UNCLE SAM’S MONEY:
Fundamentals of Federal Grant Law

Eleanor Evans, Esq. and Veronica Zhang, Esq.

Webinar One

April 5, 2016

This Webinar Series is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance (T/TA) Center. It was created by Community Action Program Legal Services, Inc. (CAPLAW) in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement – Grant Award Number 90ET0441-01. Any opinion, findings, conclusions, or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Health and Human Services, Administration for Children and Families.
Agenda

1. What is a federal grant and what authority do federal agencies have to make grants?
2. What rules apply to federal grants?
3. What is the life cycle of a federal grant?
4. What if our CAA decides to engage the services of another entity to help carry out the purposes of our grant?
5. Can federal grantees lobby or get involved in political campaigns?
6. What rights do we have if a federal agency takes enforcement action against our CAA?
What is a Federal Grant?

- **Assistance vs. Procurement:** Types of federal financial awards
  - **Grants**
    - Supports recipient’s own activities, which carries out a public purpose
    - To state/local governments, nongovermental organizations, individuals, or for-profit entities
  - **Cooperative agreements**
    - Same as grants, except substantial involvement of the federal government/pass-through entity
  - **Procurement contracts**
    - Used to purchase goods or services for the government’s own use

Types of Federal Grants Based on Funding/Legislative Strategy

- **Categorical**
  - The most restrictive; funds to be used for specific projects for known, fixed periods
  - Can also be funded under a **formula** (distribution scheme set in program’s authorizing statute)

- **Block**
  - **Block grants** are awarded to one source and distributed to multiple subrecipient for various similar purposes
  - Distribution under block grants often based on a **formula** set by Congress or established by the federal agency
Types of Federal Grants Based on Agency Discretion

Mandatory

- Grantor agency has **little discretion** in making award
- Formula for distributing funds are prescribed by law or agency regulations

Discretionary

- Grantor agency **may exercise judgment** in selecting grantee and/or setting award criteria and funding levels
- Often made through a competitive grant process

Quiz #1: Types of Federal Grants

1. Which of the following best describes the federal Community Services Block Grant?
   a. Discretionary grant
   b. Cooperative agreement
   c. Mandatory grant
   d. Categorical grant
What Authority do Agencies Have to Make Federal Grants?

- **No inherent authority to make grants**
  - Must be **authorized** by enabling legislation passed by Congress
  - Must be **appropriated**
    - Amount
    - Period
  - Must be **apportioned**
    - Spread over funding period

What Rules Apply to Federal Grants?

- Federal Award Authorizing Statute and Regs
- State Laws and Regs - Program Legislation
- Federal Appropriations Acts
- OMB Issuances - Uniform Guidance
- Federal Awarding Agency Informal Guidance
- Award Terms and Conditions
- Cross-Cutting Rules
Applicability of the Uniform Guidance

Since CSBG is a block grant, the only provisions of the Uniform Guidance that automatically apply to CSBG are:

1. Acronyms and definitions in Subpart A;
2. General provisions in Subpart B;
3. Public notice requirements in Section 200.202 in Subpart C;
4. Rules on subrecipient monitoring and management in Sections 200.330-200.332 of Subpart D;
5. **Cost principles in Subpart E; and**
6. Single audit requirements in Subpart F.

Uniform Guidance: Agencies’ Own Versions

- Agencies have *codified their own versions* of the Uniform Guidance:
  - **HHS**: 45 CFR Part 75
  - **Dep’t. of Energy**: 2 CFR Part 910
  - **CNCS**: 2 CFR Part 2205
  - **HUD**: 2 CFR Part 2400
  - **DOL**: 2 CFR Part 2900
  - **Dep’t. of Education**: 2 CFR Part 3474
Informal Agency Guidance

- Awarding agencies may issue other guidance such as:
  - Information Memorandum (IMs)
  - Program Instructions (PIs)
  - Policy Clarifications (PCs)
  - CSBG Dear Colleague Letters
  - HHS Grants Policy Statement (for Head Start and other HHS discretionary grants)

- Not as authoritative as regulations and can be changed at any time

Award Terms and Conditions

- May be found in documents such as a notice of award, grant/award agreement, contract with state, etc.

- Terms and conditions in awards from state may be negotiable in some cases
Common Cross-Cutting Rules

• Usually referred to in the award terms and conditions
• HHS Grants Policy Statement refers to these rules as “public policy requirements” – a few examples:
  – Title VI of the Civil Rights Act of 1964
  – Drug-Free Workplace Act
  – Pro-Children Act (Smoke-Free Workplace)
  – Federal Funding Accountability and Transparency Act (FFATA)
  – Suspension and debarment rules
  – Byrd Amendment

Quiz #2: Applicable Rules

2. Which one of the following rules automatically applies to CSBG funds?
   a. The procurement rules in Subpart D of the Uniform Guidance
   b. The Byrd Amendment
   c. All of the provisions of the Uniform Guidance
   d. The Davis-Bacon Act
What is the Life Cycle of a Federal Grant?

<table>
<thead>
<tr>
<th>Stage</th>
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<th>Grantee Processes</th>
<th>Subrecipient Processes</th>
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<tbody>
<tr>
<td>1 Pre-award Stage</td>
<td>Announce opportunity</td>
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Community Services Block Grant

Program Information

Authorization (040):
Community Services Block Grant (CSBG).

Objectives (050):
To provide assistance to States and local communities, working through a network of community action agencies and other neighborhood-based organizations, to reduce poverty, revitalize communities, and renew the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient. Particular families who are attempting to transition off a State program carried out under part A of this title of the Social Security Act and (1) To provide services and activities having a measurable and potential major impact on causes of poverty in the community or these areas of the community where poverty is a particularly acute problem; (2) to provide services designed to assist low-income participants, including the elderly, poor, to: (a) secure and retain meaningful employment. (b) attain an adequate education; (c) make better use of available income; (d) obtain and maintain adequate housing and a suitable living environment; (e) obtain emergency assistance through loans or grants to meet immediate and urgent individual and family needs, including health services, nutritious food, housing, and employment-related assistance; (f) remove obstacles and solve problems which block the achievement of self-sufficiency; (g) achieve greater participation in the affairs of the community; and (h) make more effective use of other related programs; (3) to provide on an emergency basis for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract conditions of starvation and malnutrition among the poor; and (4) to coordinate and establish linkages between governmental and other social services programs to assure the effective delivery of such services to low-income individuals.

Types of Assistance (060):
FORMULA GRANTS

Uses and Use Restrictions (070):
(1) States receive block grants to ameliorate the causes of poverty in communities. The block grant approach gives the States flexibility to tailor their programs to the particular services their communities. (2) States are required to use at least 60 percent of their allocations for grants to eligible entities as defined in the Community Services Block Grant (CSBG) Act, as amended. This includes primarily locally-based community action agencies and organizations that serve seasonal or migrant farm workers. (3) No more than the greater of $75,000 or 5 percent of each State's allocation may be used for administrative expenses at the State.
WIA/WIOA Dislocated Worker National Reserve Technical Assistance and Training

Program Information

Authorization (040):
The Workforce Innovation and Opportunity Act.


Objectives (060):
To support the coordination, development, and provision of appropriate training, technical assistance, staff development, and other activities, including assistance in replicating programs of demonstrated effectiveness to States, local areas, and other entities involved in providing assistance to dislocated workers, as well as promoting the continued improvement of assistance provided to dislocated workers under the Workforce Investment Act of 1998.

Types of Assistance (060):
- Project Grants

Uses and Use Restrictions (070):
Grants awarded to entities other than States or local units of government that are for amounts in excess of $100,000 shall only be awarded on a competitive basis.

Eligibility Requirements (080):
If the amounts available pursuant to 21(a)(2), the National Reserve Account, the Secretary shall reserve not more than 5% of such amounts to provide technical assistance to States, local areas, and other entities involved in providing reemployment services to dislocated workers to promote the continued improvement of assistance provided to dislocated workers under this title.

Contact Information:
- Website: [Website URL]
- Registered Office: [Address]
- Headquarters Office: [Address]

General Information:
- Assistance Types: B - PROJECT GRANTS - Project Grants
- Applicant Eligibility: 13-Dollar training
- 14- State includes District of Columbia, public institutions of higher education and hospitals 70- training
- 15-Local includes State-designated Indian Tribes, all institutions of higher education and hospitals 70- Training
- 20- Public nonprofit organizations (includes institutions of higher education and hospitals 70- Training
- 23-U.S. Territories and Possessions (includes institutions of higher education and hospitals 70- Training
- 27-Beneficiary Eligibility: 14 - State 15- Local 20- Public nonprofit organization, 54 - Unemployed

Search Grants:
- Grant opportunities:
- Search grants:
- Search by:
  - Project Code
  - Title
  - Opportunity Title
  - Opportunity Code
  - Opportunity Type
  - Funding Instrument Type
  - Eligibility
  - Category

Sort by: Project Code (Case sensitive)

1 - 25 of 1000 matching results:

<table>
<thead>
<tr>
<th>Project Code</th>
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<td>Community Action Program Legal Services, Inc.</td>
</tr>
<tr>
<td>0001-2016-0002</td>
<td>Community Action Program Legal Services, Inc.</td>
</tr>
<tr>
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</tr>
<tr>
<td>0001-2016-0004</td>
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</tr>
</tbody>
</table>
Federal Grant Relationships

- Depending on the award, a CAA may be a recipient, pass-through entity, subrecipient, and/or contractor
  - **Recipient** (2 CFR § 200.86)
  - **Subrecipient** (2 C.F.R. § 200.92)
  - **Contractor** (2 C.F.R. § 200.23)
    - **Contract** (2 C.F.R. § 200.22)
    - Uniform Guidance replaced “vendor” with “contractor”

Subawarding Federal Funds

- What if we decide to engage the services of another entity to help carry out the purposes of our grant?
  - Need to determine whether other entity is a **contractor** or **subrecipient** (2 CFR § 200.330 – 200.332)

- The **recipient** is always solely responsible to the federal government for the execution of the award
Obligations of Pass-Through Entity

- Determine **contractor vs. subrecipient** relationship
- Include certain specified information (including applicable indirect cost rate) in the subaward
- Conduct **pre-award risk assessment** to determine the appropriate monitoring level
- Consider imposing specific **subaward conditions**
- Monitor subrecipients’ activities to ensure:
  - Subaward is used for authorized purposes
  - Subaward performance goals are achieved
- Verify subrecipient is **audited** according to Single Audit
- Consider taking **enforcement actions** against noncompliant subrecipients

2 C.F.R. § 200.331

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Subrecipient vs. Contractor

<table>
<thead>
<tr>
<th><strong>Subrecipient (Subaward)</strong></th>
<th><strong>Contractor (Procurement contract)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose is to carry out a portion of the Federal award</td>
<td>Purpose is to obtain goods and services for the non-Federal entity’s own use</td>
</tr>
<tr>
<td>Determines eligibility for assistance</td>
<td>Provides goods and services within normal business operations</td>
</tr>
<tr>
<td>Performance measured according to Federal program objectives</td>
<td>Provides similar goods and services to many different purchasers</td>
</tr>
<tr>
<td>Responsible for program decision-making</td>
<td>Normally operates in a competitive environment</td>
</tr>
<tr>
<td>Must comply with Federal program requirements</td>
<td>Is not subject to compliance requirements of the Federal program as a result of the agreement</td>
</tr>
<tr>
<td>Funds used to carry out the Federal program, rather than providing goods or services</td>
<td>Provides goods or services that are ancillary to the operation of the Federal program</td>
</tr>
</tbody>
</table>

2 C.F.R. § 200.330
Subrecipient vs. Contractor

- **Substance of the relationship** is more important than the form of the agreement.
  - Not all characteristics will be present in every relationship
- Pass-through entity should use judgment in classifying each agreement as a subaward or a procurement contract
- **Subrecipient:**
  - Don’t need to use procurement processes to select
  - But need to conduct pre-award risk assessment
- **Contractor:**
  - Need to use procurement processes in selecting
  - Generally don’t need to comply with program rules

Subawarding Federal Funds

- Recipient is accountable for subrecipient’s accomplishment of grant purposes and compliance with award terms and conditions and applicable laws
  - E.g., disallowance of costs
- Thus, important for recipient to “pass through” all applicable requirements to subrecipient
Key Subaward Terms and Conditions

• Statement and scope of work
• Terms for payment and allocation of funds
• Provisions for suspension and termination
• Uniform Guidance requirements imposed on subrecipient
• Required award information, including (2 CFR § 200.331(a)):
  – Clearly identifying the grant as a subaward
  – Award identification data
  – Federally negotiated indirect cost rate (if applicable), including if the de minimis rate applies
• Reporting and recordkeeping requirements
• Access to and confidentiality of records
• Compliance with applicable laws and grant award

Quiz #3: Subawarding Federal Funds

3. Which of the following statements about a CAA subawarding HHS funds is FALSE?

a. The award agreement must state that it is a subaward
b. The subrecipient repays disallowed costs directly to HHS
c. The subaward is not a “contract” under the Uniform Guidance
d. It need not use a procurement process to select Subrecipient
Can Federal Grantees Lobby or Get Involved in Political Campaigns?

Lobbying
Issues + Legislation

Political (Campaign) Activity
Candidates

NOTE

• Chapter 1 of the Leaders’ Guide only addresses the federal grant law restrictions on lobbying and political activities
  – These apply to BOTH public and nonprofit CAAs

• Chapter 4 of the Leaders’ Guide discusses additional federal tax law restrictions on lobbying and political activities
  – These apply ONLY to nonprofit, 501(c)(3) tax-exempt CAAs

• Public CAAs should check their local laws on lobbying and political activities
Lobbying by Federal Grantees

Restrictions

– Generally, can’t use federal grants to lobby (Uniform Guidance; 2 CFR § 200.450)
  • Including attending legislative sessions or committee hearings to attempt to lobby
– Can’t use HHS funds to influence federal/state/local legislation or appropriations, or federal/state regs or administrative action (FY2015 Federal Appropriations Act)
  • Examples: Submitting comments on proposed regs, lobbying on appropriations bills
  • Check appropriations act for restrictions on other federal funds
– Can’t use federal funds to influence federal employees to make federal awards (Byrd Amendment)

Lobbying Practice Tips

• Use non-federal, unrestricted funds to lobby
  – Track time spent by employees lobbying
  – Don’t include lobbying costs as part of the indirect cost pool
• Lobby using board members or other volunteers
• Lobby on personal time, without using CAA resources
  – Be careful when asking non-exempt employees to volunteer to lobby
• Keep records of lobbying costs
Political Campaign Activities

Uniform Guidance
Federal funds may NOT be used to:

- Influence the outcome of elections, referenda, or initiatives
- Give to political campaigns or PACs
- Contribute to political parties

(2 CFR § 200.450)

Political Campaign Activities

CSBG Act
Cannot use CSBG funds in any way that identifies such use with:

- Any partisan or nonpartisan political activity
- Transporting voters to the polls
- Any voter registration activity

(42 USC § 9918(b)(2)(C))
Political Campaign Activities

Head Start Act

Cannot use Head Start funds for:

- Any partisan or nonpartisan political activity
- Transporting voters to the polls
- Any voter registration activity*  

*But a nonpartisan organization MAY use Head Start facilities to register voters in federal elections

(42 USC § 9918(b)(2)(C))

Political Campaign Activities

Hatch Act

- Federal law that applies mainly to federal, state, or local employees and NOT employees of nonprofit organizations
- However, applies to certain employees of private CAAs who are paid out of CSBG and/or Head Start funding (42 U.S.C. § 9918(b); 42 U.S.C. § 9851(a))
- Limits activities of employees, not the CAA
  - Restrictions apply regardless of whether activity is conducted at the workplace or on work time
  - Restrictions apply even when employee is on unpaid or paid leave
Hatch Act – **Nonprofit CAAs**

**FIRST TYPE OF EMPLOYEE**
- If > ½ of work time employed by CAA/Head Start org. or > ½ salary paid by org.
- Works in connection with CSBG or Head Start activities

**HATCH ACT RESTRICTIONS**
- Can’t run as candidate for public office in partisan election
- Can’t use official authority to influence election results
- Can’t coerce Hatched employee to make political contributions

**SECOND TYPE OF EMPLOYEE**
- If 100% of salary paid out of CSBG and/or Head Start funds (directly or indirectly)

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Hatch Act – **Public CAAs**

**FIRST TYPE OF EMPLOYEE**
- Works in connection with activities financed by ANY federal grants or loans

**HATCH ACT RESTRICTIONS**
- Can’t run as candidate for public office in partisan election
- Can’t use official authority to influence election results
- Can’t coerce Hatched employee to make political contributions

**SECOND TYPE OF EMPLOYEE**
- If 100% of salary paid out of ANY federal grants or loans
What Can Covered Employees Do Under the Hatch Act?

- Be a candidate in a nonpartisan election
- Be a candidate in a partisan election if not 100% paid out of CSBG/Head Start funds (private CAA) or 100% out of any federal funds (public CAA)
- Express opinions on political subjects
- Vote as one chooses
- Participate in political campaigns and parties

Quiz #4: Lobbying & Political Activity

4. Which of the following statements about a CAA engaging in lobbying and political activity is TRUE?

   a. It may be able to lobby with nonfederal, unrestricted funds
   b. No employees paid out of CSBG/HS may run for partisan office
   c. Only employees of public CAAs are subject to the Hatch Act
   d. It can use CSBG funds to ask Congress to increase CSBG funds

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Enforcement Actions

- Possible enforcement actions that can be taken against a federal grantee:

  - Disallowances of costs
  - Additional specific award conditions*
  - Suspension and Debarment
  - Temporary suspension/withholding of awarded funds*
  - Termination*
  - Denial of refunding*

* May not be applicable to certain grant programs or may require specific procedures

Appealing Federal Agency Decisions

- Administrative appeals
  - Appeals board review of certain federal awarding agency’s actions

- Judicial review
  - Generally, must exhaust available administrative remedies
  - Federal Administrative Procedures Act (APA) dictate applicable standards of review
Questions

CAA Leaders’ Legal Boot Camp
Webinar Series

APRIL 5, 2016  Uncle Sam’s Money: Fundamentals of Federal Grant Law
APRIL 7, 2016  The Nuts and Bolts of the Federal CSBG Act
APRIL 12, 2016  Dollars & Sense: Federal Grant Financial Management Rules
APRIL 14, 2016  In a Nutshell: Tax-Exempt Law for Nonprofit CAAs
APRIL 19, 2016  Public CAA Essentials

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