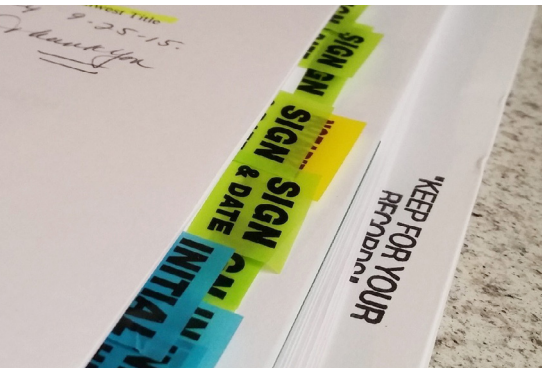
Community Services Block Grant

Q&A on... Property Issues



Restriction on Use of CSBG Funds for Property Purchase and Construction

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Introduction

This Q&A addresses a number of questions concerning the interpretation and application of the federal Community Services Block Grant (CSBG) Act's restriction on the use of CSBG funds for the purchase or improvement of land or for the purchase, construction, or permanent improvement of any building or other facility. It is intended to provide practical analysis based on relevant laws to assist states and CSBG eligible entities (referred to in this Q&A as Community Action Agencies or CAAs) to which states subgrant CSBG funds, in interpreting the CSBG Act's property restrictions. The Q&A is based on federal law and guidance, including the CSBG Act, U.S. Department of Health and Human Services (HHS) block grant regulations, federal Office of Management and Budget (OMB) Uniform Guidance regulations; Internal Revenue Service (IRS) regulations; and the federal Office of Community Services (OCS) Information Memorandum No. 60. (OCS is the office within HHS that administers the block grant). **It is important to note that the states, which are the grantees of CSBG funds, are primarily responsible for interpreting the governing statutory provisions. In resolving any issue raised by a complaint or a federal audit, OCS will defer to a state's interpretation unless it is clearly erroneous.**[1]

Any opinion, findings, and conclusions, or recommendations expressed in this Q&A are solely those of CAPLAW and do not necessarily reflect the views of the U.S. Department of Health and Human Services, Administration for Children and Families or OCS. CAPLAW has developed this Q&A for informational purposes only and not for the purpose of providing legal advice. You should contact an attorney or accountant knowledgeable in the requirements relating to federal grants, including CSBG, to obtain advice with respect to any particular issue or problem.

Background

The CSBG Act provides that:

> *[G]rants made under this chapter (other than amounts reserved under section 9903(b)(3) of this title [for OCS discretionary purposes]) may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this chapter, for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility.*
>
> *The Secretary may waive the limitation contained in [the above] paragraph upon a State request for such a waiver, if the Secretary finds that the request describes extraordinary circumstances to justify the purchase of land or the construction of facilities (or the making of permanent improvements) and that permitting the waiver will contribute to the ability of the State to carry out the purposes of this subtitle.*[2]

This provision prohibits the use of CSBG funds, absent a waiver from OCS, for any of the following:

- Purchase of land
- Improvement of land
- Purchase of any building or facility
- Construction of any building or facility
- Permanent improvement of any building or facility (other than low-cost residential weatherization or other energy-related home repairs)

Other than Information Memorandum No. 60, OCS has not issued any official guidance on this provision of the CSBG Act. In analyzing this statutory provision, therefore, this Q&A relies on rules and definitions found in the federal OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)[3] and in IRS regulations on capital expenditures.

Permanent Improvements

1. What types of work are considered "permanent improvements"?

Work that:

- Materially increases the permanent value of the property;
- Appreciably prolongs the life of the property; or
- Puts the property in efficient operating condition rather than merely keeping the property in that condition.[4]

Work that falls into one or more of the above categories may not be paid for with CSBG funds without a waiver from OCS. The state CSBG office is the party responsible for submitting a waiver request to OCS.

The CSBG Act does not define the term "permanent improvement." However, it does require that CSBG eligible entities (i.e., Community Action Agencies) follow the cost principles contained in the OMB Uniform Guidance.[5] Although the cost principles do not specifically define the term "permanent improvement," provisions on capital assets, capital expenditures and maintenance and repair contained in the cost principles indicate that the types of work described above would be considered capital expenditures. Presumably, permanent improvements are either equivalent to, or a subset of, capital expenditures.

2. What types of work are *not* considered "permanent improvements"?

Work that qualifies as maintenance and repair, and not capital expenditures, under the Uniform Guidance is not considered a permanent improvement and, therefore, is neither prohibited by the CSBG Act nor requires a waiver from OCS to be an allowable CSBG cost. In its definition of the term "capital assets," the Uniform Guidance specifically excludes "ordinary repairs and maintenance."[6] With respect to maintenance and repair costs, the Uniform Guidance provides that:

> "Work that qualifies as maintenance and repair, ...is not considered a permanent improvement"

> ***Costs incurred for*** *utilities, insurance, security,* ***necessary maintenance****, janitorial services,* ***repair, or upkeep of buildings*** *and equipment (including federal property unless otherwise provided for)* ***which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures.***[7]

3. Does guidance exist as to other types of work that are *not* considered "permanent improvements"?

OCS, which administers the CSBG program at the federal level, has not issued any guidance either specifically defining the term "permanent improvement" or providing examples of what types of work may be considered permanent improvements. However, other sources of legal authority may be used to help determine when work performed rises to the level of a permanent improvement. One such source is the IRS regulations on capital expenditures. These regulations provide a useful framework under which to analyze whether a cost is incurred for a permanent improvement, betterment or restoration, as opposed to for maintenance/repair (i.e., recurring activities that a taxpayer expects to perform to keep a building structure or each building system in its ordinarily efficient operating condition). Under the IRS regulations, amounts paid for permanent improvements or betterments made to increase the value of the property, as well as amounts paid to restore property (including restoration of a major component or a substantial structural part of the property), must be capitalized rather than deducted.[8]

...other sources of legal authority may be used to help determine when work performed rises to the level of a permanent improvement.

The IRS regulations are complex and provide over 40 different examples of when work performed in certain circumstances is treated either as a permanent improvement/betterment or maintenance/repair. For this Q&A, we only discuss the examples from the IRS regulations addressing roof repair and replacement because CAPLAW commonly receives questions about this type of work. When determining whether roof work is a permanent improvement/betterment or maintenance/repair, the IRS considers the following factors:

- Whether the new component is comparable in value to the original component;
- Whether the conditions necessitating the work resulted from normal wear and tear; and
- Whether the new component materially adds to or increased the capacity of the structure, i.e., its productivity, efficiency, strength, quality or output.[9]

Applying the factors outlined above, the IRS regulations treat the replacement of one component of a building's roof (such as shingles or the roof membrane) with similar materials to correct water seepage and leaks as maintenance/repair rather than as a permanent improvement/betterment that needs to be capitalized. However, the IRS regulations indicate that the cost of replacing the entire roof (including, for example, the decking, insulation, asphalt and coatings) is a permanent improvement and must be capitalized. The IRS views the "entire roof" as a major component or substantial structural part of a building that performs a discrete and critical function in the building structure.[10] Similar to the IRS regulations, tax decisions from the federal courts have also generally focused on whether the roof work in question appreciably prolonged a property's useful life or increased its value.[11]

Thus, when analyzing roof work through the lens of the IRS regulations, if the work performed involves replacing a worn component of the roof with comparable materials to correct and stop leaks, placing the building back into efficient operating condition, the work would qualify as maintenance/repair rather than a permanent improvement and would not require an OCS waiver. However, if the work involves either replacing a component of the roof with superior materials or removing and replacing the entire roof (e.g., decking, insulation, asphalt and coatings), the work would likely be considered a permanent improvement that would require an OCS waiver before costs could be charged to CSBG funds.

An analysis similar to the one used for evaluating roof work is applied in many of the other examples in the IRS regulations. If questions regarding other types of work arise, a CAA should either consult with

an accountant, a tax attorney or CAPLAW to determine whether the IRS regulations offer guidance as to whether that type of work would be considered a permanent improvement requiring a waiver from OCS or maintenance/repair for which an OCS waiver is not required.

4. Does charging CSBG for depreciation on a facility owned by a CAA require a waiver?

No. According to the Uniform Guidance, charges for depreciation represent compensation for the use of buildings and capital improvements owned by a non-federal entity (such as a CAA). Depreciation is not a cost of purchasing, constructing or improving a facility and is allowed regardless of whether the facility was donated by a third-party, or purchased, constructed or improved by a non-federal entity.[12]

5. Does the CSBG Act bar the use of CSBG funds for interest on a loan for the purchase or improvement of land, a building, or facility, or the construction of a building or facility?

In CAPLAW's view, no. The Uniform Guidance cost principles treat interest on loans to acquire or construct capital assets as a "financing cost," as opposed to an "asset cost."[13] Asset costs are defined as acquisition, construction and other costs capitalized in accordance with GAAP. Interest on mortgage and construction loans is expensed not capitalized under GAAP.[14] Furthermore, under the Uniform Guidance, interest may be charged to federal grants without funding source approval as long as certain conditions are met, whereas asset costs require prior approval.[15] Therefore, in CAPLAW's view, since neither the CSBG Act nor OCS guidance specifically address the use of CSBG funds to pay interest on a mortgage or construction loan and the Act requires CSBG recipients to follow the cost principles in the Uniform Guidance,[16] then a CAA may use CSBG funds to pay for interest on a loan so long as the conditions associated with paying such interest are met and the cost is allowable under the general principles of the Uniform Guidance. The principal portion of the loan, however, may not be paid with CSBG funds without first receiving HHS waiver from the state CSBG office.

The Uniform Guidance Cost Principles treat interest on loans to acquire or construct capital assets as a "financing cost," as opposed to an "asset cost."

6. Are improvements made to a facility that a CAA is leasing considered to be permanent improvements that may not be paid for with CSBG funds without a waiver from HHS?

It depends. If improvements (permanent improvements, rearrangements, or reconversions) are made by the landlord to accommodate the needs of the CAA prior to moving in and no extra cost beyond the agreed upon rent is charged, the work performed would not qualify as a permanent improvement paid for with CSBG funds and a waiver from OCS would not be required. Such rental costs must be reasonable (e.g., similar to rental costs for other comparable property, market conditions in the area etc.) and not be associated with a capital lease.[17] However, if after a CAA enters into a lease and occupies a facility, improvements (other than maintenance/repair) are made pursuant to an extra fee charged to the CAA, the work performed may constitute a permanent improvement. Note that many leases specify a certain percentage by which the rent will increase annually during the term of the lease; payment of such an increase with CSBG funds would not require approval from the state or an OCS waiver. Generally, the determination of whether a wavier is required to pay for improvements to leased property using CSBG funds is fact-specific and a CAA should work with local counsel and/or contact CAPLAW when assessing its particular situation.

Low-Cost Residential Weatherization and Other Energy-Related Repairs

7. What work falls within the statutory exception for permanent improvements that are "low-cost residential weatherization" or "other energy-related home repairs"?

Federal Low-Income Home Energy Assistance Program (LIHEAP) and federal Weatherization Assistance Program (WAP) rules may be looked to for guidance on this point. The LIHEAP Act contains language almost identical to the language in the CSBG Act prohibiting the use of funds to acquire, instruct or improve facilities and permits certain energy-related repairs. Both the CSBG and the LIHEAP Acts include an exception permitting funds to be used to "provide low-cost residential weatherization and other cost-effective energy-related home repair."[18] Thus, when interpreting the exceptions, the following should be considered:

- The low cost residential weatherization and other energy-related home repair services that may be provided to households affected by disaster, including installing new heating and cooling systems, water heaters, refrigerators and stoves. See LIHEAP Disaster Relief Q&A issued by OCS.
- The WAP definition of weatherization materials in the statute which includes, but is not limited to: caulking and weatherstripping of doors and windows; furnace efficiency modifications; clock thermostats; ceiling, attic, wall, floor and duct insulation; water heater insulation; storm windows and doors, multi-glazed windows and doors, heat-absorbing or heat reflective window and door materials; cooling efficiency modifications, solar thermal water heaters; and wood-heating appliances.[19]

The LIHEAP Act contains language almost identical to that in the CSBG Act which prohibits the use of funds to acquire, instruct or improve facilities and permits certain energy-related repairs.

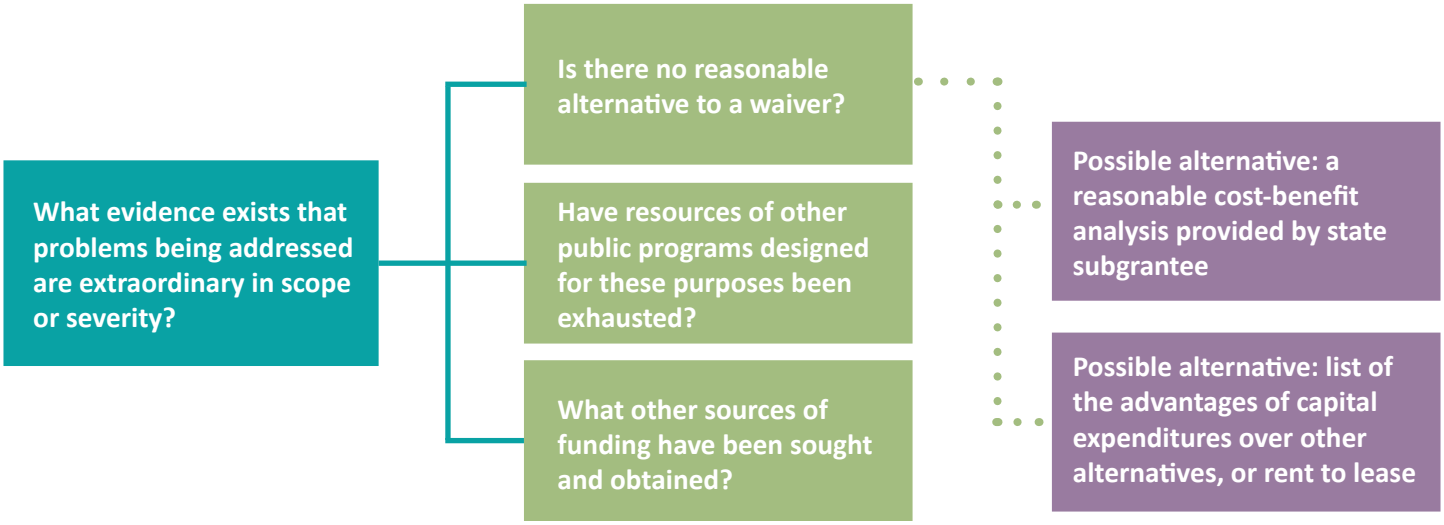
- The WAP regulation describing inexpensive weatherization materials that may be used in "low cost/no-cost weatherization activities" as: water flow controllers, furnace or cooling filters, or items which are primarily directed toward reducing infiltration, including weatherstripping, caulking, glass patching, and insulation for plugging.[20]

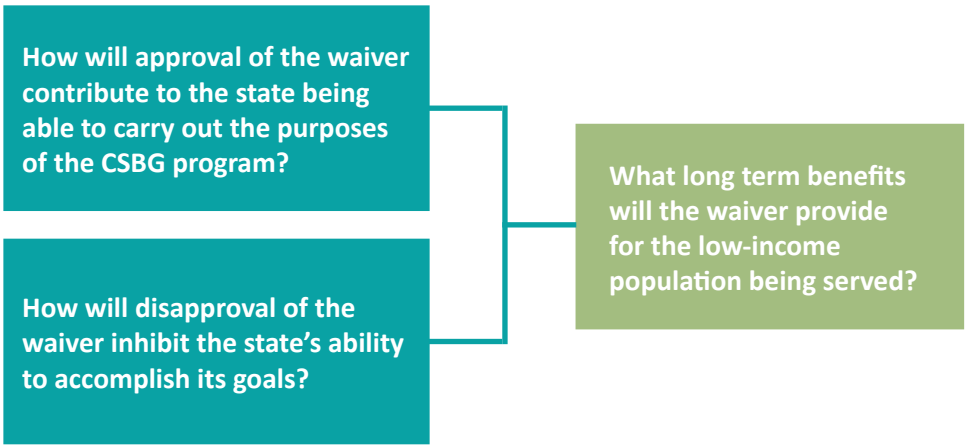
Waivers

8. What information is likely to be relevant to OCS's determination of a waiver request?

A CAA must obtain a waiver from HHS before it can use CSBG funds to purchase/improve land, purchase a building/facility, construct a building/facility or permanently improve a building/facility (other than low-cost residential weatherization or other energy-related home repairs). The state CSBG office, not the CAA, is the party responsible for submitting a waiver request to OCS. OCS may grant a waiver if it finds that evidence of extraordinary circumstances described in the waiver request exist and that issuing a waiver will contribute to

the states ability to carry out the purposes of the CSBG Act. A CAA must, therefore, be prepared to provide the state CSBG office with the information it needs to submit the request which will likely include answers to the following questions:[21]





9. What are some examples of circumstances in which OCS has granted waivers?

Some examples of circumstances in which OCS has granted waivers in the past include:

- Human suffering and destruction of property caused by natural disasters such as floods, hurricanes, tornadoes or earthquakes.
- Exceptionally high incidence of poverty such as open drainage ditches being used for sewage in a local neighborhood.
- A service center located in an architectural historic area that could not be renovated or expanded and needed replacing.
- Use of small amounts of CSBG funds as leverage on large amounts of other resources for self-help housing efforts.[22]

Government Interest

10. Is a government interest created when government funds are used to pay depreciation?

Charging only depreciation, which is the cost of use rather than the cost of acquisition or improvement of property, does not create a government interest in the property. The Uniform Guidance specifically explains that a property trust relationship establishing a federal interest is created when "[r]eal property, equipment, and intangible property" are "acquired and improved with a Federal award."[23] As previously discussed in Q&A #4, charges for depreciation represent compensation for the use of buildings and capital improvements to buildings owned by a non-Federal entity as opposed to acquisition or improvement costs themselves.[24]

11. Is a government interest created when government funds are used to pay the interest on a loan?

In CAPLAW's view, if CSBG funds are used only to pay the interest and not the principal on a loan, then no government interest in the land, building or facility is created. The Uniform Guidance specifically explains that a property trust relationship establishing a federal interest is created when "[r]eal property, equipment, and intangible property" are "acquired and improved with a Federal award."[25] As discussed above in Q&A #5 interest on mortgage and construction loans is merely a "financing cost" as opposed to an "asset cost" to purchase, construct, or permanently improve a building or facility.[26]

12. How will the reversionary interest issue be addressed if OCS grants a waiver?

Information Memorandum 60 specifys that OCS grants a waiver for use of CSBG funds in connection with the purchase or improvement of land or buildings, the state must ensure that it will hold a reversionary interest in the property purchased or improved with the funds for a period that corresponds to the useful life of the property. When a waiver is granted, OCS will: (1) require that the state retain a reversionary interest in the property for the useful life of the property or improvement and inform the CAA of that interest and (2) notify the state that it will recover funds if the state fails to monitor the use of the property or fails to use reverted property to carry out the purposes of the CSBG Act.[27] The CAA, however, and not the state or federal government, is the title owner of the property.[28]

13. What happens to the government's reversionary interest in property when it is no longer needed for the purposes for which it was acquired?

In making a determination regarding property purchased with CSBG funds, OCS has chosen a process which is consistent with its block grant policies, i.e. minimum interference with state administration of the program, while ensuring that the federal interest in the property is protected to the extent of limiting its use to the broad purposes for which funding was originally provided.

Some of the state's options for protecting its interest include: (1) allowing the CAA to use the property for other purposes connected with "ameliorating the cause of poverty" within its community or (2) if no alternative use is found in the community, taking over the property and using it or the state's proportionate share of the proceeds from its sale to carry out the purposes of the CSBG Act.[29] The notification provided by the state to the CAA should list the options for how the property will be treated when it is no longer needed for CSBG purposes, including distribution of proceeds if it is sold, and any approvals needed to sell, transfer, mortgage, or otherwise encumber the property. If a state has chosen to apply the Uniform Administrative Requirements provisions in the Uniform Guidance to its CSBG funds, those requirements set forth three

alternatives for how to dispose of property with a federal interest including ways in which to calculate the federal interest for each option.[30]

14. Examples of how the government's interest may be calculated:

Before using CSBG funds to purchase or improve land or to purchase, construct or permanently improve a building or other facility, a CAA that is granted a waiver should work closely with its state CSBG office to clarify how the government's interest will be calculated. Here are a couple of examples:

Determining Government Interest when Disposing of Property

Example A

A CAA purchases a building for $300,000 using $100,000 from CSBG funds and $200,000 from unrestricted funds obtained through a capital campaign. The state has obtained a waiver from the Office of Community Service (OCS) to use CSBG funds for the purchase. After five years, the CAA decides that it needs more space for its many diverse programs and wants to sell its current building. The value of the building has increased by 20% since it was purchased five years ago.

The Uniform Administrative Requirements in the Uniform Guidance state that the government's interest in the building is to be calculated by applying the government's % of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing expenses, if any, from the proceed of the sale. The value of the building increased by 20% and the building is appraised at $360,000. The CAA spent $10,000 to fix up the building prior to placing it on the market and sold the building for $360,000.

The government's participation in the building is calculated as follows:[31]

- The percentage of the government's interest is calculated by dividing the CSBG funds used to purchase the building, $100,000, by the original purchase cost of the building, $300,000, as follows: $100,000/$300,000 = 33%.
- The $10,000 the CAA spent to fix up the building for resale is subtracted from the sale proceeds prior to determining the government's share. Thus, the government's share is determined based on $350,000.
- The government's share in the proceeds from the sale is 33% of $350,000 which is $115,500.

Determining Government Interest when Disposing of Property

Example B

A CAA purchases a building for $300,000 by obtaining a loan for the full amount. The CAA pays the principal on the loan with unrestricted funds and the interest with CSBG funds. After five years, the CAA decides that it needs more space for its many diverse programs and wants to sell its current building. The value of the building has increased by 20% since it was purchased five years ago.

Because the CAA has paid only the interest on the loan using CSBG funds and the interest is treated as a financing cost and not part of the acquisition cost, the government does not retain an interest in the building.

15. Is a CAA required to file a notice of the government's reversionary interest if a waiver is granted?

Yes. States should ensure that CAAs record notices in accordance with state property laws indicating that the property has been acquired or improved with governmental funds and list any use and/or disposition conditions that apply to the property. The notice should indicate the period of time for which the state interest is held. The following is a template of such a notice (NOTE: CAAs and state CSBG offices should each consult with an attorney licensed in their state who is familiar with real estate law in that state to determine whether the sample notice below must be revised to incorporate language incorporating requirements and customary practices under state real estate law):

> **NOTICE OF STATE INTEREST:**
>
> The real property described below (the "Property") is subject to the **[NAME OF STATE]**'s reversionary interest which have arisen as a result of **[CAA'S NAME]** receipt and use of Community Services Block Grant (CSBG) funds from **[NAME OF STATE AGENCY ADMINISTERING CSBG PROGRAM]** in connection with the **[SPECIFY PURCHASE, CONSTRUCTION AND/OR RENOVATION]** of the Property.
>
> The Property to which this notice is applicable is located at **[ADDRESS]** and identified as Parcel **[INSERT APPROPRIATE NUMBER (S)]** in the books and records of **[INSERT APPROPRIATE NAME LOCAL UNIT OF GOVERNMENT'S RECORDING AGENCY]**. The Property is also described as **[INSERT OFFICIAL DESCRIPTION PROVIDED SURVEY]**.
>
> The Property may not be sold, leased, transferred, or its title encumbered without prior approval from the **[NAME OF STATE AGENCY ADMINISTERING CSBG PROGRAM]**. There is a prohibition against the use of the Property during its useful life for other than **[SPECIFY PURPOSE FOR WHICH THE PROPERTY IS TO BE USED]** which is the purpose for which the **[NAME OF STATE AGENCY ADMINISTERING CSBG PROGRAM]** provided CSBG funds for the **[SPECIFY PURCHASE, CONSTRUCTION AND/OR RENOVATION]** of the Property.
>
> Further information as to the **[NAME OF STATE]**'s interests referred to above can be obtained from the **[NAME AND ADDRESS OR CONTACT INFORMATION OF STATE AGENCY ADMINISTERING CSBG PROGRAM]**.

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Endnotes

1. 45 C.F.R. § 96.50(e).

2. 42 U.S.C. § 9918(a)(1).

3. OMB issued the Uniform Guidance in the form of regulations, which are codified at 2 C.F.R. Part 200. The U.S. Department of Health and Human Services has codified its version of the Uniform Guidance at 45 C.F.R. Part 75. This Q&A provides citations to both the HHS version of the Uniform Guidance and the OMB version.

4. See 45 C.F.R. §§ 75.2, 75.439(b)((3), 75.452 (2 C.F.R. §§ 200.12, 200.439(b)(3), 200.452).

5. 42 U.S.C. § 9916(a)1)(B).

6. See 45 C.F.R. § 75.2(b) (2 C.F.R. § 200.12(b)).

7. 45 C.F.R. § 75.452 (2 C.F.R. § 200.452) (emphasis added).

8. See 26 C.F.R. § 1.263(a)-1(a) and § 1.263(a)-3.

9. This example from the IRS regulations indicates that the cost of removing the original shingles on a roof and replacing them with new shingles comparable to the original shingles to correct leakage problems qualifies as repair/maintenance:

> **Example 3**
>
> Y owns a building in which it conducts its retail business. The roof over Y's building is covered with shingles. Over time, the shingles begin to wear and Y begins to experience leaks into its retail premises. However, the building still functions in Y's business. To eliminate the problems, a contractor recommends that Y remove the original shingles and replace them with new shingles. Accordingly, Y pays the contractor to replace the old shingles with new but comparable shingles. The new shingles are comparable to original shingles but correct the leakage problems. Assume that replacement of old shingles with new shingles to correct the leakage is not a betterment or a restoration of the building structure or systems under paragraph (j) or (k) of this section and does not adapt the building structure or systems to a new or different use under paragraph (l) of this section. Thus, the amounts paid by Y to replace the shingles are not improvements to the building unit of property under paragraph (d) of this section. Under paragraph (g)(2)(i) of this section, the amounts paid to remove the shingles are not required to be capitalized because they directly benefit and are incurred by reason of repair or maintenance to the building structure.

Similarly, this example indicates that replacing a roof membrane with a comparable roof membrane to correct leakage is not a betterment and does not require capitalization:

> **Example 13**
>
> M owns a building that it uses for its retail business. Over time, the waterproof membrane (top layer) on the roof of M's building begins to wear, and M began to experience water seepage and leaks throughout its retail premises. To eliminate the problems, a contractor recommends that M put a new rubber membrane on the worn membrane. Accordingly, M pays the contractor to add the new membrane. The new membrane is comparable to the worn membrane when it was originally placed in service by the taxpayer. Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building unit of property if the amount is paid for a betterment to the building structure or any building system. The roof is part of the building structure under paragraph (e)(2)(ii)(A) of this section. The condition necessitating the expenditure was the normal wear of M's roof. Under paragraph (j)(2)(iv) of this section, to determine whether the amounts are for a betterment, the condition of the building structure after the expenditure must be compared to the condition of the structure when M placed the building into service because M has not previously corrected the effects of normal wear and tear. Under these facts, the amount paid to add the new membrane to the roof is not for a material addition or a material increase in the capacity of the building structure under paragraph (j)(1)(ii) of this section as compared to the condition of the structure when it was placed in service. Moreover, the new membrane is not reasonably expected to materially increase the productivity, efficiency, strength, quality, or output of the building structure under paragraph (j)(1)(iii) of this section as compared to the condition of the building structure when it was placed in service. Therefore, M is not required to treat the amount paid to add the new membrane as a betterment to the building under paragraph (d)(1) or (j) of this section.

26 C.F.R. § 1.263(a)-3(j)(3).

10. The IRS regulations indicate that replacement of a major component or substantial structural part of a building such as the entire roof is a permanent improvement that must be capitalized:

Example 14

K owns a manufacturing building. K discovers several leaks in the roof of the building and hires a contractor to inspect and fix the roof. The contractor discovers that a major portion of the decking has rotted and recommends the replacement of the entire roof. K pays the contractor to replace the entire roof, including the decking, insulation, asphalt, and various coatings. Under paragraphs (e)(2)(ii) and (k)(2) of this section, an amount is paid to improve a building if the amount is paid to restore the building structure or any building system. The roof is part of the building structure as defined under paragraph (e)(2)(ii)(A) of this section. Because the entire roof performs a discrete and critical function in the building structure, the roof comprises a major component of the building structure under paragraph (k)(6)(ii)(A) of this section. In addition, because the roof comprises a large portion of the physical structure of the building structure, the roof comprises a substantial structural part of the building structure under paragraph (k)(6)(ii)(B) of this section. Therefore, under either analysis, K must treat the amount paid to replace the roof as a restoration of the building under paragraphs (k)(1)(vi) and (k)(2) of this section and must capitalize the amount paid as an improvement under paragraph (d)(2) of this section.26 C.F.R. § 1.263(a)-3(j)(3).

11. See, e.g., *Tsakopoulos v. Commissioner*, T.C. Memo. 2002-8, aff'd on another issue without published opinion, U.S. Tax Court 50,513 (9th Cir. 2003) (costs incurred to replace part of a shopping center roof were required to be capitalized because of the substantial nature of the work done and the work appreciably prolonged the useful life of the roof); *Craig v. Commissioner,* 7 T.C.M. (U.S. Tax Court, 1948) (although no structural changes were made and old shingles were not removed, resurfacing a wooden shingle roof by covering it with a new composition shingle roof improved the quality of the roof, requiring capitalization of the costs of the work); *Levy v. Commissioner*, 212 F. 2d 552 (5th Cir. 1954) (cost of completely encasing wooden trusses of roof supports in steel plates, replacing a substantial portion of the roof required capitalization because the work materially added to the property's value and extended its life). Cf. *Oberman Mfg. v. Commissioner*, 47 T.C. 471 (U.S. Tax Court, 1967) (replacement of roofing materials and an expansion joint did not add value or appreciably prolong the useful life of the building).

12. According to the Uniform Guidance, "Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-Federal entity's activities, and properly allocated to Federal awards." Depreciation on donated property is allowed unless the non-Federal entity claimed the value of the donated property as a match. 45 C.F.R. § 75.436 (a), (c) (2 C.F.R. § 200.436 (a), (c)).

13. 45 C.F.R. § 75.449(a), (c) (2 C.F.R. § 200.449(a), (c)).

14. 45 C.F.R. § 75.449(a), (b)(1) (2 C.F.R. § 200.449(a), (b)(1)).

15. 45 C.F.R. § 75.439(a), (b)(1) (2 C.F.R. § 200.439(a), (b)(1)).

16. 42 U.S.C. § 9916(a)(1)(B).

17. 45 C.F.R. § 75.465 (2 C.F.R. § 200.465).

18. See 42 U.S.C. § 8624(b)(1)(C).

19. See 42 U.S.C. § 6862(9).

20. 10 C.F.R. § 440.20(a)(1)

21. See 42 U.S.C. § 9918(a)(1); CSBG Information Memorandum No. 60.

22. See CSBG Information Memorandum No. 60.

23. 45 C.F.R. § 75.323 (2 C.F.R. § 200.316).

24. 45 C.F.R. § 75.436(a) (2 C.F.R. § 200.436(a)).

25. 45 C.F.R. § 75.323 (2 C.F.R. § 200.316).

26. 45 C.F.R. § 75.449(a), (b)(1) (2 C.F.R. § 200.449(a), (b)(1)).

27. See CSBG Information Memorandum No. 60; 45 C.F.R. § 96.32.

28. 45 C.F.R. § 75.323 (2 C.F.R. § 200.316).

29. See CSBG Information Memorandum No. 60.

30. 45 C.F.R. § 75.318(c) (2 C.F.R .§ 200.311(c)). Subpart D of the Uniform Guidance, which contains this provision, does not automatically appy to CAAs. However, a state may choose to apply Subpart D to funds it distributes to CAAs.

31. This example is based on the disposition of property instructions in the Uniform Guidance, 45 C.F.R. § 75.311(c) (2 C.F.R. § 200.311(c)). As noted above, this provision does not automatically apply to funds CAAs receive from the staet; however, a state may choose to apply this and other provisions of the Uniform Guidance's Subpart D to those funds.