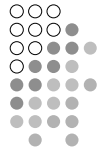


Introduction to Community Action

2009 CAPLAW Annual Training Conference

Tuesday, June 23, 2009
3:30 P.M. – 5:30 P.M.



© 2009 Community Action Program Legal Services, Inc.

1

Presenters

Seth Hassett, M.S.W.
Director, Division of State Assistance
HHS, ACF, OCS Operations Center
1515 Wilson Blvd., Suite 100
Arlington, VA 22209
(800) 281-9519
OCS@icgnet.com

R. Brian Tipton, Esq.
Sasser, Sefton, Connally, Tipton &
Davis, P.C.
100 Colonial Blank Blvd., Suite B-201
Montgomery, AL 36117
(334) 532-3400
www.sasserlawfirm.com

Allison Ma'luf, Esq.
CAPLAW
178 Tremont Street
Boston, MA 02111
(617) 357-6915
maluf@caplaw.org

© 2009 Community Action Program Legal Services, Inc.

2

Agenda

- Community Action Legal History Quiz!
- General principles
- Tripartite boards
- State plans
- Limitations on use of funds
- Allocation, payment and carryover of funds
- Fiscal controls and monitoring
- Reduction and termination of funding
- Designation of new eligible entities
- Stimulus funding under American Recovery and Reinvestment Act of 2009 (ARRA)

© 2009 Community Action Program Legal Services, Inc.

3

Origins of Community Action



What movement and court case acted as a catalyst for community action?



© 2009 Community Action Program Legal Services, Inc.

4

CIVIL RIGHTS MOVEMENT!



- Brown v. Board of Education of Topeka, Kans., (1954)
 - Segregation in public schools is unconstitutional
 - "Separate educational facilities are inherently unequal"
 - 1896 Plessy v. Ferguson overturned
 - Victory for NAACP attorney Thurgood Marshall, who became nation's first black U.S. Supreme Court justice



© 2009 Community Action Program Legal Services, Inc.

5

Community Action Begins



What domestic war did this president start?



© 2009 Community Action Program Legal Services, Inc.

6

WAR ON POVERTY!



- 1963 JFK assassinated
- 1964 LBJ expanded policy ideas initiated during JFK's administration
- Deliberate policymaking rather than casual economic growth necessary if all citizens to share in promise of American life

© 2009 Community Action Program Legal Services, Inc.

7

Who is this and what's his role in community action?



Psst, here is a hint: he is this man's father-in-law and this woman's father . . .



© 2009 Community Action Program Legal Services, Inc.

8

R. SARGENT SHRIVER!



- R. Sargent Shriver enlisted by LBJ to map out the approach to War on Poverty
- Shriver Task Force
- Maximum Feasible Participation

© 2009 Community Action Program Legal Services, Inc.

9

Community Action Agencies are Born!



- What legislation created community action agencies?



- What other very important piece of legislation was passed that same year?

© 2009 Community Action Program Legal Services, Inc.

10

Community Action Legislation



- Economic Opportunity Act of 1964
 - "Although the economic well-being and prosperity of the United States have progressed to a level surpassing any achieved in world history, and although these benefits are widely shared throughout the Nation, poverty continues to be the lot of a substantial number of our people. The United States can achieve its full economic and social potential as a nation only if every individual has the opportunity to contribute to the full extent of his capabilities and to participate in the workings of our society. It is, therefore, the policy of the United States to eliminate the paradox of poverty in the midst of plenty in this Nation by opening to everyone the opportunity for education and training, the opportunity to work, and the opportunity to live in decency and dignity. It is the purpose of this Act to strengthen, supplement, and coordinate efforts in furtherance of that policy."
- Civil Rights Act of 1964
 - Guaranteed equal opportunity for all

© 2009 Community Action Program Legal Services, Inc.

11

EOA changes



- When was the first political restriction added to the EOA?



© 2009 Community Action Program Legal Services, Inc.

12

1966!

- Hatch Act applied to CAAs
- New programs created
 - Legal Services
 - Head Start
 - Comprehensive Health Service Programs
 - Adult Basic Education
- Characteristics of CAAs delineated
 - 1/3 of board representative of poor
 - "maximum feasible participation" defined and codified
 - Fiscal accountability required

© 2009 Community Action Program Legal Services, Inc.

13

EOA changes again

- Does anyone know who these individuals are and what are their roles in community action?



© 2009 Community Action Program Legal Services, Inc.

14

EDITH GREEN and ALBERT H. QUIE!

- Green Amendment (1967) provided for greater control by local elected officials and greater accountability of politicians
 - States or local government units permitted to designate a public or private organization as a CAA
- Quie Amendment (1967) gave more uniform structure to the boards
 - Tripartite Boards are Born!
 - Maximum feasible participation destroyed?

© 2009 Community Action Program Legal Services, Inc.

15

EOA changes again and again



- What additional political activity restrictions were added to the EOA with a 1967 Amendment?



© 2009 Community Action Program Legal Services, Inc.

16

Political Activity Restrictions in 1967 Amendment



- Express prohibition as to:
 - Transportation to the polls
 - Voter registration
 - Nonpartisan political activity

© 2009 Community Action Program Legal Services, Inc.

17

The 80's and Community Action



- What important occurrence happened in 1981?



© 2009 Community Action Program Legal Services, Inc.

18

COMMUNITY SERVICE BLOCK GRANT (CSBG) BORN!



- Omnibus Reconciliation Act of 1981 created two block grants
 - Social Services Block Grant, under Title XX of the SSA and
 - CSBG which included activities administered by the CSA
- States administer block grant
 - By 1983, all 50 states assumed administrative responsibility
 - Greater local autonomy
 - Decreased administrative complexity
- Mixed Results
 - Amount of funding substantially less
 - States tried to achieve a more equitable geographic distribution of funds
- Political activities and voter registration still restricted

© 2009 Community Action Program Legal Services, Inc.

19

CSBG Years



- How many times has the CSBG Act been reauthorized since 1981?



© 2009 Community Action Program Legal Services, Inc.

20

FIVE TIMES!



- CSBG has been reauthorized 5 times:
 - 1984
 - 1986
 - 1990
 - 1994
 - 1998

© 2009 Community Action Program Legal Services, Inc.

21

1994 Reauthorization



- What did the 1994 reauthorization require from each CAA?

- What accountability program for CAAs was created in 1994?



© 2009 Community Action Program Legal Services, Inc.

22

COMMUNITY ACTION PLAN and ROMA!

- 1994 Reauthorization included:
 - .5% reserved for training and technical assistance
 - Limitation placed on states' use of funds
 - Clarification of selection of Tripartite Board members
 - Application of OMB standards to recipients
- Results Oriented Management and Accountability

© 2009 Community Action Program Legal Services, Inc.

23

1998 Reauthorization General Principles

- Community Service Block Grant (CSBG) Act: 42 U.S.C. § 9901 *et seq.*
- Block Grant "with strings"
- Basics:
 - Purposes:
 - Reduce Poverty
 - Revitalize low-income communities
 - Empower people to become sufficient through CAAs which plan and coordinate services in the community
 - Federal government (OCS) awards funds but states (not federal government) primarily responsible for interpreting CSBG Act and regulations

© 2009 Community Action Program Legal Services, Inc.

24

1998 Reauthorization General Principles



- Basics
 - Income eligibility: 100% of federal poverty line
 - State may increase up to 125%
 - 90% pass-through to CAAs
 - States may use other 10% for:
 - Admin expenses, including monitoring (5% cap)
 - Training and technical assistance
 - Coordinating state-operated programs and services to ensure increased access to services
 - Statewide coordination and communication among eligible entities

© 2009 Community Action Program Legal Services, Inc.

25

1998 Reauthorization General Principles



- Basics
 - States may use other 10% for:
 - Determining if funds targeted to the areas of greatest need
 - Asset-building programs
 - Innovative programs and activities
 - Supporting state charity tax credit
 - Other activities consistent with CSBG Act purposes

© 2009 Community Action Program Legal Services, Inc.

26

Tripartite Boards



- Governing law
- Board composition and selection
- Board size
- Terms and term limits
- Powers and duties of CAA boards

© 2009 Community Action Program Legal Services, Inc.

27

What Law Governs CAA Boards?



- Federal CSBG Act
 - Tripartite board provision – 42 U.S.C. § 9910
 - OCS Information Memorandum 82 (IM 82) – guidance only, not binding; available on OCS website: www.acf.hhs.gov/programs/ocs/csbg/documents/im82.pdf
- State CSBG or community action laws, regulations, policies, contracts
- For private CAAs – state nonprofit corporation law
- For public CAAs – delegation of authority from municipality

© 2009 Community Action Program Legal Services, Inc.

28

Federal CSBG Act



- Tripartite board administers CAA's CSBG program
 - Except for public CAAs in cases where state specifies another mechanism that assures decision-making and participation by low-income individuals
- Board fully participates in program's development, planning, implementation and evaluation

© 2009 Community Action Program Legal Services, Inc.

29

Tripartite Board Composition



- Three sectors:
 - Exactly 1/3 public officials or their representatives
 - At least 1/3 low-income representatives
 - Balance from major groups or interests in the community served
- Directors are to be chosen by grantee
 - Must use democratic selection process for low-income directors

© 2009 Community Action Program Legal Services, Inc.

30

Public Official Directors



- Under federal law, no longer required to include or be chosen by “chief elected officials”
 - For private CAAs, best to specify in bylaws that CAA itself elects public official directors – but not specify which ones
- CSBG Act says “holding office at time of selection”
 - Many state CSBG laws say “currently holding public office”
 - OCS IM 82 recommends that public officials serve only while they are in office

Public Official Directors



- If elected officials not available, may include appointed
- If public official designates a representative to serve in his/her place, that person (and not the public official) is the board member
- Best practice: specific terms and term limits
- Must serve CAA's interests

Low-Income Directors



- Private CAAs
 - Must be democratically selected to assure representative of low-income people in service area
 - If chosen to represent a particular neighborhood, must live there
- Public CAAs
 - Must be representative of low-income individuals and families in service area
 - Must live in service area
 - Must be able to participate actively in development, planning, implementation and evaluation of CSBG programs

Low-Income Directors



- Don't need to be low-income themselves
 - Best practice: should have at least some (if not all) low-income directors who are low-income themselves
- Bylaws may, but do not need to (unless required by state CSBG office), describe democratic selection procedure
 - If not described in bylaws, selection procedure should be described in a separate document referred to in the bylaws and approved by the board

Low-Income Directors



- Democratic selection techniques include:
 - Election by ballot or at community meeting
 - Elected by or designated from elected leaders of low-income groups (e.g. Head Start Policy Council, neighborhood ass'n, public housing tenants' ass'n, community health center board, etc.)
- Should not be chosen simply by CAA board or nominating committee
- Should not be staff of another low-income service provider picked by CAA board or nominating committee or by executive director of other organization

Private Sector Directors



- Reps should be officials or members of business, industry, labor, religious, welfare, education, law enforcement, or other major groups and interests in the community served
 - May include both public and private sector groups and interests

Private Sector Directors



- Usually grantee may choose representatives from organizations or individuals
 - But some state CSBG laws/regs require CAAs to choose organizations to designate private sector directors
 - If choosing reps from organizations, board has more flexibility if bylaws don't specify which organizations

Board Selection Suggestions



- Board development/governance committee oversees the recruitment and selection process
- All candidates for director positions complete an application
- Full board elects all directors once chosen through the appropriate selection process
 - Ensures that directors meet applicable requirements
 - Enables board to remove them and fill their vacancies

Petitions for Board Representation



- CSBG Act: CAAs must establish procedures for low-income individuals, community organization, religious organization or representative of low-income individuals that considers its organization or low-income individuals to be underrepresented on the board to petition for representation
- If state CSBG law/regs don't specify petition procedures, CAAs can develop their own – best to include in bylaws

Board Size



- Federal CSBG Act doesn't address board size
 - Number of directors must be divisible by three
 - Some state CSBG laws/regs impose board size requirements
 - Most CAAs have between 15 and 36 directors

Directors' Terms



- Federal CSBG Act does not address CAA directors' terms or term limits
 - Some states' CSBG laws/regs specify maximum term length and term limits
 - Some state nonprofit corporation laws set maximum term length and default term length if not specified in articles or bylaws
- Specify directors' terms in bylaws
 - May provide for staggered terms
 - Terms can be different lengths for different sectors
- Three-year terms is a common term length for nonprofit directors

Term Limits



- If state law does not specify term limits, directors may serve for any number of successive terms
 - Individual CAAs may decide to have term limits
- Good idea to have a mix of new and experienced directors
 - Staggered terms
 - Consider term limits, with possibility of rejoining the board after a break

Duties of All CAA Boards



- All tripartite boards must fully participate in their CAAs' CSBG programs'
 - Development
 - Planning
 - Implementation
 - Evaluation
- See IM 82

State Plan



- Includes either one or two fiscal years
- Must be submitted no later than 30 days prior to beginning of the first fiscal year covered by the plan
- State must hold at least one public hearing to give an opportunity for comment on the proposed use and distribution of funds
 - Must give sufficient time and statewide distribution of notice of hearing
- See CSBG Act, 42 U.S.C. § 9908(b)

State Plan



- State plan must include assurances that the state will:
 - Use CSBG funds to:
 - Support activities designed to assist low-income families and individuals. . .
 - Address needs of low-income youth
 - Coordinate with related programs
 - Obtain community action plans from CAAs with community needs assessment
- See CSBG Act, 42 U.S.C. § 9908(b)

State Plan



- State plan must include assurances that the state will:
 - Participate in ROMA/performance measurement
 - Provide a description of how state intends to use 10% discretionary funds
 - Follow the funding reduction/termination procedure when applicable
- See CSBG Act, 42 U.S.C. § 9908(b)

State Plan



- Revised or amended plan
 - Plan may be revised by state and resubmitted to OCS
 - Revised plan must be made available for public inspection in such a manner as will facilitate review of, and comment on, the plan
- See CSBG Act, 42 U.S.C. § 9908(e)

Limitations on Use of CSBG Funds



- Real Estate
 - Generally cannot use CSBG funds for either:
 - Purchase or improvement of land or
 - Purchase, construction, or permanent improvement of building or other facilities
 - OCS Waiver, upon request, if "Extraordinary Circumstances"
 - See IM 60 available at <http://www.caplav.org/documents/TransmittalNo.60.pdf>
 - See CSBG Act, 42 U.S.C. § 9918(a)

Limitations on Use of CSBG Funds



- Limits on Political Activities
 - No CSBG \$ or resources for:
 - Political activities
 - Voter registration
 - Transportation to the polls
 - Hatch Act application
 - See IM 81 available at <http://www.acf.hhs.gov/programs/ocs/csbg/guidance/im81.pdf>
 - See CSBG Act, 42 U.S.C. § 9918(b)

© 2009 Community Action Program Legal Services, Inc.

49

Limitations on Use of CSBG Funds



- Nondiscrimination
 - Charitable choice regulations permit religious discrimination in hiring by faith-based organizations
 - Religious discrimination against program beneficiaries prohibited
 - See CSBG Act, 42 U.S.C. § 9918(c)
- Can't use as match for other federal funds
 - OMB Circular A-122; 2 C.F.R. Part 230: Appendix A

© 2009 Community Action Program Legal Services, Inc.

50

Allocation, Payment and Carryover of CSBG Funds



- Allocation by states to CAAs
 - Funding formulas vary and often the result of state CSBG statute
 - Most states update their formulas to reflect most recent Census data
 - States may use data other than Census data
 - See CSBG Act, 42 U.S.C. § 9908(c)
- Advance payments not required
- CAAs may carryover unexpended CSBG funds into the next fiscal year
 - See Omnibus Appropriations Act, Pub. L. No. 111-8, Tit. II, 123 Stat. 524, 775 (2009)

© 2009 Community Action Program Legal Services, Inc.

51

Fiscal Controls



- CSBG Act requires states to:
 - Establish controls and procedures to assure proper disbursement and accounting
 - Ensure that OMB cost and accounting standards apply to CAA's and subgrantees
- Annual audit of state's CSBG expenditures by entity independent of state agency administering CSBG
- See CSBG Act, 42 U.S.C. § 9916
- Administrative costs - see IM 37 available at <http://www.acf.hhs.gov/programs/ocs/csbg/guidance/im37.html>

CSBG Monitoring



- State must monitor and visit at least once every 3 years
 - Must conduct follow-up reviews including prompt return visits to eligible entities, and their programs, that fail to meet the goals, standards, and requirements established by the State
- See CSBG Act, 42 U.S.C. § 9914
- States are subject to federal monitoring by OCS
 - See OCS IM No. 102 available at <http://www.acf.hhs.gov/programs/ocs/csbg/pdf/csbgapplicationplan.pdf>

CSBG Funding Termination/Reduction



- CAAs retain status as "eligible entities" unless terminated by state or voluntarily give up that status
- CAAs that received CSBG funding in the prior fiscal year cannot have their CSBG funding terminated or reduced until after the state follows certain procedures
- See CSBG Act, 42 U.S.C. §§ 9908(b)(8), (c); 9915 and 45 C.F.R. § 96.92

CSBG Funding Termination/Reduction



- Procedural Steps
 - State must notify CAA of deficiency
 - State must give CAA an opportunity to correct deficiency
 - Allow CAA to submit and implement corrective action plan and
 - Make training and technical assistance available
 - State must provide notice and opportunity for hearing on the record
 - After hearing, state determines if “cause” exists to terminate or reduce funding
 - If “cause” found, CAA has opportunity for review by HHS
 - See CSBG Act, 42 U.S.C. §§ 9908(b)(8), (c); 9915 and 45 C.F.R. § 96.92

© 2009 Community Action Program Legal Services, Inc.

55

CSBG Funding Termination/Reduction



- State may not terminate or reduce funding until all of the previously described steps are taken
 - If state does, CAA may request direct funding from HHS
 - See CSBG Act, 42 U.S.C. § 9915(c)

© 2009 Community Action Program Legal Services, Inc.

56

Designation of New Eligible Entities



- Governor may designate new eligible entity:
 - If area is unserved
 - If existing CAA is terminated or goes out of business
- Organization designated must be one of demonstrated effectiveness in meeting CSBG goals and purposes
- Governor may give priority to existing eligible entities providing related services in unserved area
- See CSBG Act, 42 U.S.C. § 9909

© 2009 Community Action Program Legal Services, Inc.

57

Designation of New Eligible Entities – Option One



- Private, non-profit organization:
 - Geographically located in unserved area
 - Capable of providing broad range of services designed to eliminate poverty and foster self-sufficiency
 - Meets CSBG requirements
- See CSBG Act, 42 U.S.C. § 9909

Designation of New Eligible Entities – Option Two



- Existing private non-profit eligible entity:
 - Located in area contiguous to or in reasonable proximity to unserved area;
 - Already providing related services in unserved area; and
 - Agree to add board members in all sectors for unserved area
- See CSBG Act, 42 U.S.C. § 9909

Designation of New Eligible Entities – Public Entities



- State may not designate gov't subdivision as eligible entity, unless:
 - No qualified private non-profit in area
 - Political subdivision has board or other mechanism for low-income representation
- See CSBG Act, 42 U.S.C. § 9909

ARRA's Purposes



- Preserving and creating jobs and promoting economic recovery
- Assisting those most impacted by the recession
- Providing investments needed to increase economic efficiency by spurring technological advances in science and health
- Investing in transportation, environmental protection and other infrastructure that will provide long-term economic benefits
- Stabilizing state and local gov't budgets to minimize and avoid reductions in essential services and counterproductive state and local tax increases

© 2009 Community Action Program Legal Services, Inc.

61

Principles Governing Use of ARRA Funds



- Begin expenditures and activities as quickly as possible consistent with prudent management
 - For infrastructure projects, preference for quick-start ("shovel-ready") activities
- Use grant funds in a way that maximizes job creation and economic benefit
- Accountability and transparency
- ARRA funds available for obligation until Sept. 30, 2010 – unless ARRA expressly says otherwise

© 2009 Community Action Program Legal Services, Inc.

62

CSBG Stimulus Funding



- \$1 billion in ARRA funds for CSBG
- ARRA, Division A, Title VIII, Children and Families Services Programs (3), page H.R. 1-65.
- OCS: Services to be performed by September 10, 2010
- OCS guidance:
 - Information Memo 109:
<http://www.acf.hhs.gov/programs/ocs/csbg/guidance/im109.html>
 - FAQs: <http://www.acf.hhs.gov/programs/ocs/csbg/qna.html>
 - Model state CSBG ARRA plan:
<http://www.acf.hhs.gov/programs/ocs/csbg/outlinemodel.html>

© 2009 Community Action Program Legal Services, Inc.

63

Allocation of CSBG Stimulus Funds



- \$980,000,000 to states:
 - 99% must be distributed to CSBG eligible entities
 - 1% must be used for benefits enrollment coordination activities
- \$20,000,000 to HHS:
 - \$15,000,000 for training, technical assistance, planning, evaluation, investigations, assistance to states in carrying out corrective action, monitoring, and reporting and data collection, development of performance measurement systems
 - \$5,000,000 for grants to territories

Allocation of CSBG Stimulus Funds



- Same proportion of funding to CAAs as regular FY09 CSBG funds
- States must follow required process to implement a reduction of funding
- See OCS IM No. 109 available at <http://www.acf.hhs.gov/programs/ocs/csbg/guidance/im109.html>

Allocation of CSBG Stimulus Funds



- No ARRA funds to states for statewide activities or for the state's administration of the CSBG program
- No ARRA funds to HHS for HHS discretionary activities or HHS reporting
- No funds specifically for state CAA associations, but OCS expects ass'ns will be eligible to apply for HHS T&TA funds

Allocation of CSBG Stimulus Funds



- Funding allocated to states for capacity development projects for technical assistance and strategic planning efforts related to ARRA
 - See OCS Initial Funding Announcement HHS-2009-ACF-OCS-EQ-0037 available at <http://www.acf.hhs.gov/grants/open/HHS-2009-ACF-OCS-EQ-0037.html>

© 2009 Community Action Program Legal Services, Inc.

67

Distribution of CSBG Stimulus Funds to States



- States Plans for CSBG ARRA were due to OCS by May 29, 2009
 - Viewed as a revised plan so only needed to be made available for public inspection within the state in such a manner as to facilitate review of, and comment, on the plan – no hearing required.
- HHS has already made funds available to states
 - States receiving CSBG ARRA funds under same formula used for regular annual CSBG
 - States failing to submit timely plans may have funding placed on hold

© 2009 Community Action Program Legal Services, Inc.

68

Increased Income Eligibility



- ARRA authorizes states to increase CSBG eligibility level to 200% of federal poverty line for CSBG services provided in FY09 and FY10
 - Including services paid for with regular FY09 and FY10 appropriations
 - See ARRA, Division A, Title VIII, Children and Families Services Programs (3), page H.R. 1-65.

© 2009 Community Action Program Legal Services, Inc.

69

Use of CSBG Stimulus Funds by CAAs



- OCS urges states to encourage CAAs to use CSBG ARRA funds to focus on:
 - Employment-related activities
 - Activities that create and sustain economic growth
- CAAs can also use CSBG ARRA funds for same purposes as regular CSBG funds – e.g., helping low-income people:
 - Secure and retain meaningful employment
 - Attain an adequate education
 - Make better use of available income
 - Obtain and maintain adequate housing
 - Obtain emergency assistance
 - See OCS IM No. 109 available at <http://www.acf.hhs.gov/programs/ocs/csbg/guidance/im109.html>

Accounting and Reporting



- Must track, account for and report on ARRA funds separately from regular CSBG funds
 - States will monitor CAAs' use of ARRA funds
 - Additional OCS guidance on reporting requirements and formats expected
- Regular CSBG reporting, fiscal accountability and performance measurement (e.g., ROMA) requirements also apply

- Credit to Maximum Feasible Success: A History of the Community Action Program by Robert F. Clark for much of the information contained in the legislative history slides.

CAPLAW Conference



Save the dates for

CAPLAW's 2010 National Training Conference

June 16-18, 2010
Savannah, Georgia

© 2009 Community Action Program Legal Services, Inc.

73
