



**Welcome to the
CPB Compliance: Basic Preparedness
and Recent OIG Audit Activity Webinar**

Thank you for joining us.

The presentation will begin shortly.
Please make sure that the volume on your computer's
speakers is turned up.



CPB Compliance: Basic Preparedness and Recent OIG Audit Activity

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Recent Developments

- CPB adopted new Non-Compliance Policy in January 2017
- CPB issued new “Communications Act Compliance” document in May 2017
- CPB has new FY 2018 General Provisions
- CPB changed the certification form starting FY 2017

So, It's All New!

Common Criticisms

Bad News:

- **Non-compliance is still a problem**
 - Last September, the OIG 10 year summary of OIG compliance audit findings:
 - 47 of the 69 licensees (68%) did not meet one or more of the Act's requirements. Specifically, the licensees did not:
 - give seven-day advance notice of meetings (14 of 49 licensees, 29%)
 - make financial records available to the public (32 of 69 licensees, 46%)
 - conduct CAB meetings (7 of 39 licensees, 18%)
 - make the CPB EEO information available to the public (11 of 68 licensees, 16%)
 - no findings on donor list and political activities requirements
 - In 2015, OIG Report on 10 radio stations:
 - 80% noncompliance with Communications Act requirements (open meetings, open financial records, and CABs)
 - 90% noncompliance with web posting (transparency) requirement in the General Provisions
 - 40% noncompliance with discrete accounting requirement
- **Return of Funds**
 - Public Media Platform Report: Questioned costs of \$2.4 million in CPB grant funds.
 - CPB determination reduces the grant amount by \$503,766
 - WLRN Report: Stations misallocated nearly \$9.5 million in radio underwriting revenue as television underwriting revenue
 - OIG recommended return of over \$1.1 million in television CSG funds plus a forfeiture

Common Criticisms

Bad News (Trends in Audits):

- Basic non compliance
- Lack of documentation (both compliance documentation and written policies)
- Questions about costs charged to CPB project grants
 - Inappropriate charges
 - Changes to budgets
 - Lack of documentation
- Questions about in-kind trade contributions
 - Documentation
 - Valuation
- Miscalculation of NFFS
 - Pass through Federal funds included in grants reported as NFFS
 - Indirect administrative support for institutional entities
 - CPB advice declared “...not clear enough”

The (Kind of) Upside

Good News:

- Three clean audits in the past few years!
 - Oregon Public Broadcasting
 - National Black Programming Consortia
 - Nashville Public Television

Uncertain News:

- Cascade Public Media “substantially complied” with Act’s requirements



What is Compliance?

Compliance is not checking a box that you do a list of things

Compliance is also more than doing the things you are required to do

Compliance is the adoption, institutionalization, regularization, and documentation of processes and procedures that fulfill and prove adherence to all requirements

Communications Act Requirements

- Open Meetings (47 U.S.C. §396(k)(4))
- Open Financial Records (47 U.S.C. §396(k)(5))
- Community Advisory Boards (47 U.S.C §396(k)(8))
- Equal Employment Opportunities (47 U.S.C. §396(k)(11))
- Donor List Practices & Political Activities (47 U.S.C. §396(k)(12))

Open Meetings - The Law

Section 396(k)(4) of the Communications Act states:

Funds may not be distributed pursuant to this subsection to the Public Broadcasting Service or National Public Radio (or any successor organization), or to the licensee or permittee of any public broadcast station, unless the governing body of any such organization, any committee of such governing body, or any advisory body of any such organization, holds open meetings preceded by reasonable notice to the public. All persons shall be permitted to attend any meeting of the board, or of any such committee or body, and no person shall be required, as a condition to attendance at any such meeting, to register such person's name or to provide any other information. Nothing contained in this paragraph shall be construed to prevent any such board, committee, or body from holding closed sessions to consider matters relating to individual employees, proprietary information, litigation and other matters requiring the confidential advice of counsel, commercial or financial information obtained from a person on a privileged or confidential basis, or the purchase of property or services whenever the premature exposure of such purchase would compromise the business interests of any such organization. If any such meeting is closed pursuant to the provisions of this paragraph, the organization involved shall thereafter (within a reasonable period of time) make available to the public a written statement containing an explanation of the reasons for closing the meeting.

Open Meetings - IG Findings

- Meetings weren't open to the public
- Lack of public notice
- No written explanation

Open Meetings - Key Takeaways

- Requirement is broad: governing board, committees of governing board; and advisory bodies
- Anonymous Observation
- CPB Defines Meeting as (a) the presence of a quorum; and (b) deliberations that result in the joint conduct or disposition of business relating to public broadcasting
- CPB says deliberations do not require any formal action or vote. Any discussion of public broadcasting issues that may influence the opinions of members makes it a meeting.
- Applies to electronic meetings as well

Open Meetings - Key Takeaways

- Meetings must be preceded by reasonable notice. Stations may satisfy the open meeting requirement by:
 - Providing at least seven days advance notice of an Open Meeting, including the time and place of the meeting, by
 - On-air announcement between 6:00 a.m. and 11:00 p.m. and recorded in program logs;
 - Posting notice on the station's website;
 - Placing notice in the "Legal Notices" section of a local newspaper in general circulation in the station's primary coverage area; or
 - Giving notice through a recorded announcement accessible on the station's phone system
- Documentation is key!!!

Open Meetings - Key Takeaways on Closed Meetings

- Written explanation must be made available for closed meeting sessions
 - Law states stations must make available to the public a written statement containing an explanation for the reasons for closing the meeting within a reasonable time
 - CPB defines reasonable as within 10 days
 - Written explanation must be stored in the main offices or posted on the web

Open Financial Records - The Law

Section 396(k)(5) of the Communications Act states:

Funds may not be distributed pursuant to this subsection to any public telecommunications entity that does not maintain for public examination copies of the annual financial and audit reports, or other information regarding finances, submitted to the Corporation pursuant to subsection (l)(3)(B)."

Section 396(l)(3)(B) of the Act requires that each public telecommunications entity receiving funds from CPB shall be required:

- (i) to keep its books, records, and accounts in such form as may be required by the Corporation;
- (ii)(I) to undergo a biennial audit by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State, which audit shall be in accordance with auditing standards developed by the Corporation, in consultation with the Comptroller General; or (II) to submit a financial statement in lieu of the audit required by subclause (I) if the Corporation determines that the cost of such audit on such entity is excessive in light of the financial condition of such entity; and
- (iii) to furnish biennially to the Corporation a copy of the audit report required pursuant to clause (ii) as well as such other information regarding finances (including an annual financial report) as the Corporation may require.

Open Financial Records - IG Findings

- AFRs & audited financial statements not available
- Project grant financial reports not available
- Lack of written policies and procedures

Open Financial Records – Key Takeaways

- CPB requires a station to post its most recent audited financial statements and AFR(s) on the website
- CPB also says the Act requires stations to make available to the public “...other financial information they are required to provide to CPB.”
- Key factors in determining if a document must be made publicly available under Section 396(k)(5):
 - financial information; and
 - required to provide to CPB
- Where the “other financial information” is kept & in what form (paper or electronic) is discretionary

Equal Employment Opportunities – The Law

Section 396(k)(11) of the Communications Act states:

(A) Funds may not be distributed pursuant to this subsection for any fiscal year to the licensee or permittee of any public broadcast station if such licensee or permittee--

- (i) fails to certify to the Corporation that such licensee or permittee complies with the Commission's regulations concerning equal employment opportunity as published under section 73.2080 of title 47, Code of Federal Regulations, or any successor regulations thereto; or
- (ii) fails to submit to the Corporation the report required by subparagraph (B) for the preceding calendar year.

(B) A licensee or permittee of any public broadcast station with more than five full-time employees to file annually with the Corporation a statistical report, consistent with reports required by Commission regulation, identifying by race and sex the number of employees in each of the following full-time and part-time job categories:

- (i) Officials and managers.
- (ii) Professionals.
- (iii) Technicians.
- (iv) Semiskilled operatives.
- (v) Skilled craft persons.
- (vi) Clerical and office personnel.
- (vii) Unskilled operatives.
- (viii) Service workers.

(C) In addition, such report shall state the number of job openings occurring during the course of the year. Where the job openings were filled in accordance with the regulations described in subparagraph (A)(i), the report shall so certify, and where the job openings were not filled in accordance with such regulations, the report shall contain a statement providing reasons therefor. The statistical report shall be available to the public at the central office and at every location where more than five full-time employees are regularly assigned to work.

Equal Employment Opportunities – IG Findings

- Statistical report not made publicly available at main office and satellite office (if more than 5 full-time employees are regularly assigned to work there)

Equal Employment Opportunities – Key Takeaways

- The only specific requirement for CPB is the statistical report at main location
- For satellite locations, the magic number for the report is 6 full-time employees
- Maintain report for public inspection on-site
- Compliance with the FCC rules
 - Upload documents to FCC in a timely manner
 - Post information on station website
- Remember – your certification is also that job openings were filled in compliance with FCC rules (or explain why they were not)

CABs - The Law

Section 396(k)(8) of the Communications Act states:

(A) Funds may not be distributed pursuant to this subpart to any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) unless such station establishes a community advisory board. Any such station shall undertake good faith efforts to assure that: (i) its advisory board meets at regular intervals; (ii) the members of its advisory board regularly attend the meetings of the advisory board; and (iii) the composition of its advisory board are reasonably representative of the diverse needs and interests of the communities served by such station.

(B) The board shall be permitted to review the programming goals established by the station, the service provided by the station, and the significant policy decisions rendered by the station. The board may also be delegated any other responsibilities, as determined by the governing body of the station. The board shall advise the governing body of the station with respect to whether the programming and other policies of such station are meeting the specialized educational and cultural needs of the communities served by the station, and may make such recommendations as it considers appropriate to meet such needs.

(C) The role of the board shall be solely advisory in nature, except to the extent other responsibilities are delegated to the board by the governing body of the station. In no case shall the board have any authority to exercise any control over the daily management or operation of the station.

(D) In the case of any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) in existence on the effective date of this paragraph, such station shall comply with the requirements of this paragraph with respect to the establishment of a community advisory board not later than 180 days after such effective date.

(E) The provision of subparagraph (A) prohibiting the distribution of funds to any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) unless such station establishes a community advisory board shall be the exclusive remedy for the enforcement of the provisions of this paragraph."

CABs – IG Findings

- Lack of proof of functional CABs (minutes)
- Lack of documentation regarding CAB structure & composition
- Management not allowing CAB to be independent (agenda & structure)
- Open meeting violations

Community Advisory Boards – Key Takeaways

- The CAB must be functional
 - Meet regularly
 - Members attend
 - Be reasonably representational of the communities served
- Documentation is key: IG needs to be able to verify structure and composition, including the number of members, their terms, and method of appointment and removal.
- CAB must be allowed to advise governing body
- Don't forget minutes!
- Open meetings requirement applies (this is true even for voluntary CABs)

Donor Lists - The Law

Section 396(k)(12) of the Communications Act states:

Funds may not be distributed under this subsection to any public broadcasting entity that directly or indirectly--

(A) rents contributor or donor names (or other personally identifiable information) to or from, or exchanges such names or information with, any Federal, State, or local candidate, political party, or political committee; or

(B) discloses contributor or donor names, or other personally identifiable information, to any nonaffiliated third party unless--

(i) such entity clearly and conspicuously discloses to the contributor or donor that such information may be disclosed to such third party;

(ii) the contributor or donor is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(iii) the contributor or donor is given an explanation of how the contributor or donor may exercise that nondisclosure option.

Donor Lists - No IG Findings (but here are Bob's findings)

- Lack of written policies
- Lack of documentation

Donor Lists – Key Takeaways

- Stations have to maintain control over the list
- Know who non-affiliated third parties are
 - CPB defines a non-affiliated party as “any person, company, partnership, or other party that is not controlled by or acting on behalf of, or at the request of, the station for the purpose of fundraising, underwriting, or development for the station.”
- Just “say no” to political entities
- Must offer an “opt out” for other non-affiliated third parties
 - clearly and conspicuously disclose that information may be disclosed;
 - give the opportunity before the time that information is initially disclosed, to direct that such information not be disclosed; and
 - give an explanation of how to exercise the nondisclosure option
- Law or judicial process will trump the “opt out”

CPB General Provision Requirements

- Diversity (Goal and Statement)
- Transparency
- Data security
- Compliance Training

NEW!

Diversity Requirement

1. Establish, review, and amend, if necessary the formal goal of diversity
2. Review practices to fulfill the station's commitment to diversity and meet FCC rules;
3. Website statement:
 - a. Elements of diversity important to public media work
 - b. Extent to which the staff & management reflects such diversity
 - c. Efforts to increase diversity of the past 2 -3 years and
 - d. Plans for upcoming year

Diversity Requirement

4. Undertake one of the following initiatives on an annual basis:

- Include diverse groups in internships or workstudy programs;
- Include qualified diverse candidates for elected governing boards that the Grantee controls;
- Implement a diversity training program for members of the organization's governing body on an annual basis;
- Participate in minority or other diversity job fairs; or
- Implement formal diversity training programs

5. Grantees are strongly encouraged to interview at least one qualified diversity candidate for each senior leadership position hire

Transparency

Each Grantee must have on its website:

- A list of station senior management (names and titles) with contact information;
- A list of the members of its Board of Directors;
- A list of the members of its CAB (for stations that have a CAB by statute or voluntarily);
- Its most recent Audited Financial Statements;
- Its most recent Annual Financial Report(s)

AND

Transparency

Each Grantee must have on its website or make available in its central office:

- Local Content & Services Report; and
- Diversity Statement

CPB General Provision Requirements – IG Findings (and Personal Observations)

- Diversity (Goal and Statement)
 - No adoption of a specific diversity goal or posting of statement – its different than the EEO requirement
 - Statement doesn't address all four topics:
 - a. Elements of diversity important to public media work
 - b. Extent to which the staff & management reflects such diversity
 - c. Efforts to increase diversity of the past 2 -3 years and
 - d. Plans for upcoming year
- Transparency
 - Required information not posted/made publicly available

CPB General Provision Requirements – Key Takeaways

- Diversity (Goal and Statement)
 - Easy to confuse compliance with EEO requirement
 - Adopt and document
 - Make sure you address each of the four topics CPB want you to discuss
- Transparency
 - Post!
 - It's not a scavenger hunt
- Data security
 - IT Department participation

Grant Use & Financial Reporting Requirements (in General Provisions) – IG Findings

- Discrete accounting – each CPB grant (& sub category of grant) must have its own demarcation
- NFFS miscalculation
 - Calculations of indirect administrative support costs
 - Federal funds included in grants from other entities
 - Premiums
- Use of restricted radio CSG funds
 - Documentation
 - Proper allocation of costs (back out purely local costs)
- Incorrect and undocumented charges to CPB grants
 - Timesheets
 - Charges not authorized by the grant agreement
 - Amendments needed
 - Reconciliation
- IPA attestation
- Written procedures & policies

Grant Use & Financial Reporting Requirements (in General Provisions) – Key Takeaways

- Contemporaneous discrete accounting for all CPB funds on both revenue and expenditure side
- Read and follow the agreement and CSG General Provisions
- Keep documentation up to date
- Accounting must reconcile
- Institutionalization of processes
- Written policies & procedures
- Annual review & memorialization
- Confirm non-Federal nature of grant funds
- Adopt best practices

Audit Client Insights

- No one is taking your word for anything
 - An auditor's job is to be skeptical
 - An auditor's job is to find something
- No one is alone
- Did you just make that up? Or does it appear like you just made that up?
- It really is all about documentation
- Have an explanation (and it should make sense)
- Don't break into jail
- Preparation is essential and you absolutely need to know where you stand

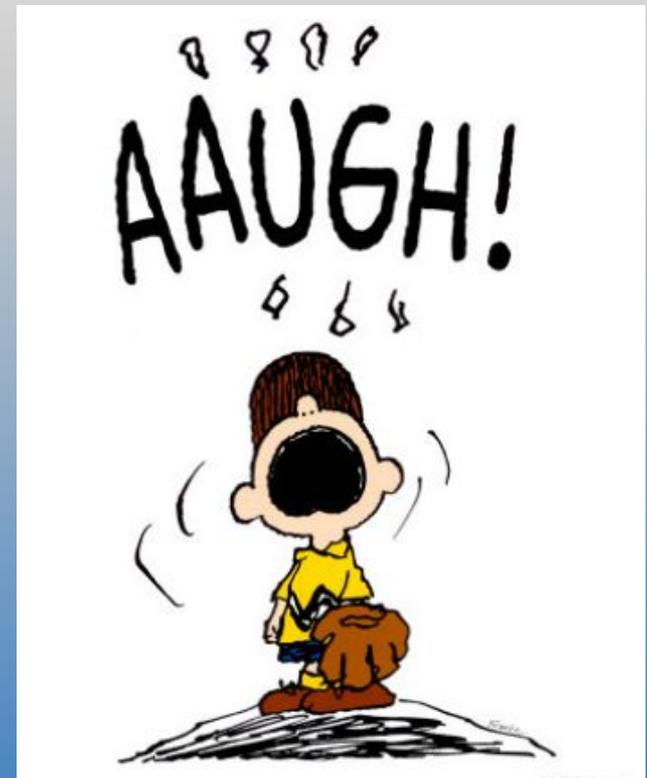


Consequences

- Loss of eligibility
- Forfeiture
- Repayment of CSG overpayment or grant funds
- Other costs in terms of time, fees, and good will

Planning is essential to avoid (potentially) costly and public consequences.

This takes time and effort.



Compliance is the adoption, institutionalization, regularization, and documentation of processes and procedures that fulfill and prove adherence to all requirements

What Does Bob Do?

Fixed Fee Services:

- CPB Compliance Review and Report (fee based on CSG amount plus travel costs)
- OIG Report Alerting Service Subscription (\$325 per year)

Traditional Hourly Rate Services:

- Compliance with Criteria
- Policy Development
- Audit Assistance
- Facilitation

Calculation of FY 2018 CPB Compliance Review Fee

(excludes reimbursement of travel costs)

	CSG Amount				
	<\$100K	\$100K<\$150K	\$150K<\$200K	\$200K<\$1M	>\$1M
Radio Single Licensee	\$5,000	\$5,500	\$6,000	\$6,500	\$7,500
For each additional radio CSG add	\$500	\$750	\$1,000	\$1,000	\$1,500
	<\$600K	\$600K<\$1M	\$1M<\$2.5M	>\$2.5M	
Television Single Licensee	\$5,500	\$6,500	\$7,500	\$8,500	
For each additional CSG add	\$750	\$1,000	\$1,000	\$1,250	

***Joint Licensee calculation based on Television CSG unless Radio NFFS exceeds TV NFFS, then Radio CSG is used to calculate fee**

Compliance Review Includes:

- Within 30 days of the completion of each aforementioned compliance review, Station management will receive a Report regarding the review findings. This report will include:
 - An evaluation of compliance with the CSG General Provisions and Eligibility Criteria;
 - An evaluation of compliance with the applicable certification requirements in the public broadcasting provisions of the Communications Act of 1934, as amended;
 - An evaluation of the Station’s internal processes and procedures regarding risk management, about which OIG auditors routinely inquire, that protect CSG and other funds from waste, fraud, or abuse; and
 - Recommendations for improving compliance with the CSG General Provisions and Eligibility Criteria and the certification requirements, as well as internal practices and controls to meet CPB requirements.
- Bob will also participate in conference calls, as required up to a maximum of three (3) hours, to discuss the findings and recommendations, as well as implementation of the recommendations, with the management of each Station.

Contact Info!

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Questions?

