

Certification Requirements for Station Grants Recipients

INTRODUCTION

This document explains the requirements of the Communications Act of 1934, 47 U.S.C. 396, et seq., as amended (“Communications Act” or “Act”), with which the recipients of Corporation for Public Broadcast (“CPB” or “Corporation”) station grants must certify their continued compliance. These requirements involve five specific areas: meetings which must be open to the public (Section 396(k)(4)); financial information which must be made available to the public (Section 396(k)(5)); community advisory boards which must be established by certain stations (Section 396(k)(8)); equal employment opportunity (“EEO”) regulations and reporting requirements which must be observed (Section 396(k)(11)) and donor list and political activities requirements (Section 396(k)(12)). CPB requires station grant recipients to certify their continued compliance with the requirements of Sections 396(k)(4), (5), (8), (11), and (12) of the Communications Act prior to receiving any grant funds.

CPB does not provide legal advice of any kind concerning any laws or regulations. Accordingly, CPB recommends that stations and licensees contact their own legal counsel directly for any and all legal advice. In any event, CPB is not responsible for any aspect of the activities stations or licensees undertake in an attempt to comply with the requirements of the Communications Act and the Corporation for Public Broadcasting described in this document. This document replaces and supersedes the booklet by the same name issued by the Corporation for Public Broadcasting in 1998.

OPEN MEETINGS REQUIREMENTS

I. THE LAW

A. Section 396(k)(4) of the Communications Act provides that:

“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.”

B. Section 397(5) of the Act provides that:

“The term ‘meeting’ means the deliberations of at least the number of members of a governing or advisory body, or any committee thereof, required to take action on behalf of such body or committee where such deliberations determine or result in the joint conduct or disposition of the governing or advisory body’s business, or the committee’s business, as the case may be, but only to the extent that such deliberations relate to public broadcasting.”

II. INTERPRETATIONS

A. Effect

This provision of the law prohibits CPB from distributing its federally appropriated funds to PBS or NPR or to public broadcasting station permittees or licensees, unless the governing bodies of those organizations, any committee of such governing bodies, or any advisory bodies hold open meetings preceded by reasonable notice to the public. The language of the statute, read in conjunction with its legislative history, requires that all meetings of governing bodies, committees thereof and advisory committees thereto must be open to the public.

1. Open Meetings

Because of the statutory definition of “meeting,” not all sessions of governing bodies, their committees, or advisory bodies are subject to the open meetings provisions of the Act. The following elements must be present in order for a board, etc., session to meet the statutory definition of a meeting: (1) a quorum, for purpose of taking action, must be in attendance; (2) deliberations must take place; and (3) the deliberations must determine or result in the joint conduct or disposition to the business of the particular body, but only to the extent that such deliberations relate to public broadcasting.

The statute does not preclude telephonic meetings, meetings conducted via the Internet, or meetings conducted by video conferencing. If an organization’s by-laws allow for meetings by telephone, Internet, or video conferencing, the body may meet in such a manner. However, these alternative meeting formats must still meet the other statutory requirements such as providing reasonable notice and allowing the public to attend, which in the case of an alternative meeting format would mean the ability to listen, observe, or participate.

The affected organization will have to determine on a case-by-case basis whether the elements that make a gathering into a “meeting” subject to the open meeting provisions are present. For example, certain gatherings of governing and advisory bodies are not “meetings” because they do not involve deliberations to determine joint conduct. Examples of gatherings that are not “meetings” include: background or status briefings; sessions to stuff envelopes or complete other menial tasks; events that are purely social in nature; or assemblies to assign responsibilities for particular projects to individual board members for fact finding and subsequent report to the body as a whole.

Similarly, some deliberations do not “relate to public broadcasting” and would not fall within the requirements of the open meetings section of the law. For example, a university or school board licensee could be expected to conduct board meetings that would cover subjects not even remotely related to public broadcasting such as deliberations on university housing, faculty appointments, or changes to tuition. On the other hand, a board at a community licensee, whose sole responsibility is related to public broadcasting, would rarely deliberate about matters unrelated to public broadcasting. Again, these determinations must be made on a case-by-case basis.

2. Reasonable Notice to the Public

The law provides that all meetings that are required to be open to the public must also be preceded by “reasonable notice to the public.”

”Reasonable notice” normally means notice that is both reasonably expected to inform and appropriate to the purpose of the notice. Notice should be directed toward those individuals who could be reasonably expected to have an interest in attending the meeting. Notice should also be given in a manner that could be expected to reach such individuals.

The Conference Report acknowledges that there may be occasions when an open meeting preceded by reasonable notice would be impracticable. The Report states, “from time to time emergency situations or the convenience of teleconferencing may make it impractical to hold an open meeting preceded by reasonable notice. In such situations, requiring advance notice to the public for committee meetings would be unreasonable. Although the conferees understand that meetings conducted by telephone cannot be open to the public, the conferees expect that the entities involved will attempt to minimize those instances.”

3. All Persons Shall Be Permitted by the Stations to Attend

One troublesome part of the open meeting requirement is that physical space, as well as fire department occupancy regulation, may prohibit “all persons” from attending a meeting. Although it would not be reasonable to expect an organization to rent a convention hall to accommodate persons who may wish to attend meetings, it would nevertheless seem appropriate that the various bodies conduct their respective meetings in facilities that would accommodate a reasonable audience. The rule of reasonableness should guide in this area and the organization should take into account factors such as past attendance, the meeting’s agenda, and current events. The law would not require a station to undergo unreasonable expenses and efforts to accommodate the public. By the same token, the law would not tolerate failure to provide reasonable accommodation of the public. Therefore, it would be inconsistent with the open meetings requirement to reduce the size of current meeting facilities or otherwise deter the public from attending open meetings.

Likewise, security procedures may impact the public’s ability to attend meetings without providing identification. Since the statute prohibits organizations from requiring members of the public, as a condition to attendance, to register their name or to provide any other information, organizations should not hold meetings at locations where access is privately restricted. However, it would be unreasonable to require organizations to hold meetings in unsafe locations or otherwise fail to protect stations employees, volunteers and those attending meetings, or ignore security procedures in emergency circumstances during governmentally mandated heightened security alerts. The rule of reasonableness should apply to security procedures. An organization must make reasonable efforts to allow unrestricted access to open meetings, while maintaining a reasonably safe environment and bearing in mind that Federal, state, and local security regulations may unavoidably impact such access.

If a meeting, which is open to the public, is conducted telephonically or via video conferencing or the Internet, the organization, in addition to complying with the other provisions of this section, must provide the public with access to the proceedings through a location at which the public may observe or listen or by disseminating call-in information that permits the public to observe or listen from another location in a manner consistent with the reasonable notice provisions herein. To the extent practicable, if the organization provides a location for the public to observe or listen to a meeting, this

location must be reasonably accessible to members of the public who could be expected to have an interest in attending the meeting. If the organization allows the public to listen to or observe the meeting from another location, the station may not charge for the phone call, notwithstanding normal telephone toll charges.

4. Explanation of Closed Meetings

If a session is closed to the public pursuant to the statutory exceptions (discussed in part C below), a written statement containing an explanation of the reasons for closing the meeting must be made publicly available within a reasonable period of time thereafter. The explanation for a closed meeting, however, does not have to be made available in the same manner as the notice of an open meeting. The explanation for the closing of a meeting preferably should use the words of the statute.

B. Prohibitions

Although PBS, NPR, or stations cannot require that a person register by name or provide any other information as a condition of attending a meeting, they may request identification for other purposes, such as ensuring reasonable security. For example, an organization providing priority seating arrangements for those who formally request such seating space ahead of time may request those individuals to identify themselves. This procedure would be acceptable, because it is a requirement only for priority seating, not attendance. Similarly, the organization could place a sign-up sheet at the entrance to the meeting so that members of the public may voluntarily do something such as submit a comment for consideration, sign-up for volunteer work or engage in similar activities. This is acceptable as long as providing information is voluntary for the public and not a requirement to attend.

C. Exceptions

The law also provides exceptions to the open meeting requirement. Closed sessions can be conducted 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.

D. Result of Noncompliance

The law provides that CPB may not distribute any of its funds to PBS, NPR, or the licensee or permittee of any public broadcast station that does not hold open meetings in compliance with this provision.

III. MINIMUM COMPLIANCE REQUIREMENTS

In order to comply with the open meetings requirements of the Act:

A. PBS, NPR (or their successor organizations) and any licensee or permittee of a public broadcasting station must --

1. Open the meetings of its governing body and any committee of its governing body to the public;
2. Open the meetings of its community advisory board or any advisory body of the governing board to the public;
3. Give reasonable notice to the public of the fact, time and place of an open meeting at least one week (7 days) in advance of the scheduled date of an open meeting;
4. Allow all persons to attend any open meeting of the board, committee or advisory board, without requiring, as a condition of attendance, that the person register or provide such person's name or any other information, except as would be reasonably required to maintain a safe meeting environment; and
5. If a meeting is closed pursuant to the exceptions recognized by the law, make available to the public, within a reasonable period of time after the closed meeting, a written statement containing an explanation of the reason(s) for closing the meeting.

B. PBS, NPR, or any public broadcasting station may conduct meetings of the governing body, its committees or advisory groups that are not open to the public as long as they deal with matters considered to be exceptions to the open meeting requirement.

C. Minimum compliance for "reasonable notice" requires that:

1. Notice is placed in the "Legal Notices" or the radio and television schedules section of a local newspaper in general circulation in the station's coverage area; or, notice is available through a recorded announcement that is accessible on the station's phone system; or, notice is available through an announcement that is accessible on the station's web page; and
2. Notice is communicated by letter, e-mail, fax, phone, or in person to any individuals who have specifically requested to be notified; and
3. The station makes on-air announcements on at least three consecutive days once during each calendar quarter that explain the station's open meeting policy and provide information about how the public can obtain information regarding specific dates, times, and locations.

D. For a station to satisfy the requirement that a written explanation be offered after a meeting is closed to the public:

1. The explanation of the reasons for a closed meeting should be distributed in the same manner as the notice of an open meeting, made available to the public at the station's offices, posted on the station's web site, or by offering to mail a copy of the explanation to any person who requests one. If applicable, a reasonable charge for this service, or the requirement of a self-addressed, stamped envelope, may be considered.

2. In the case of regularly scheduled meetings that are usually open to the public, the station should give advance notice of the fact that such a meeting will be closed when the occasion arises. The notice that such a normally open meeting will be closed should be disseminated in the same manner as the notice of an open meeting. Meetings that are not regularly scheduled would not need an advance notice of closing.

IV. SUGGESTIONS FOR COMPLIANCE

Each station is encouraged to fashion its own maximum involvement of the community beyond the minimum requirements. It is CPB's position that only through enthusiastic and vigorous efforts can the intent of the Congress, as reflected in the law, be fully realized. Therefore, CPB recommends that stations make copies of the minutes of all open meetings available to the public on the station website, by mail, or at the station's office upon request. A reasonable charge to cover copying or postage may be considered for mailing. If a member of the public wishes to inspect the minutes at the station, it would not be unreasonable to require an appointment with the station be made as long as the process is not burdensome to the public.

V. CPB PROCEDURES FOR COMPLIANCE AND CERTIFICATION

A. Documentation

1. Each recipient of a CPB station grant, after reviewing the above information, shall develop documentation indicating the manner of compliance with this requirement. This documentation shall contain information that will indicate, for example, the recognition of the open meeting provision by the relevant boards and committees, the procedure for open meetings, the method used to give reasonable notice to the public, examples of notices of open meetings, examples of statements of explanation for closed meetings, and other information indicating community response, if any, to the open meetings.

2. The documentation shall be kept at a reasonable location by each station and made available to CPB, upon request, to determine the fact and extent of compliance. The documentation shall also be made available to CPB auditors who may be making periodic audits of a station.

B. Certification

1. CPB currently requires each recipient of a CPB station grant to certify its continued compliance with the open meetings requirement. The annual certification is part of the Certification of Eligibility form(s) which are included in the Stations Grant Management System (“SGMS”) and must be filled out by each CPB station grantee.

2. All such Certification of Eligibility forms must be completed in their entirety and executed by two different individuals: (1) an authorized official of the licensee responsible for executing grants and/or contracts for the licensee who has knowledge and authority to certify that the licensee and its station meet or exceed each of the eligibility criteria listed in the Certification of Eligibility (e.g., chairman, treasurer or secretary of the board of directors, university vice president for finance, president of the school board); and (2) the chief executive officer in charge of the operation of the station (e.g., president, general manager, or station manager).

OPEN FINANCIAL RECORDS REQUIREMENTS

I. THE LAW

A. Section 396(k)(5) of the Communications Act provides that:

“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).”

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.”

C. 1. Section 397(12) of the Act defines the term “public telecommunications entity” as:

“any enterprise which-

“a. is a public broadcast station or a noncommercial telecommunications entity; and

“b. disseminates public telecommunications services to the public.”

2. Section 397(7) of the Act defines the term “noncommercial telecommunications entity” as: *“any enterprise which-*

“a. is owned and operated by a State, a political or special purpose subdivision of a State, a public agency, or a nonprofit private foundation, corporation,

“b. has been organized primarily for the purpose of disseminating audio or video noncommercial educational and cultural programs to the public by means other than a

primary television or radio broadcast station, including but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, microwave, or laser transmission through the atmosphere.”

3. Section 397(14) of the Act defines the term “public telecommunications services” as

“noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications.”

II. INTERPRETATIONS

A. Effect

The provisions of the law in Section I.A., above, prohibit CPB from distributing its federally appropriated funds to any public telecommunications entity unless that entity allows public examination of any annual financial reports filed with CPB, any audit reports or financial statements on the financial condition of the station performed in compliance with Section 396 (1)(3)(B) (which requires at least a biennial audit or, under certain circumstances, a financial statement), and any other information regarding finances that CPB may request of an entity under Section 396 (1)(3)(B). The open records requirement applies to public telecommunications entities that offer public telecommunications services to the public, as those terms are defined in Section II.C., above. It does not apply to PBS, NPR, or independent production entities.

B. Exceptions

1. Financial information provided to CPB to accompany a proposal for funding need not be made available for public inspection before the proposal is accepted for funding by CPB. After acceptance by CPB for funding, the financial information should be made available to the public at the station as a part of the CPB funding agreement. Proprietary information may be withheld. If the proposal is rejected by CPB, it need not be made available for public inspection.
2. Financial support information required by Section 396(1)(3)(C) - (D) to be kept by recipients of CPB funds to substantiate a CPB or U.S. General Accounting Office audit is not subject to the open records requirement.
3. Any financial records that deal with personnel matters and that would be kept confidential under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), also would not be required to be made available for public inspection.

C. Result of Noncompliance.

The law provides that CPB may not distribute any of its funds to any public telecommunications entity that does not maintain for public examination copies of the records referred to in this provision.

III. MINIMUM COMPLIANCE REQUIREMENTS

All public telecommunications entities must make the following types of records available for public inspection:

- A. Annual financial reports filed with CPB;
- B. Audited statements or other financial statements filed with CPB. These include the reports from CPB required audits conducted by independent certified public accountants or state-certified independent public accountants, according to the CPB adopted audit standards, and the financial statements which CPB may permit to be submitted in lieu of such audit reports under certain circumstances; and
- C. Other information regarding finances submitted to CPB related to any funding agreement with CPB that requires a financial report.

IV. SUGGESTIONS FOR COMPLIANCE

A number of mechanisms are available to comply with these provisions. While the choice of mechanism is left to each grantee's discretion, each grantee should choose the method it believes best accommodates the public.

The basic question is how to make the reports available. Because all stations must maintain a public inspection file by FCC rule, one alternative would be for a station to include publicly available financial records in the same location as this public file for convenient reference. If this information is kept in a different place, the documents should be maintained in a readily accessible location. Another alternative would be for a station to make this financial information available on the station's web site, with arrangements available for providing individuals with this information if they are unable or unwilling to use the Internet to access this information. In any event, arrangements for photocopying the financial records, at cost, could be made in a manner similar to the arrangements for reproducing other documents in the public file. In this regard, the station should refer to FCC regulations. It would not be unreasonable to require an appointment with the station to review the financial reports as long as the process is not burdensome to the public. Stations should note that this is a separate requirement from the FCC's public inspection files requirement. As such, stations should consult the FCC's rules for its provisions pertaining to the public's access to the FCC mandated public inspection file.

V. CPB PROCEDURES FOR COMPLIANCE AND CERTIFICATION

A. Documentation

1. Each station, after reviewing the above information, is to develop documentation indicating the manner of compliance with this requirement. This documentation shall contain information that will indicate, for example, the type of records made available for public inspection (by specific description), the mechanism by which the records are made available (and, if appropriate, the location of these records), the arrangements made for reproduction of the documents by members of the public, and any limitations placed on access to the file by the entity.

2. The documentation shall be kept at a reasonable location by each station and be made available to CPB, upon request, to determine the fact and extent of compliance. The documentation shall also be available to CPB auditors upon request in the course of a periodic audit

B. Certification

1. CPB currently requires that each recipient of a CPB station grant certify its continued compliance with the open records requirements. This annual certification is part of the Certification of Eligibility form(s) which are included in the Stations Grant Management System (“SGMS”) and must be filled out by each CPB station grantee.

2. All such Certification of Eligibility forms must be completed in their entirety and executed by two different individuals: (1) an authorized official of the licensee responsible for executing grants and/or contracts for the licensee who has knowledge and authority to certify that the licensee and its station meet or exceed each of the eligibility criteria listed in the Certification of Eligibility (e.g., chairman, treasurer or secretary of the board of directors, university vice president for finance, president of the school board); and (2) the chief executive officer in charge of the operation of the station (e.g., president, general manager, or station manager).

COMMUNITY ADVISORY BOARD REQUIREMENTS

I. THE LAW

A. Section 396(k)(8) of the Communications Act provides that:

“(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.”

II. INTERPRETATIONS

A. Privately Owned Stations

The Community Advisory Board requirement provisions apply to all stations except those stations that are owned and operated by a State, a political or special purpose subdivision of a State, or a public agency. Thus, if a station is privately owned (as are all community licensees, as well as stations owned by private universities and other private organizations), it must, without exception, comply with these provisions. CPB does not provide legal advice to a station about whether its state's laws make it an entity that falls into the exception to the community advisory board requirement. It is up to each station to determine whether it is required to have a community advisory board, and act accordingly.

B. Nature of the Community Advisory Board

1. The law provides that “[t]he role of the board shall be solely advisory in nature....” It also stipulates that the board shall advise the governing body of the station and therefore must be distinct from and independent of the governing body. The purpose of the advisory board is to provide a vehicle for effective community input to the station's governing body about station programming, community service and impact on the community from the station's major policy decisions. Congress believed that the establishment of community advisory boards would assist the stations to develop programs and policies that address the specific needs of the communities that they endeavor to serve.

2. The law is not intended to preclude stations from establishing and maintaining other types of advisory bodies.

C. Relationship of the Community Advisory Board to the Governing Board of the Station

1. The law segregates the management and operational functions of the governing board from the functions of advisory board to ensure a clear demarcation between the governing board and the advisory board.

2. The advisory board is intended to provide the public the opportunity to be heard on station programming, community service and impact on the community of major policy decisions. All stations are encouraged to establish whatever mechanisms will be most effective, under local circumstances, to accomplish this congressionally established goal.

D. Composition of Community Advisory Boards

The station may exercise a reasonable degree of discretion in selecting advisory board members. The board should be reasonably representative of the diverse needs and interests of the communities served by the station. No individual representative of any particular group has a legal right to membership on an advisory board. Nor does the law

empower any person, court, or government agency to require a station take or refrain from taking any action with respect to a station's programming or policies. The composition of the community advisory board must reflect its independent role, and may not include members of the station staff or governing body in anything other than an ex officio or administrative capacity.

E. Result of Noncompliance

CPB may not distribute any of its funds to any community-licensed public broadcasting station that does not have an advisory board which meets the requirements of the law. This prohibition against the distribution of funds is the exclusive remedy for enforcement of this requirement.

III. MINIMUM COMPLIANCE REQUIREMENTS

A. Each station that is not owned by a State, a political or special purpose subdivision of a State, or a public agency must do the following --

1. establish a community advisory board that is independent of the community licensee's governing body;
2. undertake good-faith efforts to assure that --
 - a. its advisory board meets at regular intervals;
 - b. the members of the board regularly attend the meetings of the advisory board;
 - c. the composition of the community advisory board is reasonably representative of the diverse needs and interests of the communities served by the station.

B. In addition, each licensee required to have a community advisory board must also permit the community advisory board to perform the following activities:

1. establish and follow its own schedule and agenda, within the scope of the community advisory board's statutory or delegated authority;
2. review the programming goals established by station;
3. review the community service provided by the stations;
4. review the impact on the community of the significant policy decisions rendered by the station; and
5. advise the governing board of the station whether the programming and other significant policies of the station are meeting the specialized educational and cultural

needs of the communities served by the station. The advisory board may make recommendations to the governing board to meet those specialized needs.

C. The governing board of a licensee, if it desires, may delegate other responsibilities to the advisory board to assist the governing board or station personnel. However, the law states: “In no case shall the [community advisory board] have any authority to exercise any control over the daily management or operation of the station.”

IV. SUGGESTIONS FOR COMPLIANCE

Due to the specialized needs of each service community and the variety of station organization types, it may be more confusing than helpful to suggest ways to use community advisory groups. Maximum flexibility will better serve stations, allowing the composition, organization, and role of advisory groups to be tailored to the individual needs of the respective communities.

A licensee that owns more than one station should be aware that the law requires each station covered by this provision to have a community advisory board. A licensee with multiple stations may, at its discretion, establish a community advisory board that is shared among the stations if that community advisory board can meet all the minimum compliance requirements for each of the stations that share a community advisory board.

V. CPB PROCEDURES FOR COMPLIANCE AND CERTIFICATION

A. Documentation

1. Each community-licensed station, after reviewing the above information, is to develop documentation indicating the manner of compliance with this requirement. This documentation shall indicate, for example, the existence of a community advisory board, the mechanism used to determine its composition, organization, schedule of meetings and attendance records, the role that it plays with respect to the station, and its position relative to the organization of the station. Continued documentation of the activities of the advisory board is also encouraged.

2. The documentation shall be kept at a reasonable location by each station and be made available to CPB, upon request, to determine the fact and extent of compliance. The documentation shall also be available to CPB auditors upon request in the course of a periodic audit.

B. Certification

1. CPB currently requires that each recipient of a CPB station grant certify its continued compliance with the community advisory board requirements. This annual certification is part of the Certification of Eligibility form(s) which are included Stations Grant Management System (“SGMS”) and must be filled out by each CPB station grantee.

2. All such Certification of Eligibility forms must be completed in their entirety and executed by two different individuals: (1) an authorized official of the licensee responsible for executing grants and/or contracts for the licensee who has knowledge and authority to certify that the licensee and its station meet or exceed each of the eligibility criteria listed in the Certification of Eligibility (e.g., chairman, treasurer or secretary of the board of directors, university vice president for finance, president of the school board); and (2) the chief executive officer in charge of the operation of the station (e.g., president, general manager, or station manager).

EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

I. THE LAW

A. Section 396(k)(11) of the Communications Act provides that:

“(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 is required 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 for noncompliance. 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.”

II. INTERPRETATIONS

A. Effect

1. This provision of the law prohibits CPB from distributing its federally appropriated funds to any licensee or permittee of a public broadcasting station with more than five full-time employees that has not filed with CPB the annual statistical report required by Section 396(k)(11). The statistical report must: (a) identify by race and sex the number of employees in each of eight full-time and part-time job categories (officials and managers; professionals; technicians; semi-skilled operatives; skilled craft persons; clerical and office personnel; unskilled operatives; and service workers); and (b) state the number of job openings occurring during the course of the year. The law also requires that this statistical information be made available to the public at the central office of the station and at every location where more than five full-time employees are regularly assigned to work.

2. The provision also requires that every licensee or permittee of a public broadcasting station that receives federally appropriated funds from CPB must certify to CPB that it complies with the FCC regulations concerning equal employment opportunity or any successor regulations. Each licensee or permittee of a broadcast station with more than five full-time employees must further certify that the job openings identified in the statistical reports described above were filled in accordance with such FCC regulations, or provide a statement of the reasons for not filling the positions in accordance with such regulations.

B. Exceptions

Although licensees and permittees of public broadcast stations with five or fewer full-time employees are not subject to the reporting and public records requirements in this provision of the law, CPB does require that all station grant recipients submit annually to CPB the information required in the statistical report.

C. Result of Noncompliance

The law provides that CPB may not distribute any of its funds to the licensees and permittees of public broadcast stations that do not make the necessary certifications, file the required statistical report annually with CPB, or make such statistical information available to the public as required by the law.

III. MINIMUM COMPLIANCE REQUIREMENTS

A. All Licensees and Permittees

The law requires that all licensees and permittees of public broadcasting stations that receive federally appropriated funds from CPB must certify to CPB that they comply with the above-referenced FCC regulations concerning equal employment opportunity.

B. Licensees and Permittees with More Than Five Full-time Employees

In addition to III.A above, the law requires that licensees and permittees of public broadcast stations with more than five full-time employees must do all of the following:

1. file annually with CPB the statistical report described above (although not required by law for stations with five or fewer employees, CPB requires that all station grant recipients file such statistical information with CPB annually);
2. certify that the job openings identified in the statistical report were filled in accordance with FCC regulations or provide a statement of the reasons for not filling the positions in accordance with such regulations; and
3. make this statistical information available to the public at the central office of the station and at every location where more than five full-time employees are regularly assigned to work.

IV. SUGGESTIONS FOR COMPLIANCE

As to the FCC regulations regarding EEO, it must be understood that CPB does not regulate or enforce EEO or nondiscrimination compliance. Neither does CPB provide legal counsel of any kind concerning EEO or nondiscrimination laws and/or regulations.

Accordingly, because the FCC's EEO regulations have changed in recent years, CPB recommends that stations contact their legal counsel directly for any and all legal advice in this regard.

CPB does suggest, however, that stations may be able to satisfy the public information requirement by making available the appropriate sections from the CPB Stations Activity Benchmarking Study ("SABS") or the annual Stations Activities Survey ("SAS") (see V.A., below). For additional suggestions about complying with the requirement that the statistical information be made available to the public, see Part IV of the OPEN FINANCIAL RECORDS REQUIREMENTS section.

V. CPB PROCEDURES FOR COMPLIANCE AND CERTIFICATION

A. Reporting

CPB currently requires that the statistical information be provided annually in the employment portion of the Stations Activity Benchmarking Study ("SABS") or the annual Station Activities Survey ("SAS") which every CPB supported station -- regardless of the size of their work force -- must file with CPB.

B. Certification

1. CPB currently requires that the certification of compliance with the FCC's EEO regulations, and, if necessary, the statement of reasons for not filling positions in accordance with the FCC regulations, be provided annually in the Stations Grant Management System ("SGMS") and must be filled out by each CPB station grantee.
2. All such Certification of Eligibility forms must be completed in their entirety and executed by two different individuals: (1) an authorized official of the licensee responsible for executing grants and/or contracts for the licensee who has knowledge and authority to certify that the licensee and its station meet or exceed each of the eligibility criteria listed in the Certification of Eligibility (e.g., chairman, treasurer or secretary of the board of directors, university vice president for finance, president of the school board); and (2) the chief executive officer in charge of the operation of the station (e.g., president, general manager, or station manager).

C. Documentation

1. Each licensee or permittee of a public broadcast station, after reviewing the above information, is to develop documentation that may be used to verify the statistical employment information reported to CPB through the SABS or SAS and/or included in the public record. In addition, each station should develop documentation indicating the manner of compliance with public record requirements of this provision of the law. This documentation should contain information that will indicate, for example, the type of records made available to the public (by specific description), the mechanisms by which the records are made available (and, if appropriate, the location of these records), the arrangements made for reproduction of the documents by members of the public, and any limitations placed on access to such records by the licensee.
2. The documentation shall be kept at a reasonable location by each station and made available to CPB, upon request, to verify the accuracy of the statistical employment information, and to determine the fact and extent of compliance with the public record requirement of this provision of the Communications Act. However, CPB will not investigate (a) whether the stations are in compliance with the FCC's EEO regulations, or (b) any EEO complaints filed against any licensee or permittee of a public broadcast station.
3. The documentation shall also be made available to CPB auditors upon request in the course of a periodic audit.

VI. OTHER EEO REQUIREMENTS

It is important to note that this is NOT a comprehensive summary of all of the EEO requirements or nondiscrimination provisions found in the Communications Act or in other laws and regulations with which broadcast stations must comply. (For example, such other laws may include, but are not limited to: the Americans with Disabilities Act

of 1990 (42 U.S.C. 12101); the Civil Rights Act of 1964 (42 U.S.C. 2000e); the Equal Pay Act of 1963 (29 U.S.C. 206); the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-34); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); Title IX of the Education Amendment of 1972 (20 U.S.C. 1681); and Title V of the Rehabilitation Act of 1973 (29 U.S.C. 790-94).

In addition, Section 298 of the Communications Act (47 U.S.C. 398) also contains important EEO requirements of which every station must be aware. Again, since CPB does not provide legal advice to stations, it is recommended that the stations consult their legal counsel for assistance in complying with all of the applicable laws and regulations concerning EEO and nondiscrimination.

DONOR LIST AND POLITICAL ACTIVITIES REQUIREMENTS

I. THE LAW

A. Section 396(k)(12) of the Communications Act provides that:

“(12) 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.”

B. Section 397(11) of the Act states: *“The term “public broadcasting entity” means the Corporation, and licensee or permittee of a public broadcast station, or any nonprofit institution engaged primarily in the production, acquisition, distribution, or dissemination of educational and cultural television or radio programs.”*

II. INTERPRETATIONS

A. Definitions

1. CPB defines “candidate” to mean an individual who seeks election to Federal, State or local office, or nomination for such election.

2. CPB defines “political party” to mean an association, committee, or organization which nominates a candidate for election to any Federal, State, or local office whose name appears on an election ballot as the candidate of such association, committee, or organization.

3. CPB defines “political committee” as a committee that is authorized by a candidate or whose primary purpose is the election of such candidate to Federal, State or local office.

4. For purposes of this policy, CPB considers a third party person, company, partnership or other entity to be a “nonaffiliated” third party, unless such third party is acting on behalf of and at the request of the public broadcasting entity for the purposes of the public broadcasting entity’s fundraising development.

B. Effect

1. Political Lists.

This provision of the law prohibits CPB from distributing its federally appropriated funds to public broadcasting entities (as defined in Section 397(11) of the Act) that rent contributor or donor names (or other personally identifiable information) to or from, or exchange such names or information with, any Federal, State, or local candidate, political party, or political committee. Therefore, it is CPB policy that grantees shall not engage in the exchange, rental, or sale of donor or member names to, from or with any candidate, political party, or political committee, except as required by law or judicial process. This prohibition applies whether or not the contributor or donor has given permission for the exchange of names or other information.

2. Donor or Contributor Privacy.

Public broadcasting entities receiving CPB funds must not disclose contributor or donor names, or other personally identifiable information, to any nonaffiliated third party unless three specific requirements are met: (1) the CPB grantee clearly and conspicuously discloses to the contributor or donor that personally identifiable information may be disclosed to nonaffiliated third parties; (2) before the time that any information is initially disclosed, the contributor or donor is given the opportunity to direct that such information not be disclosed to nonaffiliated third parties; and (3) the contributor or donor is given an explanation of how the contributor or donor may exercise that nondisclosure option.

a. CPB grantees must maintain active control over their membership and donor lists, and take all appropriate measures to prevent unauthorized use of these lists. This requirement applies to the station and third parties working for the station, including but not limited to list brokers, mail-list management organizations, Friends organizations, fundraising organizations, or advertising or public relations agencies, to abide by a grantee’s compliance requirements, except as otherwise required by law or judicial process.

b. CPB grantees must not disclose contributor or donor names or other personally identifiable information to any nonaffiliated third party unless, before the time that such information is initially disclosed, the grantee clearly and conspicuously discloses to all of its contributors and donors that such personal information may be disclosed to nonaffiliated third parties. The grantee shall give the contributor or donor the opportunity to direct that such information not be disclosed to nonaffiliated third parties, and give the contributor or donor an explanation of how to exercise that nondisclosure option, except when such disclosure is required by law or judicial process.

c. CPB grantees must periodically remind contributors or donors of any potential for sale, rental, lease, loan, trade, gift, donation, transfer, or exchange of their names and personally identifiable information; and offer a means by which the names and other personally identifiable information may be suppressed upon request; and suppress the names as requested, except as otherwise required by law or judicial process.

3. Record Retention.

CPB requires that grantees maintain complete, accurate, and secure records by which it may be assured that grantees are in compliance with all applicable laws and regulations of the Federal government relating to this policy, and the eligibility requirements for public broadcasting entities as established by the Corporation. These records may be maintained in any format; they must be maintained for a period not less than three years. A grantee may contract with an affiliated third party to maintain the grantee's records, provided that the records are maintained in accordance with CPB's policies. If a grantee utilizes an affiliated third party to maintain records, the grantee retains and bears the responsibility of ensuring the records are maintained in compliance with CPB policies.

C. Limitation.

Non-political Organizations.

A public broadcasting entity may buy, sell, exchange, lease, or rent donor or contributor lists to, from, or with other organizations or individuals provided that such organizations or individuals are not candidates for Federal, State or local office, political parties, or political committees; and further provided that the public broadcasting entity complies with all of the provisions of CPB's donor list policy provisions relating Section 396(k)(12) of the Act.

III. MINIMUM COMPLIANCE REQUIREMENTS

A. All public telecommunications entities, including all station grant recipients, must do the following:

1. Annually certify to CPB their continued compliance with the laws and regulations of the Internal Revenue Service, and with all other applicable Federal law or regulations governing political activity and lobbying in effect at the time of certification;
2. Not sell, rent, lease, loan, trade, give, donate, transfer or exchange their membership or donor names to, with or from any candidate for Federal, State or local office, political committees, or political parties for any purpose whatsoever, except as otherwise required by law or judicial process;
3. Maintain active control of their contributor and donor lists, and take all appropriate measures to ensure against unauthorized use of such lists including requiring any third party, including but not limited to list brokers, mail-list management organizations,

Friends organizations, fundraising organizations, or advertising or public relations agencies, to abide by a grantees' compliance requirements, except as otherwise required by law or judicial process;

4. Refrain from disclosing contributor or donor names or other personally identifiable information to any nonaffiliated third party unless, before the time that such information is initially disclosed, they clearly and conspicuously disclose to contributors and donors that such personal information may be disclosed to a nonaffiliated third party. If such disclosure is not required by law or judicial process, the grantee shall give the contributor or donor the opportunity to direct that such information not be disclosed to a nonaffiliated third party, and give the contributor or donor an explanation of how to exercise that nondisclosure option; and

5. Periodically remind contributors or donors of any potential for sale, rental, lease, loan, trade, gift, donation, transfer, or exchange of their names and personally identifiable information, and offer a means by which the names and other personally identifiable information may be suppressed upon request; and suppress the names as requested, except as required by law or judicial process.

B. All public telecommunications entities, including all CPB grantees, must maintain complete, accurate, and secure records of all uses of membership and donor lists for fundraising purposes, and must furnish such records to CPB on request.

C. Result of Noncompliance. At its discretion, CPB may disqualify grantees from eligibility to receive, in whole or in part, Station Grants or other CPB grants or awards.

IV. CPB PROCEDURES FOR COMPLIANCE AND CERTIFICATION

A. Documentation

1. Each recipient of a CPB station grant, after reviewing the above information, shall develop documentation indicating the manner of compliance with this requirement.

2. The documentation shall be kept at a reasonable location by each station and made available to CPB, upon request, to determine the fact and extent of compliance. The documentation shall also be made available to auditors who may be making periodic audits of a station.

B. Certification

1. CPB will require that each recipient of a CPB station grant annually certify its continued compliance with the mailing list and political activities requirements. The annual certification will be part of the Stations Grant Management System ("SGMS") and must be filled out by each CPB station grantee.

2. All such Certification of Eligibility forms must be completed in their entirety and executed by two different individuals: (1) an authorized official of the licensee responsible for executing grants and/or contracts for the licensee who has knowledge and authority to certify that the licensee and its station meet or exceed each of the eligibility criteria listed in the Certification of Eligibility (e.g., chairman, treasurer or secretary of the board of directors, university vice president for finance, president of the school board); and (2) the chief executive officer in charge of the operation of the station (e.g., president, general manager, or station manager).

V. OTHER REQUIREMENTS

A. Section 501(c)(3) --The Internal Revenue Code; Tax Exempt Organizations' Lobbying and Political Activities Accountability Act of 1987:
501(c)(3) organizations must:

"...not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

B. The Internal Revenue Service may revoke the 501(c)(3) status of any organization that fails to comply with its rules, and may levy fines in the nature of excise taxes, on the organization and/or its leaders who knowingly engaged in activities in violation of its rules.

C. The Internal Revenue Service has regulations stating that no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (i.e. lobbying).