

CSBG Q & A

By Eleanor A. Evans, Esq., CAPLAW

1 What are the CSBG client income eligibility requirements?

To be eligible for CSBG services, clients must be at or below 100% of the federal poverty line as determined by the federal Office of Management and Budget (OMB) based on the most recent federal Census data and as revised annually (or more frequently) by the U.S. Department of Health and Human Services (HHS).¹ A state may permit CSBG services to be provided to clients up to 125% of the federal poverty line whenever a state determines that doing so serves the objectives of the CSBG program.²

The American Recovery and Reinvestment Act of 2009 (ARRA) authorizes states to increase the CSBG income eligibility level up to 200% of the federal poverty line for CSBG services provided in FY09 and FY10, including services paid for with ARRA funds and regular FY09 and FY10 CSBG funds.³

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

2 Are there any CSBG requirements regarding immigrant eligibility?

OCS Information Memorandum 30 (Sept. 30, 1998) states that non-citizens, regardless of their alien status, should not be banned from CSBG programs based solely on their alien status unless the exclusion is authorized by another statute.

3 Can CSBG funds be used as a required match for another federal program?

No. There is no specific language in the federal CSBG Act that prohibits the use of CSBG funds as a required match for another federal program. However, the CSBG Act requires states to ensure that "cost and accounting standards of the Office of Management and Budget apply to a recipient of [CSBG] funds."⁴ OMB Circular A-122, "Cost Principles for Non-Profit Organizations" provides that in order to be an allowable cost under a federal grant, the cost may "[n]ot be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period."⁵

In addition, the Government Accountability Office treatise "Principles of Appropriations Law" (known informally as the "GAO Redbook") states that,

neither the federal nor the nonfederal share of a particular grant program may be used by a grantee to match funds provided under another federal program unless specifically authorized by law.... Normally, exceptions to this rule are in the form of express statutory authority. It should be noted that where any federal assistance funds are used as nonfederal matching funds for another grant, such use must be consistent with the grant under which they were originally awarded as well as the grant they are intended to supplement.⁶

In the past, informal guidance received by CAPLAW on this issue from OCS staff has stated that CSBG funds cannot be used as a required match for other federal programs.

4 May a CAA carry over CSBG funds from one fiscal year to the next?

Yes. Since federal fiscal year 2002, the federal acts appropriating funds for the CSBG program have contained the following language:

[T]o the extent Community Services Block Grant funds are distributed as grant funds by a State to an eligible entity as provided under the CSBG Act, and have not been expended by such entity, they shall remain with such entity for carryover into the next fiscal year for expenditure by such entity consistent with program purposes.⁷

OCS, in the annual CSBG terms and conditions it requires states to follow, has interpreted this language to mean that CAAs may carry over CSBG funds from one federal fiscal year (such as FY 2010) into the next federal fiscal year (e.g., FY 2011) but must fully expend those funds by September 30 of the second fiscal year (e.g., FY 2011).⁸

Guidance from OCS confirms that the appropriations act language supersedes carryover language in the CSBG Act, which authorizes states to recapture and redistribute CSBG funds that a CAA has not obligated at the end of a fiscal year, to the extent that those funds exceed 20% of the funds distributed by the state to the CAA for that year.⁹

5 Can CSBG funds be used for the purchase of real estate or the construction or permanent improvement of buildings or facilities?

The federal CSBG Act generally prohibits the use of CSBG funds for either: (1) the purchase or improvement of land, or (2) the purchase, construction, or permanent improvement of any building or other facility.¹⁰ (Note that

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OCS Guidance (Continued from page 4)

- reduce CSBG funding.
- The state notifies the eligible entity and OCS that cause has been determined, that it intends to terminate or reduce funding, and that the entity may seek review of the determination by OCS by writing to OCS within 30 days.⁵ The IM instructs states to provide the address to which the request for review should be sent and strongly recommends sending such requests via overnight mail with a signed certification of receipt.
- If the eligible entity does not seek OCS review, the state may terminate or reduce funding 30 days after receipt of notification by the eligible entity. Otherwise, the state must continue both current and future funding of the entity until the latter of either approval from OCS of the termination or reduction decision, or passage of 90 days from the date the state has provided complete documentation of the decision to OCS. If OCS denies approval of the state's decision, the state must continue funding the eligible entity.

If a state discontinues or reduces funding without following these steps, the eligible entity may request direct funding from OCS.⁶ In that case, the state's block grant would be reduced by that amount.

The IM also provides guidance on other options for addressing deficiencies. States may consider use of cost-reimbursement funding to assure a detailed review of expenditures. States should take care, however, that such funding is provided in a timely fashion; in CAPLAW's view, if the delay is too great it could constitute a reduction or termination in funding subject to the requirements discussed above.

Finally, the IM describes the process for the state to designate a new eligible entity, which may only occur where there is an unserved area. The CSBG Act specifies the criteria for the entities that may be designated, including, but not limited to, demonstrated effectiveness in meeting the goals of the CSBG Act.⁷ States may give priority to an eligible entity that is already providing related services in the unserved area. The state may designate a public (governmental) entity when there are no qualified nonprofits in the area.

It is important for both states and eligible entities to be familiar with the rights and responsibilities accorded to both parties under the CSBG Act. By providing these due process rights to eligible entities, Congress has shown its support for the community action network. At the same time, the law provides states and OCS with the tools to ensure that services provided are meeting the objectives of the CSBG program and that federal funds are spent appropriately.

1. 42 U.S.C. § 9908 (b)(8).
 2. 42 U.S.C. § 9908(c)(1).
 3. 42 U.S.C. § 9914.
 4. 42 U.S.C. § 9915.
 5. 45 C.F.R. § 96.92.
 6. 42 U.S.C. § 9915(c).
 7. 42 U.S.C. § 9909.

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there is an exception for low-cost residential weatherization or other energy-related home repairs.) However, HHS may waive this prohibition upon a request from a state if HHS finds that: (1) the request describes extraordinary circumstances to justify use of the funds for such purposes; and (2) permitting the waiver will contribute to the state's ability to carry out the purposes of the CSBG Act. OCS has issued guidance on this prohibition and on the questions to be answered when submitting a request for a waiver.¹¹ CAAs seeking to use CSBG funds for the purchase of real estate or the construction or permanent improvement of buildings or other facilities should discuss the matter with their state CSBG office before committing CSBG funds to those purposes and, in appropriate cases, work with the state to submit a waiver request to OCS.

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6 Under the federal CSBG Act, do CAAs have any obligation to make child support referrals?

The federal CSBG Act requires CAAs to inform custodial parents in single-parent families that participate in CSBG programs, activities, or services about the availability of child support services and to refer eligible parents to state and local government child support offices.¹²

7 Where can I find the federal CSBG Act and federal guidance on the CSBG program?

The CSBG program is governed by the federal CSBG Act (42 United State Code (U.S.C.) sections 9901 – 9921, which can be found online at <http://www.gpoaccess.gov/uscode/browse.html> (go to Title 42, Chapter 106). The CSBG program is also governed by block grant regulations of HHS (45 Code of Federal Regulations (C.F.R.) Part 96, which can be found online at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=%2Findex.tpl>. Among other things, these regulations note that it is the states that are primarily responsible for interpreting CSBG Act and regulations.

The federal Office of Community Services (OCS), which is within HHS's Administration for Children and Families, administers the CSBG program at the federal level. OCS's CSBG website can be found at <http://www.acf.hhs.gov/programs/ocs/csbq/>. OCS has issued guidance on the CSBG program in the form of information memoranda

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(IMs) many of which are available on the OCS CSBG website. (OCS CSBG IMs, including some not included on the OCS website, can also be found on CAPLAW's website <http://www.caplaw.org/resources/CSBGMemoranda.html>.) Other federal guidance on the CSBG program – including the terms and conditions of OCS's awards of CSBG funds to states, a model CSBG state plan, CSBG assurances that states must make in their state plan – can be found on the OCS CSBG web page.

When researching a CSBG legal issue, be sure to check the CSBG agreement (often called a contract or award document) between your CAA and the state. In addition, many states have state CSBG or Community Action laws and regulations and many state CSBG offices issue CSBG policies and procedures.

1. See 42 U.S.C. 9902(2).
2. *Id.*
3. See Pub. L. No. 111-5, Div. A, Tit. VIII, 123 Stat. 115, 179 (2009).
4. 42 U.S.C. § 9916(a)(1)(B).
5. 2 C.F.R. Part 230, Appendix A, paragraph A.2(f).
6. *II Principles of Appropriations Law*, 10-97-10-99.
7. See, e.g., Pub. L. 111-117, Div. D, Tit. II, 123 Stat. 3034, 3251 (2009).
8. See, e.g., CSBG Terms and Conditions, par. 15, available online at http://www.acf.hhs.gov/programs/ocs/csbq/allocations/2010_tc.html.
9. See OCS Information Memo. 61 (2002), available online at <http://www.acf.hhs.gov/programs/ocs/csbq/guidance/im61.html> and 42 U.S.C. § 9907(a).
10. 42 U.S.C. § 9918(a).
11. See OCS Information Memo. 60 (2002) available online at <http://www.caplaw.org/documents/TransmittalNo.60.pdf>.
12. 42 U.S.C. § 9919(b).

DAB Examines Disallowances

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the number of hours that the volunteer worked in that classroom during the given month, and the activity performed. The volunteer form recorded the volunteer's name, address, and status (parent/guardian, relative, community member, or other); the program served (Head Start or Early Head Start); the classroom; the date or dates of the volunteer services; the time-in and time-out; and one or more of eleven activity codes.⁵ There were spaces on the form for signatures of the volunteer, the teacher, any individual who filled out the form on behalf of the volunteer or teacher, and the fiscal officer.⁶

ACF presented four arguments regarding the volunteer master sheets and the individual volunteer forms, all of which the DAB rejected. First, noting that the handwriting changed from form to form for the same volunteer, ACF argued that these inconsistencies called the reliability of the information contained in the forms into question. In rejecting this argument, the DAB opined that, although the volunteer names listed on the master sheets and on the volunteer forms appeared to have been written by different people, the difference in handwriting was consistent with the master sheets having been prepared by a PPCC staff member who reviewed the volunteer sheets signed by volunteers and recorded the volunteers' names and reported hours onto the

master sheet. According to the DAB, the fact that a PPCC staff member compiled the information on volunteers and the hours they worked in a particular month onto a master sheet did not undermine the reliability of the information contained in the volunteer sheets.

Second, ACF argued that PPCC failed to provide adequate source documentation to verify and account for in-kind contributions and failed to submit contemporaneously completed parent volunteer forms that adequately documented parent hours. Moreover, ACF argued that PPCC attempted to support its claim solely with accounting information from its general ledger. The DAB rejected these arguments on the basis that ACF did not explain why the volunteer forms and classroom volunteer master sheets did not constitute contemporaneously prepared source documentation.

Third, ACF argued that PPCC failed to show that parent volunteers were performing the duties of an assistant teacher, which ACF said was required by HHS's grants administration regulations on in-kind contributions (45 C.F.R. § 74.23(i)). The DAB rejected this argument on the basis that ACF did not explain which part of the regulation (which does not refer to assistant teachers) required that parent volunteers perform the duties of an assistant teacher in order for their volunteer hours to count as in-kind contributions. The DAB noted that even if ACF's argument could be interpreted as questioning the rates at which PPCC had valued the volunteer services, the rates PPCC used were reasonable for a major metropolitan area, such as Philadelphia.

Finally, ACF argued that some forms constituting source documentation were neither verified nor signed by an appropriate official from PPCC's fiscal office as ACF alleged was required. The DAB rejected this argument, finding that ACF did not cite legal authority for this supposed requirement and that most forms were initiated in the space indicating review by PPCC's fiscal office.⁷

Inadequate Documentation

Generally, the volunteer services documentation that the DAB found to be inadequate consisted of forms that (1) were not filled out completely; (2) were not prepared contemporaneously with the volunteer work performed; (3) failed to note the activities performed; and/or (4) failed to show how the activities performed benefited the Head Start program.

The following are a few examples of the forms the DAB found inadequate along with the DAB's reasoning behind its findings. A delegate agency of PPCC used volunteer time sheets to record the name of an individual volunteer, a classroom number, the month, the work performed, the date, the time in and the time out. Even though the DAB determined that the volunteer time sheet was sufficient, the DAB found that some of the sheets were completed in a way that rendered the sheets clearly inadequate. For instance, one of the volunteer time sheets included only a name and