



# CAPLAW Webinar Transcript

## Mastering the A-B-CSBGs: A Four-Part Fundamentals Series

### Monitoring and Termination

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1:00 - 2:15 PM

#### [Jonathan Cohen, CAPLAW]

Alright, good afternoon everybody. It is now one o'clock. And so I know that people are still joining but I thought we'd get started with today's webinar. You are here for the final installment of CAPLAW's Mastering Your A-B-CSBGs series that we've been doing throughout the month of January. This final session we'll be dealing with monitoring and termination for CAAs. And so thank you for joining us, we hope you've been able to catch the prior sessions. If you haven't, those were all recorded and are available on our website in our resource library. In addition, this session will be recorded. If you have to leave at any time or anything like that the recording and the transcript will be available in the next few days. And so keep an eye out for that as well as an evaluation of the session and the series itself. I see that people are entering some greetings in the chat so it's great to see that, please know that you can always enter questions in the chat and we'll try to monitor that and get to those as they as they come up.

My name is Jon Cohen. I'm a staff attorney with CAPLAW. And I'm joined today by my colleagues, Veronica Zhang and Allison Ma'luf. You will be hearing from all of us at different points in this particular webinar. So have no fear, it will not just be me talking. And so, you know, really just to jump in, we're gonna jump right in and get going with today's agenda on monitoring and termination.

So as you can see today's agenda, we'll be discussing monitoring, we'll be talking about the purpose of monitoring, and essentially what is it for. Some standards and processes in the network for monitoring. And then we're going to jump into corrective actions, funding reductions and terminations, talking through issues related to the corrective action process.

You know, as you might expect, it's not, this session, well, it's titled, monitoring and termination, but those aren't the only two options that are available within that scope and in this in this area. And so, certainly corrective action processes will be discussed, and sort of processes to correct deficiencies and findings as a result of a monitoring. And then of course, we'll be talking about the funding reduction and termination process and how that looks and what's involved in that. And then we'll close things out by talking about the complaint process. And so a complaint alleging that the state didn't follow federal CSBG Act requirements and things like that, and how you file that and what that looks like as well. So that's overall today's agenda. As I mentioned, I'll be starting things off, and then you'll hear from, from Allison and Veronica.

So we'll jump right into to the substance of today's discussion and for this slide, I should say this is just a refresher, really. I think we put this in each of the webinar slides up until this point. I should also say, slides will be made available as well after the session. So have no fear on that one either. But again,

with this, if it looks familiar, we've included this slide just to give a framework for the laws and guidance that are out there. With regard to what we'll be discussing what we have discussed in past webinars, of course, you have the citation to the federal Community Services Block Grant Act, CSBG Act. We'll be referencing that quite a bit. There's also HHS block grant regulations to be aware of. You know, we've talked a lot about those in prior webinars. Information memoranda will be referenced in this webinar. This is non-binding guidance put out by OCS, again, non-binding but very informative about how they interpret and see various issues. And as well, state CSBG laws will be generally referenced. These are statutes and regulations related to various states, and the states come out with and states release, particular to their own CAAs in the state. As you know, states are primarily responsible for grant administration, so just throwing that in there at the end of the slide, but that's just really for a frame of reference.

So with regard to the CSBG review process, which we'll be talking through today, I wanted to give everyone an overview of the state's responsibilities in this process, and what that looks like just so that you can have that and can see it. A lot of this might look familiar to some people. And maybe others of you haven't been through this type of process before. But really just wanted to talk a little bit about this at the outset. The first thing on there is entering into a CSBG subaward agreement with CAA is, of course, the state as the pass-through entity needs to do this in order to pass through its funding to CAAs and those sub award agreements will be talked about as a really key component of this process. Because essentially, that's, you know, compliance with those subaward agreements, with those terms and conditions in those agreements, is really a key aspect of what monitoring is about. You know, you have the monitoring and follow up as required. We'll be talking through that and what that can look like, and what the types of follow up that may be required will be if a deficiency is found. There are requirements around informing the agency about a deficiency and requiring various types of corrections. within that scope. The state can provide training and technical assistance and or quality improvement plan. And we'll be talking a little later about what that entails. Also when does training and technical assistance need to be provided? What are the limited instances when state can say you don't need it doesn't need to bring in training and technical assistance for the CAA. So that's another one of the state's responsibilities that will be discussed. Then providing notice and a hearing on the record if a deficiency is not corrected, so that gets a little later in the process. And again, that will be detailed in later slides too. And then determining if cause exists to reduce or terminate funding. So the reduction or termination of funding requires that the state does find cause. And so what does cause mean? We'll be talking about that and talking about how the federal CSBG Act defines cause in later slides as well. And then, when cause is found, initiate a reduction or termination of funding. And then after that opportunity for federal view by HHS. So that's, that's a broad overview of the process.

I wanted to really, to maybe highlight in this slide, a few keywords. You'll see, you'll see agreement, you see, follow up, you see inform, you see words like correction, notice, hearing, review. And so I think, you know, these all suggest, the prevalence of these words all suggest that this doesn't have to be, reductions and terminations of funding are not taken lightly. It doesn't have to be seen as really punitive. And there are all these different words in here that indicate that this is a process that the state engages in with CAAs to do things like correct and to do things like follow up and inform. And so I think, you know, highlighting that, focusing in on those types of words is important in the approach. And we'll get a little bit into that approach in the next slide when we talk about the purpose of monitoring.

And so with regard to the purpose of monitoring, it's a gotcha moment, it's for the state to come in and say you've been doing something you shouldn't be doing. We gotcha, we caught you in the act. No, that's actually not what it is. Hopefully, you understood that, as I said that, it's not aimed to be a gotcha moment, it's an opportunity to provide a CAA with feedback on the effectiveness of its programs. And we're not

just talking about the effectiveness of maybe compliance with different terms of an agreement or with the requirements or standards that are available, but also providing feedback and on the effectiveness of programs as it relates to the mission. Is the CAA really going out there? How is it? How is it performing with regard to reaching people with reaching people in its community, with its programs? Is it really fulfilling the mission as to why it's there in the first place. And I think a good monitoring really gets at that aspect of things, in addition to those issues of compliance.

In addition to that, it's assisting leaders with making changes to the organization that might be required. And so monitoring can identify things, maybe before they're going to become a problem and giving the agency or leaders in that agency an opportunity to say, oh, this could become a problem later and so let's address that now. Let's take a proactive approach to addressing potential problems. And it can really give leaders an opportunity to do that by maybe having an early warning system in place for those issues, and what issues could lead to that are identified in the monitoring. And it's also identifying potential strengths that the agency has. So let's say an agency is, is really effective at and the data shows that it's really effective at reaching low-income individuals in the community. You know, maybe the monitoring shows that and the agency can build upon that particular strength in its other programs and really implement changes that are informed by what a monitoring showed as a really good practice of the agency. And so monitoring can also boost the capacity of the agency to do things, to do the things that it's already doing well.

And then a monitoring is also providing, as the slide says, the state with data to assess its statewide network. Obviously, the state has other CAAs in the state that it's monitoring and getting information from about how things are working. And so the state's getting information on trends that it's identifying in the state, you know, what might not be that effective? What areas might need more training and technical assistance. Has it, for example, identified that there are a lot of new staff in key positions like the CFO position or executive director position as a result of its monitoring. And if it sees that, maybe it wants to conduct some training and technical assistance for those new leaders. So that's another example of the purpose of a monitoring and what it's aiming to do and the type of information it's trying to get at.

Some general standards and some general process involved in monitoring. What are the general thoughts on this that we see? Well, standards and process you know, as a CAA to be suspicious of the state when it comes in, try to hide anything that could perhaps, you know, go against your organization or be seen as a negative and be as confrontational as possible with the state when they come in. Fight against everything and stonewall them with whatever they asked for. But, of course, no, that's not the way you want to do things under monitoring in terms of processes, not the approach you want to take.

So what's the good way to go about it? Well, first of all, mutual respect, of course. Recognize on both sides that the people in the positions at the state office are professionals who are there to do a job. And they have roles and responsibilities the same as you as a CAA do. And from the state, at the state level, see the community action agency and the professionals that work there, trying to do their best for the individuals in the community, and recognize that really, you know, there's a mutual respect that exists there. And they're both at the end of the day, trying to accomplish similar goals with regard to the goals of the CSBG Act, and the goals of community action. And so approaching it with that type of mutual respect, I think can really frame the monitoring and set it up for success in the future.

In addition, open communications, another key component, as you might expect. I think that that tends to be a common theme across the things that we talk about, you know, all types of issues, having a dialogue, having different types of communication, available, being responsive to someone when they come in making sure that the things that they need are available. You know, with regard to the type of

communication, we know there's a host of communications tools available now and so know what works best. Is it Zoom, is it video chat? Is it a phone call? Is it an email, how was someone most responsive, but make sure you're keeping those lines of communications open. You're sharing ideas, and also key with regard to communication, you're listening to ideas and listening actively to things and asking questions.

In addition, with the state and CAAs joint problem solving is another key to this process, working collaboratively exploring the different options that may be available. Getting back to the open communications, you have a degree of openness with regard to the issues you're working on with the monitoring, you're trying to find solutions together that are mutually agreeable for both the state and the CAA when you're engaged in monitoring.

So those are the general standards and process that you want to keep in mind. So what does the federal CSBG Act say? What does it require with regard to what does the state office have to do in terms of monitoring? Well, the state, according to the Federal CSBG Act, has to conduct a review of the CAA, a full on site review at least once every three years; on site review of newly designated entities after the first year wanting to make sure that things went okay that first year, and you're identifying any issues that might not have been as great and trying to get an early, early view of those; other reviews as appropriate, and prompt follow up review. So let's say something's identified in in the monitoring, the state wants to come back and take another look and promptly follow up on that. That is, again, what the federal CSBG Act says about monitoring.

As you might expect, for a block grant program, there's very little guidance in the Act into the type of monitoring and review procedure to be used. They're really, the only language that talks about the type we'll be seeing on the next slide. But that's all to say it's really up to the states largely to determine the types and procedures for the monitoring that will take place, of course within the scope and the boundaries of the CSBG Act parameters. But keep that in mind, too. You'll need to look to your state to get a sense of type.

I mentioned this a second ago with regard to what the CSBG Act requires states to monitor CAS on. These are broad categories listed here. There's a lot of detail that could go into each of these, I'll just give you a sense of each. The Act requires states to monitor a CAA on performance goals. So when we say performance goals, we're talking about looking at how the CAA and its programs have assisted the community in reducing poverty, revitalizing low-income communities, and empowering people towards self sufficiency. And so broadly speaking, the goals of the CSBG Act, are they being met, are your programs meeting those goals?

ROMA might come in here, performance, measurement of performance. And, you know, goals and objectives, the monitoring will look at whether goals and objectives are being met? If so, why are they being met? What's working again? If not, why are they not being met? And so this is really what we're what we're looking at with regard to performance goals.

With regard to administrative standards, the monitoring will be taking a look at board composition, tripartite boards. Is the board involved in the development, planning, implementation, and evaluation of the CSBG program. You know, so that will be within the scope of administrative standards. In addition, limitations contained in the federal CSBG Act on uses of funds, for example, for political activity, you know, making sure that those limitations are being complied with. And then there's other non-discriminatory language and practices as well, that will be looked at here.

## Monitoring and Termination

Broadly speaking, financial management requires, as you might expect, the monitoring will be about the fiscal controls and audits in place, and if single audits are required, the single audit. And then is the agency following the cost principles of the Uniform Guidance? And we talked about that in a prior webinar as well, about uses of CSBG funds. So if you have questions about those details, look there or of course, get in touch with us.

And then other state requirements as well. And so we mentioned this earlier, but things like does the state have a CSBG Act, a state specific CSBG Act and regulations. Taking a look at the CSBG plan and what it might say it's going to be monitoring on, or as I mentioned before, the contractor agreement with the CAA the state has can speak to those types of requirements that will be looked into terms and conditions as well. So a couple more points on standards and process for monitoring.

The first thing there is really going to be the first point of reference, I think, and we talked about it, it's really the importance of the CSBG contract. And so important to know, when it comes to process, it really begins there. The CAA of course needs to be complying with the terms and conditions that are contained in its CSBG contract. That's a key piece of what the state will be monitoring it on. And so make sure that you understand what's in that contract. And so even prior to signing the contract, you need to review and negotiate it because that's going to be, again, key to what you will be monitored on at a later date. And so when you get that contract, compare it to prior years, make sure you understand what's in it, you know, engage executives to review it, sometimes the board is involved in a review, that'll depend on the CAA involved and whether or not and to what extent the board's involved in it. But if it is, of course, they'll need to review it. Don't ignore things like boilerplate language that that seem like, you know, it's just going to be consistent with all the contracts, make sure you look at the details, because even though it might be something that's been there, it might be something that seems pretty standard, still, those are still terms and conditions that you need to be complying with your agencies and so know what's in it.

And then finally, for, you know, a plug for us attorneys, try to work with an attorney on reviewing and negotiating that contract, as well. Because there could be various legal requirements to know about and attorneys know how to factor that in and review and negotiate with an eye towards that. So that's my plug for attorneys.

In addition to that, there's also many states that have a monitoring tool. And so key to mention, there's no national uniform monitoring tool that exists. Nothing that you know every state uniformly uses the same, the same tool when it's monitoring and checklists and things like that to look out for issues that will vary by state. So of course, know what your state has, understand what its monitoring tool contains. Because that's essentially what you're going to be monitored on. And that's what they're going to use to do it. And so, of course, you want to know what they're considering to be important, what they're gonna be monitoring around, so you can know what you need to produce at the time of monitoring, what you need to be focused on complying with over the course of the year. And so you can really set your agency up for success by understanding that particular tool.

While no uniform monitoring tool exists, the CSBG Organizational Standards do exist. And those are intended to really provide a set of uniform standards for all CAAs across the country to adhere to, to comply with and to be monitored on those or something similar. And so those do exist. I'll talk about those briefly now. Hopefully, you're all aware of them.

But if not just a little background and context about those organizational standards. The final version of the organizational standards was issued by OCS in Information Memorandum 138. And that was done in

January 2015. So they've been around for a few years now. And really the purpose of those organizational standards was to strengthen organizational capacity of CAAs and to increase accountability in the CSBG network. It includes a number of standards for nonprofit CAAs as well as public CAAs, in several different categories at several different areas. And so the standards include standards on things like community engagement, they include standards on things like board governance, strategic planning, as well as human resources standards, and financial operations standards. So they really are both HR/Finance/administrative-related standards as well as CSBG-specific standards; things like the tripartite board, for agencies to be aware of, to adhere to, and to be monitored on.

So I wanted to also say with regard to the standards, in 2016, the Appropriations Act required states to adopt the standards or comparable performance management requirements. And that essentially required the states to describe an assessment approach in the state plan which would be subject to OCS review. So basically, CAAs are going to be monitored on how well they're meeting the CSBG organizational standards, or if the state has a comparable performance management standard system, on that. And so, really key to understand what those standards say, and to make sure that your agency has processes and administration in place to meet them. And again, as I mentioned, check out OCS Information Memorandum 138 if you have questions about what those may be as you move forward.

So that is monitoring in a nutshell. Hopefully, that's clear. I'm not sure if there are any questions, but maybe I'll, if not, okay, I can turn it over to Alison, who will be taking over the next phase of the presentation.

**[Allison Ma'luf, CAPLAW]**

Yeah, it doesn't look like we have any questions, Jon, so we can dive in.

**[Jon]**

Crystal clear? Great.

**[Allison]**

Yeah, you are crystal clear. That's right. Absolutely. Yeah, so I am going to start talking about, you know, we've sort of had our monitoring, the stat's come in, they've used their tool, and the tool refers to the organizational standards. And after they did their monitoring, they, there is a process that the CSBG Act lays out with respect to well, what happens if the state has a finding, a non-compliance finding, the Act refers to it as a deficiency. And if one is identified, the state does have some obligations with respect to working with the community action agency on that finding, and hopefully correcting it in a way that enables both parties to move forward.

So this slide kind of lays out what those different steps are, you'll see that they have an obligation to inform the community action agency of a deficiency to be corrected, to require the CAA to correct the deficiency. And when we talk about a CAA, we're also referring to eligible entity, it's one in the same with respect to our presentations.

They also can offer training and technical assistance, and if they're not going to offer training and technical sense, and we're gonna talk about some more context with respect to these steps in the process in just a minute. But if they're not going to do that, then they have to state their reasons for not doing so.

They can also, within the state can also within its discretion, give a community action agency an opportunity to submit what is referred to in the Act as a quality improvement, quality improvement plan. And there's some process around that that we're going to talk about. And then last but not least, if that deficiency goes uncorrected by the committee action agency, then there is the whole process that could lead to a reduction or termination in funding. And that is a process. And we're going to talk about that. And then I'm going to shift over the presentation at some point to Veronica then to talk about the direct assistance. Actually, I'm going to talk a bit about the direct assistance, she's going to talk a little bit about the complaint process that could feed into this, some of these steps if you get to that point.

So with that, let's go ahead and dive into all of these different steps that are associated with the corrective action portion and then moving to potentially a reduction or termination of funding that results from a monitoring finding. And so with that, you'll see that the federal CSBG Act does not exactly define what a deficiency is. It kind of dances around the definition of a deficiency which is somewhat understandable because as Jon noted earlier on, the state CSBG offices have some discretion to interpret and facilitate this funding. So what the federal CSBG Act does is it refers to the cause that a state must determine in order to begin to initiate a reduction or termination and funding. And so we think about cause with respect to, okay, when does a deficiency rise to the level of cause such that a state would then move to initiate a reduction and terminate termination of funding based on that cause, i.e. that deficiency? So with respect to that, then we look at well, how do they, how does the federal CSBG Act define cause? Well, of course, they give us a somewhat circular definition with respect to what is cause because cause is a failure as defined in the federal CSBG Act as a failure to comply and comply with the terms of the CSBG agreement. So that contract that you entered into with the state that Jon was talking about the importance of that, the state plans, as we talked about in prior webinars, the state is required to enter into an arrangement with the Federal Office of Community Services, which involves the state submitting a plan of assurances that it will agree to, and those assurances involve you as a Community Action Agency. So if there's a failure to comply with some obligation that a CAA has with respect to that, those assurances, and that could lead to a cause by which the funding could be reduced or terminated, or failure to meet a state requirement. And now, as Jon mentioned, the CSBG organizational standards, our state requirements or something comparable in our state requirements.

And so basically, it says failure to meet all these different actions or provisions, as described in this section of the CSBG Act that talks about corrective action and reduction and termination of funding. What is the deficiency? So it gives you some clue, but it kind of also punts you back to what that process is. And so that's what I'm going to talk about, the process by which a state goes through and works with a community action agency to hopefully resolve a deficiency. Some states refer to deficiencies as non-compliance issues or findings, and then, you know, gives deficiency the status of when cause is, is at play in order to move forward to initiate a reduction or termination and funding. So it can be a little bit confusing, and there is room here for states to kind of step in and add some clarity and framework within what the federal CSBG Act requires them to do.

So next slide. So as I already mentioned, in the steps, the Act does require the state to inform a community action agency of a deficiency, again, the deficiency could be a non-compliance issue, it could be some level of finding, and it is required to give the community action agency an opportunity to correct and so there is some recommendations from the Federal Office of Community Services when Jon mentioned that there are information memoranda at play here to help to help kind of flesh out what are the state's obligations with respect to this, these processes. Information Memorandum 116 is sort of the go to guidance from the Federal Office of Community Services. And it basically recommends to state offices when a deficiency arises that that the state be clear on what that deficiency is, what is the basis on which

you're determining that the community action agency has failed to meet a requirement that it's required to meet, and then maintaining a record of that correspondence and that relationship back and forth with the community action agency with respect to actions that the state is taking to help resolve, help the community action agency as much as the state can resolve that issue that that has occurred, that compliant, that non-compliance, that deficiency.

Alright, I can see in my section that the questions are rolling in but maybe I will go a little bit further along and then we can jump in closer to the end and I will try to address some of these questions, because some of these slides really do feed off of each other as we go through this. So, you know, the Act does address when a state CSBG office or it does set forth this this concept of training and technical assistance to be provided by the state CSBG office, in order to help correct a deficiency, help a community action agency correct a deficiency. It is qualified by if it is appropriate for the state CSBG office to do so. And so you'll see on the slide the requirements from the Act with respect to what the state office must do. It must prepare and submit a report to the Federal Office of Community Services describing the T/TA, the training and technical assistance that it is offering to the community action agency. And if it decides not to offer that training and technical assistance to the community action agency, then it has to be prepared to explain why it's not offering that training and technical assistance to the community action agency. So this is important for community action agencies to understand that there is this this process that the state is going through. And so then when you look to Information Memorandum 116, it actually offers at least from OCS perspective, the Federal Office of Community Services for perspective on the next slide, we list out when it may not be appropriate for a state to provide training and technical assistance to a community action agency.

And you can see here, and again, this is just guidance, but it's ultimately within the state's discretion. And so conversations and collaborations should be occurring at this level. Because the goal here is to try to have a healthy, well operating well functioning community action agency that is meeting the needs of the community. And so both parties have a role to play with respect to making that happen. So what it may not be appropriate is if the community action agency actually has the expertise and skills with respect to the deficiency, the noncompliance, to try to correct it. And so if both parties feel like that's the case, then it just may not be appropriate for the state to have to provide training and technical assistance. It may also not be appropriate if the state has already attempted to provide training and technical assistance and the correct, and the CAA is attempted to do correct it based, correct the deficiency based on that training, technical assistance, and it's still not corrected. So that is, you know, potentially signaling that it's no longer viable to keep providing training and technical assistance. If the deficiencies are multiple, widespread, if they're again repeated then it, then training and technical assistance may not be appropriate.

And then I think this is one we can all agree on if there is fraud, criminal wrongdoing that is at play with respect to this deficiency. And so in order to mitigate risk, immediate action needs to be taken. And training technical assistance may not be the way to address a matter.

All right, next slide, please. So in addition to training and technical assistance, states also have the discretion to give community action agencies an opportunity to develop and implement what we've been referring to as a quality improvement plan in order to correct the deficiency. Now I know that states have their own lingo, and their own framework with respect to corrective action. And so we're really just talking about what's in the federal CSBG Act. And states do have a little level of discretion to facilitate and interpret those provisions and the facilitation of the Community Service Block Grant program. So it's just important to remember that, that you may have a quality improvement plan process, it just may not be called quality



improvement plan, it may be called something else. And that's what you're familiar with. Or you may have more than one stage. In other words, quality improvement plan may be one step in a multi-phase process. The Act just requires that it's that at some point the state decide whether or not it's going to proceed with moving forward with what it turns to be a quality improvement plan. So in making that decision, the Act notes that the state can take into consideration the seriousness of the deficiency, and the time that could be required to correct that deficiency. And we've already sort of talked about with respect to training and technical assistance plans, you know, some of the factors that the state would consider with when it may not provide T/TA, and I think you'll see that some of those factors come into play with respect to quality improvement plans.

Next slide, please. Okay, so before we dive into the state and the CAA working together on a quality improvement plan, it's helpful to know that Information Memorandum 116 does give examples of when a state office may deny a CAA the opportunity to submit a quality improvement plan. And those include, again, you're going to see some repetition here, if one has already been instituted, and this in the finding continues to be repeated, and also when you have evidence of fraud or criminal wrongdoing, these are factors that could lead to the state needing to take more immediate action, which would be likely to initiate that reduction or termination in funding process.

Next slide. So if a state does grant a community action agency the opportunity to submit a quality improvement plan, there are some parameters within the Act as to how that process would go. And there's a bit of a timeframe here, a timeline, the state is required to give the community action agency 60 days after they've informed the community action agency of that deficiency, to develop and implement quality improvement plan. And then once the state receives that, they have about 30 days to approve, or not approve that quality improvement plan. And if they decide not to approve it, they do have to specify the reasons why they have decided not to approve it. And this is from the Act, there is also a little bit of language in Information Memorandum 116, what I've been referring to throughout when talking about this corrective action process, that does talk about with respect to the content of a quality improvement plan, it does indicate that for community action agencies, it's important to be specific about what steps you're planning to take, and with respect to how you are planning to address that deficiency. And for the state to have some discretion with respect to what is a reasonable timeframe within which you have to correct that deficiency. But you should put all that forth in that quality improvement plan is what the Federal Office of Community Service recommends. And so your state might have fleshed out what that would look like. And I know some states even have a template. And we have over the years at CAPLAW tried to kind of collect those and share those with the introduction of the organizational standards that has on some level, informed this added level, added a level of uniformity and consistency to this process, the monitoring process as well as sort of the corrective action process, because now we're kind of all looking at some of the same standards and the ways in which to meet those standards are, are very similar, if not the same. All right, next slide, please.

Okay, so let's say you've gone through all that process, and the deficiency is not corrected. So before we dive into what that looks like, I want to be clear about the funding reduction and termination process, because I think sometimes it gets a little fuzzy, because there are actually two causes for which a state office could proceed with initiating a reduction or termination of funding, we've been spending a great deal of time, in fact, this whole entire presentation, talking about monitoring, and the corrective action process, and when the corrective action process isn't going the way that perhaps is one in which deficiencies are being corrected and changes are being made that can enable the program to operate more effectively than then you could face a state proceeding to initiate a reduction or termination of funding based on cause related to that deficiency that they have identified and not being able to correct that deficiency.

So then there's another reason why the state could move forward with reducing funding that doesn't have anything to do with monitoring. It has to do with a statewide redistribution of CSBG funds and Veronica is going to talk about that in just a minute. I'm going to finish off with the whole monitoring piece of it and then I'll hand it off to her to talk about the statewide redistribution of CSBG funds piece of it. By the way, both of these, both of those causes are discussed in Information Memorandum 116, that is the only guidance we have in the Federal Office of Community Services regarding just about everything we're talking with you about today.

Okay, next slide, please. Alright. So, back to our monitoring center scenario that we're kind of working through in our heads, and on these slides. So the state has obligations that it has to follow when a deficiency is not corrected. And there is a lot of back and forth before we often get to this point in the process. It's a point in the process that I don't think either states or CAAs really like to get to. And, unfortunately, here at CAPLAW, we've been involved in a handful of situations that have gotten to this point. But what's important to note is that the state and its state plan does give an assurance that when we do get to this point in the process, that the state will provide the community action agency with notice and an opportunity for a hearing on the record. And then based on that hearing on the record, it will determine if cause exists. If you have a deficiency, that likely has not been corrected. If you've got fraud, some of these types of reasons, likely that would lead to a determination of cause. So if cause exists, that state has determined that cause exists, then it will initiate proceedings to terminate or reduce some of the community action agency's funding. But prior to doing anything to that funding, prior to any reduction, any termination of that funding, the state is required to allow the community action agency to seek a federal review of the state's determination with respect to cause, the cause on which it's basing its initiation of this reduction and termination process. Now that review is a 90-day review. And if OCS, they are appealing to the Federal Office of Community Service with respect to that review, and if OCS does not respond within that 90 days, then the state's determination will stand. Alright. Okay. With respect to that, I'm going to turn it over to Veronica to talk about the other way in which a state office might move forward with reducing community action agencies' funding. And then she's also going to talk about some of that process, which applies to both ways in which a state office may reduce or terminate funding. So I'll hand it off to you, Veronica.

### [Veronica Zhang, CAPLAW]

Thanks, Allison. And just so those who submitted questions know, we will address questions at the end of the presentation, since some of these issues are tied together. So as Allison said, I'm addressing now the second basis on which a state could initiate reduction or termination of CSBG funding. And that has nothing to do, as Allison said, with the monitoring process. This is what the CSBG Act refers to as a statewide redistribution of funds. And here, I think it's actually helpful to have some idea of what we mean by a statewide redistribution of funds. This tends to come up in a few kinds of commonly seen ways. And the CSBG act outlines them.

One is that Census data that's released every, you know, on a regular basis, shows changes in poverty across the state, the distribution of poverty. And we know that that can happen when there's economic development in certain neighborhoods, and changes the demographics of a neighborhood. And so the most recently available Census data might show that poverty concentration has changed across the state. And on the basis of that, the state may decide to change the funding formula for CSBG, to be responsive to the changes in demographics within that state. And in that situation, that would be a basis for redistributing funds within the state.

The second basis would be the designation of a new Community Action Agency. There are some states that have unserved areas of counties or neighborhoods or parishes, or, you know, local government units that are not currently covered by an existing Community Action Agency, that do not belong to an existing CAA service area. And the state may decide that it wants to have a Community Action Agency providing services in that area. Oftentimes, doing so, there's a process—which we talked about on our last webinar, there's a process to designating a new Community Action Agency. There's a preference given to certain nonprofit organizations in the area, in that unserved area, or a Community Action Agency in a contiguous area providing services. And in that case, the state may also re calculate its funding formula to account for that new Community Action Agency, or that new service area being added to an existing Community Action Agency's service area. And then lastly, there's a sort of catch all that the federal CSBG Act provides, which is severe economic dislocation. This may be, you know, the result of disasters or other reasons that might lead to a particular need within the state that would justify a redistribution of CSBG funds.

In all of these situations when the proportional funding formula changes, as you can imagine, some Community Action Agencies may experience a reduction in the proportional share of funding that they receive. And as a result, this triggers the requirement under the federal CSBG Act, to provide notice a hearing on the record and an opportunity for federal review. So it's important to think about this basis of cause as again, not part of the monitoring process. There are other factors at play here, needs in the state have changed. And as a result, the state is looking to update its funding formula to respond to that need. But because it affects the proportional share of individual Community Action Agencies, it must go through this hearing process.

So if you go to the next slide, Jon, you can see that the state—so this is to say that this process here, outlined in this slide, applies to both reduction in termination of funding either from a monitoring process or because of a statewide redistribution of funds. The state will determine the type of notice and hearing procedures that it will use to complete with comply with the federal CSBG Act, and that the federal Act does not prescribe, you know, who that notice has to go to, how far in advance the notice needs to be provided.

We do get guidance from OCS saying that notice will be deemed adequate if it provides for a reasonable timeframe for the public, and the Community Action Agencies that are affected by the initiation of reduction or termination of funding, to respond. There should be reasons provided for conducting the hearing so that members of the public and Community Action Agencies that are affected can understand what the state is trying to do, should obviously provide for the location and the time of hearing so that people can participate in that hearing. And then provide information regarding additional appeal options, so that if the parties that, you know, attend that hearing wish to pursue additional options after that hearing.

So, for initiation of reduction or termination of funding on the basis of a redistribution of state CSBG funds statewide, OCS IM 116 does state that states can use the legislative hearing that they're required to conduct every three years to conduct this hearing. Essentially, you can use that legislative hearing to talk about reasons for redistributing funds within that state that would meet the requirements of providing notice and a hearing on the record, or the state can conduct a special administrative hearing solely for the purpose of discussing the statewide redistribution of CSBG funds. So it can make that choice.

So what happens after that hearing, after that hearing, you know if the state decides that it will continue to move forward with reduction or termination of funding, the affected Community Action Agencies? So the eligible entities that experienced a reduction or termination of funding may request a federal review of the state's determination. So the CSBG Act allows Community Action Agencies to appeal that determination

by the state, that final determination by the state, after that hearing process. And that request for federal review would be submitted in writing within 30 days of getting notice from the state that it has reached its final decision. And that request for review must go to OCS, the Division of State Assistance.

As part of that, the Community Action Agency should, you know, indicate its reasons that it disagrees with the state's final determination and wait for OCS to respond. Importantly, during this appeal process, while the CAA and the state are waiting for OCS to issue its final review and final determination of the state's decision, the state must continue to fund the affected Community Action Agency and provide the same level, the proportional share of funding, that that Community Action Agency received prior to the determination that the state was going to terminate or reduce funding. So even though the state has made that determination for itself that it intends to, or it's going to terminate or reduce funding for the Community Action Agency, the state cannot discontinue funding until OCS has completed its review process.

So how long does OCS have? OCS has 90 days after it receives from the state all of the necessary documentation. If it's from a monitoring process, the monitoring findings, the sort of efforts at corrective action that Allison talked about—the, you know, opportunities for T/TA and QIPs and, if those weren't provided, reasons why they were not provided. The kind of testimony and evidence submitted as part of the hearing process. And so all of this goes to OCS and is part of OCS's review. And so for Community Action Agencies that are seeking this type of review, this is why it's important to ensure that you are responding to your state on a timely basis, and also why it's important to show up to that public hearing, where, you know, the state is discussing its basis for reducing or terminating funding. And it's helpful to be submitting, you know, documentation into the record to have testimony at that hearing, because that all becomes part of the record that goes to OCS for that final federal review process.

If OCS does not respond—I'm sorry, Jon—yeah, one more at the very bottom, just to note that the federal Act does not require OCS to respond either affirmatively, you know, to say that, yes, we agree with the state or to say no, we disagree with the state's decision. And if OCS does not respond, and it has the prerogative to not respond, the state's determination is final after 90 days. And when you're thinking about this, it's really important to keep in mind, again, we've been talking about CSBG being a block grant, where states are primarily responsible for administering that funding source. This is another example of how the structure of the funding is set up to allow states to be the primary arbiters. It doesn't mean that they're the only arbiters because OCS does have a role to play here in reviewing the decision. And so Community Action Agencies that want the feds to sort of step in and weigh in on that state's determination should be thinking about what it can submit, you know, in support of its position, but at the end of the day, the state's determination will stand after 90 days if there is no response from OCS.

All right, so what happens if the state doesn't follow these procedural requirements, and I say procedural requirements, because before, we've been talking about how the state should be addressing monitoring findings. When, you know, findings might rise to the level of a deficiency, which then would rise to the level of cause in our monitoring process, or why states might reduce or terminate funding based on a change to the statewide distribution formula. If the state violates any of those sort of procedural protections that a Community Action Agency has, if it doesn't give you notice of a hearing; if it terminates your funding without providing a hearing on the record; if, when you're appealing to OCS, it, you know, moves on and gives your funding to a different Community Action Agency. The Community Action Agency has rights in those situations.

And the primary right has here is to go to OCS and request that OCS directly fund that Community Action Agency. To essentially say, you know, we're not getting our funding allocation from the state while these

sorts of procedural protections are in place, or procedural requirements are in place. And so, we ask that OCS provide our allocation of CSBG funding directly to us, rather than give that to the states. And so, in this, you know, here you see that the federal CSBG Act gives OCS the authority to provide funding directly to Community Action Agencies when there is a violation of the state's responsibilities that we've talked about. It should say, you know, why the state has violated the requirements of due process and the basis for, you know, OCS directly funding that Community Action Agency.

That funding is really meant to be temporary, again, because it's funding, you know, while this process is in place, and so, typically, either the violation is corrected by the state so the state provides the hearing or, you know, resumes the funding, pending OCS review, whatever the violation was that led the Community Action Agency to seek direct funding in the first place. Once that violation is corrected, then OCS would stop that direct funding. Or, if we get to the end of this funding reduction and termination process where the state's determination is final after a federal review, then you know that direct assistance would end as well.

On the next slide, so, a separate but in some ways related process is the federal CSBG block grant regulation. So, these are found at 45 CFR (Code of Federal Regulations), section 96.50. These are the federal block grant regulations that apply to CSBG. There is a complaint process outlined in these block grant regulations that allow grant recipients, so, you know, Community Action Agencies, eligible entities, to file complaints alleging that the state failed to follow the federal CSBG Act. So this could be in connection with a funding reduction or termination process, like we talked about earlier. Or it could be, you know, another reason that the Community Action Agency believes the state has violated or failed to follow the federal Community Services Block Grant Act. And here, this, these block grant regulations talk about, you know how a Community Action Agency can request OCS to investigate and then issue a determination on the complaint that that Community Action Agency has. So typically, these complaints relate to the state assurances, which we talked about in last week's webinar, when we talked about the mechanics of CSBG. The state has to make certain assurances to OCS and how they will use that funding and the kind of protections that they will have in place for Community Action Agencies. If a state fails to follow those state assurances, that typically is the basis for a complaint to OCS, if the Community Action Agency chooses to bring one to OCS.

Importantly, to remember, again, is that OCS will defer to the state's interpretation of the CSBG Act, unless that interpretation is what, as a legal standard, is called clearly erroneous. Now, clearly erroneous is a high standard. It's more than just, you know, we think that their position, the state's position, is unreasonable. We think that we could come to an equally compelling, you know, other, conclusion than what the state has come to. Clearly erroneous is that the state's interpretation of the Act is more likely to contradict the federal CSBG Act than not. And, again, this legal standard is high in the sense that it's a, you know, a high bar that a Community Action Agency bringing a complaint has to reach, because, again, going back to the structure of CSBG, it is a block grant and states are considered the primary administrators of this grant. So OCS recognizes that there may be inconsistency from state to state. I know that's not something that we all like to hear that, you know, different states do it differently. Different states have different requirements. They interpret the Act in a different way. I hear this other Community Action Agency in a different state coming to a different conclusion.

But the CSBG block grant regulations actually explicitly contemplate that that states can come to different interpretations, as long as that interpretation is not considered clearly erroneous, OCS will defer to the state's interpretation and let that stand. Now, of course, there are interpretations that are clearly erroneous. And in those cases, the Federal CSBG, the Federal Office of Community Services, is there to step in. And

this is why there is this complaint procedure.

Go to the next slide. So if you are looking to bring a complaint under these block grant regulations, similarly, they have to be submitted to the OCS, the director of OCS, in writing, it should identify the provision or the assurance. So whatever, you know, violation, that you believe the state has violated, state that in the complaint, and again, all relevant information that would help OCS come to a determination. On the next slide, you'll see that OCS has the responsibility to provide a copy of that complaint to the state. So this will, these are not anonymous complaints where, you know...so you have to provide that copy to the, you have to provide that complaint to OCS. OCS notifies the states, provides them with a copy of the complaint. OCS can conduct an investigation if it chooses to do so and if it believes that it would be helpful.

OCS must respond to the Community Action Agency within 180 days of receiving that complaint. Sometimes OCS's response is, we weren't able to complete our resolution of this process within 180 days and more time is required. And the OCS is permitted to do so, but it does need to, specify the reasons for asking for more time. Once the state receives a copy of that complaint from OCS, the state itself has 60 days to respond to OCS and again may also request additional time. A resolution from OCS should be sent to the Community Action Agency within 180 days, or any extension of time that OCS deems necessary.

All right, I think we've gotten to the end of our presentation. And so we're happy to take some questions that have come in, we've got a couple of different questions. And so maybe I'll go back to some of the earlier ones, which I think address some of the earlier sections of our presentation. The first is, can agencies use CSBG funds to cover the cost of attorney review of the CSBG contract? So I know, Jon, you had talked about, you know, Community Action Agencies understanding the grant agreement that they're entering into with the state. And so the question is, well, can we get an attorney to help us review that CSBG grant agreement? And more importantly, can we use our CSBG funds to pay for that attorney to conduct that kind of review?

**[Jon]**

Yeah, I think, you know, I would go to the Uniform Guidance, Cost Principles, to check to check whether or not that specific cost would be covered. My, you know, off the top of my head, thinking on it, would be that'd be maybe a pre-award cost or a professional service cost, that that could be covered, and could be allowable.

**[Allison]**

Yeah, and I'll just, I'll just jump here in here and add that CAPLAW actually has a resource that talks about working with attorneys. And generally, you know, the important part with respect to working with attorneys is when you're doing it in what we refer to as a transactional way. In other words, you're working on, you know, maintaining compliance with respect to the business actions that you're engaged in. That is generally an allowable cost to do that, but you need to do it within the budget that you set aside with respect to anticipating those types of costs. And so the provision and the Uniform Guidance that Jon was referring to, talking about receiving professional services, so basically working with an outside party, like a lawyer or finance consultant. You would review the, you know, you would go through whatever procurement you would, your policies require with respect to retaining that individual to provide you with that service. So that's how we would think about working with lawyers and what we would refer to as, sort of, your transactional compliance type matters. And, you know, reviewing the CSBG contract would be one of those.

I know someone in here asked about a deficiency, and what is a deficiency? And so the federal CSBG Act basically states—and I'll take that one—the federal CSBG Act basically states that, you know, a deficiency is a failure to meet the terms and conditions of the CSBG contract, the state standards and state requirements, or, you know, terms that you're required to comply with pursuant to the state's plan. Any of those types of failures are—so I think what's important to note is that when we're talking about deficiency, we're talking about really a noncompliance. And so what we're trying to explain with the slides that we had in here is that there is actually no specific definition of deficiency. That's our understanding, based on the way that the that the Act is worded, that would be a noncompliance is if you fail to comply with the terms of your agreement or with the requirements that the state has issued with respect to the CSBG program or funding.

And so then, when that deficiency would rise to the level of cause such that the state could proceed with initiating a reduction or termination of funding, you know, our understanding of that is really driven mostly by the guidance and Information Memorandum 116, when they talk about, well, when T/TA can no longer be provided or when quality improvement plan is not appropriate. And that really is when you have these multiple widespread findings within your organization that are not being corrected, and they vary. There have already been attempts to try to correct them, or you've got fraud, or you've got a wrongdoing criminal wrongdoing. That would, those are instances that would likely lead to a finding of caused by the state such that they would want to initiate a reduction or termination of funding. Hopefully that helps.

### [Veronica]

We have a question here about, if the CAA has lost funding for programs within the CAA for noncompliance, or potential fraud, does that affect the CSBG program itself and I think that's really a great question. It's one that I think comes up regularly. And I think particularly for CSBG, because CSBG funding often supports the kind of infrastructure, organizational infrastructure, of an organization, and supports the kind of linkages and leveraging that Community Action Agencies do. We talked about that in our second webinar, Uses of CSBG Funds. It is encouraged by the Federal CSBG Act. And so I think the question is, you know, when a state is here to monitor you on your CSBG funding, it should be looking at your uses of CSBG funding, it shouldn't just be looking at systems of the organization at whole at large. And so, if there's an issue, and a monitoring, finding, you know, with one funding source that is sort of isolated to that funding source, that, you know, it may not have any bearing on your CSBG funds. I think the tricky part is if there's a monitoring finding on another program that implicates something more systemic or organization wide, a fiscal policy or a personnel policy or a, you know, a security, IT security policy, that could have some bearing on your CSBG funding, then that could be cause for, you know, your CSBG monitor from the state also looking into that as well. But I think we would say that, just because there's an issue in one program does not mean that, you know, there should be, or the state monitor should use that issue as a reason to issue a finding, or noncompliance for CSBG purposes, unless, you know, there is actually something to that finding with respect to your use of CSBG funds.

### [Allison]

Absolutely. And I'll just add to that, that Information Memorandum 116, actually, just really briefly touches on this. And, and, and basically, you know, direct states from the perspective of you know, if something goes wrong, that you're aware of, with respect to another program, yeah, that could lead you to want to go in and do a little more investigation and find out more, just sort of exactly what Veronica was saying. But then that's what you would do, it wouldn't necessarily mean you would immediately go in and start initiating a reduction or termination of funding. But it does make sense that if you get wind of something that might

lead you to take advantage of what Jon talked about way back in the beginning with respect to when a state could go in to monitor. And so that could trigger a monitoring at some level with respect to that issue and how it relates to your funding. If, as Veronica noted, your CSBG funding is connected in some way, or it's unclear, or they're concerned that what has occurred with this other funding, that some of that similar activity is happening with respect to how you're using your CSBG funding.

### [Veronica]

One other place that I think this can come up is, the Uniform Guidance does have a section that talks about requirements for pass through entities to conduct kind of risk assessments for its subgrantees. And part of that risk assessment is looking at, you know, audits of you, of that subgrantee, and that subgrantee's compliance or noncompliance with other federal statutes, regulations and programs. And so, as part of that risk assessment, that, you know, a pass through entity, the state office, could look at the Community Action Agency's ability to meet requirements for other funding sources. But again, the Uniform Guidance has some specific provisions if the subgrant. If this pass through entity, the state, is concerned about the CAA's ability to meet the requirements of, you know, the CSBG sub award, it can impose additional, you know, monitoring or reporting requirements that help the state get comfortable with, you know, that this sort of elevated risk for that agency for that time period. But it doesn't, again, automatically lead to a reduction or termination of funding.

### [Jon]

Someone had asked, what if what happens if the deficiency is more from the state than from the CAA? And with regard to that question, one, I think, you know, as Allison has mentioned, deficiency can sort of, can be a lot of things. I think more generally, I think, hopefully, from this presentation, the process that's involved with regard to monitoring, and with regard to corrective action, and with termination and reduction of funding, that process gives a sense of, you know, trying to be as fair as possible. If there's a deficiency that's identified with a CAA, there are ways to correct it, there are ways to have a hearing about it and get to, you know, the CAA side of the story on that particular deficiency. There are also other ways that were talked about later in the presentation, about if something is particularly egregious or violating the federal CSBG Act, you know, what, what recourse might be available to a CAA and so on. I think there are options available. And I think there's a process in place to hopefully account for that particular situation as best as possible.

### [Allison]

Yeah, absolutely. And I think to that, that with respect to, you know, issues that might happen at the state level, you know, as everybody may be familiar with, the state is also monitored. It's monitored by the federal Office of Community Services. And they monitor states on sort of, on a, I guess, kind of a rolling basis. In other words, not all states are monitored every year, they go in and monitor a handful of states. And they actually do issue those monitoring reports. And if there are findings based on those monitoring reports, it could come down to impact Community Action Agencies. So just going back to sort of the slides that that Jon spoke to, in the very beginning, it's really important that everyone understands kind of the roles and, and responsibilities that everybody has, and everyone does play a role and responsibility and the success of the Community Service Block Grant funding to meet the needs of the community served. And then federal Office of Community Services recognizes that there is a complaint process that that Veronica did touch on at the end, if it is found that the state's interpretation of the federal CSBG Act is contradicting what the language of the Act is saying, then to pursue that avenue is an option.



So someone asked, can we see the monitoring report from the state? Okay, great. Yeah. So I see Veronica is real time responding to that question. As a Community Action Agency, as we said earlier, they are required to notify you of deficiencies and give you an opportunity to correct them. It doesn't specifically say how they will do that. But you know, the idea is that you would receive information about what is at issue, if there is anything at issue, or if you're doing a great job? They'll give you that as well. And then Veronica just put in OCS's assessments of states in there.

### [Veronica]

There's a question from Cassidy, about local authorities refusing to sign off at the county level, if state agencies can sign on your behalf. I think you're talking about CSBG funding, if you're not, maybe please reach out to us, and we can talk separately offline. But remember that CSBG funding is granted to states and then states distribute that funding to, you know, subrecipients. Now, if that subrecipient, usually it's a Community Action Agency directly. So the state is funding the Community Action Agency and the relationship, the grant agreement would be between the state and the Community Action Agency. It's possible that states might, you know, give them to an eligible entity that then subgrants further. So I don't know if that's the situation that you're talking about, Cassidy.

### [Allison]

It looks like in their state, that as part of the process of allocating the funds to the Community Action Agencies, eligible entities, there's a county sign off with respect to that. Oh, it's Montana. All I would say with respect to that process, is that it's just important to note that, if any process that the state puts in place, could somehow jeopardize your ability to receive your proportional share of funding. In other words, it's risking the reduction in termination and or termination of your funding, because that process isn't being followed in a timely manner, then that would be a reason to, you know, file a complaint to say that the that the state is effectively reducing our terminating our funding, by not by not allocating the funds to us within a timeframe that is reasonable. Now, there is no definition of what is a reasonable timeframe, and states do have authority and discretion to put in processes with respect to the facilitation of that funding, but they cannot reduce or terminate your proportional share without going through a specific process. So it may be worth noting that there is no requirement in the federal CSBG Act to have anybody at the local level sign off on the funding. From the federal CSBG Act's perspective, it goes from the feds to the state to the eligible entity. And so that process is solely a state specific one, it could be a holdover from prior iterations of either the Economic Opportunity Act or prior iterations of the Community Services Block Grant Act. And it's important to have conversations with the state about that.

Were there any other questions? I think we're at time.

### [Veronica]

There's a question about whether states react reallocate funding often.

### [Allison]

I tell you this, the Census just came out. Right. And so that's why the Census was so important, because there is, you know, under the causes that Veronica talked about, to redistribute funds to support economically disadvantaged areas, and Census results could trigger that need. So it's possible that there could be some more based on sort of those types of results that have come out with respect to need

in your in your states, but it does happen. And that's a whole process. And our sister national partner, the National Association of Community Service Programs, NASCSP, is the one that works with states with respect to that their formulas and the process by which they determine the proportional share that Community Action Agencies receive.

**[Veronica]**

There's a question about reporting T/TA awards for monitoring. Maybe, maybe you could reach out to us separately, I'm not sure I totally understand that question to be able to answer it live here.

**[Jon]**

And if anyone thinks of a question after the fact, again, reach out to us.

**[Allison]**

Caplawinfo@caplaw.org. That's the email address that you'll see our on our website. There you go. Veronica, put it in the chat. And thank you, everyone, for joining us for this series. We've found it really helpful for us to be able to talk to you on a more regular basis about all these ins and outs of the federal CSBG Act that we live in, in segments, but not necessarily the whole Act within four weeks. So thank you and keep reaching out to us with any questions, concerns you have, and we're happy to help in any way we can.

**[Veronica]**

Have a good afternoon, everyone.

**[Jon]**

Thank you, bye.

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