

**Legal Issues Unique to CAAs**  
**Part 2**

Applications

Grants

CAPLAW Attorney Network Webinar  
Thursday, September 21, 2017

PRESENTED BY:  
Eleanor Evans, Esq.  
Alison Ma'uf, Esq.  
(617) 357-6915

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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

## What is the Uniform Guidance (UG)?

### UNIFORM GUIDANCE BASICS

- **Answer:** generally, the UG is a set of federal rules applicable to federal grants that establishes parameters as to how federal funds may be used and a framework for protecting those funds
- **UG contents:**
  - **Subpart A** – Acronyms and Definitions
  - **Subpart B** – General Provisions
  - **Subpart C** – Pre-Federal Award Requirements and Contents of Federal Awards
  - **Subpart D** – Post Federal Award Requirements
  - **Subpart E** – Cost Principles
  - **Subpart F** – Audit Requirements
  - **Appendices**

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## Where is UG and Info About it Located?

### UNIFORM GUIDANCE BASICS

- **Answer:** UG is generally codified. It was also adopted by each federal agency with minor changes, except for the U.S. Department of Health and Human Services (HHS) which codified its own version
  - Generally codified at 2 C.F.R. Part 200
  - HHS codification, 45 C.F.R. Part 75 (applicable to Head Start, CSBG, and other HHS grants)
- **Guidance available from Chief Financial Officers Council** (previously referred to as Council on Federal Assistance Reform (COFAR) (<https://cfo.gov/grants/>):
  - **FAQ:** <https://cfo.gov/wp-content/uploads/2017/08/July2017-UniformGuidanceFrequentlyAskedQuestions.pdf> (updated July 2017)

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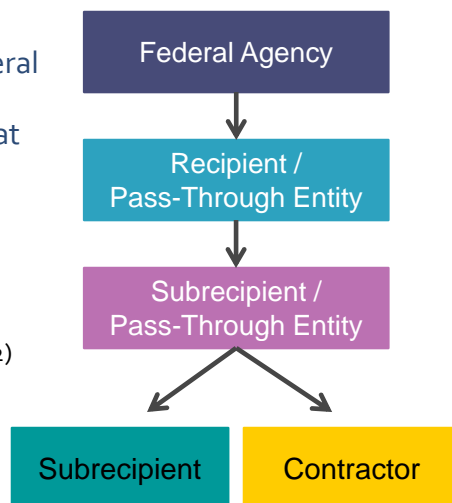
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## What Relationships does UG Cover?

### UNIFORM GUIDANCE BASICS

- **Answer:** a CAA may play several different “roles” under the UG which affects the provisions that may apply to it:

- **Recipient** (2 CFR § 200.86)
- **Pass-through entity** (2 CFR § 200.331)
- **Subrecipient** (2 C.F.R. § 200.92)
- **Contractor** (2 C.F.R. § 200.23)



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## How Does UG Apply?

### UNIFORM GUIDANCE BASICS

- **Answer:** Depends on the funding a CAA receives and the applicability provisions in the UG (2 C.F.R. 200.101):
  - **Direct Grants:**
    - Generally, must comply with all of UG, e.g., Head Start
  - **Formula Grants**
    - Generally, must comply with all of UG, e.g., Weatherization Assistance Program (WAP)
  - **Block Grants**
    - Compliance with only a few, select UG provisions, e.g., Low-Income Home Energy Assistance Program (LIHEAP)

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## When do Additional UG Provisions Apply?

### UNIFORM GUIDANCE BASICS

- **Answer:** Additional UG provisions may be incorporated by reference via the:
  - Authorizing statute for the federal funding
  - Grant agreement between the pass-through entity and the non-federal entity
  - State statutes and regulations

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## Which UG Provisions Apply to CSBG?

### UNIFORM GUIDANCE BASICS


- **Answer:** The following UG provisions apply to all block grants, including CSBG:
  - **Subpart A** (Acronyms & Definitions)
  - **Subpart B** (General Provisions)
  - **Subpart F** (Audit Requirements)
  - **Certain provisions of Subpart C**
    - § 200.202 – Requirement to provide public notice of federal financial assistance programs
    - § 200.330 – Subrecipient and contractor determinations
    - § 200.331 – Requirements for pass-through entities
    - § 200.332 – Fixed amount subawards
- **\*Additionally:** Subpart E, Cost Principles, applies to CSBG because CSBG Act, the authorizing statute (42 U.S.C. § 9916(a)(1)(B)), specifically requires it

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- Chapter Three: Financial Management of Federal Grants, <http://caplaw.org/resources/PublicationDocuments/CAALeadersLegalGuide.html>




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## What is a Disallowance?

### DISALLOWANCES

- **Answer:** Determination by a federal awarding agency or pass through entity that certain expenditures of federal grant funds are not allowable under the UG or specific terms and conditions of the federal award. Examples of disallowances include:
  - Improper procurement (i.e., policies not as restrictive as UG requirements, etc.) so funding used to enter into transaction is disallowed
  - Fundraising activity (i.e., golfing event) paid for with federal funds absent prior approval from the funding source



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## How Should a CAA Respond to a Disallowance?

### DISALLOWANCES

- **Answer:** No established approach exists for responding to a disallowance since funding source rules vary and may impose requirements with respect to how funds may be used; however, a response will likely consist of reviewing:
  - Grant/subgrant agreement and/or notice of funding award to determine applicable requirements
  - Specific funding source requirements
  - UG requirements, if applicable, including the general principles, selected items of specific costs, and uniform administrative requirements
  - HHS Departmental Appeals Board (DAB) Decisions <https://www.hhs.gov/about/agencies/dab/decisions/board-decisions/index.html>, e.g., regarding substituting documented costs that would have been allowable but were not charged

## What if Specific Cost is Not in UG?

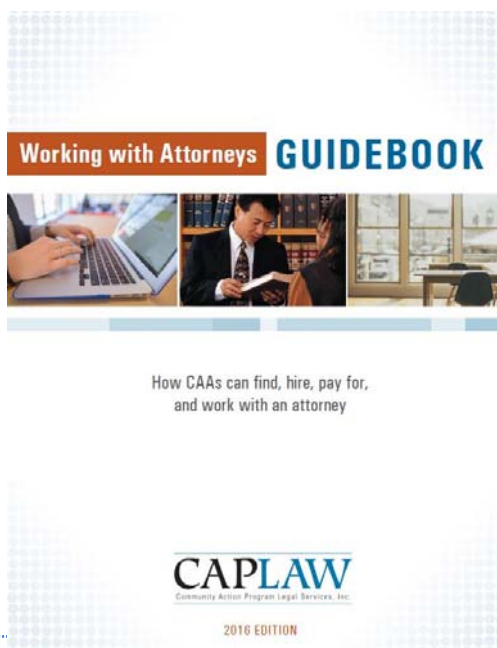
### DISALLOWANCES

- **Answer:** UG (2 C.F.R. §200.420) explains that failure to mention a specific item of cost does not imply that it is allowable or unallowable; rather, an allowability determination is based on the treatment provided for similar/related items of cost and the basic considerations (2 C.F.R. § § 200.402-411).
  - UG establishes factors to consider when determining if a cost is:
    - Allowable
    - Reasonable
    - Allocable

## Can Federal Funds Pay Attorney Fees?

### ATTORNEY FEES

- **Answer:** Depends on how the fee arises. Generally, all attorneys fees must meet the UG basic considerations (2 C.F.R. §§ 200.402-411) and the factors for charging professional services costs (2 C.F.R. § 200.459). Legal fees often incurred by CAAs include those from:
  - Administration of federal grants
  - Reorganization and grant termination
  - Proceedings against the government
  - Program-specific provisions
  - Private lawsuits
  - Settlement agreements



- **Working with Attorneys Guidebook,** <http://caplaw.org/resources/PublicationDocuments/WorkingwithAttorneys.html>

## Does UG treat Subrecipients and Contractors Differently?

### CONTRACT PROVISIONS

- **Answer:** Yes, the UG sets forth factors to consider when determining if a non-federal entity is a subrecipient or contractor (2 C.F.R. § 200.330)
  - Substance of the relationship is more important than the form of the agreement
    - Not all characteristics will be present in every relationship
  - A pass-through entity should use judgment in classifying an agreement as a subaward or a procurement contract

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





■ **Nuts and Bolts of Subgrant Agreements,** [http://www.caplaw.org/resources/networks/attorney\\_network.html](http://www.caplaw.org/resources/networks/attorney_network.html)

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Community Action Program Legal Services, Inc.  
Legal and Financial Resources for Community Action

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**ATTORNEY NETWORK**

The CAPLAW Attorney Network connects attorneys from across the country in dealing with Community Action Agency legal issues, enabling legal professionals working with CAAs to share information, provide informal peer-to-peer assistance, and benefit from other legal experts' input.

Join the Attorney Network  
If you are an attorney and interested in learning more about participating in the CAPLAW Attorney Network, go to [www.caplaw.org/networks/attorney\\_network.html](http://www.caplaw.org/networks/attorney_network.html)

**Network Webinars & Conference Calls**

**Legal Issues Unique to CAAs – Two Part Webinar Series**  
Presented by CAPLAW Attorneys  
Former Webinar  
First Date: Wednesday, September 23, 2015 1:00:23pm ET  
First Date: Thursday, September 24, 2015 1:00:23pm ET

Working with Community Action Agencies (CAAs) on legal matters can sometimes be challenging for outside counsel. Federal grants that CAAs receive require compliance with dozens of requirements that can make new issues more involved and complex. In the two-part webinar series, we pose questions and provide answers to attorneys working with CAAs on some of the key legal requirements that impact the way CAAs operate. Rather than wait any one issue, we will help CAAs attorneys deal with a variety of CAA legal issues and identify CAA-related attorneys they refer to when working with CAAs on specific matters. The webinar will cover topics such as fee contracts, board composition, bylaws provisions, tasks of state governing entities, federal funds, cost sharing and recommended contract provisions, mergers and related services, and more.

**CAPLAW**  
Community Action Program Legal Services, Inc.  
**Nuts and Bolts of Subgrant Agreements**  
Attorney Network Webinar  
September 29, 2015

Eleanor Evans, Esq.  
Veronica Zhang, Esq.  
[www.caplaw.org](http://www.caplaw.org)  
[eleanor.evans@caplaw.org](mailto:eleanor.evans@caplaw.org)  
[veronica.zhang@caplaw.org](mailto:veronica.zhang@caplaw.org)  
617.857.6915

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This Webinar Series is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance (LTTA) 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 HHS70462-02. Any opinions, 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.

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## Does the UG Require Specific Contract Provisions?

### CONTRACT PROVISIONS

- **Answer:** Yes, Appendix II to Part 200 (2 C.F.R. § 200.362) of the UG lists specific provisions to include in federally funded contracts, some of which are subject to certain threshold amounts. Examples of provisions required include:
  - Administrative, contractual or legal remedies for violations or breaches of a contract exceeding the simplified acquisition threshold
  - Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) for contracts in excess of \$100,000
  - Termination provisions for contracts in excess of \$10,000
  - Davis-Bacon Act requirements for construction contracts when required by the federal program statute
  - Debarment and suspension provisions

## Are there Other Contract Provisions?

### CONTRACT PROVISIONS

- **Answer:** Yes. Such provisions often address potential issues arising from the federal grants funds a CAA receives and may include:
  - Termination due to issues with grant funding
  - Record retention requirements
  - Protecting confidential information
  - Insurance coverage and types, certificates of insurance, renewal

## Are Mergers/Shared Services Different for CAAs?

### MERGER AND SHARE SERVICES

- **Answer:** Partially, yes. Because of the funding CAAs receive they must work with federal and state funders on a host of issues unique to that funding, such as:
  - Payment of costs associated with each option
  - Transfer of federal funds to another entity, for example:
    - **CSBG** transfer requires state approval and compliance with CSBG Act as to the type of entity that may receive funding
    - **Head Start:** potential for competition of non-surviving Head Start program

Publications | CAPLAW | Working Better Together

www.caplaw.org/resources/PublicationDocuments/MergersandSharedServicesIntroduction.html

Community Action Program Legal Services, Inc.

Legal and Financial Resources for Community Action

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Working Better Together

Introduction

- Why are CAAs looking about shared services and mergers?
- What do the terms "shared services" and "mergers" mean?
- Why should we think about shared services and mergers?
- What are some of the pros and cons of shared services and mergers?
- What are some of the pros and cons of shared services and mergers?

Why Consider Sharing Services or Merging?

Why are CAAs looking about shared services and mergers?

What do the terms "shared services" and "mergers" mean?

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- Working Better Together: CAPLAW's Guide to Shared Services and Mergers, <http://www.caplaw.org/resources/PublicationDocuments/WorkingBetterTogether.html>

Webinar and Audio Conference Library

Topics

- CSBG + Community Development + Government + State Law + Social Work + Human Resources + Labor & Public Policy + Other Topics of Interest

Community Services Block Grant (CSBG)

The State and Role of the Federal CSBG Act (Part 2 of the CAA Leaders Legal Briefing Webinar Series) Presented by Alison Hark, Esq. and Christopher Lopez, Esq. Presented on April 7, 2016

The Community Services Block Grant (CSBG) Act is the legal cornerstone of Community Action. While the Act itself is short, it contains many important requirements. This session offers an introduction to the Act for Community Action leaders and serves as a reference for assessment waters. Topics covered will include an overview of laws and guidance relevant to CAA, uses of CSBG funds, income eligibility, eligible boards, state plans, monitoring, and funding reduction and termination.

View Resources | View PowerPoint | View CAA Leaders Legal Briefing

**Working Better Together, Part One:**  
An Exploration of Shared Administrative Services

PRESENTED BY:  
Eleanor Evans, Esq.  
Veronica Zhang, Esq.

CAPLAW Training Webinar  
Tuesday, July 18, 2017

**Working Better Together, Part Two:**  
Mergers as a Strategy for Success

PRESENTED BY:  
Eleanor Evans, Esq.  
Veronica Zhang, Esq.

CAPLAW Training Webinar  
Thursday, July 20, 2017

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- Working Better Together, Part One and Part Two, <http://www.caplaw.org/conferencesandtrainings/webinars.html>

## Can Federal Funds be Garnished?

### GARNISHMENT

- **Answer:** Several court decisions, including some involving CAAs and Head Start grantees, have held that federal grant funds may not be seized or garnished by third parties
  - Grant funds must be used for their intended purposes and are held in trust by the grantee for intended beneficiaries
  - May need to distinguish between funds paid as advances and funds paid as reimbursements
  - *Buchanan v. Alexander*, 45 U.S. 20 (1841); *In re Joliet-Will County Community Action Agency*, 847 F.2d 430 (7th Cir. 1985); *Palmiter v. Action, Inc.*, 733 F.2d 1244 (7th Cir. 1984) (community action agency); *Henry v. First Nat'l Bank of Clarksdale* (Head Start grantee), 595 F.2d 291 (5th Cir. 1979).

## What Options are Available for Insolvent CAAs?

### INSOLVENT CAA

- **Answer:** Options that exist for CAAs experiencing insolvency include:
  - State receivership
  - Declaring bankruptcy

The screenshot shows the CAPLAW Attorney Network website. The main header includes the CAPLAW logo and navigation links: HOME, ABOUT CAPLAW, RESOURCES, TRAININGS, ATTORNEY NETWORK, and CONTACT US. A featured section titled 'ATTORNEY NETWORK' describes the network's purpose. Below this, there is a section for 'Network Webinars & Conference Calls' with details for a webinar on September 23, 2017. A large green callout box in the foreground contains the following text:

**Closing the Doors: Strategies for CAAs Unable to Survive**  
 CAPLAW Webinar  
 May 27, 2015

Ardis Lichtblau, Esq.  
 John Morrison, Esq.  
 Casner & Edwards  
[lichtblau@casneredwards.com](mailto:lichtblau@casneredwards.com)  
[morrison@casneredwards.com](mailto:morrison@casneredwards.com)  
 517.436.9700

The CAPLAW logo is visible in the bottom left corner of the screenshot, and the number '25' is in the bottom right corner.

■ Closing the Doors: Strategies for CAAs Unable to Survive, <http://www.caplawn.org/resources/networks/attorneynetwork.html>

***This training 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 90ET0441-03.***

***Any opinion, findings, and 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.***

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