

COMMUNITY SERVICES BLOCK GRANT PROGRAM

Information Memorandum

**U.S. Department of Health and Human Services
Administration for Children and Families
Office of Community Services
Division of State Assistance
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447**

Transmittal No. 116

Date: December 4, 2009 (Revised April 2, 2010)

TO: State Community Services Block Grant Program (CSBG) Administrators,
U.S. Territory CSBG Program Administrators, State CSBG Financial Officers

SUBJECT: Guidance on Corrective Action, Termination or Reduction of For
CSBG Eligible Entities

PURPOSE: To ensure a consistent understanding of legal requirements and procedures
for termination or proportional reduction of funding to eligible entities
receiving CSBG funds

**RELATED
REFERENCES:** Community Services Block Grant Act (Public Law 105-285, the Community
Opportunities, Accountability, and Training and Educational Services Act of
1998); U.S. Code of Federal Regulations (45 CFR, Section 96.92).

This Information Memorandum (IM) provides background on statutory and regulatory requirements for terminating organizational eligibility or otherwise reducing the share of funding allocated to any CSBG-eligible entity. A step-by-step description is provided outlining necessary actions and considerations for terminating or reducing funds to a CSBG-eligible entity for cause. A sample tool is provided for State documentation of State actions. Although described as a series of discrete steps, some activities described in this IM can be implemented concurrently. States are encouraged to review internal monitoring, corrective action, and hearing procedures to assure compliance with the CSBG Act and applicable regulations cited in this memorandum. In addition, States are strongly encouraged to develop tools and procedures for timely action in circumstances requiring corrective action, reduction, or termination of funding to assure accountability and prevent waste, fraud, or abuse of CSBG funds.

Note: The IM is intended as a guidance tool to support State implementation of requirements of specific sections of the CSBG Act. Key sections of the CSBG Act are referenced throughout the IM. It is strongly recommended that the referenced sections of the CSBG Act be read along with this guidance in order to assure an understanding of the specific language of the statute. The CSBG Act may be obtained online at the OCS website.

Background

CSBG funds are awarded to States, U.S. Territories, and eligible Tribal governments and Tribal Organizations based on a statutorily defined formula outlined in the CSBG Act. States are required under the CSBG Act to distribute at least 90 percent of block grant funds to specific eligible entities within the State to support services focused on the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families in rural and urban areas to become fully self-sufficient.

States may retain up to ten percent of grant funds for administrative expenses (which may not exceed the greater of \$55,000 or five percent of the total State award) and other discretionary activities. For example, if a State receives a CSBG allocation of \$10 million, the State may retain up to \$1 million for discretionary activities, but may not use more than \$500,000 of these funds for administrative expenses.

Eligible entities are non-profit or public agencies that meet the requirements of Section 673(1)(A) and Section 676B of the CSBG Act. Nonprofit eligible entities must administer the CSBG program through a tripartite board, one-third of whom must be elected public officials or their representatives, not-less than one-third of whom must be democratically-selected representatives of low-income families and individuals in the neighborhoods served, and the remainder of whom are officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

Public eligible entities must also have a tripartite board, which must assure that not fewer than one-third of the members are democratically-selected representatives of low-income individuals and families in the neighborhood served, reside in the neighborhood served, and are able to participate actively in the development, planning, implementation, and evaluation of programs funded through the CSBG grants. States may also specify an alternate mechanism to assure decision-making and participation by low-income individuals in the development, planning, implementation, and evaluation of public entity programs funded under the CSBG grant.

The majority of eligible entities in the CSBG program are Community Action Agencies or public agencies with a longstanding involvement in the CSBG program. The list of eligible entities within a State is generally consistent from year-to-year. States may add or remove organizations from the list of eligible entities but must do so consistent with procedures outlined in the CSBG Act. States award funds to eligible entities based on State-defined formulas. However, any changes that adversely affect the proportional share of funding awarded to an eligible entity must be conducted in accordance with the CSBG Act.

Proportional Share Requirements for Eligible Entities

The CSBG Act requires that as a part of the annual submission of an application and plan for CSBG funding, States must assure that any eligible entity in the State that received funding in the previous fiscal year through a Community Services Block Grant will not have its funding terminated, or

reduced below the proportional share of funding the entity received in the previous fiscal year unless, after providing notice and an opportunity for a hearing on the record, the State determines that cause exists for such termination or such reduction. The CSBG Act also specifies that a State's determination is subject to Federal review by the Department of Health and Human Services. The time lines and procedures for Federal review are discussed later in this IM.

An eligible entity's "proportional share" refers to the amount of non-discretionary grant funds awarded to that entity compared to the amount of non-discretionary grant funds awarded to all eligible entities in the State. For example, if an eligible entity received \$1 million in non-discretionary grant funds in the prior year and the total of all non-discretionary grant funds awarded to all eligible entities in the State in the prior year was \$10 million, the eligible entity's proportional share would be ten percent.

Cause for Changes of Proportional Share to Eligible Entities

Under Section 676(c) of the CSBG Act, there are two major causes for changing the proportional share of funding awarded to eligible entities.

Statewide Redistribution of Funds - The first, and most common, cause for changing the proportional share of funding to eligible entities is not related to performance deficiencies of a specific organization. Under Section 676(c)(1)(A) of the CSBG Act, States may implement a Statewide redistribution of funds to respond to the results of the most recently available census data or other appropriate data, the designation of a new eligible entity, or severe economic dislocation. Statewide changes to the distribution formulas require a public hearing. The CSBG Act requires at least one legislative hearing every three years in conjunction with the development of the State plan and States may utilize this legislative hearing to consider changes to distribution formulas. States may also conduct special administrative hearings in response to specific demographic or economic changes, or the designation of a new eligible entity to address an unserved area.

Failure to Comply with State Plan, Standard or Requirement - The second cause for reducing funding or terminating eligibility for CSBG funding is related to deficiencies in the activities of an individual eligible entity. Under Sections 676(c)(1)(B) and 676(c)(2) of the CSBG Act, States may reduce funding or terminate eligibility for CSBG funding based on an eligible entity's failure to comply with the terms of an agreement or a State plan, or to meet a State requirement, to provide services, or to meet appropriate standards, goals, and other requirements established by the State, including performance objectives.

State Monitoring and Review

Section 678B(a) of the CSBG Act requires that States conduct monitoring visits and a full on-site review of each eligible entity at least once during each three-year period. The CSBG Act also requires that States conduct an on-site review of each newly-designated entity immediately after the completion of the first year in which the entity receives CSBG funds.

States are required under the regular CSBG program to conduct follow-up reviews including prompt return visits to eligible entities, and their programs, that fail to meet the goals, standards, and requirements established by the State. The CSBG Act also requires that States conduct other reviews as appropriate, including reviews of entities with programs that have had other Federal, State, or local grants other than assistance provided under CSBG terminated for cause.

It is an expectation of the Office of Community Services (OCS) that State CSBG Lead Agencies will conduct reviews when informed that an eligible entity has grant funds terminated for cause under a related program, such as Head Start, the Low Income Home Energy Assistance Program (LIHEAP), the Weatherization Assistance Program, or other Federal programs. State CSBG Lead Agencies should include questions in routine monitoring visits and contacts about whether an eligible entity has had grant funds terminated for cause in any Federal, State, or local programs other than CSBG. State CSBG Lead agencies are expected to review the cause of termination for other Federal programs to assure that comparable issues do not exist for CSBG funds.

It is also the expectation of OCS that State CSBG Lead Agencies will thoroughly investigate any instances of "whistleblower" complaints or allegations of fraud or abuse of CSBG funds or funds from closely-related programs. In any instances in which complaints or allegations of fraud are considered credible and raise significant "red flags," OCS should be informed of findings and may assist with additional compliance review or referral to appropriate investigative authorities.

Note: Allegations of fraud or abuse may also be referred directly to the HHS hotline maintained by the Office of the Inspector General using the following contact information: 1-800-HHS-TIPS (1-800-447-8477) <http://oig.hhs.gov/fraud/hotline/>

Determination of Performance Deficiencies or Failure to Comply with State Requirement

Based on routine State monitoring, reviews, or investigations related to specific complaints or allegations, the State CSBG office may determine that an eligible entity has failed to comply with the terms of an agreement or a State plan, or to meet a State requirement. The State's determination may be based on the agency's failure to provide CSBG services, or to meet appropriate standards, goals, and other requirements established by the State, including performance objectives. The State should document the basis for such determination and the specific deficiency or deficiencies that must be corrected.

Communication of Deficiencies and Corrective Action Requirements

When a State CSBG Lead Agency has determined that an eligible entity has a specific deficiency, the State must communicate the deficiency to the eligible entity and require the eligible entity to correct the deficiency. To establish compliance with the requirements of the CSBG Act, records of correspondence or other communications related to an enforcement action against an eligible entity should be maintained.

Technical Assistance to Correct Deficiencies

The State must offer training and technical assistance, if appropriate, to help an eligible entity correct identified deficiencies or failures to meet State requirements. Technical assistance may be offered concurrently with the notification of a deficiency or deficiencies and should focus on the specific issues of the eligible entity to the extent possible.

The CSBG Act requires that the State prepare and submit to the Secretary a report describing the training and technical assistance offered. Alternately, if the State determines that training and technical assistance are not appropriate, the State must prepare and submit a report to the Secretary stating the reasons that technical assistance is not appropriate.

Some examples of situations in which a State may determine that technical assistance is not appropriate may include, but are not limited, to the following:

- A deficiency for which the eligible entity has the expertise and skills available within the organization to make corrective actions without assistance;
- A deficiency for which the State has previously provided technical assistance and the eligible entity has failed to institute corrective actions;
- Multiple, widespread, and/or repeated deficiencies that cannot feasibly be addressed through technical assistance;
- A deficiency that involves evidence of fraudulent reporting or use of funds, or other evidence of criminal wrongdoing.

Quality Improvement Plan

Section 678C(a)(4) of the CSBG Act allows for State discretion in the implementation of a quality improvement plan by an eligible entity to correct an identified deficiency or deficiencies. The Act specifies that States must consider the seriousness of the deficiency and the time reasonably required to correct the deficiency.

Examples of instances in which a State may exercise discretion on whether a quality improvement plan is appropriate or necessary may include, but are not limited to the following:

- A deficiency for which an eligible entity has previously instituted a corrective action plan and has repeated findings;
- A deficiency that involves evidence of fraudulent reporting or use of funds, or other evidence of criminal wrongdoing and therefore presents a risk requiring immediate action.

If a State determines that an eligible entity should be allowed to develop and implement a quality improvement plan, the CSBG Act requires the State to allow the eligible entity to develop and implement their plan within 60 days after being informed of a deficiency. States are encouraged to review quality improvement plans and issue decisions on whether the plans are approved as quickly as possible within the 30-day time frame. The quality improvement plan should identify actions that will be taken to correct the deficiency within a reasonable period of time as determined by the State. States may exercise discretion based on the specific circumstances.

If a quality improvement plan is allowed, the State must review and issue a decision on whether to approve the plan not later than 30 days after receiving the plan from an eligible entity. If the State does not accept the plan, the State must specify the reasons why the proposed plan cannot be approved.

Opportunity for a Hearing

A key statutory requirement for funding termination or reductions, as outlined in Section 678C(a)(5) of the CSBG Act is that States must provide adequate notice and opportunity for a hearing prior to terminating organizational eligibility for CSBG funding or otherwise reducing the proportional share of funding to an entity for cause. The CSBG Act does not include any State or Federal authority to waive the requirement of an opportunity for a hearing. Hearing procedures should be consistent with any applicable State policies, rules or statutory requirements.

Pursuant to Section 678C(b) of the CSBG Act, OCS shall, upon request, review any final State determination to terminate or reduce funding of an eligible entity. In order to conduct such review, the requestor and State should submit to OCS all necessary documentation relating to the determination, including, for example, transcripts of the hearing and any documentation used in reaching the State's decision. For the purposes of any Federal review, it is suggested that States provide the following information to OCS:

- A copy of the notice provided in advance of the hearing that includes the date of the notice and the date of the hearing;
- The name of the presiding hearing official;
- The name(s) of official(s) or individual(s) responsible for determination of hearing findings or decisions (e.g. the CSBG State Official);
- The names of the individuals participating in the hearing; and
- Documentation of evidence presented at the hearing.

State Proceedings to Terminate or Reduce Funding

After providing an opportunity for a hearing, if the State finds cause for termination or reduction in funding, the State may initiate proceedings to terminate the designation of or reduce the funding to an eligible entity unless the entity corrects the deficiency. If a State CSBG Lead Agency determines that funding will be reduced or that eligibility for CSBG funds will be terminated, the State must notify both the eligible entity and the OCS of the decision.

Opportunity for Federal Review

A Federal review of the State decision to reduce or terminate funding may be initiated through a request from the affected organization. In accordance with 45 CFR §96.92, an eligible entity has 30 days following notification by the State of its final decision to request a review by the Secretary of the Department of Health and Human Services (HHS).

If a request for a review has been made, the State may not discontinue present or future funding until the Department responds to the request. Requests for Federal review must be received by OCS within 30 days of notification of a State decision. If no request for review is made within the 30-day limit, the State's decision will be effective at the expiration of the time.

Section 678C(b) of the CSBG Act specifies that a review by the Department of Health and Human Services shall be completed no later than 90 days after the Department receives from the State all necessary documentation relating to the determination to terminate the designation or reduce the funding. If the review is not completed within 90 days, the Act specifies that the determination of the State shall become final at the end of the 90th day.

Expedited Federal Review and Technical Assistance

While the CSBG Act specifies that a Federal review of State documentation for terminating the designation or reducing funding to an eligible entity must be completed within 90 days, an expedited Federal review may be possible in some instances. This is particularly true in circumstances in which the State has consulted closely with OCS before and during proceedings and has provided documentation at each step of the process as described above. In some instances, particularly those involving potential waste, fraud and abuse, an on-site Federal review may be arranged to expedite the review of documentation and assist with CSBG procedures and requirements. A documentation tool outlining information required for Federal review is included as an attachment to this guidance.

Address to Request Federal Review

Information on how to request a Federal review should be provided to all eligible entities that are subject to a termination or reduction of funding hearing and decision. To ensure that requests are received in time for Federal review, it is strongly recommended that requests be sent via overnight mail with a signed certification of receipt. Requests for review must be sent to the attention of the Division of State Assistance in the Office of Community Services at the following address:

U.S. Department of Health and Human Services
Administration for Children and Families
Office of Community Services
Division of State Assistance
Attention: Community Services Block Grant Program
370 L'Enfant Promenade S.W., 5th Floor West
Washington, D.C. 20447

Overnight mail submissions may be sent directly to the assigned Office of Community Services' CSBG Program Services - Regional Contacts to provide notification that a request has been submitted. This contact information is available on the CSBG program website.

Potential for Direct Federal Assistance to an Eligible Entity

Section 678C(c) of the CSBG Act specifies that whenever a State terminates or reduces the funding of an eligible entity prior to the completion of a required State hearing and other statutorily-required considerations and procedures as outlined in this document, the Department of Health and Human Services is authorized to provide financial assistance directly to the eligible entity until the State violation of the CSBG Act requirements is corrected. In such instances, the State's CSBG allocation under the block grant would be reduced by the amount provided to the eligible entity.

State Award of Funds to a New Eligible Entity

In the event that the State terminates the designation of an organization as an eligible entity, or otherwise reduces funds, any resulting funding may be awarded only to an organization that is an eligible entity for CSBG funds. Section 676A of the CSBG Act outlines procedures for designation and re-designation of eligible entities in un-served areas. In accordance with the CSBG Act, a State may solicit applications and designate as an eligible entity either:

- A private nonprofit organization that is geographically located in the un-served area that is capable of providing a broad range of services designed to eliminate poverty and foster self-sufficiency and meets the requirements of the CSBG Act; or
- A private nonprofit eligible entity that is geographically located in an area contiguous to or within reasonable proximity of the un-served area and is already providing related services in the un-served area.

States must grant the designation to an organization of demonstrated effectiveness in meeting the goals of the CSBG Act, and may give priority to an eligible entity in a contiguous area that is already providing related services in the un-served area. If no private, nonprofit organization is identified or determined to be qualified as an eligible entity to serve the area, the State may designate an appropriate political subdivision of the State to serve as an eligible entity for the area.

Any nonprofit or public agency receiving CSBG funds must meet the tripartite board requirements specified in Section 676B of the CSBG Act. The process of soliciting applications to select a new eligible entity may take place during the period in which the Department of Health and Human Services is reviewing a State decision to terminate an organization's eligibility for CSBG funds. However, the State may not award the funds to a new eligible entity until the Department confirms the State's finding for cause or the 90-day period for Federal review has passed.

Additional Options to Protect Federal Funds

Although the CSBG Act provides for a specific process for terminating an organization's status as an eligible entity or otherwise reducing an entity's proportional share of funding, States have considerable additional authority to assure appropriate expenditures of Federal funds. Where State laws and procedures permit, States may consider use of cost-reimbursement funding approaches to assure a detailed review of actual expenditures and State approval prior to reimbursement. In some instances, particularly when substantial risks have been identified, States may consider cost reimbursement strategies for some or all funds during a period of corrective action or implementation of a Quality Improvement Plan. While cost reimbursement procedures may be used to assure appropriate expenditure of funds, payment to eligible entities must be made within a reasonable period of time after submission of the reimbursement request and necessary documentation. The Office of Community Services encourages consideration of all applicable State laws and procedures in circumstances in which credible allegations of waste, fraud, or abuse of funds are under formal investigation, but not yet conclusively documented. This may include circumstances in which the office has received whistle-blower complaints, referrals from a State or Federal investigative office, or evidence of misuse of funds in a related Federal or State program.

Conclusion

The appropriate use of CSBG funds is a shared responsibility between the Office of Community Services, State CSBG Lead Agencies, and eligible entities at the community level. The CSBG Act provides protections and responsibilities for organizations at each level. While the procedures for terminating eligibility or reducing funding for cause related to a deficiency are expected to apply to only a small percentage of eligible entities, all State and Federal officials involved with the CSBG program must be familiar with required procedures. It is strongly recommended that State CSBG Lead Agencies work closely with the Office of Community Services at each stage of the process to assure appropriate documentation of the process. The Office of Community Services will work closely with State CSBG Lead Agencies to assure due process for any affected organizations, to assure that procedures are executed efficiently and correctly in instances where warranted to prevent waste, fraud and abuse, and to promote the appropriate and effective use of funds to alleviate the causes and conditions of poverty in communities nationwide.

In the supplemental appropriation for the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), States were instructed to award 99% of appropriated funds to eligible entities.

Procedures for designating a new eligible entity are outlined in Section 676A of the CSBG Act.

_____/s/_____
Yolanda J. Butler, Ph.D.
Acting Director
Office of Community Services

Attachment:

Sample Documentation Tool for Corrective Actions, Reductions, or Terminations of CSBG Funding For Cause

**ATTACHMENT Sample Documentation Tool
for Corrective Actions, Reductions, or
Terminations of CSBG Funding For Cause**

The table provided below may be used by State CSBG Lead Agencies to assure appropriate documentation at each stage of the required process for corrective action, termination, or reduction of funding for organizational deficiencies. Some steps may be instituted concurrently and documentation (e.g. reports or correspondence) may include multiple steps. For example, a State may notify an eligible entity of deficiencies, offer appropriate technical assistance, and require a plan of correction within a single item of correspondence. The statutory requirements are described here as a series of discrete steps in order to assure that all key requirements are documented. Highlighted notes provided below are intended as a guidance regarding appropriate documentation and may be removed in an actual working document.

Community Services Block Grant (CSBG) Legislative Requirement – Section 678C

**Activities Undertaken by the State with respect to the Eligible Entity in Compliance with
Section 678C**

Documentation in the Proceedings

Step 1: State conducts review pursuant to section 678B.

§678C(a), 42 U.S.C. §9915(a)

Describe the review dates, procedures, key participants.

Cite monitoring reports, working papers, or key correspondence.

Step 2: State determines, on the basis of a final decision in a review pursuant to section 678B, that an eligible entity fails to comply with the terms of an agreement, or the State plan, to provide services under this subtitle or to meet appropriate standards, goals, and other requirements established by the State (including performance objectives).

§678C(a), 42 U.S.C. §9915(a)

Describe the basis for State determination.

Cite monitoring reports, working papers, and key correspondence relevant to State determination.

Step 3: State informs the entity of the deficiency to be corrected.

§678C(a)(1), 42 U.S.C. §9915(a)(1)

Describe the dates and method of notification.

Cite relevant correspondence, meeting notes and other documentation of communication.

Step 4: State requires the entity to correct the deficiency.

§678C(a)(2), 42 U.S.C. §9915(a)(2)

Describe communication of State requirements, any associated deadlines or documentation requirements for eligible entities.

Cite relevant correspondence, meeting notes and other documentation of communication.

Step 5: State determines whether training and technical assistance are appropriate.

§678C(a)(3)(B), 42 U.S.C. §9915(a)(3)(B)

Describe the rationale for determining whether training and technical assistance are appropriate to correct the deficiency. If training and technical assistance are not appropriate describe the basis for this determination.

Cite meeting notes and other documentation of communication.

Step 6 (if appropriate): State offers training and technical assistance, if appropriate, to help correct the deficiency.

§678C(a)(3)(A), 42 U.S.C. §9915(a)(3)(A)

If applicable, describe the document the State's offer of training and technical assistance offered to correct the deficiency.

Cite relevant correspondence, meeting notes and other documentation of communication.

Step 7: State either (A) prepares and submits to the Secretary a report describing the training and technical assistance offered; or (B) *if the State determines that such training and technical assistance are not appropriate, prepares and submits to the Secretary a report stating the reasons for the determination.*

§678C(a)(3), 42 U.S.C. §9915(a)(3)

Provide a report documenting either:

- *the specific training and technical assistance offered; or*
- *the State rationale for not providing technical assistance*

If training and technical assistance is offered, document whether the offer was accepted, when training and/or technical assistance was provided, and whether it was successful in addressing the deficiency.

Note: In instances in which training and/or technical assistance are provided and the eligible entity successfully addresses the deficiency, the State should maintain documentation and may provide to the Office of Community Services for future reference.

Cite report submitted to HHS.

Step 8 (Discretionary): At the discretion of the State (taking into account the seriousness of the deficiency and the time reasonably required to correct the deficiency), the State allows the entity to develop and implement, within 60 days after being informed of the deficiency, a quality improvement plan to correct such deficiency within a reasonable period of time, as determined by the State; and not later than 30 days after receiving from an eligible entity a proposed quality improvement plan, either approve such proposed plan or specify the reasons why the proposed plan cannot be approved.

§678C(a)(4), 42 U.S.C. §9915(a)(4)

Maintain documentation of any quality improvement plans, State deadlines to correct identified deficiencies, whether or not the State approves the quality improvement plan.

Note: In instances in which a quality improvement plan is implemented and the deficiency is corrected, the State should maintain documentation and may provide to the Office of Community Services for future reference.

Cite Quality Improvement Plans – If Applicable

Step 9: State provides adequate notice and an opportunity for a hearing.

§678C(a)(5), 42 U.S.C. §9915(a)(5)

Describe, communication to eligible entity regarding the opportunity for a hearing, date of communication, and any applicable State policies, rules, or procedures.

If applicable, describe conduct of hearing to present and consider evidence relevant to State determination consistent.

If applicable, describe outcomes or findings of hearing.

Cite correspondence or public communication regarding the date and procedures for hearing.

If applicable, cite documentation of the hearing, including official minutes or record of the presiding hearing official, official(s) or individual(s) responsible for determination of hearing findings or decisions; a list of individuals participating in the hearing; evidence presented at the hearing; and any outcomes or findings.

Step 10: State initiates proceedings to terminate the designation of or reduce the funding under this subtitle of the eligible entity unless the entity corrects the deficiency.

§678C(a)(5), 42 U.S.C. §9915(a)(5)

Notification to eligible entity and HHS of State decision to terminate or reduce funding.

Upon request, OCS review of State determination.

Designation or redesignation of eligible entity to serve un-served areas in accordance with CBSG Act.

Cite official correspondence to eligible entity and HHS.

If applicable, cite OCS approval or disapproval of State decision.

- 1 In the supplemental appropriation for the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), States were instructed to award 99% of appropriated funds to eligible entities.
- 2 Procedures for designating a new eligible entity are outlined in Section 676A of the CSBG Act.