922 KAR 6:010. Standards for community action agencies.


STATUTORY AUTHORITY: KRS 194A.050(1), 273.448(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 273.448(1)(a) requires the state administering agency to establish in accordance with applicable state and federal laws and regulations, standards for community action agencies by which the administrative, fiscal and programmatic effectiveness of the federal act shall be measured. This administrative regulation establishes the requirements for the operation and oversight of the community action agencies relative to the community services block grant funding, intended to provide services for residents meeting poverty income guidelines issued by the U.S. Department of Health and Human Services. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with KRS 45.357, and the Kentucky Civil Rights Laws, KRS Chapter 344, are more inclusive than those required under 42 U.S.C. 9918(c)(1). The imposition of additional requirements and responsibilities is to ensure necessary compliance with applicable state laws.

Section 1. Definitions. (1) "Commissioner" means the Commissioner for the Department for Community Based Services, Cabinet for Health and Family Services.

(2) "Community action agency" is defined by KRS 273.410(2).

(3) "Community action board" means the board of directors of a community action agency that which is a political subdivision.

(4) "Community Services Block Grant" or "CSBG" means Community Services Block Grant funds made available by 42 U.S.C. 9901-9926.

(5) "Designating official" means the chief elected official of the eligible political subdivision or subdivisions if the political subdivision is a community action agency.

(6) "Governing board" means the board of directors of a private nonprofit community action agency.

(7) "Public community action agency" means a community action agency that is established as a division of local government.

Section 2. Board of Directors. (1) Each community action agency shall establish and maintain a board of directors in accordance with KRS 273.437 and 273.439.

(2) Governing boards and community action boards shall adopt written bylaws. The bylaws shall include:

(a) The purpose of a community action agency;

(b) Duties and responsibilities of the board;

(c) Number of members on the board;

(d) Qualifications for a board membership;

(e) The types of membership;
(f) The method of selecting a member;
(g) Terms of a member;
(h) Officers and duties;
(i) Method of electing an officer and chairperson;
(j) A standing committee, if applicable;
(k) Provision for approval of programs and budgets;
(l) The frequency of board meetings and attendance requirements; and
(m) Provision for official record of meetings and action taken.

(3) The boards and designating officials:
(a) May delegate the responsibility to carry out a program of a community action agency and fiscal requirements to an executive director; and
(b) Shall not delegate final approval, responsibility, accountability, or direction of policy, except for a public community action agency.

Section 3. Board Meetings. (1) A board meeting shall be open to the public in accordance with KRS 61.800-61.850.
(2) A simple majority shall constitute a quorum for a board meeting.
(3)(a) A meeting of a governing board or a community action board shall be recorded.
(b) Minutes shall be made of the meeting.
(c) The minutes shall include:
1. Date, time, and place of meeting;
2. Names of members attending;
3. Topics discussed, problems, recommendations made or presented, and a plan for change and improvements;
4. Decisions reached and actions taken;
5. An executive director's report and other reports as are presented; and
6. Recommendations made by the community action board to designating officials of the eligible political subdivision.
(d) The minutes shall be:
1. Approved by the board of directors and signed by the appropriate officer; and
2. Copied and distributed to each board member, the executive director, and the department within thirty (30) days of the minutes' approval in accordance with subparagraph 1 of this paragraph.

Section 4. Administration. (1) A community action agency shall meet the federal assurances and reporting requirements in accordance with 42 U.S.C. 9901-9926 and 45 C.F.R. 96.
(2) A community action agency shall adopt the organizational standards for eligible entities pursuant to the Community Services Block Grant Information Memorandum, Transmittal No. 138 from the U.S. Department of Health and Human Services, dated January 26, 2015.
(3) A community action agency in accordance with KRS 273.441 and 273.443, and with the knowledge and concurrence of appropriate officials and boards as required in KRS 273.437 and 273.439, shall:
(a) Submit necessary reports, records, or other information to:
1. Determine fiscal, administrative, and programmatic effectiveness in utilization of CSBG funds; and
2. Fulfill requirements of KRS 45.357;
(b) Except for a public community action agency, develop written personnel policies including:
1. A job classification plan with the provision of a systematic arrangement of job positions in the agency indicating title, related duties, and responsibilities for each position. For those positions that [which] are sufficiently similar as to the duties performed and to the scope of responsibility, equal pay ranges shall be:
   a. Allocated to the same job classification; and
   b. Reviewed at least every four (4) years;
2. A job specification for each job classification, including required education, experience, training, skills and other qualifications required that [which] shall be reviewed at least every four (4) years;
3. A compensation plan with the provision of a pay plan for community action agency employees outlining pay grades or salary rates, salary adjustments, salary advancements, and overtime adjustments as appropriate for the job classifications. Rates of pay shall be:
   a. Consistent with the functions outlined in the job classification plan; and
   b. Reviewed at least every four (4) years;
4. Attendance and leave policies that shall:
   a. Be reviewed at least every four (4) years; and
   b. Include the accumulation and credit of:
      (i) Annual leave;
      (ii) Sick leave;
      (iii) Compensatory or overtime leave;
      (iv) Military leave;
      (v) Leave related to the birth or adoption of a child;
      (vi) Court leave;
      (vii) Voting leave;
      (viii) Absence without leave; and
      (ix) Other conditions of specific leave;
5. A fringe benefit plan that shall:
   a. Be reviewed every four (4) years; and
   b. Include the coverage and conditions of those items provided by the community action agency, such as:
      (i) Basic salary or wage rates including hospitalization insurance;
      (ii) Dental insurance;
      (iii) Holidays;
      (iv) Disability leave;
      (v) Personal leave;
      (vi) Retirement or pension; and
      (vii) Deferred compensation;
6. An affirmative action plan with a policy statement that the community action agency's intention is to give equal opportunity in hiring, advancement opportunities, and in work assignments in accordance with KRS Chapter 344;
7. A personnel grievance procedure that shall:
   a. Include a plan for resolving employee grievances and complaints; and
   b. Describe the method that the community action agency follows if an employee is dissatisfied with some aspect of the employee's working conditions. The procedure shall outline:
      (i) How the employee files a complaint;
      (ii) Who reviews the complaint;
      (iii) Who hears the complaint;
      (iv) Who may attend a hearing;
      (v) Length of time for the hearing decision; and
(vi) The next level of appeal, if the employee is still dissatisfied with the hearing results; and

8. Hiring and firing practices, with a plan for:
   a. Hiring an employee;
   b. Promotions;
   c. Demotions;
   d. Job postings and advertisements;
   e. Resignations;
   f. Layoff procedures;
   g. Disciplinary actions; and
   h. Dismissal procedures;

(c) Make available a copy of the community action agency’s personnel policies to staff;

(d) Ensure that there is no discrimination against an applicant or recipient of CSBG services in accordance with KRS 344.015(2), 344.020, and 42 U.S.C. 9918(c)(1);

(e) Be responsible for compliance with conditions of contracts and grants, appropriate state and federal laws, administrative regulations, and cost principles;

(f) Indemnify the cabinet against a claim, including attorney fees and other costs of litigation that may result from damage caused by the community action agency’s employee, negligent acts, or omissions of the community action agency’s agent, employee, or subcontractor;

(g) Ensure that a notice, information pamphlet, research report, and similar public notice prepared and released by the community action agency pursuant to its contract for CSBG funds shall include the statement: "This project is funded, in part, under a contract with the Cabinet for Health and Family Services with funds from the Community Services Block Grant Act of the U.S. Department of Health and Human Services"; and

(h) Ensure that no employee or representative of the community action agency with procurement authority shall participate either directly or indirectly in an activity that is in conflict with the provisions of KRS 45A.455 and 42 U.S.C. 9918.

(4)(a) Except for a public community action agency, a community action agency with the knowledge and concurrence of appropriate officials and boards, shall:
   1. Develop written fiscal policies and a manual; and
   2. Review and update the policies and the manual at least annually.

(b) Fiscal records shall be maintained in accordance with generally acceptable accounting procedures and practices and in conformity with 42 U.S.C. 9916(a).

(c) A current written financial report shall be presented to a board of directors:
   1. At least quarterly; or
   2. More frequently, if requested by the board or the cabinet.

(5)(a) A community action agency shall:
   1. Develop written programmatic operation policies and a manual; and
   2. Review and update the policies and the manual at least annually.

(b) A community action agency’s program manual, which may be characterized as an operations manual, shall include:
   1. Criteria for determining eligibility of an individual for CSBG programs;
   2. The intake process including information needed to approve an applicant;
   3. Procedures for accepting a referral from another agency;
   4. Instructions for records to be kept on applicants, clients, and statistical data on intake;
   5. Procedures for reports to be made to the cabinet and frequency;
   6. Procedures to be followed if an applicant is found ineligible;
   7. Complaint procedures;
8. A description of each program's organizational structure, major lines of authority, and areas of responsibility within the CSBG programs; and

9. Procedures for documenting the extent of participation of individuals who are low income in the community action agency's CSBG programs.

(6)(a) A community action agency shall ensure that a client dissatisfied with services rendered under a CSBG contract shall be provided an opportunity to file a formal complaint and to be heard at the local level.

(b) A client may attempt to resolve the issue by submitting a written complaint to the community action agency within thirty (30) calendar days after the date of the community action agency's action or alleged act.

(c) The community action agency shall provide the client a written response to the complaint within thirty (30) calendar days of receipt of the client's complaint in accordance with paragraph (b) of this subsection.

(d) If extenuating circumstances concerning the client's case prolong review of the complaint, the executive director of the community action agency may grant an extension to the response timeframe given in paragraph (c) of this subsection.

(e)1. A client dissatisfied with a final written decision rendered by the community action agency in response to a complaint may request that the commissioner review the complaint and the community action agency's response.

2. A request for review shall be submitted to the commissioner within ten (10) days of the receipt of the community action agency’s response.

3. Upon completion of the review, the commissioner or designee shall render a written order regarding the complaint within thirty (30) days unless:
   a. Extenuating circumstances prolong the review of the complaint; and
   b. The commissioner or designee notifies the client of the need for an extension to the timeframe specified in this subparagraph.

4. The community action agency shall abide by the order.

(f) The complaint and hearing procedures shall be posted in each agency office.

(7) A community action agency shall ensure the design, implementation, and documentation of in-service training program for staff. Additional training shall also be documented for staff.

Section 5. Income Eligibility, Validation, and Determination. (1) To be eligible to participate in services and programs funded with CSBG funds, an individual's or family's income shall be at or below 125 percent of the current poverty level issued each year by the United States Department of Health and Human Services and published in the Federal Register, unless:

(a) Program funding is enhanced through a federal or state award; or

(b) The cabinet approves an increase to the poverty income eligibility guidelines due to funding availability.

(2) Information and referral services shall be provided to an individual or family without regard to income.

(3) If screening for programs where the eligibility factor is higher, the factor for that other program applies.

(4) The individual or family head shall sign a document attesting to the amount of declared income and eligibility to receive services.

(5) A community action agency or its worker shall require that a client produce proof of income eligibility in which a dated copy of the client's documentation shall be placed in the client's file.

(6) Initial eligibility shall be:
   a. Determined within thirty (30) days of application;
(b) Redetermined if there is a change in circumstance; and
(c) Redetermined at least annually, if there is not a change in circumstance.

Section 6. Maintenance of Case Records. (1) A log shall be maintained by a community action agency on a referral made by an outside agency or individual including:
(a) Date of referral;
(b) A referring agent; and
(c) Reason for referral and disposition.
(2) A CSBG case record shall be maintained on each applicant accepted for a service or benefit.
(a) The record shall include:
1. Intake information as follows:
   a. Name, address, and telephone number of the applicant;
   b. Birthdate;
   c. Sex;
   d. Race or ethnic origin;
   e. Proof of income;
   f. Level of education completed;
   g. A presenting problem;
   h. Date of presenting problem;
   i. Staff member gathering information;
   j. Referral agent, if applicable;
   k. Approval or disapproval for services or benefits and date; and
   l. The signature of the person making the determination or the referral;
2. Client progress toward a documented goal during a service or benefit period;
3. Chronological recording of supervisory and staff contacts with a client during the service or benefit period;
4. Copies of correspondence and other pertinent information;
5. Redetermination of eligibility, if required by Section 5(6) of this administrative regulation; and
6. Information regarding any termination of services and benefits.
(b) A community action agency shall ensure that a client case record is maintained in conformity with existing laws pertaining to confidentiality in accordance with KRS 194A.060.
(c) The records shall be maintained in a location that is secure and convenient to service delivery staff.
(3) A community action agency shall ensure development and implementation of a written client case record retention and disposal schedule.
(4) A public community action agency or any program or subdivision of a community action agency meeting the definition of a public agency as defined in KRS 61.870(1) shall comply with the open records law, KRS 61.870-61.884.

Section 7. Monitoring and Evaluation Reports. A community action agency in accordance with 42 U.S.C. 9914, Community Services Block Grant Information Memorandum, Transmittal No. 138 from the U.S. Department of Health and Human Services, KRS 273.441, 273.443, and 273.448(1), and with the knowledge and concurrence of appropriate officials and boards as required in KRS 273.437 and 273.439, shall meet the following:
(1) Ensure the development of a data collection and recordkeeping system that allows for administrative, programmatic, and fiscal monitoring and evaluation;
(2) Ensure the design and implementation of program reviews and studies to determine under or over utilization of each program, and progress towards goals and objectives; and
(3) Permit monitoring, review, and evaluation of the total community action agency operation by the department or its designee.

Section 8. Matching Requirement. (1) A contractor receiving CSBG funds pursuant to 922 KAR 6:045 [3:040] shall provide a twenty (20) percent local match in accordance with KRS 273.446(3).
(2) The cabinet may waive the local match required by subsection (1) of this section if additional state or federal funds are provided.

Section 9. CSBG Program State Plan. A copy of the state's CSBG program plan may be obtained by submitting a written request to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 10. Incorporation by Reference. (1) "Community Services Block Grant Information Memorandum, Transmittal No. 138 from the U.S. Department of Health and Human Services", January 26, 2015, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ERIC C. FRIEDLANDER, Secretary
APPROVED BY AGENCY: May 27, 2020
FILED WITH LRC: May 28, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:
A public hearing on this administrative regulation shall, if requested, be held August 24, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.
CONTACT PERSON: Donna Little, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin or Donna Little
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for the operation and oversight of Kentucky’s community action agencies providing services for residents meeting poverty income guidelines issued by the U.S. Department of Health and Human Services in accordance with the Community Services Block Grant.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for community action agencies and qualify for the receipt of federal funds under the Community Services Block Grant.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes, which require the state administering agency to establish standards for community action agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of standards for the operation and oversight of the community action agencies under the Community Services Block Grant.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by increasing the eligibility income limit for programs and services provided through Community Services Block Grant funding. The emergency version of this amendment is necessary in order to immediately utilize federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding as the Act authorizes states to raise the eligibility income limit for CSBG services furnished during fiscal years 2020 and 2021, including services furnished with the state’s regular CSBG appropriations during those years. Each community action agency determines the most appropriate use of the funds based on the needs identified in their area, but programs and services frequently include nutrition assistance, providing personal care items, assisting with rent or utility emergency payments, providing employment services and referrals, assisting substance abuse programs and domestic violence shelters, and more. The increase in eligibility and funding are especially needed in low-income populations that may be dealing with economic hardships due to the COVID-19 pandemic and resulting loss of employment. The amendment also gives the cabinet the authority to waive the required local matching funds for supplemental state or federal funding as community action agencies may not be able to match the funds due to decreased donations and economic hardship during the COVID-19 pandemic. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)2. and 4., as federal funding will be lost if not used as soon as possible, and the expansion of program eligibility will protect human health through the provision of community services to low-income populations in Kentucky.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to utilize federal funding in providing services and programs to low-income populations in Kentucky. The CARES Act authorizes an increase in the eligibility income limit for these programs and services in fiscal years 2020 and 2021.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by maintaining standards for community action agencies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for greater utilization of community services and programs in low-income populations in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet contracts with twenty-three community action agencies that serve all 120 Kentucky counties to provide community ser-
services and programs to low-income populations in Kentucky. This currently includes twenty-two non-profit entities and one public entity. In fiscal year 2018, CSBG funds were used to serve 307,668 low-income individuals (152,273 households).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment increases the eligibility income limit for programs and services provided through Community Services Block Grant funding; therefore, allowing the provision of more programs and services through the utilization of federal CARES Act dollars. The increase in eligibility and funding are especially needed in low-income populations that may be dealing with economic hardships due to the COVID-19 pandemic and resulting loss of employment. The amendment also gives the cabinet the authority to waive the required local matching funds for supplemental state or federal funding so the entities identified above will not always be required to provide a local match.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs associated with providing community services and programs will be absorbed within the sub-award of the federal Community Services Block Grant to the regulated entities. The amendment waives the requirement to provide a local match in some instances. There is no cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The eligibility income limit for programs and services provided through Community Services Block Grant funding is increased through this amendment and additional funding is being provided through the CARES Act; therefore, there should be an increase in the provision of programs and services in low-income populations. The amendment also waives the local match required from contract entities in some scenarios.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The cabinet will utilize the available administrative funds under the Community Services Block Grant to implement this amendment. The additional funding for this program provided by the CARES Act is $16,857,000.

(b) On a continuing basis: The cabinet, in partnership with Kentucky’s Community Action Network, will ensure that the programs and state administrative activities funded under the Community Services Block Grant are within federal appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds provided by the Community Services Block Grant and state general funds for community action agencies’ audits are used for the implementation and enforcement of this administrative regulation. Federal CARES funding will be used to provide additional community services and programs in 2020 and 2021.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON
1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 96, 42 U.S.C. 9901-9926

2. State compliance standards. KRS 45.357, 194A.050(1), 273.405-273.453, Chapter 344

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 96, 42 U.S.C. 9901-9926

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter requirements than those required by the federal mandate. However, the current administrative regulation in place imposes additional responsibilities and requirements than those required by federal mandate. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with state law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Additional reporting requirements are necessary in order to comply with KRS 45.357. The Kentucky Civil Rights Laws, KRS Chapter 344, are more inclusive than those required under 42 U.S.C. 9918(c)(1). The imposition of the additional requirements and responsibilities is necessary to ensure compliance with applicable state laws.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services, and one public and 22 quasi-governmental non-profit entities in Kentucky's Community Action Network will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 45.357, 45A.455, 61.870-884, 194A.050(1), 194A.060, 273.405-273.453, Chapter 344, 45 C.F.R. 96, 42 U.S.C. 9901-9926.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet will utilize the state administrative funds available under the Community Services Block Grant to administer these programs in the first year. Federal CARES funding will be used to provide additional community services and programs in 2020 and 2021. Costs will be within available appropriations.

(d) How much will it cost to administer this program for subsequent years? The cabinet will utilize the state administrative funds under the Community Services Block Grant to administer these programs in subsequent years. Federal CARES funding will be used to provide additional community services and programs in 2020 and 2021. Costs will be within available appropriations.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation: