Making the Grade: How to Prepare for and Respond to CSBG Monitoring
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Agenda

• Pre-Monitoring Actions
• Approach to a State’s Monitoring Report
• State’s Obligation to Provide T/TA and QIP
• Response to a State’s Monitoring Report
• State’s Obligation if Deficiency Not Corrected
• Additional State Obligations and CAA Options

Navigating the CSBG Review Process
Pre-Monitoring Actions

CSBG Contract
- Review and negotiate, as necessary, CSBG contract
  - Compare contract to prior years
  - Engage executive staff in review
  - Don’t ignore boilerplate language
  - Work with an attorney
- Use monitoring tool to develop internal procedures and processes

Monitoring Tool
- No national uniform monitoring tools and procedures exist
- Only language in federal CSBG Act that directly addresses the type of monitoring a state is to conduct requires a state to:
  
  "Determine whether eligible entities meet the performance goals, administrative standards, financial management requirements and other State requirements"

  42 U.S.C. § 9914(a)
Monitoring Tool

- Common concerns about state monitoring tools:
  - Questions not linked to legal requirements
  - Fail to clearly explain the legal effect that a CAA’s answers to questions not linked to legal requirements will have on the CAA and/or
  - Enable the state to micromanage a CAA’s operations by asking questions such as “how many fire drills does your CAA conduct?” or “does your CAA use exit interviews?”
Monitoring Tool

- Action steps for a CAA concerned about monitoring tool:
  - Ask state to implement a process permitting CAAs to comment on monitoring tool
  - Explore if state association and other CAAs in your state share your concerns
  - Discuss your concerns with state CSBG office
  - Follow-up any discussion with the state with an email or letter recounting the conversation

Monitoring Preparation

1. Regularly use and refer to monitoring tool in structuring and operating CSBG programs
2. Ensure information about the following is available:
   - Monitoring process
   - Deficiencies
   - Corrective actions
   - Time lines
   - Training and Technical Assistance
   - Quality improvement plans (or corrective action plans)
   - Reductions and terminations of funding
   - Notice and hearing procedures
3. Understand implications of not meeting a legal requirement
4. Management and staff should locate information and prepare responses
5. Make information easily accessible by organizing it in binders
6. Conduct mock interviews with board members and staff
7. Ensure board is regularly receiving reports from CAA management
How to Approach a State’s Monitoring Report

State’s Obligation to Inform CAA
- Must inform CAA of deficiency and give CAA an opportunity to correct it
- OCS recommends that state CSBG office:
  - Document basis for a performance deficiency or failure to comply with a state requirement
  - Maintain records of correspondence or other communications relating to actions taken, including enforcement actions

Deficiency
- Deficiency is not defined by the federal CSBG Act
- State may, within parameters of federal CSBG Act, establish when a monitoring finding rises to the level of a deficiency
- Federal CSBG Act only defines the “cause” a state must determine exists to initiate a reduction in or termination of funding
Who Should Be Involved in Developing an Approach?

- Board of directors
  - Review monitoring report
  - Make recommendations on how to address findings and deficiencies
  - Consider forming a committee to help facilitate the review and response process

- Executive director and senior staff
  - Review report and make recommendations
  - Provide information to the board
  - Facilitate corrective actions

Sample Monitoring Report

3. Computer Security
   - CAA does not have the following: (1) adequate computer security procedures; (2) a formal computer access policy; (3) password protected employee computers; and (4) adequate procedures for data removal from computers. The National Institute of Standards and Technology Special Publication 800-53 Rev. 3 requires an organization to develop and disseminate a formal, documented access control policy for computer access and requires information systems to uniquely identify and authenticate users.

4. Personnel Management
   - CAA is experiencing more employee turnover than other agencies in the state. We believe one reason for this high rate of turnover is the failure of CAA to conduct exit interviews.
How to Think about a State’s Monitoring Report – Findings?

• Do you understand what it means to have a compliance issue vs. a deficiency?
• Are you sure that the legal basis noted for each of the findings is applicable to a CAA?
• Has the state CSBG office accurately set forth the facts?
• Is there a legal basis for each of the findings?

Sample Monitoring Report

Deficiency(s):
1. Limitations on Use of CSBG Funds
   - For a second time in three years, CAA has used CSBG funds to help pay for permanent improvements to its CSBG administrative office building CAA used the funds to partially pay for the replacement of the building’s roof. The federal CSBG Act at 42 USC § 9918(b) clearly states that unless HI5 provides a waiver, CSBG funds may not be used for the permanent improvement of any building.

How to Think about a State’s Monitoring Report – Deficiency?

• Has the state CSBG office accurately set forth the facts?
• Has the state CSBG office interpreted the federal CSBG Act correctly?
• Whom should you contact to help you better understand the law and its application to your facts?
Sample Monitoring Report

Best Practice Recommendations:

The following are not deficiencies but are best practice recommendations:
1. The CAA should add term limits for its board of directors to its bylaws.
2. The CAA should work with its board of directors to develop a succession plan.

How to Think about a State’s Monitoring Report – Best Practice?

• Do you understand the effect of choosing not to follow a best practice?
• If you choose not to follow a best practice, do you have a documented reason why not?

Sample Monitoring Report

The CAA has thirty (30) days from receipt of this letter to develop a Quality Improvement Plan (QIP) and submit it to the state CSBG office. The QIP should address how the CAA intends to correct the compliance issues and deficiencies addressed in this letter. It should also specify a proposed timeline of when these actions will be completed. If CAA needs training and technical assistance (T/TA) as part of its QIP, please include that in the plan and the state CSBG office will assist the agency with those needs.

The state CSBG office will review the QIP and will either approve it or ask for additional clarification at that time. Within thirty (30) days of receiving it, if T/TA is needed, the state CSBG office will work with the Executive Director and the Board of Directors to address those needs. If the state CSBG office cannot provide the T/TA, it will recruit outside assistance as needed.
How to Think about State’s Monitoring Report – Logistics?

- Do you understand your options for responding to the state CSBG office’s monitoring report?
- Do you know the time frame within which you are required to respond?
- Have you designated someone in your CAA to monitor any responses and/or actions you may take?

State’s Obligation to Offer Training & Technical Assistance and Quality Improvement Plans

- State CSBG office is required to offer T/TA, if appropriate, to help correct a deficiency
  - If provides T/TA, must prepare and submit a report to OCS describing T/TA offered
  - If does not provide T/TA, must prepare and submit a report stating reasons for its determination

Training & Technical Assistance

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  - If does not provide T/TA, must prepare and submit a report stating reasons for its determination

42 U.S.C. § 9915(o)(3)(A), (B)
Training & Technical Assistance

• T/TA may not be appropriate when:
  – CAA has internal expertise and skills
  – State already provided T/TA and CAA failed to institute corrective actions
  – Multiple, widespread and/or repeated deficiencies
  – Fraud or criminal wrongdoing involved

OCS Information Memorandum (IM) 116

How to Challenge State’s Decision Not to Provide T/TA

• Obtain a copy of the report the state sent to OCS explaining why T/TA not appropriate
  – See state public record acts and federal FOIA
• Send letter to state CSBG office that:
  – Clearly outlines why T/TA is appropriate
    • Show how your situation differs from the scenarios OCS describes in IM 116 as inappropriate for T/TA
  – Sets forth T/TA sought
  – Copies OCS

Quality Improvement Plans

• Within state’s discretion to give CAA opportunity to develop and implement a QIP to correct a deficiency
  – State must take into account the seriousness of a deficiency and the time required to correct
• If state grants CAA opportunity to submit a QIP, must:
  – Give CAA 60 days to develop and implement it
  – Approve/not approve within 30 days of receiving QIP from CAA

42 U.S.C. §§ 9915(a)(5)&(b); 9908(b)(8); 45 C.F.R. § 96.92; IM 116
• Prepare to implement QIP as soon as you submit it to the state for approval
• Keep state informed of intention to submit a QIP

Quality Improvement Plans
• State CSBG office may deny CAA opportunity to submit a QIP when:
  – A QIP has already been submitted and CAA has repeated findings
  – Fraud or criminal wrongdoing involved
• A CAA may challenge a state’s decision not to grant CAA the opportunity to submit a QIP by:
  – Sending a letter to the state outlining reasons why an opportunity to submit a QIP should have been granted
  – Coping OCS on the letter

Quality Improvement Plans
• A CAA may challenge a state’s decision not to approve a QIP by:
  – Obtaining state’s reasons as to why QIP not approved
  – Sending a letter to state responding to its reasons why it did not approve the QIP and outlining reasons why a QIP should have been granted
  – Providing documentation, if available, to support position
  – Copying OCS on the letter
How to Respond to a State’s Monitoring Report

Sample CAA Response Letter

Sample CAA Response

Compliance Issue #1: Computer Security
Even though we take computer security seriously and are currently in the process of reviewing and updating our computer security policy, we believe that this compliance issue is not valid and we are not required to follow. This is the first time that we have been made aware of the application of the National Institute of Standards and Technology Special Publication 800-55, Rev. 3 (Special Publication) to the CSBG program. From our research, we have learned that this Special Publication specifically states that “[the guidelines in this special publication are applicable to all federal information systems].” Additionally, this Special Publication makes no mention of it.

Compliance Issue #4: Personnel Management
Even though we are willing to address the problems related to personnel management, we believe that the CSBG program does not have any legal requirements that serve as the basis for this finding.
Sample Monitoring Report

Deficiency(s):
1. Limitations on Use of CSBG funds: °
   - For a second time in three years, CAA has used CSBG funds to help pay for permanent improvements to its CSBG administrative office building. CAA used the funds to partially pay for the replacement of the building’s roof. The federal CSBG Act at 42 U.S.C. § 9911(b) clearly states that unless HHS provides a waiver, CSBG funds may not be used for the permanent improvement of any building.

Sample CAA Response

Deficiency #1: Limitations on Use of CSBG funds: °
The work we completed on our CSBG administrative offices was not a permanent improvement, rather it was repair to sections of the roof that had deteriorated because of age and were leaking during heavy rainstorms. We made these repairs using the same type of materials that were used to replace the roof fifteen years ago. The partial use of CSBG funds for these repairs is thus an allowable cost.

It is our understanding that work performed on a building that is considered a permanent improvement materially increases the permanent value of the property, appreciably prolongs the life of the property, and puts the property in efficient operating condition rather than merely keeping the property in such condition. Work that falls into one or more of the above categories may not be paid for with CSBG funds without a waiver from HHS. See 2 C.F.R. Part 230, Appendix B, ¶ 15.

The work we performed on our building qualifies as maintenance and repair. It is our understanding that work that qualifies as maintenance and repair, and not capital expenditures, under 2 C.F.R. Part 230, is not considered a permanent improvement and, therefore, is neither prohibited by the CSBG Act nor requires a waiver from HHS to be an allowable CSBG cost. Part 230 provides that:

Costs incurred for necessary maintenance, 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.

How to Prepare a QIP

1. Ensure understand factual and legal basis for findings and deficiencies
2. List actions you will take to correct finding or deficiency
3. Set forth timeframe for completing actions
4. If need assistance from state CSBG office, be specific
5. If you anticipate you will need more than the allotted time, communicate this in your plan and set forth a reasonable timeframe

Sample QIP

Issue Addressed by QIP

Compliance Issue(s):

1. Tripartite Board
   
   - CAA is not in compliance with the tripartite board structure required by the federal CSBG Act, 42 U.S.C. § 9912, because the CAA has a twelve member board with two vacant board seats. The seats have been vacant for over three months and CAA’s bylaws requires the board of directors to fill a vacancy within 60 days.
Sample CAA QIP

Compliance Issue #2: Tripartite Board

1. We have filled one of the two vacant seats which was in the private representative sector of the board and are in the process of filling the other vacant seat which is in the low-income representative sector of the board.
2. We are currently taking the following measures to fill the low-income representative sector seat:
   - Pursuant to our democratic selection process policy approved by the board of directors, we have posted public announcements throughout the low-income community asking low-income individuals and families to contact our executive office by June 15, 2012 with names of individuals who are interested in seeking this board seat.
   - Next, we will contact all of the individuals who have been nominated to ensure that each one is truly interested in being included on the ballot and that, if they are chosen to represent a particular neighborhood, they live in that neighborhood.
   - We will then place all of the individuals who meet the above requirements on a ballot that will be available at our CAP’s administrative office and all of our satellite sites as well as at the next public committee meeting which is very well attended by the low-income community.
   - We will close voting for the seat by June 30, 2012.

Sample CAA QIP

3. We expect to have the second vacant seat filled no later than July 10, 2012.
4. We have also established a board committee referred to as the governance and board development committee, charged with tracking board vacancies and developing recruitment strategies for all board sectors.
5. We will make board recruitment an ongoing board task. To this end, we are in the process of developing an advisory board that would not have the authority to deliberate or vote but would be available to be elected to a board seat pursuant to a vacancy. We will also ensure that any low-income representative on the advisory board has been democratically elected by low-income individuals in the service area before he/she is seated on the board of directors.

www.caplaw.org/documents/CAPLAW_BoardComposition_Matrix_April2012.xls
Issue Addressed by QIP

Compliance Issue(s):

2. Safeguarding of Assets
   - CAA failed to maintain complete equipment inventory records and had not taken a physical inventory in three years. CAA’s receiving procedures did not ensure that the procurement officer received detailed property record information such as serial numbers for all technology equipment. The state CSBG office incorporates 2 C.F.R. Part 213.100 Circular A-110 by reference in its CSBG contracts with CAA’s and requires pursuant to 2 CFR 215.34(f)(1). (2) that CAA’s maintain an accurate property management system to account for equipment acquired with federal funds and that is federally owned by keeping accurate records that include a description of the equipment, serial numbers, model numbers, source, vesting of title, acquisition date and cost, HHS’s share of the equipment, location and condition, and ultimate disposition. Additionally, the CAA is required to take physical inventory of equipment and reconcile the results with equipment records at least once every 2 years.

Sample CAA QIP

Compliance Issue # 2: Safeguarding of Assets

1. The CAA has added to the job description of the Chief Financial Officer (CFO) of the CAA, the responsibility to execute two random spot checks of the CAA’s inventory records throughout the year to ensure that the records accurately reflect the physical inventory.

2. The CAA will include in its procurement procedures the requirement that the procurement manager conduct a physical inventory every two years. The CFO will be charged with ensuring that this inventory is completed and with enlisting additional staff to assist with the inventory as needed.

Sample CAA QIP

3. The CAA is in the process of developing a form and checklist of all of the property record information that must be obtained to ensure legal compliance. This form and checklist will be developed using a computer program that will be password-protected and will permit one of the procurement manager’s staff to input the property records information directly into the computer.

4. The procurement manager will be responsible for executing four random spot checks of the property record information to ensure that it is accurate.

5. The procurement manager will produce a report of the property record information for the CFO to present to the board of directors at least twice a year.

6. We expect to have all of the changes regarding this compliance issue implemented by August 31, 2012.
Additional State Obligations and CAA Options

State’s Obligation if Deficiency Not Corrected

- Provide to a CAA notice of the uncorrected deficiency and an opportunity for a hearing to determine if “cause” exists to terminate or reduce CSBG funding;
- Based on the hearing record, determine if “cause” exists for reduction in or termination of CSBG funding; AND
- If it determines that “cause” exists, initiate proceedings to terminate the CSBG designation or reduce the CSBG funding

Complaint Process

- Federal CSBG block grant regulation allows grant recipients to file a complaint alleging that the state failed to follow the federal CSBG Act
  - Includes failure to follow certification and assurances made by state
  - OCS will defer to state’s interpretation of the CSBG Act unless the interpretation is clearly erroneous

45 C.F.R. § 96.50
Complaint Process

• Complaint must:
  – Be submitted in writing to Director of OCS
  – Identify the provision act, assurance or certification allegedly violated
  – Specify the basis for the violations charged
  – Include all relevant information known to the person submitting the complaint

Complaint Process

• OCS’s responsibilities include:
  – Providing a copy of the complaint to the state
  – Conducting an investigation where appropriate
  – Responding to the CAA within 180 days of receiving the complaint
  – If a final resolution is not obtainable within the 180 days, setting forth reasons why additional time is needed
• Upon receiving the complaint from OCS, state has 60 days to respond and may request additional time

Resources
