



CSBG Training Module

Transcript

Introduction



Welcome to CAPLAW's Introduction to CSBG training module. We are excited to offer this interactive tool for Community Action Agencies to learn about the Community Services Block Grant Act.

All Community Action Agencies (which we will sometimes refer to in this module as CAAs or eligible entities) receive Community Services Block Grant (or CSBG) funds. These funds come with significant requirements that affect how CAAs are governed and operate. Thus, it is important for CAA staff and board members – as well as anyone else who works with these funds – to understand how CSBG works and the key requirements of this funding source.

This interactive module enables users to learn about CSBG on their own or as part of a group training session, such as a board meeting. We encourage CAAs to use this module with their staff and board members – especially those who are new to Community Action. We also encourage CAAs to use this training module alongside [CAPLAW's CAA Leaders' Legal Guide](#), a publication that provides a closer look at the legal framework that governs CSBG funding. You can find the CAA Leaders' Legal Guide, along with all other CAPLAW resources, in our Resources Library at caplaw.org.

Agenda



The module contains 10 chapters on topics ranging from the history of CSBG, to the tripartite board requirements for CAAs, to funding reduction and termination. You can work through the chapters in order or choose specific chapters to focus on. The module is structured so that you can access any chapter individually, and so you can return to review chapters you've already completed. There are also interactive activities throughout the module to help review and assess what you have learned. The module contains citations to relevant laws, regulations and other guidance to give you additional reference points, and also links to federal guidance on CSBG funding.

Chapter 1: History, Background and Governing Law



Community Action Beginnings

“Because it is right, because it is wise, and because, for the first time in our history, it is possible to conquer poverty, I submit, for the consideration of the Congress and the country, the Economic Opportunity Act of 1964. The Act does not merely expand old programs or improve what is already being done. It charts a new course. It strikes at the causes, not just the consequences of poverty...”¹

With these words, President Lyndon B. Johnson submitted to Congress the centerpiece of his War on Poverty, the Economic Opportunity Act of 1964. In his message to Congress, President Johnson described one of the central components of the Act:

“[T]hrough a new Community Action program we intend to strike at poverty at its source – in the streets of our cities and on the farms of our countryside among the very young and the impoverished old. This program asks men and women throughout the country to prepare long-range plans for the attack on poverty in their own local communities.... The most enduring strength of our nation is the huge reservoir of talent, initiative and leadership which exists at every level of our society. Through the Community Action Program we call upon this, our greatest strength, to overcome our greatest weakness.”²

The Economic Opportunity Act was enacted on August 20, 1964. It authorized funding for community organizations, to be provided directly from the federal government, without involvement of state or local political forces. Over 1,000 of these community organizations, which came to be known as Community Action Agencies, were established and funded through the Economic Opportunity Act.

The Act established a number of other programs aimed at improving the lives of low-income Americans, such as Job Corps and Volunteers in Service to America (or VISTA).

It also created the Office of Economic Opportunity (or OEO), a cabinet-level office, whose mission was to coordinate the federal government’s War on Poverty efforts and programs. President Johnson appointed Sargent Shriver as the first director of the OEO. Shriver had served under his brother-in-law President John Kennedy as the Peace Corps’s first director and then as a special assistant to President Johnson tasked with designing the War on Poverty.

An important part of OEO’s mission was to serve as a laboratory for anti-poverty program development. In addition to overseeing the Economic Opportunity Act programs, OEO incubated other key War on Poverty initiatives – including Head Start, the Legal Services Program, and the Comprehensive Health Services Program – that Congress later separately authorized and funded.

Written into the Economic Opportunity Act was the mandate that Community Action Agencies at the local level be developed, conducted and administered with the “maximum feasible participation of residents of the areas served and members of the groups served.” This inclusion of members of the low-income community served by CAAs in the decision-making process of those organizations endures as a hallmark of the program. In 1966, Congress passed the Quie Amendment, which required that at least one-third of the members of CAA boards be representatives of the poor.

However, big city mayors charged that maximum feasible participation of the poor “undermin[ed] the integrity of local government” and they sought local government involvement in the Community Action Agencies planning groups.³ In 1967, Congress responded by passing the Green Amendment, which created a three-part structure for Community Action Agency boards. One-third of the board would be composed of public officials or their representatives; at least one-third of the board would be composed of democratically selected representatives of the poor in the area served; and the remainder would be composed of officials of business, industry, labor, religious, welfare, education or other major groups and interests in the community.

In 1975, Congress amended the Economic Opportunity Act to include restrictions on political activities of CAAs and their employees. These amendments were passed in response to advocacy and voter registration efforts by CAAs, conducted in some cases as part of the civil rights movement.

In 1981, Ronald Reagan took office, having won the presidency in a landslide election on a platform of limiting federal government spending. Later that year, Congress repealed the Economic Opportunity Act and passed legislation championed by the Reagan administration that combined 57 formerly discretionary grants into 9 block grants and reduced funding for those programs. The idea behind changing the funding structure from discretionary grants to block grants was to reduce federal spending, limit the federal government’s role in social programs, and transfer responsibility and authority for these programs to state and local governments.

Community Action was one of the discretionary grant programs repealed in 1981 and replaced with a block grant– the Community Services Block Grant, which continues to serve as the authorizing statute for CSBG funding today.

Block Grants

There are two main types of federal grants: **mandatory grants** and **discretionary grants**. Each type is characterized by a specific set of terms that governs the relationship between the awarding agency and the grantee. CAAs often receive both mandatory and discretionary grants, so it is important to understand the differences between them.

A **mandatory grant** is one that awarding agency must make if the grantee, which is usually a state, meets the requirements for the grant. These grant requirements are set forth in the grant authorizing statute and implementing regulations.

A **block grant** is a specific type of mandatory grant. CSBG is an example of a block grant. With block grants, states are primarily responsible for grant administration, and the federal government plays a fairly limited role. Other examples of block grants that CAAs may receive or facilitate are the Low-Income Home Energy Assistance Program (or LIHEAP), Temporary Assistance for Needy Families (or TANF), the Social Services Block Grant (or SSBG), and the Community Development Block Grant (or CDBG).

The amount of a block grant funds awarded to a state is determined by a formula in the authorizing statute. The federal funding agency must award the amount Congress has allotted – it does not have the discretion to award any more or less funding. However, the federal funding agency can refuse to award grant funds if a grantee fails to meet the applicable statutory and regulatory requirements. Once a state has chosen to participate in a mandatory grant program, it must also follow the program’s authorizing statute and regulations. To participate in a block grant program, a state usually must submit a state plan detailing how it will use the grant funds and assuring the federal agency administering the program that the state will comply with applicable statutory and regulatory requirements; once a state plan has been approved by the awarding agency, the state must follow that plan. However, states generally have significant leeway in interpreting the program requirements and their own state plans.

States are the grantees of block grant funds, but they often further subaward or subcontract those funds to other entities, such as Community Action Agencies, to operate programs or provide services with the grant funds. Because states typically pass block grant funding through to sub-grantees, block grants are one type of grant sometimes referred to as “pass-through” grants.

Another important distinction between mandatory and discretionary grants is whether the sets of rules known as the federal “cross-cutting” requirements apply to the funding. These cross-cutting requirements include the Uniform Federal Administrative Requirements and Cost Principles for grants from the Office of Management and Budget, also known as the Uniform Guidance. Other common cross-cutting provisions include anti-discrimination requirements, the Byrd Amendment (which is a law restricting lobbying the federal government regarding grants), the Federal Funding Accountability and Transparency Act (which is a law requiring recipients of certain federal grants and cooperative agreements to report executive compensation and subaward information), and the rules on suspension and debarment from receiving federal awards.

Typically for block grants, many federal cross-cutting requirements do not apply. In some cases, however, the federal authorizing statute requires states to incorporate certain cross-cutting requirements. For example, the CSBG Act requires that states apply OMB’s cost and accounting standards to recipients of CSBG funds. In addition, a state may choose to apply certain cross-cutting requirements to a particular block grant program.

The other main type of federal grant is known as the **discretionary grant**. With a **discretionary grant** (sometimes also referred to as a direct, categorical or project grant), the federal government is the one that is primarily responsible for administering the funding. The authorizing statutes for discretionary grant programs give the federal agencies awarding the grants the discretion to decide – usually through a competitive process – who will receive awards and how much the awards will be.

The federal agencies usually attach program or project-specific conditions to discretionary grants, and discretionary grants are typically subject to federal cross-cutting requirements. Discretionary grants are awarded directly by the federal government to the applicants (such as CAAs) rather than through the states, and are made for specific, time-limited projects. A current example of a discretionary grant program is the Head Start program.

Community Action Today

Despite the repeal of the Economic Opportunity Act close to 30 years ago, the Community Action movement today is changing lives, improving communities and making America a better place to live. Approximately 1,100 CAAs are fighting poverty and providing services to nearly 16.4 million people across the country.⁴ Though the majority of these CAAs are nonprofit organizations, local government entities also operate a significant number of CAAs. Under the CSBG Act, states may subaward CSBG funding to both nonprofit and public entities meeting the requirements of the Act.

While CSBG may not necessarily be a CAA's largest source of funding, it is particularly important for a few reasons: first, the broad purposes and goals of the CSBG Act highlight the flexible and community-based nature of CSBG funding. CSBG is used not only to provide anti-poverty services, but also to support and enhance a CAA's various anti-poverty programs and link them with each other and other related programs in the community. CSBG also has a significant impact on CAA governance because the CSBG Act specifies that each CAA must have a tripartite board.

Today, at the federal level, CSBG funding is administered by the Office of Community Services (or OCS), which is an agency of the U.S. Department of Health and Human Services. Each state has an office designated by the governor to oversee the CSBG program in that state.

Governing Law

The main law governing CSBG today is the federal CSBG Act, which was originally passed in 1981 and has been revised a number of times since then. The CSBG Act was most recently reauthorized by Congress in 1998.

CSBG funding is subject to the U.S. Department of Health and Human Services' block grant regulations, which can be found at 45 C.F.R. (or Code of Regulations), Part 96. These regulations specify that **states** are primarily responsible for interpreting the governing law of the block grant. Thus, the regulations acknowledge that different states may reach different interpretations of the same statutory provisions in the federal Act. (The CSBG Act, however, does give HHS the authority to issue rules and regulations to provide for enforcement of the Act's political activity restrictions.)

At the federal level, further guidance specific to CSBG is available in the form of Information Memoranda (or IMs) from the federal Office of Community Services. Also, when states accept CSBG funds, they become bound by terms and conditions of the CSBG grant from the federal government. Copies of the IMs and terms and conditions are available on the OCS website.

The federal CSBG Act requires that states ensure that the cost and accounting standards of OMB apply to CSBG. Initially, OMB issued these standards in the form of circulars, which were government-wide instructions issued to federal agencies. In 2014, these circulars were consolidated into and replaced by OMB's Uniform Administrative Guidance, Cost Principles, and Audit Requirements for Federal Awards, otherwise known as the Uniform Guidance. Subpart E of the Uniform Guidance contains the federal cost principles and provides guidance as to what expenses can be charged to federal grants. Subpart F of the Uniform Guidance provides standards for audits of states, local governments and nonprofit organizations receiving federal funds.

Unfortunately, the Uniform Guidance turned out not to be so "uniform" after all. Intended to be a government-wide framework for grants, the Uniform Guidance is codified at 2 C.F.R. Part 200. However, individual federal agencies have also separately adopted their own versions of the Uniform Guidance. While most federal agency codifications adopted OMB's version with a few program-specific tweaks, HHS—which is the federal agency administering CSBG—completely re-codified the Uniform Guidance, and also included revisions specific to HHS programs. HHS's codification of the Uniform Guidance can be found at 45 C.F.R. Part 75.

The Uniform Guidance also clarified that because CSBG is a block grant, only a few select provisions of the administrative requirements (Subparts B, C, and D) apply to CSBG. Thus, CSBG funds are subject to the following Uniform Guidance provisions: the Acronyms and Definitions in Subpart A, the General Provisions in Subpart B, the public notice of federal financial assistance programs requirement in Subpart C, and the rules on distinguishing between subrecipients and contractors, pass-through entity/requirements, and fixed amount awards in Subpart D.

At the state level, a number of states have state CSBG or Community Action laws and/or regulations. Many state CSBG offices issue CSBG policies and procedures or similar guidance.

In addition, all state CSBG offices enter into contracts or grant agreements with CAAs that spell out the responsibilities of the state and the CAA. These agreements provide the most specific terms and conditions governing the performance of the grant by the grantee. They generally address topics such as: the amount of funds awarded, the scope of work, performance goals, monitoring and reporting, payment methods, access to records, and enforcement actions. When questions arise about a CAA's responsibilities under a CSBG award, it is often best to start by looking at the CSBG funding agreement with the state. Keep in mind, however, that state CSBG laws, regulations, and agreements must be consistent with federal and state law, including the federal CSBG Act. For example, where a state CSBG law or regulation is inconsistent with the federal CSBG Act, the federal Act will prevail.

Finally, all states are required to adopt a performance management framework, which must incorporate the CSBG Organizational Standards set forth in IM 138, or an equivalent framework. To date, all states have adopted the CSBG Organizational Standards as issued by OCS in IM 138. These standards were developed by the CSBG Organizational Standards Center of Excellence, and are intended to ensure that all CAAs have the capacity to provide high-quality services to low-income individuals and families.

The CSBG Organizational Standards are organized into three thematic groups: (1) maximum feasible participation; (2) vision and direction; and (3) operations and accountability. There are 58 standards for nonprofit CAAs and 50 standards for public CAAs. Some of the standards have direct links to the CSBG Act, such as the standards on the tripartite board structure and the democratic selection process. Some standards link with OMB guidance, such as the standards on audits. As a whole, the standards reflect many of the requirements of the CSBG Act, applicable federal laws and regulations, good management practices, and the values of Community Action.

Chapter 2: CSBG Purposes and Permitted Uses of Funds



CSBG Act Purposes

The purposes of the CSBG Act are “to provide assistance to States and local communities working through a network of Community Action Agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient.”

These three broad purposes are to be accomplished by the following means that emphasize the flexible and community-based nature of CSBG:

- The strengthening of community capabilities for planning and coordinating use of a broad range of federal, state, local and other assistance (including private resources) related to the elimination of poverty so that this assistance can be used in a manner responsive to local needs and conditions;
- The organization of a range of services related to needs of low-income families and individuals, so that these services may have a measurable and potentially major impact on the causes of poverty in the community and may help the families and individuals to achieve self-sufficiency;
- The greater use of innovative and effective community-based approaches to attacking the causes and effects of poverty and of community breakdown;
- The maximum participation of resident of low-income communities and members of the groups served by CSBG programs to empower them to respond to the unique problems and needs within their communities, and
- The broadening of the resource base of programs directed to the elimination of poverty so as to secure a more active role in the provision of services for
 - Private, religious, charitable, and neighborhood-based organizations; and
 - Individual citizens, and business, labor, and professional groups, who are able to influence the quantity and quality of opportunities and services for the poor.

A Unique Block Grant

Although CSBG is a block grant, states have less leeway in administering it than they do with most other block grant programs. For example, states do not have much discretion to choose which local organizations receive CSBG funds; they must pass through 90% of the funds they receive to what the statute calls “eligible entities.” In addition, a state cannot reduce or terminate a CAA’s funding below the proportion the CAA received in the previous year without following procedures specified in the CSBG Act, including notice and an opportunity for a hearing. Also, a CAA’s programs and services are determined on the basis of a local community needs assessment, rather than by the state. Moreover, CSBG funding may be used not only to provide direct services, but also, in the words of OCS IM 37, “to undertake a very broad range of activities, including linking and strengthening other anti-poverty programs and services.” OCS has issued Information Memorandum 37 to help states and eligible entities distinguish between administrative costs and costs of providing direct services.

State Discretionary Funds

States may use the remaining 10% of their allotted CSBG funds for a variety of purposes, including expenses associated with administering the program. However, the maximum yearly amount a state may spend on administrative expenses, including monitoring, is 5% of its total CSBG allotment for that year. The CSBG Act specifies, however, that the cost of providing training and technical assistance will not be considered administrative expenses.

HHS Discretionary Funds

The U.S. Department of Health and Human Services also receives discretionary funds that it can use for a variety of CSBG-related purposes. Examples of these purposes include: awarding funds to CSBG-network organizations to provide training and technical assistance to CAAs and awarding funds on a competitive basis to organizations conducting community economic development activities, rural community development activities and neighborhood innovation projects. Recipients of community development and neighborhood innovation awards are not limited to CAAs.

Chapter 3: Tripartite Boards



Governing Law

The tripartite board requirement remains a hallmark of Community Action. Like its predecessor, the Economic Opportunity Act, the CSBG Act generally requires that each CAA have a tripartite board made up of three sectors – representatives of the low-income people being served, public officials, and other major groups and interests in the community. The purpose of this requirement is to obtain input from each of the sectors on community needs, resources and program effectiveness.

IM 82 from the federal Office of Community Services provides further federal guidance on tripartite boards. Although neither states nor CAAs are bound by this guidance, they may find it helpful in understanding the composition, role and responsibilities of the tripartite board.

These issues are often also addressed in state CSBG or Community Action laws and regulations, which must be consistent with federal and state law. For example, Category 5 of the CSBG Organizational Standards, which have been adopted by all states, incorporates federal requirements regarding CAA board composition, selection and bylaws, as well as board roles and responsibilities.

Other sources of law governing CAA tripartite boards vary depending on whether a CAA is a nonprofit corporation or a government entity. A nonprofit CAA's board is governed by the nonprofit corporation law in its state, while a public CAA's tripartite board is governed by whatever authority the local governing body (such as a city council or board of county commissioners) may have delegated to it through a local ordinance or other official act.

Other grant programs may impose board requirements as well. For example, the boards of CAAs with Head Start programs are subject to the Head Start Act's requirements on composition, responsibilities and conflicts of interest. Additionally, the board of a CAA that operates a community health center or intends to qualify as a CHDO must meet additional composition requirements.

In addition, tripartite boards adopt bylaws to specify the rules and procedures by which they will be governed. Bylaws typically cover issues such as: board size, composition and selection; board members' terms; board meeting procedures; officers; and committees. Because of the tripartite board structure required by the CSBG Act, CAAs must include a number of provisions in their bylaws not found in a typical nonprofit's bylaws.

Sections 5.3 and 5.4 of the CSBG Organizational Standards require that a CAA's bylaws must be reviewed by an attorney every 5 years, and that the organization documents that each board member has received a copy of the bylaws within the past 2 years. To assist CAAs in understanding and revising their bylaws, CAPLAW has developed a [Bylaws Toolkit for CAAs](#) and the attorneys working with them to review their bylaws.

CSBG Duties

The CSBG Act requires that each CAA's CSBG-funded programs be administered by a tripartite board that fully participates in the development, planning, implementation and evaluation of the program.

OCS Information Memorandum 82 offers guidance on how a tripartite board can fully participate in these activities. For example, the IM states that a board can participate in CSBG program development by clarifying the CAA's mission and providing critical input on the organization's community needs assessment.

Category 5 of the CSBG Organizational Standards imposes additional duties upon CAAs and their boards. Some of these duties include making sure board members receive training on their duties and responsibilities and sign a conflict of interest policy at least every 2 years, implementing a

structured orientation for board members within 6 months of joining the board, and providing the board with programmatic reports at each regular board meeting.

For public CAAs, the federal CSBG Act provides a limited exception to the tripartite board requirement. A state may specify that a public CAA may employ another mechanism to assure decision-making and participation by low-income individuals in the development, planning, implementation and evaluation of the CAA's CSBG-funded programs. Most public CAAs, however, have tripartite boards.

Powers

The powers of a CAA tripartite board depend on whether the CAA is a nonprofit corporation or a government entity.

The powers of a nonprofit CAA's tripartite board are established by state nonprofit corporate law, which usually grants the board broad powers. These laws usually include a statement such as "All corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board of directors."

As mentioned previously, the powers of a public CAA's tripartite board depend on the authority delegated to it by the local governing body.

Although many people think of a public CAA's tripartite board as an advisory board, the CSBG Act actually specifies a more active role. According to the CSBG Act, a public CAA "shall administer the community services block grant program through... a tripartite board." Thus, the board is to be an administering board, and not simply an advisory board. Moreover, it is clear from the CSBG Act, that a public CAA's low-income board members (and, presumably, other board members as well) must make decisions about and participate actively in the development, planning, implementation and evaluation of the CSBG program.

Composition & Selection – Three Sectors

The federal CSBG Act requires that the board be composed of three sectors; however, it does not require that the three sectors be equal in size. The CSBG Act specifies the following: that the public sector must comprise exactly one-third of the board; that the low-income sector must comprise at least one-third of the board; and that the so-called "private sector" is to make up the remainder of the board. Thus, according to the CSBG Act, a CAA tripartite board may be composed of more than one-third low-income sector board members, fewer than one-third private sector board members and exactly one-third public sector board members, or it may be made up of three sectors of equal size. In some cases, however, state CSBG laws or regulations require that the three sectors be of equal size.

It is important to note that the federal CSBG Act requires that the tripartite board be selected by an eligible entity. For a nonprofit CAA, this means the CAA tripartite board. For a public CAA, this means the local governing body (for example, the city council or board of county commissioners), unless that body has delegated the responsibility of selecting board members to the tripartite board itself.

However, both nonprofit CAAs and public CAAs must use a democratic process to select low-income sector board members. We will describe this process in greater detail shortly.

CAPLAW has a few recommendations about board composition and selection.

First, we recommend that nonprofit CAAs specify in their bylaws that the board selects public and private sector board members (unless state CSBG law or regulations require them to select the board members in another manner).

In the case of a public CAA, the tripartite board should be actively involved in the process of identifying candidates for and selecting tripartite board members, even if the local governing body (such as the city council or board of county commissioners) ultimately has the final say on the selection of tripartite board members.

Second, we recommend that, rather than using a nominating committee that meets only when there are board positions to fill, a CAA establish a standing governance committee responsible for “care and feeding” of the board. Such a committee could: oversee the low-income board member democratic selection process; recommend candidates for public and private sector board seats; work to fill board vacancies when they arise; develop written job descriptions/expectations for board members; assign existing board members to mentor new board members; coordinate orientation for new board members and training for all board members; coordinate the board’s periodic evaluation of itself and of individual board members; and coordinate periodic review of the CAA’s articles of incorporation and bylaws

Third, to ensure that board member candidates meet the required qualifications for service on the board and in their particular board sector, as well as to determine whether their particular skills and backgrounds meet the board’s current needs, we recommend that candidates for board positions complete an application.

Finally, following the appropriate selection process for each nominee and a review by the board or governance committee to ensure that each nominee meets all of the applicable qualifications for board membership and for their particular board seat, we suggest that the tripartite boards of nonprofit CAAs vote on the election of the nominees. This is consistent with the federal CSBG Act, which specifies that the CAA itself selects its tripartite board members (subject to the requirement that low-income board members be chosen through a democratic selection process). In addition, under some states’ nonprofit corporation laws, board members appointed by individuals or entities other than the nonprofit’s board of directors can only be removed by the person or entity that appointed them; however, if the board votes on the election of all board members, it retains the

power to remove them. Having the board taking this vote will also allow the CAA to screen out individuals who are not legally permitted to serve on the board (for example, for a Head Start grantee, individuals with financial conflicts of interest or relatives working for the CAA.)

Composition & Selection – Low-Income Sector

At least one-third of the tripartite board members must be selected in accordance with a democratic procedure adequate to ensure that they are representative of low-income individuals and families in the community or area served by the CAA.

The individuals who are selected to serve as low-income directors do not necessarily need to be low-income themselves. However, because the CSBG Act specifies that its goals are to be achieved through maximum participation of low-income people, we recommend that each CAA ensure that some, if not all, of its low-income sector board members be low-income themselves or have recently moved out of poverty.

For private CAAs, if a low-income sector board member is selected to represent a specific neighborhood within in its service area, he or she must live there. So, for example, assume that a CAA serves three counties and that its bylaws specify that one low-income sector board member will be selected to represent each county. The CAA holds an election in one of the counties to elect a low-income sector board member to represent that county. The person selected must live in that county. However, if the CAA's bylaws do not tie low-income board member selection to a particular county or other geographic area, its low-income sector board members need not live in any particular neighborhood.

For public CAAs, low-income sector board members must reside in the neighborhood served. Presumably, the neighborhood served could be the CAA's entire CSBG service area or a portion of it.

Composition & Selection – Democratic Selection

In general, the bylaws may, but do not need to, describe the procedure used to select low-income directors. However, Section 5.2 of the CSBG Organizational Standards require the board to have written procedures that document a democratic selection process satisfying the CSBG Act's requirements, and some states' CSBG laws, regulations or other guidance require CAA bylaws to include the details of the democratic selection procedure. Where state law does not require inclusion of the democratic selection procedure in the bylaws, a CAA can describe the democratic selection process generally in its bylaws and adopt more detailed procedures by means of a board resolution.

Examples of democratic selection procedures for low-income sector directors include: (1) election by ballots cast by the CAA's clients and/or by other low-income people in the CAA's service area (ballots

could be cast, for example, at designated polling place(s) in the service area, at the CAA's offices, or via the Internet); (2) a vote at a community meeting of low-income people (attendance may be improved if the meeting serves not simply to select low-income sector directors but also to address a topic of interest to low-income people in the community); (3) designation of community organizations composed predominantly of and representing low-income people in the service area (for example, a Head Start policy council, low-income housing tenant association, or the board of a community health center) to elect members to the CAA's board or whose boards will choose someone from among their elected officers/board members to serve on the CAA's board; or (4) selection by neighborhood CAA advisory groups made up of or selected by primarily low-income residents.

Low-income people in the community served by the CAA must have input at some point in the selection process. For this reason, low-income sector board members should not simply be chosen by the CAA's executive director or tripartite board, nor should they be staff of another low-income service provider chosen by the executive director or board of that other organization (unless low-income people make up a majority of that board).

Composition & Selection – Public Sector

According to the federal CSBG Act, one-third of the tripartite board must be composed of elected public officials or their representatives. If there are not enough elected public officials who are reasonably available and willing to serve on the CAA board, appointed public officials or their representatives may be selected.

The Economic Opportunity Act briefly required that public sector board members include chief elected officials or their representatives, but that requirement was repealed in 1972 and has not been included in the CSBG Act. Nevertheless, bylaws of many CAAs continue to require that public sector board members include or be chosen by the chief elected local officials.

A CAA can choose to include chief elected officials on its board; however, CAPLAW does not recommend that the bylaws require this. Instead, we suggest drafting the bylaws to provide flexibility as to which public officials will serve on the board.

For public CAAs, the chief elected local officials usually have significant input or final say on many of the decisions affecting the CAA. Therefore, it may be redundant to include them on the tripartite board. Instead, a public CAA may want to consider including other public officials on the tripartite board.

CAPLAW suggests that nonprofit CAAs specify in their bylaws that their boards select the public officials who will serve or appoint representatives to serve. We also suggest drafting the bylaws to make representatives of public officials subject to approval by the CAA's board. In addition, we recommend clarifying in the bylaws that if a public official appoints a representative to serve, that person, and not the public official is the board member and gets to vote at board meetings.

In some cases, conflict of interest rules make it preferable for public officials to designate representatives. For example, state or local ethics or conflict of interest rules or HUD conflict of interest rules may affect whether public officials can serve on a CAA's board and what they can do as board members.

The federal CSBG Act requires that public officials be holding public office on the date of selection to the tripartite board. Some state CSBG laws/regulations require that public officials be "currently holding office" while they are on the tripartite board. CAPLAW recommends requiring in the bylaws that public sector board members serve only while they (or, in the case of representatives, their appointing officials) hold public office, or no longer than some short period afterwards, such as one to three months.

Composition & Selection – Private Sector

The remainder of the board members must be officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served. This sector is sometimes called the "private sector," but in fact, as indicated by the types of interests listed in the CSBG Act's tripartite board provision, it may include both public and private sector groups and interests.

Unless state CSBG laws or regulations require otherwise, the grantee may choose either individuals or organizations that are asked to designate a representative, to fill private sector board seats.

CAPLAW recommends leaving the choice of all or some of the private sector board members up to the tripartite board (or local governing body, in the case of some public CAAs), rather than to other organizations, if this is permitted under your state's CSBG laws or regulations. Doing this allows the board to play a more active role in determining who the private sector board members will be. In selecting private sector board members, while it is important to choose people who are involved with community groups and interests that will be good partners for the CAA and its programs, it is just as important to choose people who themselves have the skills, experience and resources that the CAA needs – for example, people with financial expertise, fundraising skills and contacts, or with the various forms of expertise needed to fulfill the Head Start board composition requirements.

Composition & Selection – Petitions for Representation

Under the federal CSBG Act, states must require CAAs to establish procedures for a low-income individual, community organization, or religious organization, or representative of low-income individuals that considers its organization, or low-income individuals, to be inadequately represented on the board to petition the CAA for adequate representation. If the state does not require specific procedures, each CAA can develop its own. It is best to include these procedures in the bylaws.

Board Size

The federal CSBG Act does not include requirements about tripartite board size. However, some state CSBG laws, regulations or contracts impose tripartite board size requirements.

Most states allow the bylaws to state the board size in terms of a range. Doing this offers the organization more flexibility than specifying an exact number of board members (for example, 15). Typical bylaws language in such a case might say “no less than 15 nor more than 24 as set forth by resolution of the board.”

If the bylaws specify a range of directors rather than a specific number, the board will have the flexibility to add directors as additional skills, experience or qualifications are needed, rather than to fill an arbitrary number of positions. Therefore, stating a fairly generous range of directors is generally advantageous and can preclude repeated amendments to the bylaws every time the board is expanded. However, in adding to the board, consideration should be given to ensuring that the total number remains divisible by three.

The appropriate size of a CAA tripartite board will depend on the CAA's circumstances, such as the geographic area it serves, its budget and staff size, and the number of programs that it runs.

On the one hand, the larger the board, the more difficult, expensive, and time consuming it can be to give board members notice of board meetings. Similarly, with a very large board, it can also be more difficult to get a quorum of board members to attend board meetings so that business may be conducted. Having a large board can also increase the board's reliance on the organization's management staff and lessen management's accountability to the board.

On the other hand, the smaller the board, the more difficult it may be to obtain community participation and input and to get committee work done. Small boards can also lessen accountability if only a few people are making decisions.

One alternative to having a large board is to create an advisory body, honorary council, or similar group consisting of prominent individuals or experts on technical issues. This group can have non-voting advisory status and provide information and advice to the board of directors to consider in making its decisions; it can also help the organization in its fundraising campaigns. Because the individuals who are members of these advisory bodies are not voting board members, they are not counted in determining whether a quorum is present and are not expected to attend the board meetings. However, they can be called upon as needed by the board for advice and assistance.

Terms & Term Limits – Terms

The bylaws should specify the term for which board members serve before they must be re-elected or re-appointed to the board. Each of the three sectors should have a specific term length. Generally, a CAA can choose whether to make the terms for each sector the same length (for

example, three-year terms for each sector) or to vary terms by sector (for example, three-year terms for the low-income and private sectors and one-year terms for public sector). CAAs should consult their states' CSBG laws to determine whether they contain any term length requirements.

CAPLAW does not recommend permitting public officials (or their representatives) to serve automatically on the tripartite board for as long as they (or their appointing officials) hold public office, unless this is required by state CSBG law. Instead, we suggest giving public sector board members a specific term length.

Most organizations also use staggered terms for their directors. With staggered terms a certain portion of the board will be up for election in any given year. Using staggered terms ensures that there is never a board composed entirely of new members. Staggered terms are especially beneficial for CAAs because of the important information existing board members can share with new members about the requirements of the CSBG Act and other unique legal and practical issues that CAAs face.

Terms & Term Limits – Term Limits

Some nonprofit organizations limit the number of consecutive terms that an individual may serve on the board. State nonprofit corporate laws do not usually set term limits; however CAAs should check whether their state corporate or CSBG law requires term limits for board members.

If term limits are not required by law, a CAA can decide whether to adopt them.

Advantages of term limits include: ensuring a variety of perspectives on the board; helping an organization expand its base of contacts for fundraising and other purposes; educating a larger sector of the community about the organization and its programs; preventing a concentration of power among a small group of long-time leaders and providing a diplomatic way to for board members to exit the board. Disadvantages include: the loss of board members with specific expertise regarding the organization's programs; the loss of institutional memory; and the lack of qualified board members who are true supporters of the organization and its programs.

Even with those organizations that do impose term limits, many allow board members who have completed the maximum number of terms to return to the board after a one-year sabbatical if re-elected.

Chapter 4: Other Requirements and Restrictions



Client Eligibility

To be eligible for CSBG services or benefits, clients must be at or below 100% of the federal poverty line. The federal poverty line is based on the most recent federal Census data and is revised at least once a year by the U.S. Department of Health and Human Services. Under the federal CSBG Act, a state may permit CSBG services to be provided to clients up to 125% of the federal poverty line. In certain emergency situations, Congress has authorized states to permit CAAs to use CSBG funding to serve clients with even higher income levels, such as up to 200% of the federal poverty line.

If the state has not specified how to calculate a client's income for the purpose of determining client eligibility for CSBG services or benefits, the CAA may adopt its own written procedures for doing so. These procedures may, based on the CAA's community needs assessment, give priority to certain client populations within the applicable income limit.

Where a CAA program serves both clients who meet the CSBG income eligibility requirements and clients who do not (or clients for whom no income eligibility documentation is collected), the CAA must be sure to use non-CSBG funds to cover the costs of providing services to clients who do not meet the CSBG income eligibility requirements. Thus, if program staff work with both eligible and ineligible clients, other funds (either unrestricted or from a source with an income eligibility level that the client meets) could be used to pay that portion of the staff's salaries allocated to time spent working with ineligible clients.

The CSBG Act does not restrict immigrant eligibility for CSBG programs and services and OCS Information Memorandum 30 states that: "Non-citizens, regardless of their alien status, should not be banned from CSBG programs based solely on their alien status unless the exclusion is already authorized by another statute."

Real Estate

The federal CSBG Act generally prohibits the use of CSBG funds for both the purchase or improvement of land and the purchase, construction, or permanent improvement of any building or other facility. However, there is an exception for low-cost residential weatherization or other energy-related home repairs.

HHS may waive this prohibition upon a request from a state if HHS finds that the request describes extraordinary circumstances to justify use of the funds for these purposes and that permitting the waiver will contribute to the state's ability to carry out the purposes of the CSBG Act.

OCS Information Memorandum 60 includes guidance on this prohibition and on the questions to be answered when submitting a request for a waiver.

CAAs seeking to use CSBG funds for the purchase of real estate or the construction or permanent improvement of buildings or other facilities should discuss the matter with their state CSBG office before committing CSBG funds to those purposes and, in appropriate cases, work with the state to submit a waiver request to OCS.

CAAs and states should keep in mind that not all building-related expenses are necessarily prohibited under the CSBG Act and that, under the HHS block grant regulations, states have the discretion to decide whether an expense is allowable. A waiver is only required if the state decides an expense is prohibited. For example, a state could reasonably conclude that the use of CSBG funds for work that counts as maintenance, repair or upkeep, as described in §200.452 of the Uniform Guidance is allowable under the CSBG Act.

Political Activity

The federal CSBG Act contains significant restrictions on involvement by CAAs and their employees in political campaign activity.

The Act prohibits CAA programs receiving CSBG funds from being carried on in a manner involving use of program funds, provision of services, or employment or assignment of personnel, in a manner supporting or resulting in identification of such programs with:

- Any partisan or nonpartisan political activity or any political activity associated with a candidate, or contending faction or group, in an election for public or party office
- Any activity to provide voters with transportation to the polls or similar assistance
- Any voter registration activity

The CSBG Act also requires that a federal political activity statute, the Hatch Act, apply to both public and nonprofit CAA employees in certain circumstances. The Hatch Act is a federal law that typically restricts the political activities of public employees. However, the Hatch Act will also apply to employees of nonprofit CAAs because of its incorporation into the CSBG Act. The Hatch Act's restrictions limit the activities of individual employees, rather than of the CAA as an organization.

Two types of employees of nonprofit CAAs are subject to the Hatch Act's restrictions (we refer to them as "Hatched Employees").

The first type of employee restricted by the Hatch Act is one who:

- either (i) spends more than half of their total work time employed by a CAA, or (ii) receives more than half their total wages from the CAA; and
- works in connection with activities paid out of CSBG funds.

This first type of employee can't use their official authority to influence or interfere with or affect the results of an election or nomination for office. The employee also may not coerce, ask, or advise another Hatched employee make political contributions to candidates, PACs, or political parties. Supervisors who ask for political contributions from their subordinates are deemed to have indirectly engaged in coercion.

The second type of employee subject to Hatch Act restrictions is one who is 100% paid out of CSBG funds. This second type of employee is subject to the same restrictions that apply to the first type of employee. But, this second type of employee is also prohibited from being a candidate for public office in a partisan election.

For public CAAs, the Hatch Act's net is broader. Any public CAA employee whose activities are paid using ANY federal funds (not just CSBG funding) is subject to the Hatch Act's restrictions. If the employee's salary is 100% paid out of federal funds, this employee is also prohibited from being a candidate for public office in a partisan election.

To ensure compliance with the Hatch Act, CAPLAW recommends that CAAs adopt a political activity policy that requires employees to notify and get permission from the CAA executive director before running for public office.

Use of CSBG as Match

There is no specific language in the federal CSBG Act that prohibits the use of CSBG funds as a required match for another federal program.

Performance Measurement and Reports

The CSBG Act requires that states and eligible entities participate in a performance measurement system. This system is called ROMA, or Results Oriented Management and Accountability, a performance-based initiative developed with support from HHS that is designed to preserve the anti-poverty focus of Community Action and to promote greater effectiveness among states and CAAs receiving CSBG funds.

Each state must annually prepare and submit to HHS an annual report on the measured performance of the state and the eligible entities in that state. This report must include:

- An accounting of the expenditure of CSBG funds received by the state
 - Including an accounting of funds spent on administrative costs by the state and the eligible entities and of funds spent by eligible entities on the direct delivery of local services;
- Information on the number and characteristics of clients served, based on data collected from the eligible entities; and
- A summary of training and technical assistance offered by the state to eligible entities with deficiencies identified by the state

HHS must also submit an annual report to Congress that includes:

- A summary of the planned use of funds by each state and the eligible entities in the state, as described in each state's CSBG state plan;
- A description of how funds were actually spent by the state and eligible entities, including breakdown of funds spent on administrative costs and on the direct delivery of local services by eligible entities;
- Information on the number of entities eligible for CSBG funds, the number of low-income people served under the CSBG program, and demographic data on low-income populations served by eligible entities
- For each state, a comparison of planned and actual uses of funds
- A summary of each state's performance results and results for eligible entities, based on the annual reports submitted by the states; and
- Any additional info that HHS considers appropriate, if it informs states of the need for that information and allows a reasonable period of time for states to collect and provide that information

Child Support and Drug Treatment Referrals

An often-overlooked provision of the CSBG Act requires that CAAs inform custodial parents in single-parent families that participate in CSBG-funded programs, activities, or services about the availability of child support services and to refer eligible parents to state and local government child support offices. Therefore, CAPLAW recommends checking whether your CAA has procedures in place to make these referrals and, if not, to implement such a policy.

The CSBG Act also provides that states are not prohibited from testing participants in CSBG-funded programs, activities or services for controlled substances. States that do this must inform participants who test positive about the availability of treatment or rehabilitation services and refer those participants for appropriate treatment or rehab services. Expenses spent on testing are considered state administrative expenses and are subject to the 5% limit on administrative expenses.

Nondiscrimination and Charitable Choice

The CSBG Act prohibits discrimination in CSBG-funded programs or activities on the basis of race, color, national origin, sex, age or disability.

The CSBG Act's so-called "Charitable Choice" provision specifies the following:

- The federal government, state and local governments, and CAAs must consider religious organizations on the same basis as other nongovernmental organizations to provide CSBG assistance, so long as the program is implemented in a manner consistent with the Establishment Clause of the first amendment to the United States Constitution. Anywhere the term "private, nonprofit organization" is used in the CSBG statute, it includes religious organizations.
- A CSBG-funded religious organization shall retain its religious character and control over the definition, development, practice, and expression of its religious beliefs.

- The religious organization shall not be required to alter its form of internal governance; except that, if it is designated by the state as a CSBG eligible entity, it must conform to the CSBG Act's tripartite board requirements.
- The religious organization shall not be required to remove religious art, icons, scripture, or other symbols.
- The religious organization may discriminate on the basis of religion in its employment practices.
- No CSBG funds provided directly to a religious organization may be used for sectarian worship, instruction, or proselytization.
- The religious organization must comply with the same fiscal accountability regulations as other non-profits for the use of the CSBG funds.
- The religious organization must segregate CSBG funds into a separate account; only those funds are subject to audit by the government.

CAAs and other CSBG eligible entities, as well as other "intermediate organizations" providing CSBG services, must follow these rules in entering into subcontracts for CSBG-funded programs.

However, HHS's Charitable Choice regulations for CSBG-funded programs state that religious organizations are prohibited from discriminating against program beneficiaries on the basis of religion.

Chapter 5: State Plans



Application and Plan

In order to receive CSBG funds, each state submits an application to OCS. In the application, the governor designates a state agency to administer CSBG funding at the state level. The application must also include a state plan detailing how the state will run the CSBG program during the period covered by the plan, which may be either one or two fiscal years. The state must submit the application and plan to OCS at least 30 days before the first fiscal year covered by the plan. OCS then reviews each state plan and either notifies the state that the state plan is accepted, or requires the state to make changes to the plan and re-submit the plan to OCS.

Once OCS has accepted the state plan, the state must follow the plan. However, it can revise the plan, as we'll discuss shortly.

Public Inspection and Hearings

Before the state submits the plan to OCS, it must make the plan available for public inspection in a way that will facilitate the public's review of and comment on the plan. In addition, the state must also hold a public hearing on the plan. The hearing must be held with sufficient time and statewide distribution of notice to provide the public an opportunity to comment on the proposed use and distribution of funds for the period covered by the state plan.

In addition, the state must also hold at least one legislative hearing every 3 years in conjunction with development of the state plan.

Elements

The state plan must include information required by OCS, as well as certain other information spelled out in the CSBG Act.

In particular, the plan must contain information provided by the state's eligible entities about their use of funds from the 90% set aside, including:

- A description of the service delivery system, for services targeted to low-income people that are provided or coordinated with CSBG funds;
- A description of how linkages will be developed to fill identified gaps in services by providing information, referrals, case management and follow-up consultations;
- A description of how funds from the 90% set aside will be coordinated with other public and private resources; and
- A description of how eligible entities will use CSBG funds to support innovative community and neighborhood-based initiatives related to the anti-poverty purposes of the CSBG Act.

The plan must also describe how the state plans to use its 10% discretionary funds, including how it will support innovative community and neighborhood-based initiatives related to CSBG Act purposes.

Assurances

In addition, the plan must include a number of assurances by the state that it will do certain things in implementing the CSBG program. The following are some examples of assurances a state must make:

- The state must assure that it will use CSBG funds to support activities designed to assist low-income people, homeless people, and migrant or seasonal farm-workers, and include a description of how those activities will meet 7 specified anti-poverty goals. It must also assure that it will use CSBG funds to address the needs of youth in low-income communities and that eligible entities will provide emergency services to prevent hunger among low-income people.

- The state must assure that it will ensure coordination between antipoverty programs in each community in the state and that it and the eligible entities in the state will coordinate and establish linkages between governmental and other social services programs to assure that those services are delivered effectively and without duplication. The CSBG Act specifically requires coordination on emergency energy crisis intervention administered as part of the Low-Income Home Energy Assistance Program (or LIHEAP) and employment and training provided under the Workforce Investment Act.
- The state must assure that it will obtain from each eligible entity in the state a community action plan that includes a community needs assessment.
- The state must assure that it and the eligible entities in the state will participate in a performance measurement system of the type we discussed in Chapter 4.
- Finally, the state must assure that the state will not terminate or reduce the CSBG funding of any eligible entity in the state that received CSBG funding in the previous fiscal year below the proportional share it received the previous year without following certain procedures. We will discuss these procedures in Chapter 8.

Plan Revisions

A state can revise its state plan. However, before it can do so, it must make the revised plan available for public inspection in such a manner as will facilitate review of, and comment on, the plan. It must also submit the revised plan to OCS for its review and acceptance.

Chapter 6: Allocation, Payment and Carryover



State Allocations

Each state allocates its CSBG funding to CAAs through a formula. These formulas vary from state to state and, in some cases, are specified in the state's CSBG law or regulations.

A state can change its formula due to any of the following:

- the results of the most recently available census or other appropriate data;
- the designation of a new eligible entity; or
- a severe economic dislocation.

However, before it changes its formula, it must provide CAAs with notice of the proposed change and an opportunity for a hearing on the record concerning the change.

Payment

Here is the step-by-step process of how CSBG funds ultimately get to the local Community Action Agencies or other CSBG eligible entities:

- First, states submit their state plans to HHS and HHS notifies each state that either it has accepted the state plan, it requires changes, or it has rejected the plan.
- Second, each year, Congress appropriates funds to the U.S. Department of Health and Human Services to be used for the CSBG program.
 - This is done through annual appropriations acts, which are sometimes preceded by continuing resolutions for some period of time before the appropriations are passed.
- Third, on a quarterly basis, the federal Office of Management and Budget (or OMB) apportions funds that have been appropriated by Congress to HHS
 - The apportionment makes funds available from Treasury accounts to be “obligated” by HHS
 - OMB allocates funds among states based on an historic formula, as required by the CSBG Act
- Fourth, the HHS Office of Grants Management sends Notices of Grant Award letters to state CSBG grantees on quarterly basis, noting the total annual allotment to the state and the current amount available to be drawn down by state through HHS Payment Management System.
- Fifth, each state draws down funds from the HHS Payment Management System
 - By drawing down funds from the HHS Payment Management System, a state agrees to HHS’s CSBG Terms and Conditions
- Sixth, each state disburses to CSBG eligible entities at least 90% of CSBG funds made available to it by HHS.

Carryover

Since federal fiscal year 2002, the federal acts appropriating funds for CSBG have contained language providing that:

“[T]o the extent [CSBG] funds are distributed ... by a State to an eligible entity ..., and have not been expended by [that] entity, they shall remain with such entity for carryover into the next fiscal year for expenditure by such entity consistent with program purposes.”

OCS, in the annual CSBG terms and conditions it requires states to follow, has interpreted this language to mean that CAAs may carry over CSBG funds from one federal fiscal year (such as FY 2021) into the next federal fiscal year (for example, FY 2022) but must fully expend those funds by the end of the second fiscal year (in this example, by the end of September 2022).

Guidance from OCS confirms that the appropriations act language supersedes carryover language in the CSBG Act, which authorizes states to recapture and redistribute CSBG funds that a CAA has not obligated at the end of a fiscal year, to the extent that those funds exceed 20% of the funds distributed by the state to the CAA for that year.

Chapter 7: Fiscal Controls and Monitoring



Fiscal Controls

The CSBG Act requires states to establish controls and procedures to assure the proper disbursement and accounting for CSBG funds, including procedures for monitoring those funds.

As we've previously discussed, the CSBG Act also requires states to ensure that OMB's cost and accounting standards apply to recipients of CSBG funds.

In addition, the Act requires each state to obtain an independent audit of its CSBG funds at least annually. The audit must be conducted in accordance with generally accepted accounting principles and with Subpart F of the Uniform Guidance, which provides standards for audits of states, local governments and nonprofit organizations receiving federal funds. Within 30 days after its completion, the state must submit a copy of the audit to HHS, the state legislature and any eligible entity that was the subject of the audit.

Monitoring

States are required to monitor eligible entities. In particular, a state must conduct a full onsite review of each eligible entity at least once during each three-year period. OCS IM 97 clarifies that "For eligible entities that received CSBG funds in previous years, and are receiving continued funding, compliance reviews must occur for those entities no later than three years after the last compliance review."

In addition, a state must also conduct an on-site review of each newly designated entity immediately after completion of first year in which the entity receives CSBG funds. It must also conduct follow-up reviews, including prompt return visits, to those entities that fail to meet the goals, standards and requirements established by the state, as well as other reviews as appropriate, including reviews of entities with programs that have had other federal, state or local grants terminated for cause.

In Information Memorandum 116, OCS has stated that it expects states to monitor eligible entities when informed that they have had grant funds terminated for cause under a related program, such as Head Start, the Low Income Home Energy Assistance Program (LIHEAP), the Weatherization Assistance Program, or other Federal programs. IM 116 instructs states to include questions in routine monitoring visits and contacts about whether an eligible entity has had grant funds terminated for cause in any federal, state, or local programs other than CSBG. It also directs states to review the cause of termination for other federal programs to assure that comparable issues do not exist for CSBG funds.

According to IM 116, states should thoroughly investigate any instances of “whistleblower” complaints or allegations of fraud or abuse of CSBG funds or funds from closely-related programs and notify OCS in any instances in which complaints or allegations of fraud are considered credible and raise significant “red flags.”

States are also subject to monitoring by HHS, which is required to conduct evaluations of several states each year to assess their compliance with the CSBG Act. HHS must submit a report to each state evaluated with the results of the evaluation and with recommendations for improvements. Upon receiving this report, the state must submit to HHS an action plan responding to the recommendations. HHS is to include the results of the evaluations as part of its annual report to Congress.

Chapter 8: Funding Reduction and Termination



Overview

The CSBG Act provides CAAs with procedural protections that are somewhat unusual for sub-recipients of block grant funds. In particular, as we’ve discussed previously, a state cannot terminate or reduce a CAA’s CSBG funding below the proportional share the CAA received in the previous year until after the state follows certain procedures. Until the termination procedures are complete, the state must continue to provide funding to the CAA. If the state terminates or reduces a CAA’s funding without following these procedures, a CAA can request direct funding from OCS.

Thus, a CAA remains an eligible entity until it voluntarily gives up that status, or until the state terminates that status, and only then by following the required termination procedures.

OCS Information Memorandum 116 provides guidance on the procedures for funding terminations or reductions.

Procedures

These are the funding termination or reduction procedures mandated by the CSBG Act:

- The state monitors a CAA and conducts follow-up reviews as required.
- The state notifies an eligible entity of specific deficiencies and any corrective actions required to address those deficiencies.
- The state offers training and technical assistance (T&TA), if appropriate.
- The state submits a report to OCS describing the T&TA provided.
- If the state determines that T&TA is not appropriate, it submits a report to OCS explaining its position. IM 116 provides examples of situations when T&TA may not be appropriate.

- The state then has the discretion to provide the CAA with an opportunity to correct its deficiencies and implement a quality improvement plan (or a QIP), within 60 days of being informed of the deficiency.
- Within 30 days of receiving the proposed QIP, the state must approve the QIP or specifies reasons why it is not approving the QIP. IM 116 provides examples of situations when a QIP may not be appropriate.
- If the CAA does not correct the deficiency, the state notifies the CAA of the opportunity to request a hearing on the record to determine if cause for termination or a funding reduction exists. IM 116 notes that this requirement may not be waived. And, according to IM 116, the hearing procedures must be consistent with any applicable state laws, rules or policies.
- If, after the hearing, the state finds cause, as it is defined by the CSBG Act, it initiates proceedings to terminate or reduce CSBG funding.
- The state then notifies the CAA and OCS that it has found cause, that it intends to terminate or reduce funding, and that the CAA may ask OCS to review the state's decision by making a request in writing to OCS within 30 days.
- If the CAA does not seek OCS review, the state may terminate or reduce funding 30 days after the CAA receives the state's notification. Otherwise, the state must continue both current and future funding of the entity until the later of these two dates: (1) when OCS approves the state's termination or reduction decision, or (2) once 90 days have passed since the date the state has provided complete documentation of the decision to OCS. If OCS denies the state's decision, the state must continue CSBG funding to the CAA.
- If a state discontinues or reduces funding without following these steps, the CAA may request direct funding from OCS. In that case, the state's total block grant amount would be reduced by the amount that OCS provides directly to the CAA.

In some circumstances, a state may want to reallocate CSBG funds among the various CAAs in its state. If this results in a reduction of a CAA's proportional share of CSBG funding, the state must show that there is cause to do so. The CSBG Act explains that a statewide redistribution of funds may be needed to respond to (i) the results of the most recently available census or other appropriate data; (ii) the designation of a new CAA; or (iii) severe economic dislocation. The state is required to follow the same procedures it follows for terminating or reducing a CAA's funding pursuant to a monitoring. In other words, the state must provide the CAA with notice, a hearing, and an opportunity for federal review.

According to IM 116, if a state terminates the designation of an organization as an eligible entity, or otherwise reduces a CAA's CSBG funds, any resulting funding may be awarded only to an organization that is a CSBG eligible entity.

Chapter 9: New Eligible Entities



When State May Designate

A state may designate a new CAA if an area of the state is not served, or ceases to be served by a CAA. This includes situations where an existing CAA goes out of business, is terminated or relinquishes its designation as a CAA.

IM 116 clarifies that, where a state has made a decision to terminate a CAA's CSBG funding and the CAA has appealed to OCS, the state can solicit applications for new eligible entities, but cannot award funds to a new entity until OCS confirms the state's decision to terminate or the review period ends.

Criteria

In designating a new CAA, a state must choose an organization of demonstrated effectiveness in meeting the goals and purposes of the CSBG Act. In the designation process, states may give priority to existing CAAs providing related services in the unserved area, consistent with needs identified by a community needs assessment. In choosing a new CAA, a state must first look to nonprofit organizations, and only if there are no qualified nonprofit organizations may a state designate a government entity to serve as a CAA.

New Private Entities

A state may choose from among two types of nonprofit organizations when designating a new CAA. It may choose either:

- A nonprofit organization that is not currently a CAA, but is geographically located in the unserved area, that is capable of providing a broad range of services designed to eliminate poverty and foster self-sufficiency, and that meets the requirements of the CSBG Act (such as the tripartite board requirement); OR
- A nonprofit CAA that is geographically located in an area contiguous to or within reasonable proximity of the unserved area, that is already providing related services in the unserved area, and that agrees to add board members to ensure compliance with the CSBG Act's tripartite board requirement.

New Public Entities

Only if the state concludes that no such nonprofit organizations are qualified, may the state consider designating a local government entity as the new CAA. This entity must have a tripartite board or other mechanism specified by the state to assure decision-making and participation by low-income people in the development, planning, implementation and evaluation of the entity's CSBG programs.

Chapter 10: Complaints



CSBG Act Requirements

The CSBG Act requires HHS to respond in an “expeditious and speedy” manner to complaints of a serious nature that a state has failed to use funds in accordance with the CSBG Act, including the required assurances the state has made in its state plan.

HHS block grant regulations provide, however, that in resolving any issue raised by a complaint or a federal audit, HHS will defer to a state's interpretation of its assurances and of the provisions of the block grant statute unless the state's interpretation is clearly erroneous. The regulations require that HHS provide copies of complaints about a state to the state's independent auditor. They also state that any determination by HHS that a state's interpretation is not clearly erroneous is not meant to prevent the auditor from, or influence the auditor in, considering the issue.

Whenever HHS determines that, for a particular fiscal year, there is a pattern of complaints of a state's failure to use funds in accordance with the CSBG Act or comply with the state's assurances, the CSBG Act requires that HHS conduct an investigation as to the state's use of its CSBG funds.

Complaint Process

Complaints are to be handled according to the following process, which is specified in the HHS block grant regulations:

- First, complaints must be in writing and sent to the director of HHS's Office of Community Services (OCS).
- Second, OCS must promptly furnish a copy of any complaint to the affected state.
- Third, the state has an opportunity to respond to the complaint. The regulations specify that OCS will consider any comments received from the state within 60 days (or a longer period as agreed to by the state and OCS).
- Fourth, OCS will conduct an investigation of complaints where appropriate.
- Fifth, OCS will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

If HHS determines that a state has not used CSBG funds in accordance with the federal CSBG Act or with the assurances made in the state plan, it may withhold funds from the state. However, HHS must first provide adequate notice and an opportunity for a hearing conducted in the state in question. Where amounts are found not to have been spent in accordance with the CSBG Act, the state must repay the funds, or HHS may offset the funds against other CSBG funds it owes the state.

Conclusion

We hope this training module has enhanced your understanding of the Community Services Block Grant. Please contact CAPLAW with questions about the topics covered in this module. We also would appreciate receiving feedback or comments you have. For additional resources on CSBG and other legal topics faced by CAAs and other members of the Community Action network, please visit our website at www.capl原因.org.

ENDNOTES

¹President Lyndon B. Johnson Special Message to Congress Proposing a Nationwide War on the Sources of Poverty, March 16, 1964.

²Id.

³See Robert F. Clark, *Maximum Feasible Success: A History of the Community Action Program*, (National Association of Community Action Agencies, 2000), 104 (stating that San Francisco's mayor John F. Shelley charged that the OEO was "undermining the integrity of local government" and that New York mayor Robert Wagner testified before Congress that local governments should have "power over the ... planning group," citing J.C. Donovan, *The Politics of Poverty*, 55 (New York: Pegasus, 1967).

⁴U.S. Department of Health and Human Services, Administration for Children and Families, FY 22 Justification of Estimates for Appropriations Committees, available at https://www.acf.hhs.gov/sites/default/files/documents/olab/fy_2022_congressional_justification.pdf.

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