Legal Issues Unique to CAAs

Part 1

Applications

CAPLAW Attorney Network Webinar
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Agenda

Part 1:
- Federal grant vs. contract
- Type of grant
- CSBG basics
- Board composition
- Bylaws provisions
- Personnel Policies
- Lobbying & political activity

Part 2:
- Uniform Guidance basics
- Disallowances
- Attorney fees
- Contract Provisions
- Mergers and shared services
- Garnishment
- Bankruptcy
Are CAAs Federal Contractors?

Federal Grant vs. Contract

- **Answer:** CAAs, generally, are federal grantees, not contractors

- **Federal gov’t distinguishes between:**
  - Vendors from which it buys products or services to be used by the gov’t, i.e., contractors **AND**
  - Entities to which the gov’t provides funds to benefit the public at large, i.e., grants or federal assistance

- **Grant terms:** “financial assistance award”, “notice of grant award”, “grant award”, “grant agreement”

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**CAPLAW Articles Archive**, [http://caplaw.org/resources/caplawArticles.html](http://caplaw.org/resources/caplawArticles.html)
Who Awards Federal Funds to a CAA?

**TYPE OF GRANT**

- **Answer:** Depends on type of grant a CAA receives

**Discretionary, e.g., Head Start – Federal Agency**

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

**Block, e.g., CSBG, LIHEAP – State Agency**

- 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

What Rules Apply to Federal Grants?

**TYPE OF GRANT**

- Federal Award Authorizing Statute and Regs
- State Laws and Regs - Program Legislation
- OMB Issuances – Uniform Guidance
- Potentially Applicable Rules
- Federal Awarding Agency Informal Guidance
- Award Terms and Conditions
- Cross-Cutting Rules
Chapter One: General Overview of Federal Grant Law, [Link](http://caplaw.org/resources/PublicationDocuments/CAALeadersLegalGuide.html)

What Makes a CAA a CAA?

**CSBG BASICS**

- **Answer:** An entity must receive Community Services Block Grant (CSBG), 42 U.S.C. § 9901, et al. funding to be a community action agency (CAA)

- **Approximately 1,000 CAAs across the U.S.**
  - Provide services to over 15 million people
  - Serve 99% of nation’s counties

- **CSBG “eligible entities”**
  - **Nonprofit/private CAAs:** Majority are nonprofit organizations (42 U.S.C. § 9909(a), (b))
  - **Public CAAs:** Remainder are arms of city or county government (42 U.S.C. § 9909(c))
Who Facilitates a CAA’s CSBG Funding?

CSBG BASICS

- **Answer:** CSBG is facilitated by both the:
  - **Federal agency**
    - Office of Community Services (OCS), within the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services (HHS)
  - **State agency**
    - Governor appoints a state office to oversee CSBG program
    - State primarily responsible for interpreting governing statutory provisions, 45 C.F.R. § 96.50(e)

What Laws Govern CSBG Program?

CSBG BASICS

- Federal Community Services Block Grant (CSBG) Act

- Federal Block Grant Regulations
  - 42 C.F.R. Part 96

- Information Memoranda (IMs)
  - Non-binding guidance
  - https://www.acf.hhs.gov/ocs/resouce/csbg-information-memoranda

- State CSBG Laws
  - Statutes and regulations
  - CSBG Organizational Standards, IM 138

- Office of Management and Budget (OMB) Uniform Guidance
  - 45 C.F.R. Part 75; 2 C.F.R. Part 200

Why is CSBG Funding Important?

**CSBG BASICS**

- **Answer:** CSBG usually not a CAA's largest source of funding, but important because:
  
  - **Flexible use of funds:** (42 U.S.C. § 9901)
    
    - Based on local community needs
    
    - Supports and enhances a CAA's other anti-poverty programs and links them together
    
    - **OCS Information Memorandum 37**
Chapter Two: Community Services Block Grant Act,
http://caplaw.org/resources/PublicationDocuments/CAALeadersLegalGuide.html

Why is Board Structure Challenging?

**BOARD COMPOSITION**

**Answer:** Tripartite board requirement at 42 U.S.C. § 9910

- **Stand. 5.1: Nonprofit/Public**
  - The org.’s governing board/advisory body is structured in compliance with the federal CSBG Act

- **Stand. 5.5: Nonprofit/Public**
  - Governing board/advisory body fills board vacancies as set out in its bylaws

- At least 1/3: democratically selected rep. of low-income community served
- 1/3: elected public officials or appointed if none available or willing to serve
- Remainder: individuals or organizations from private sector
Why is Board Structure Challenging?

**BOARD COMPOSITION**

- **Answer:** Other federal funding sources impose board composition requirements, for example:
  - **Head Start funding requires** (42 U.S.C. § 9837(c)(1)(b)):
    - Licensed attorney familiar with board issues
    - Early childhood education expert
    - Fiscal management or accounting expert
    - Reflect community served and include current/former HS parents
  - **HUD Community Housing Development Organizations (CHDO), funding requires** (24 C.F.R. § 92.2):
    - At least 1/3 low-income community representatives
    - No more than 1/3 public officials (broad definition)
    - Remainder unrestricted

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Does CAA Designation Affect Bylaws?

**BYLAWS PROVISIONS**

- **Answer:** Yes, a handful of bylaws provisions are potentially affected by CAA-specific requirements, such as:
  - Board composition (42 U.S.C. § 9910)
  - Petition for representation (42 U.S.C. § 9908(b)(10))
  - Board size, terms and terms limits may be addressed by state CSBG laws and policies
  - Meeting requirements such as open meeting/sunshine laws, if applicable

- **CSBG Org. Standards require attorney review of bylaws w/in past 5 yrs** *(Stand. 5.3 (Nonprofit CAAs))*
How do Sunshine Laws Apply to CAAs?

**BYLAWS PROVISIONS**

- **Answer:** sunshine/open meetings laws (OMLs) apply to public CAAs as divisions/depts of a local gov’t; however, the application of OMLs to nonprofit CAAs varies by state and may apply for reasons such as:
  - OML applies to entities that receive a certain % of public funds;
  - OML specifically applies to CAAs;
  - Attorney general or state office charged with enforcing OML interprets it as applicable to CAAs via published opinions; or
  - State CSBG laws require all CAAs to comply with OML

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**CAPLAW**

**The Rules CAAs Live By**

- CAPLAW’s Bylaws Toolkit, [http://www.caplaw.org/resources/publications.html](http://www.caplaw.org/resources/publications.html)
Are Personnel Policies Affected by CSBG?

**PERSONNEL POLICIES**

**Answer:** yes, Category 7 of the CSBG Org Standards (now incorporated in a state’s CSBG laws/policies) require certain actions be taken w/r to HR management, such as:

- **Stand. 7.1**, written personnel policies reviewed by an attorney and approved by board w/in past 5 yrs
- **Stand. 7.2**, employee handbook available to all staff who are notified of any changes
- **Stand. 7.3**, written job descriptions for all positions updated w/in past 5 yrs
- **Stands. 7.4, 7.5**, board evaluates and sets ED compensation annually
- **Stand. 7.6**, policy for regular written employee evaluations by supervisors
- **Stand. 7.7**, board approved whistleblower policy
- **Stands. 7.8, 7.9**, new employee orientation w/in 60 days of hire and ongoing training for staff either conducted or made available

Are Lobbying Rules Different for CAAs?

**Lobbying & Political Activity**

- **Answer:** yes, in addition to IRS rules applicable to tax-exempt nonprofits (i.e., nonprofit CAAs) and local gov’t rules applicable to gov’t entities (i.e., public CAAs), **CAAs generally may not use federal funds for lobbying:**
  - Anti-Lobbying Act may apply to CAA’s federal grant funds (18 U.S.C. § 1918)
  - Annual federal appropriation acts are broad; may include state and local regulatory or administrative action
  - Uniform Guidance specifically prohibits use of funds for lobbying, including costs of membership in orgs whose primary purpose is lobbying are unallowable (Uniform Guidance 2 C.F.R. §§ 200.314, 200.454)

**CAPLAW**

**Chapter One: General Overview of Federal Grant Law and Chapter Two: Community Services Block Grant Act**, [http://caplaw.org/resources/PublicationDocuments/CAALeadersLegalGuide.html](http://caplaw.org/resources/PublicationDocuments/CAALeadersLegalGuide.html)
Are Political Activity Rules Different for CAAs?

**LOBBYING & POLITICAL ACTIVITY**

- **Answer:** yes, in addition to IRS rules applicable to tax-exempt nonprofits (i.e., nonprofit CAAs) and local gov't rules applicable to gov't entities (i.e., public CAAs), all CAAs must comply with the following federal grant rules:
  - Uniform Guidance **prohibits** use of federal funds for influencing the outcomes of elections, referenda or initiatives or contributing to political parties, campaigns or PACs (2 C.F.R. § 200.450(c)(ii))
  - Federal CSBG Act (42 U.S.C. § 9918(b)(1),(2))
    - **Prohibits** use of CSBG funds to provide services or use employees in a manner that **identifies** programs with any partisan or nonpartisan political activity, voter registration activities or transportation to the polls or similar activities
    - **Requires** compliance with the Hatch Act
Private/Nonprofit CAAs

FIRST TYPE OF EMPLOYEE
- If > 1/2 of work time employed by CAA/Head Start org. or > 1/2 wages paid by org.
- Works in connection with CSBG and/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 a Hatch Act Employee to make a political contribution

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

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 a Hatch Act Employee to make a political contribution

SECOND TYPE OF EMPLOYEE
- If 100% of salary paid out of ANY federal grants or loans
- **Chapter One:** General Overview of Federal Grant Law and **Chapter Two:** Community Services Block Grant Act, [http://caplaw.org/resources/PublicationDocuments/CAALeadersLegalGuide.html](http://caplaw.org/resources/PublicationDocuments/CAALeadersLegalGuide.html)

- **Playing by the Rules:** Political Activity, [http://www.caplaw.org/conferencesandtrainings/webinars.html#lobbying](http://www.caplaw.org/conferencesandtrainings/webinars.html#lobbying)
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