



December 2022

While Community Action Agencies (CAAs) receive Community Services Block Grant funding as subrecipients, many also act as pass-through entities for CSBG or other sources of federal funding. The Department of Health and Human Services' Departmental Appeals Board (DAB, or the Board) recently issued a decision that provides some important takeaways for CAAs on the role of a pass-through entity with respect to a subaward and the standards for documenting personnel costs under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, [45 CFR Part 75](#) (Uniform Guidance). The DAB upheld a decision of the Administration for Community Living (ACL) disallowing \$6,936 in costs charged to Older Americans Act program grants. The DAB found that the grants' pass-through entity, the Nebraska Department of Health and Human Services (Nebraska, or the State), failed to adequately monitor its subrecipients to ensure that payments charged to the grants were allowable costs.

The Case

The Older Americans Act is a formula grant administered by ACL that supports social services and programs for individuals sixty years and older and is subject to the Uniform Guidance ([45 CFR § 1321.5\(b\)](#)). Nebraska subgranted its Older Americans Act funding to nine different subrecipients, or Area Agencies on Aging (AAAs). During routine monitoring, the State noted that two subrecipients were allocating personnel costs based on budgeted amounts, rather than the actual time worked by employees. Nebraska indicated that subrecipient Midland AAA's (Midland) cost allocation method did not meet the requirements of the Uniform Guidance and that Midland was working on a time study to more accurately charge personnel costs to its various programs. The State also noted that the personnel costs of employees working on multiple programs at another subrecipient, Blue Rivers AAA (Blue Rivers), were allocated based on estimated time worked on each program and that there was not adequate documentation to support the percentages used to allocate the costs. Nebraska recommended that Blue Rivers implement procedures to ensure that the correct program was charged for the actual work performed. The State did not take any further action to ensure that Midland and Blue Rivers had corrected the identified deficiencies.

A Single Audit of Nebraska's Older Americans Act funding indicated that Nebraska had not met its obligation to monitor the performance of multiple subrecipients, including Midland and Blue Rivers, which led ACL to disallow personnel costs totaling \$6,936. On appeal, the DAB concluded that the State was aware of the unallowable personnel costs when it conducted its monitoring of the subrecipients, and its failure to take corrective action to remediate the issue constituted inadequate subrecipient monitoring. Thus, the Board upheld the disallowances.

Key Takeaways

Pass-through entities must follow up on identified deficiencies. This decision highlights a pass-through entity's responsibility not only to monitor its subrecipients but to promptly implement corrective action to ensure that the subrecipients remediate deficiencies identified during monitoring. Nebraska noted the issue



of Midland's and Blue Rivers' improper timekeeping procedures in its monitoring reports, but it did not follow up to make sure corrective changes had been made. Pass-through entities have an ongoing obligation to work with subrecipients to remedy deficiencies identified through monitoring. They may impose additional conditions on an award, but if those measures are insufficient, the Uniform Guidance (as well as funding award) sets forth certain remedies available to pass-through entities (such as temporarily withholding cash payments, disallowing costs, etc.) [45 CFR § 75.371](#). For more discussion of pass-through entity responsibilities, see CAPLAW's [Sample Subaward Agreement](#).

Pass-through entity is ultimately responsible for costs charged. A pass-through entity is not off the hook even if it subgrants most of its federal funding. It remains subject to the grant terms and conditions imposed by the funding source and the Uniform Guidance, if applicable. If the federal funding agency challenges a subrecipient's use of the award, the pass-through entity is ultimately responsible for repaying the cost. Or, it bears the burden to show that the disallowed subrecipient costs were allowable in a proceeding before the DAB.

Personnel costs must be based on actual activity. This case serves as a reminder of the Cost Principles' requirements for documenting actual personnel expenses. Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to federal awards. Budget estimates may be used for interim accounting purposes if the system for establishing the estimates produces reasonable approximations of the activity actually performed, significant changes in corresponding work activity are identified and entered into the records in a timely manner, and the non-federal entity's system of internal controls includes processes to review after-the-fact interim charges made to federal awards based on budget estimates. [45 CFR § 75.430\(i\)\(1\)\(viii\)](#). Personnel costs must ultimately be allocated to federal awards based on actual time worked by personnel.

This publication is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance (T/TA) Center. It was created by Community Action Program Legal Services, Inc. (CAPLAW) in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement – Award Number 90ET0482-03. Any opinion, findings, conclusions, or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of HHS and ACF. The contents of this publication are intended to convey general information only and do not constitute legal advice. Any communication through this publication or through CAPLAW's website does not constitute or create an attorney-client relationship. If you need legal advice, please contact CAPLAW or another attorney directly.