

OCS Issues Guidance on CSBG Funding Reduction and Termination

By Anita Lichtblau, Esq., CAPLAW

Late last year, the U.S. Department of Health and Human Services' Office of Community Services (OCS) issued Information Memorandum No. 116, "Guidance on Corrective Action, Termination or Reduction of Funding for CSBG Eligible Entities" (IM 116). This IM, which also includes a sample step-by-step tool for states to use in carrying out these procedures, was prompted by the American Recovery and Reinvestment Act of 2009 (ARRA) and its increased attention on accountability for federal grant dollars. The IM includes examples and is helpful in reconciling the various requirements of the Community Services Block Grant (CSBG) and in explaining how to carry them out, including examples. IM 116 is available on OCS's website at <http://www.acf.hhs.gov/programs/ocs/csbg/guidance/im116.html>.

The IM addresses the states' obligation to continue funding CSBG eligible entities. In their state plans, states must assure they will not terminate funding or reduce the proportional share of funding received by eligible entities from the prior year until and unless the state finds cause for such actions after a hearing on the record and affirmation of the termination or reduction of funding.¹ The IM explains that "proportional share" means the amount of non-discretionary CSBG grant funds, i.e. the 90% pass-through funds, awarded by the state to the entity compared to the amount of non-discretionary CSBG grant funds awarded by the state to all of the eligible entities in the state. For example, if an eligible entity received \$1 million in non-discretionary CSBG grant funds in the prior year and the total of all such funds awarded to all eligible entities in the state the prior year was \$10 million, the eligible entity's proportional share would be 10%. The state must continue funding that eligible entity at 10% of the total non-discretionary CSBG funds for the next

year, unless and until, among other things, it finds cause for a reduction as defined in the CSBG Act.

The CSBG Act specifies two reasons constituting "cause" for a state to reduce the proportional share awarded to an eligible entity: (1) statewide redistribution of funds and (2) the failure of an eligible entity to comply with the terms of an agreement, or the state plan, to provide CSBG services

or to meet appropriate standards, goals, and other state requirements, including performance objectives.² A statewide redistribution of funds may be undertaken to respond to one of three circumstances:

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

The IM also addresses the requirement that states conduct monitoring visits and a full on-site review of each eligible entity at least once during each three-year period.³ OCS indicates that it expects states will conduct reviews of an eligible entity when informed that grant funds under another federal program have been terminated for cause and that states will investigate allegations of fraud or abuse of CSBG funds or closely-related programs. If the allegations are found to be credible and raise significant red flags, OCS expects to be informed and may assist with additional compliance review or referral to appropriate investigative authorities.



The IM outlines the steps states must take if they find performance deficiencies or a failure to comply with a state requirement.⁴ Each of these steps, as well as the specific deficiencies and the basis for the determination that deficiencies exist, should be documented. The steps mandated by the CSBG act are the following:

- The state notifies an eligible entity of specific deficiencies and corrective action requirements.
- The state offers training and technical assistance (T&TA), if appropriate.
 - The state submits a report to OCS describing T&TA.
 - If the state determines that T&TA is not appropriate, it submits a report to OCS explaining its position. The IM provides examples of situations when T&TA may not be appropriate.
- At the discretion of the state, the state provides the eligible entity with an opportunity to create and implement a quality improvement plan (QIP) to correct the deficiency, within 60 days of being informed of the deficiency. Within 30 days of receiving the proposed QIP, the state must approve the QIP or specifies reasons why it is not approving the QIP. The IM provides examples of situations when a QIP may not be appropriate.
- If the eligible entity does not correct the deficiency, the state notifies the eligible entity of the opportunity to request a hearing on the record to determine if cause for termination or a funding reduction exists. The IM notes that this requirement may not be waived. The hearing must be consistent with state hearing requirements.
- If after the hearing, the state finds cause, as it is defined by the CSBG Act, it initiates proceedings to terminate or

“...states must assure that they will not terminate funding or reduce the proportional share of funding received by eligible entities...”

Continued on page 9

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.

CSBG Q & A *(Continued from page 5)*

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.

“...there is an exception for low-income residential weatherization or other energy-related home repairs.”

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

Continued on page 10