



AUG - 5 2009

Center for Mental Health Services
Center for Substance Abuse
Prevention
Center for Substance Abuse
Treatment
Rockville MD 20857

RE: Guidance on Substance Abuse Prevention and Treatment and
Community Mental Health Services Block Grant Requirements

Dear State Substance Abuse and Mental Health Director:

The purpose of this letter is to clarify the guidance regarding Substance Abuse Prevention and Treatment (SAPT) and Community Mental Health Services (CMHS) Block Grant program requirements issued by the Substance Abuse and Mental Health Services Administration (SAMHSA) on June 15, 2009. The guidance provided herein replaces and supersedes that provided by SAMHSA on June 15, 2009.

Over the past several years, States and Territories began utilizing administrative service organizations and payment/reimbursement processes via purchaser-vendor arrangements. The SAPT and CMHS Block Grant statutes and regulations do not specifically address these arrangements, and as a result, SAMHSA has received many questions about the interpretation of various Block Grant requirements. This communication is designed to provide guidance to States and Territories on how the statutes and regulations address these arrangements and how they should be interpreted. Specifically, this letter addresses the following issues: the funding of for-profit organizations; vendor compliance with SAMHSA Block Grant statutory requirements; clarification of the differences between subrecipients and vendors, and audit requirements for subrecipients and vendors. The basis for this guidance is the Public Health Service (PHS) Act, 45 Code of Federal Regulations (CFR) Part 96 (*Block Grants*), and Office of Management and Budget (OMB) Circular A-133 (*Audits of States, Local Governments, and Non-profit Organizations*).

Funding of For-Profit Organizations

In response to questions regarding fee-for-service (procurement contracts) arrangements with for-profit service providers, both the PHS Act establishing the SAPT and CMHS Block Grants and the implementing regulations impose restrictions on the expenditure of grant funds, including a prohibition on awards of financial assistance to for-profit entities. Specifically, the PHS Act § 1931(a)(1)(E) and 1916(a)(5) and 45 CFR § 96.135(a)(5) prohibit States and Territories from expending Block Grant funds “to provide financial assistance to any entity other than a public or nonprofit private entity.” Ordinarily, the term “financial assistance” is used to describe a grant relationship as distinguished from an acquisition (or procurement) relationship, typically funded by a contract. While the statute and regulations preclude States and Territories from providing grants to for-profit entities, procurement contracts may be entered into with for-profit entities.

Vendor Compliance with Block Grant Statutory Requirements

Vendors receiving Block Grant funds must comply with all Block Grant laws, regulations, contracts, agreements, and other program requirements. However, § 210 (f) of OMB Circular A-133 states, in part, that although program compliance requirements

do not normally pass through to vendors, non-Federal entities¹ are responsible for ensuring that vendor transactions are either structured such that the vendor is responsible for program compliance or the vendors' records must be reviewed to determine program compliance. Therefore, as recipients and subrecipients of Federal Block Grant funds, States, local governments, and non-profit organizations are responsible for ensuring that their vendors are in compliance with Block Grant program requirements.

Clarification of Differences Between Subrecipients and Vendors

According to § 105 of OMB Circular A-133:

- ✓ A subrecipient is a non-Federal entity that expends Federal awards received from a pass-through entity² to carry out a Federal program; and
- ✓ A vendor is a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program.

§ 210 (b) and (c) lists the following characteristics, indicating that some or all of the listed features may be present:

SUBRECIPIENTS	VENDORS
Determine who is eligible to receive Federal financial assistance	Provide the goods and services within normal business operations
Performance is measured against whether the objectives of the Federal program are met	Provide similar goods or services to many different purchasers
Responsible for programmatic decision making	Operate in a competitive environment
Responsible for adherence to applicable Federal program compliance requirements	Provide goods or services that are ancillary to the operation of the Federal program
Use Federal funds to carry out a program of the organization	Are not directly subject to the compliance requirements of the Federal program

Further, § 210 (d) states, in part, that:

- ✓ Unusual circumstances may exist; therefore, careful judgment should be exercised in determining whether an entity is a subrecipient or vendor; and
- ✓ The relationship between the recipient of Federal funds and the entity should be examined, rather than the form of the written agreement between the two parties.

¹ States, local governments, or non-profit organizations.

² A non-Federal entity that provides a Federal award to a subrecipient to carry out a Federal program.

Audit Requirements for Subrecipients and Vendors

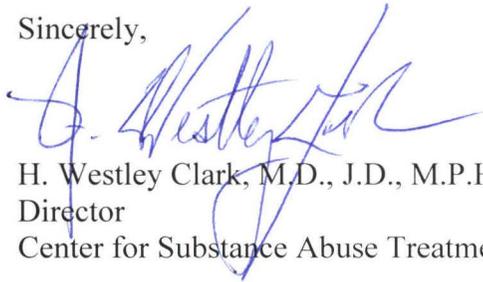
In accordance with OMB Circular A-133 § 210, local government and non-profit organization subrecipients are subject to OMB Circular A-133 audits, but for-profit subrecipients and vendors are not.

Summary

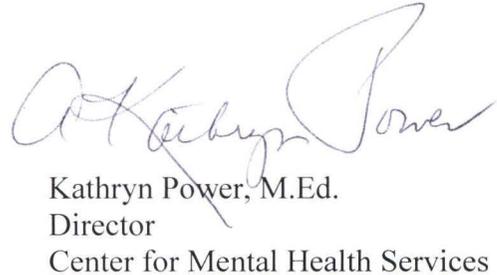
Recipients and subrecipients of SAMHSA Block Grant funds may award contracts, but not grants, to for-profit organizations. All grantees, subrecipients, and vendors must adhere to all legal, regulatory, and Block Grant program requirements. The relationship between Block Grant recipients and the characteristics of the recipient contributions to the Block Grant program should be carefully examined to determine whether the entity is a subrecipient or vendor. While SAMHSA Block Grant local government and non-profit organization subrecipients are subject to OMB Circular A-133 audits, for-profit subrecipients and vendors are not.

If you have any questions about this guidance, please contact your State Project Officer.

Sincerely,



H. Westley Clark, M.D., J.D., M.P.H., CAS, FASAM
Director
Center for Substance Abuse Treatment



Kathryn Power, M.Ed.
Director
Center for Mental Health Services