

State of California
DEPARTMENT OF COMMUNITY SERVICES AND DEVELOPMENT

INITIAL STATEMENT OF REASONS

**Proposed Amendment(s)/Adoption to the Regulation for
COMMUNITY SERVICES BLOCK GRANT BOARD REQUIREMENTS**

INTRODUCTION

The Department of Community Services and Development (CSD) is the designated state agency for administering California's Community Services Block Grant (CSBG) funding.

Congress adopted the CSBG Act (Title 42 of the United States Code Sections 9901 to 9926) to provide assistance to State and local communities through community action agencies and other neighborhood-based organizations to reduce poverty, revitalize low-income communities, and empower low-income families and communities to become fully self-sufficient. Section 9902 of the CSBG Act states an entity eligible for funding under this act must have a tripartite board or other authorized mechanism. Section 9910 of the CSBG Act sets the requirements for the composition of the tripartite boards, and it does not set any minimum or maximum limits for the board's size.

California Government Code Sections 12725 to 12790 codified the CSBG Program in California. Government Code Section 12735 subsection (c) established CSD as the administering agency for the CSBG Program and Section 12738 vested CSD authority to promulgate regulations, make grants, and enter into contracts to carry out the responsibilities of the CSBG Program. Section 12750 identifies community action agencies (CAAs) as local administrators of the CSBG Program. Section 12751 sets the requirements for the agencies' tripartite board, including the requirement that one-third of members of the board be elected officials who currently hold office, or their representatives, at least one-third of members of the board represent the low-income residents of the area, and the remainder of the board represent major groups and interests in the community. Section 12751 does not establish any minimum or maximum board size.

Through Title 22 of the California Code of Regulations Sections 100601 to 100795, CSD established regulations to carry out the responsibilities of the CSBG Program, in accordance with Government Code Section 12750. Section 100605 subsection (a)(3) of the California Code of Regulations currently requires each CAA's tripartite board to have

at least twelve, and at most thirty, members. CAAs throughout California are currently struggling to maintain the minimum tripartite board size.

Section 100605 also currently uses the undefined term “poor” throughout, and uses the terms “community action,” “community action agency,” and “community action partnership” interchangeably. Subsection (a)(2) contains language that is redundant of the language in California Government Code Section 12752.1, and Title 42 of United States Code Section 9910. Under the current regulation, CAAs have no obligation to inform CSD of the current tripartite board roster, nor are they required to inform CSD of any changes to the board’s composition. Some CAAs have experienced board vacancies lasting multiple years and it can be difficult for CSD to act on prolonged board vacancies, as there is no clear standard for how long CAAs may take to fill vacancies. The cited authority of Section 100605 also does not cite Government Code Section 12087(l) which authorizes CSD to promulgate regulations to ensure that federal state standards of programmatic performance and fiscal accountability are met.

TECHNICAL, THEORETICAL OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON:

CSD relied upon the “Community Service Block Grant California State Assessment On-Site Review (June 23-27, 2014)” from the United States Department of Health and Human Services Office of Community Services.

SPECIFIC PURPOSE AND RATIONALE FOR EACH ADOPTION, AMENDMENT, OR REPEAL

The proposed amendments summarized below intend to clarify language in Title 22 of the California Code of Regulations Section 100605, create an enforcement mechanism for CAA compliance, and reduce the administrative burden on CAAs by reducing their mandatory tripartite board size from a minimum of 12 members to a minimum of nine members.

Nonsubstantive Changes

The proposed regulatory text includes nonsubstantive changes throughout to improve clarity, accuracy and consistency with formatting conventions. These changes include noting community action agency is abbreviated to “CAA”, properly identifying subsections, spelling out numbers nine and lower, and using numeric digits for numbers 10 and higher, to conform to Office of Administrative Law standards.

Additional Nonsubstantive changes include:

- Replacing the term “poor,” which is an undefined term, with “low-income,” which is a term that both CSD and local agencies use and is consistent with the term’s use in federal and state statute.
- Replacing the terms “community action board,” and “board” with CSBG board, to unify term use and clarify the board's connection to CSBG.

These revisions improve clarity, eliminate potential confusion, and promote consistency in regulatory terminology. Furthermore, these revisions do not materially alter any requirement, right, responsibility, condition, or prescription in the regulations.

Section 100605(a)(2)

Purpose

The proposed regulation action removes section 100605(a)(2) in its entirety. The language in subsection (a)(2) is already included in California Government Code Section 12752.1(a), and Title 42 of United States Code Section 9910(b). This language does not provide any clarity, is not mandated by law, and therefore is duplicative.

Rationale for Necessity

The proposed removal of subsection 100605(a)(2) is necessary to comply with the Government Code Sections 11349 and 11349.1, which require that regulations not serve the same purpose as a state or federal statute or another regulation. Subsection 100605(a)(2), requiring public CAAs to have tripartite boards, has the same purpose of California Government Code Section 12752.1(a), and Title 42 of United States Code Section 9910(b), and it does not provide any further clarity to the issue. Subsection 100605(a)(2) is therefore duplicative and needs to be removed to comply with OAL and Government Code standards.

Section 100605(a)(3)

Purpose

The proposed regulation action amends section 100605(a)(3) to change “12” to “nine” in the context of the minimum number of members that a CSBG board must have. This amendment will reduce the administrative expenses, in the form of recruitment burdens, advertising open positions, and scheduling difficulties, associated with a CAA meeting the minimum CSBG board requirements, while complying with state and federal requirements.

Rationale for Necessity

The amendment is necessary to allow CAAs to reasonably staff their CSBG Boards, while remaining compliant with state and federal statutes. California Government Code Section 12751 and Title 42 of the United States Code Section 9910 require that a CAA’s

board's composition be one third elected public officials or their representatives, at least one third should be members that represent low-income individuals and families, and the remainder should be officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served. The statutory requirement that the board have one third elected public officials, not "at most" or "at least," means that the board size must be divisible by three. The current and proposed language for Title 22 of the California Code of Regulations Section 100605 subsection (a)(3) reflects this requirement when it states, "[t]he membership of the board shall be divisible by 3 in order to implement the tripartite requirement as stated in Government Code Section 12751." Currently, Section 100605(a)(3) requires that a CSBG Board have at least 12 members. As state and federal statutes do not require CSBG Boards to have 12 board members, a nine person CSBG Board would still meet the requirements of California Government Code Section 12751 and Title 42 of the United States Code Section 9910.

At present, 24 out of 55 CSBG Boards are struggling to maintain a board size that complies with the current regulation. CAAs are expending CSBG administrative resources and staff time to search for new board members, train new board members, and maintain board members, to comply with the current regulation. CAAs have found that their CSBG Boards work more efficiently with small sizes. The reduction from the 12-board member to nine-board member minimum is necessary for CAAs to properly effectuate the purpose of the CSBG statute "to reduce poverty, revitalize low-income communities, and empower low-income families and communities to become fully self-sufficient." The present regulation is forcing CAAs to allocate funds designated for low-income communities and families, to remedy the unnecessary administrative task of maintaining a 12-person CSBG board.

It is necessary for the proposed regulations to have a minimum of nine members, and no smaller. Since CSBG Boards need to have a board size that is divisible by three, then any board smaller than nine members would need to be three or six members. CSD found that it would not be proper to have three or six member boards, because it would result in boards having only one or two representatives from the low-income sector. California Government Code Section 12751 and 12756(b) and Title 42 of United States Code Section 9910, encourage meaningful participation from low-income members in the tripartite board. Allowing only one or two members of the low-income community to be present on CSBG Boards diminishes their voices. CSD has found that a nine-person board properly balances reducing the administrative burden on CAAs while still allowing some diversity in low-income representatives on the board.

The proposed reduction in CSBG Board member size is therefore necessary to allow CAAs to effectively and properly allocate program funds and time to low-income

communities, while remaining in compliance with California Government Code Section 12751 and Title 42 of the United States Code Section 9910.

Section 100605(e)

Purpose

The proposed regulation action amends Section 100605 to include a subsection (e), which requires CAAs to annually send CSD a CSBG board roster that would identify members of the CSBG Board, provide basic information about the board members (including which subsection of Gov. Code Section 12751 they represent), and identify any vacant spaces on the board. Subsection (e) would also require CAAs to send CSD an updated CSBG board roster within 30 calendar days of any changes to the board's composition. This addition to Section 100605 would provide CSD a regulatory method to monitor CAAs' compliance with Section 100605, along with California Government Code Section 12751 and Title 42 of the United States Code Section 9910.

Rationale for Necessity

The proposed addition to Section 100605 is necessary to allow CSD to monitor CAA compliance with federal and state tripartite board requirements. In 2018 the Department of Health and Human Services' Office of Community Services (OCS) released a State Assessment of the CSBG Program in California, based on a 2014 On-Site Review. In this review OCS noted a CSBG subrecipient that had a long-standing issue of noncompliance with tripartite board requirements. OCS recommended CSD create definitive time frames of corrective actions for this noncompliance, and CSD agreed to establish these time frames.

The proposed regulations (Section 100605(f)) establish these timeframes, but for CSD to properly and timely monitor CAA compliance and implement any corrective actions, CAAs must be required to provide prompt and accurate updates on CSBG Board composition. Without a method of staying informed of CSBG Board composition, CSD would not be aware of CAAs that are out of compliance with State and Federal standards until the next monitoring visit, and thus CSD would not be able to promptly implement corrective actions. Subsection (e) gives CSD a method of staying informed, while only requiring that CAAs provide the minimum amount of data that is necessary.

Section 100605(f)

Purpose

The proposed regulation action amends Section 100605 to include subsection (f), which creates a timeline for CAAs to fill any CSBG Board vacancies. Subsection (f) would require CAAs to make reasonable efforts to fill board vacancies within 90 calendar days

of a board vacancy and prohibit that a board position remain vacant for one year. This language would create a reasonable standard for CAAs to follow.

Rationale for Necessity

The proposed addition to Section 100605 is necessary for CSD and CAAs to have standardized time periods to comply with the requirements of Section 100605, along with California Government Code Section 12751 and Title 42 of United States Code Section 9910. In 2018 the Department of Health and Human Services' OCS released a State Assessment of the CSBG Program in California, based on a 2014 On-Site Review. In this review OCS noted an CSBG subrecipient that had a long-standing issue with noncompliance with tripartite board requirements. OCS recommended CSD create definitive time frames of corrective actions for this noncompliance, and CSD agreed to establish these time frames.

The proposed addition of subsection (f) establishes the timeframes for how quickly CAAs would need to fill board vacancies. The provided timelines give CAAs the opportunity to fill board vacancies, without risk of not complying with CSBG standards, while also providing CSD structured deadlines for CAA compliance enforcement. The provided timelines are necessary for CSD to effectuate the requirements set in State and Federal statutes and comply with OCS's recommendation, while granting CAAs reasonable time to fill vacancies.

Authority Cited

Purpose

The proposed regulation action amends Section 100605 to include Government Code Section 12087(I) as an Authority Cited and Title 42 of United States Code Section 9910 as a Reference citation. The inclusion of subsection 12087(I) will properly identify CSD's authority to "promulgate regulations [...] necessary or convenient for the exercise of its responsibilities, powers and functions, and to ensure that federal and state standards of programmatic performance and fiscal accountability are met." (Cal. Gov. Code Section 12087(I)). Similarly, the inclusion of Title 42 of United States Code Section 9910 will properly identify the statute that Section 100605 is interpreting and implementing. These changes reflect a statutory review and correction.

Rationale for Necessity

The proposed amendment is necessary to require that only the appropriate legal authorities and supporting statutes are cited for regulatory accuracy, according to California Government Codes Sections 11349 and 11349.1.

Anticipated Benefits

Benefits of the proposed regulation modifications include increasing efficiency and reducing administrative burden on local CAAs, increasing clarity in the regulation, and increasing communication between local community action agencies and CSD.

Currently, CAAs struggle to recruit, manage, and maintain a 12-person board. This is especially true for CAAs in less populated service areas that consistently struggle to recruit board members. Reducing the minimum board member requirements would increase CAA compliance and reduce the existing administrative burden.

The proposed modification would provide clarity for both CAAs and CSD. The modified wording would create consistent terminology. The regulation's standard for informing CSD of the composition of the CAAs' boards and any changes to them, will allow CSD to remain up to date on each CAAs' compliance with Section 100605. The establishment of a clear standard for time necessary to fill vacancies will help to ensure CAAs' compliance and allow CSD to more easily act when seats are left vacant.

Economic Impact Assessment/Analysis

In accordance with Government Code section 11346.3(b)(1)(A) through (D), the Department has made the following assessments regarding the proposed regulations:

Creation or Elimination of Jobs within the State of California

CSD has determined that the regulatory proposals regarding board membership requirements would not result in the creation or elimination of jobs in the State of California. There will be a reduction in board members for CAA boards, but these are non-paying positions and CAAs are not required to reduce their board membership to nine. At most, the proposed regulation may result in the reduction of three non-paid board member positions for some CAAs.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California

CSD has determined that the proposed regulation changes would not create or eliminate any businesses within California. CSBG is federally funded, and the amount of the grant award to California, and its subrecipients, is formula based. The proposed regulations will not impact the formula, or the award amount. The proposed changes clarify procedures and reduce CSBG Board composition requirements. There is no reason to believe that the changes in the CAA boards' compositions would result in any changes to CSBG grant amounts and therefore there is no reason to believe that the regulation would result in the creation or elimination of businesses.

Expansion of Businesses Currently Doing Business within the State of California

CSD has determined that the proposed regulation changes would not result in the expansion of businesses currently doing business in California. CSBG is federally funded, and the amount of the grant award to California, and its subrecipients, is formula based. The proposed regulations will not impact the formula, or the award amount, so there is no reason to believe that the proposed changes will result in expansion of businesses currently doing business within California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The Department anticipates that this regulatory action would contribute to the health and welfare of California residents receiving CSBG services. Ensuring compliant board governance for CAAs and reducing burden on staff will support CAAs in accomplishing their CSBG service goals.

The proposed regulations will not affect the health and welfare of California residents in general and will not affect worker safety or impact the state's environment.

REASONABLE ALTERNATIVES

Government Code section 11346.2, subdivision (b)(4) requires the Department to consider and evaluate reasonable alternatives to the proposed regulatory action and provide reasons for rejecting those alternatives.

CSD has considered implementing performance standards for CSBG board composition, in which there is no minimum board size, and CAAs were given guidance to meet the objective of having board members in the ratio identified in California Government Code Section 12751 and Title 42 of United States Code Section 9910. CSD found this standard unfeasible because if there is no set minimum board size then CAAs could have three or six member boards. CSD found that a board of this size would not be proper because it would result in boards having only one or two representatives from the low-income sector. California Government Code Section 12751 and 12756(b) and Title 42 of United States Code Section 9910, encourage meaningful participation from low-income members in the tripartite board. Because meaningful representation is important for these boards, it is necessary for CSD to prescribe that CAAs have a minimum board size.

CSD has considered the alternative of implementing a performance standard for CAAs to fill CSBG Board vacancy positions and inform CSD of CSBG Board composition. CSD rejected this alternative based on CSD's obligation, under California Government Code Section 12087(l), to ensure that federal and programmatic performance is met. Currently, in the absence of any prescriptive standards, CSD received a finding from

OCS stating the Department did not have established time frames for board vacancies. CSD has concluded that a prescriptive standard of setting clear timelines to fill board vacancies, and inform CSD of board composition, is necessary to assure that CSD and CAAs are within program standards.

Small Business Alternative

The Department has not identified any reasonable alternatives that would lessen any adverse impact on small business as no impacts to small businesses are anticipated.

EVIDENCE SUPPORTING FINDINGS OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has determined that there is no significant statewide adverse economic impact directly affecting businesses because the regulations apply to rules surrounding a federal grant, CSBG, with no state or local matching of administrative funds. The grant award from these funds to the State and subsequently subrecipients, is formula based. The proposed regulation would not impact that formula or the award amounts. The proposed regulation therefore would not impact the CSBG funding amount that businesses in the State of California would receive.