



April 21, 2016

Mary Mitchelson
Inspector General
Corporation for Public Broadcasting
401 Ninth Street NW
Washington, D.C. 20004

RE: Audit of CPB Radio Restricted Fund Expenditures, Communications Act, Transparency, and Discrete Accounting Requirements At Selected Grantees for Fiscal Year 2014, Report No. ACR1506-1508

Dear Ms. Mitchelson,

In September 2015, your office completed the audit referenced above. Recommendations 4 and 5 were addressed to the Corporation for Public Broadcasting (CPB), and our response follows.

- I. **OIG Recommendation 4:**** The Office of the Inspector General (OIG) requests that CPB revise its guidance, i.e. the Transparency Section in the General Provisions and Eligibility Criteria (General Provisions), to require:
- stations to post their Annual Financial Review (AFR) or annual Financial Summary Report (FSR) on their websites; and
 - Community Service Grant (CSG) recipients to specify how the public may obtain other financial reports they submitted to CPB for other grants they have received from CPB.

CPB Determination: CPB has several requirements for grantees to maintain, submit and disclose information, not all of which are required by the Communications Act. We are currently reviewing those requirements to determine which are necessary and effective, and CPB will make its final determination on Recommendation 4 in that context.

Recommendation 4 raises the issue of which kinds of financial information stations must make available to the public under the Communications Act and how they may comply. Unlike most FOIA statutes, which require government

agencies to disclose all information subject to discrete exceptions, the Act only requires disclosure of limited categories of information.

Section 396(k)(5) requires stations to “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).*” (Emphasis added.) Section 396(l) of the Act, “Financial management and records,” establishes requirements for accounting, recordkeeping, audits and public disclosure of financial information. Section 396(l)(3)(B) is limited to a subset of those requirements, under which stations must submit a biennial audit by qualified accountants, or a financial statement in lieu thereof, “as well as other information regarding finances (including an annual financial report) as the Corporation may require.” The disclosure requirement of 396(k)(5), therefore, applies to the limited subject matter of 396(l)(3)(B): biennial audits, financial statements and “other information regarding finances” that CPB requires stations to submit.

If Congress had intended Section 396(l)(3)(B) to encompass all financial information of any kind that grantees must submit to CPB, it would have said so. Instead, 396(l)(3)(B) is limited to information regarding the stations’ finances in the context of their periodic financial audits and reports. The Act elsewhere requires disclosure of other kinds of financial information, including reports on program production funds (Section 396(l)(4)(B, C and D)) and reports on ITVS production grants (Section 396(k)(3)(B)(iii)(VI)). The clear intent, therefore, is that each statutory disclosure requirement applies to the subject matter of the section where it appears, and not to the universe of “financial information.”

This interpretation is consistent with CPB’s longstanding practice of not disclosing financial information that stations submit in the SABS/SAS surveys. Accordingly, CPB interprets the Act to require that stations make available to the public their audited or unaudited financial reports, as well as their closely related AFR and FSR, which supplement those statutory reports.

The Act is silent on how stations may comply with these disclosure requirements. Absent statutory guidance, CPB considers it sufficient if they provide access to the public by any reasonable means upon request, similar to governmental agencies in responding to FOIA requests. Further, the Act does not suggest that grantees should instruct the public on how to obtain particular kinds of information. As long as a station’s contact information is readily available, it is intuitive how to ask for any information the public may desire. Requiring instructions on how obtain discrete categories of information would appear unnecessary.

As noted, CPB is comprehensively reviewing the reporting and public access requirements in the Act and the General Provisions, some in conjunction with the current CSG consultation panel, to ensure that they are adequate, consistent,

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reasonable, and not unnecessarily duplicative. The review includes methods for disclosing financial and grant information, and we expect to include website posting as one means of compliance, though not necessarily mandatory for all information. In the same context, CPB will also evaluate the instructions we require for obtaining information. We look forward to concluding that review, which will reflect a final decision on Recommendation 4.

- II. OIG Recommendation 5:** The OIG requests that CPB revise its guidance, i.e. the Transparency Section in the General Provisions, for stations reporting compensation for institutional stations (government and university stations) in lieu of an Internal Revenue Service (IRS) Form 990, by specifying the dollar thresholds for reporting compensation for officers, key employees, highest compensated employees, and independent contractors, consistent with the IRS's guidance.

CPB Determination: Because the IRS already requires that non-profit organizations make this Form available for public review, we have agreed to remove this requirement from the General Provisions and consider this action resolved and closed.

We trust that these audit issues are resolved.

Sincerely,



Jackie J. Livesay
Assistant General Counsel & Vice President, Compliance

CC: VIA ELECTRONIC MAIL

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