



August 21, 2020

VIA ELECTRONIC MAIL

Mr. Tom Mara  
Executive Director  
KEXP-FM  
472 1st Ave N  
Seattle, WA 98109

Dear Mr. Mara,

RE: Audit of Community Service Grants Awarded to Friends of KEXP,  
for the Period January 1, 2017 through December 31, 2018 (Report No. ASR1911-2003)

The report referenced above found that Friends of KEXP (KEXP) generally complied with the Corporation for Public Broadcasting's (CPB) Certification of Eligibility<sup>1</sup> and the applicable provisions in the Communications Act of 1934, 47 U.S.C. §396, et seq. (Communications Act or Act), with the following exceptions: it over and understated non-federal financial support (NFFS) in two fiscal years that resulted in a \$2,662 overpayment of its community service grants (CSG), it did not fully comply with the open meeting requirements in the Act, and it did not complete one of CPB's training requirements.

The audit findings and CPB's determinations for them follow.

## **I. Recommendations 1 and 2: NFFS Misreporting**

The audit report identified the errors in reporting NFFS, summarized in the table and individually addressed below.

- A. Underwriting Revenues from Ineligible Sources: CPB's Financial Reporting Guidelines (Guidelines), exclude from NFFS, revenues CSG recipients receive from public broadcasting entities.<sup>2</sup> Further, it indicates that this definition includes revenues provided by licensees of public broadcasting stations. Accordingly, the audit disqualified the underwriting revenues KEXP received from the University of Washington, because the University was the licensee of another public broadcasting radio station. We agree with this finding and KEXP must return total CSG overpayments of \$886 for FYs 2019 and 2020 to CPB.

Action: KEXP must return \$886 CSG overpayments, which CPB will collect through an adjustment to its FY 2021 CSG award and as offset by the CSG underpayments explained in paragraph F.

- B. Ineligible Payments: CPB's Guidelines exclude from NFFS payments unless they are provided by educational institutions or state and local government entities in exchange for educational or instructional television or radio programs.<sup>3</sup> The audit found that KEXP received payments from ineligible sources and disallowed the payments and recommended CPB require KEXP to return the resulting \$949 in CSG overpayments.

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<sup>1</sup> AKA CSG Agreement and Certification of Eligibility.

<sup>2</sup> Part I, Section 2.3 of the FYs 2017 and 2018 Financial Reporting Guidelines.

<sup>3</sup> Part I, Section 2.3 of the FYs 2017 and 2018 Financial Reporting Guidelines.

KEXP disagreed with a portion of this finding (\$477 in CSG overpayments), maintaining the revenues were not payments but underwriting in the form of sponsorships for several community events, including music events. KEXP co-produced some of the activities which benefited the events, and it argued that these services are not exchange payments that are ineligible as NFFS. While we do not dispute KEXP's assertion that the funds were intended as underwriting, the agreements that KEXP entered with its sponsors included conflicting provisions, some indicating that the funds were intended as a payment for services. While we recognize that international organizations may insist on documenting sponsorships, we encourage stations to work with their sponsors to ensure that the agreements clearly identify their donative intent. Accordingly, KEXP must return the resulting \$477 in CSG overpayments to CPB. KEXP indicated that it would take greater care going forward to ensure that the donations it receives are accurately described in the underlying records.

Nonetheless, we want to emphasize that CPB's Guidelines treats revenues generated from underwriting, which includes sponsorships, differently than those generated from special fundraising events. One distinguishing factor is that stations are not typically required to reduce underwriting revenues by any expenses including those to produce outreach events, unlike revenues from special fundraising events.

Regarding the balance of the finding, KEXP agreed with the audit that a \$9,424 payment it received in exchange for production services was erroneously reported as NFFS, resulting in a \$472 FY 2020 CSG overpayment. We agree with this finding and require KEXP to return the overpayment.

Action: KEXP must return to CPB the \$949 FY 2020 CSG overpayment which CPB will collect through an adjustment to its FY 2021 CSG award and as offset by the CSG underpayments explained in paragraph F.

- C. Overstated Interest and Dividends: The Guidelines do not allow CSG recipients to report as NFFS, capital gain distributions.<sup>4</sup> The audit found that KEXP erroneously included such distributions within the amount it reported as interest and dividends, i.e. NFFS, resulting in a \$523 FY 2019 CSG overstatement. KEXP and CPB agree with this finding and KEXP must return this overpayment to CPB.

Action: KEXP must return the \$523 FY 2019 CSG overpayment, which CPB will collect through an adjustment to its FY 2021 CSG award and as offset by the CSG underpayments explained in paragraph F.

- D. Overstated Special Fundraising Revenues: CPB's Guidelines allow CSG recipients to report as NFFS, revenues from special fundraising events, net of expenses.<sup>5</sup> The audit found that KEXP understated its special fundraising expenses resulting in a FY 2020 CSG overpayment of \$644. KEXP and CPB agree with this finding and KEXP must return the overpayment to CPB.

Action: KEXP must return to CPB the \$644 CSG overpayment, which CPB will collect through an adjustment to its 2021 CSG award and as offset by the CSG underpayments explained in paragraph F.

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<sup>4</sup> Part I, Section 2.3 of the FYs 2017 and 2018 Financial Reporting Guidelines.

<sup>5</sup> Part III, Line 14 instructions of the FYs 2017 and 2018 Financial Reporting Guidelines.

- E. Overstated In-Kind Revenues for a Public Performance: CPB’s Guidelines prohibit CSG recipients from reporting in-kind donations for local productions as NFFS.<sup>6</sup> The audit found that KEXP included donated production services for the public performance of a local production, resulting in a \$464 FY 2020 CSG overpayment. KEXP and CPB agree and KEXP must return the overpayment to CPB.

Action: KEXP must return the \$464 FY 2020 CSG overpayment, which CPB will collect through an adjustment to its FY 2021 CSG award and as offset by the CSG underpayments explained in paragraph F.

- F. Overstated Premiums: The Guidelines require CSG recipients to comply with IRS Publication 1771 when reporting NFFS and deduct the cost of high-end premiums they provided to donors in exchange for their contributions.<sup>7</sup> The audit found that KEXP overstated the required reduction because it mistakenly included cost of low-end premiums in addition to the high-end premiums, resulting in a \$803 CSG underpayment. Because CPB distributes all CSG funds the year they are received, there are no reserves from which to compensate the recipient. However, we will allow KEXP to offset the underpayments against the overpayments occurring in the same fiscal years, resulting in CSG reductions of \$557 and \$246 for FYs 2019 and 2020, respectively and as shown in the table below.

Action: No further action is required.

Ineligible NFFS	FY 2019 CSG Overpayments	FY 2020 CSG Overpayments	Total
Underwriting	\$778	\$108	\$886
Payments	\$318	\$631	\$949
Interest & Dividends	\$523	\$0	\$523
Fundraising	\$0	\$644	\$644
Public Performance	\$0	\$464	\$464
Premiums	(\$558)	(\$246)	(\$804)
Total	\$1,061	\$1,601	\$2,662

G. CSG Non-Compliance Policy

CPB adopted the Non-compliance Policy to encourage stations to comply with the applicable provisions governing their CSG and the Communications Act. Failure to comply with these requirements which results in an overpayment of the recipient’s CSG subjects the recipient to a penalty of ten percent of the amount of the overpayment. Accordingly, CPB will assess a penalty of \$266 for the total CSG overpayment of \$2,662 which KEXP must provide to CPB within 45 days of the date of this correspondence.

Action: KEXP must provide the \$266 penalty to CPB within 45 days of the date of this correspondence.

**II. Recommendation 3: Open Meeting Requirements**

<sup>6</sup> Part I, Section 2.4.2 of the FYs 2017 and 2018 Financial Reporting Guidelines.

The Communications Act requires that stations receiving CSGs give reasonable advance notice of any board, board committee and community advisory board meetings,<sup>8</sup> and CPB requires at least seven-days' notice.<sup>9</sup> The audit found that KEXP did not provide notice for 16 of 62 board and board committee meetings.

This section of the Act also addresses closed board, board committee and community advisory board meetings and provides that stations must document the reasons for closing any of those meetings and make that documentation available within a reasonable period. CPB requires that the written statement be prepared for inspection, either at the recipient's central office or posted on its station website, within 10 days after each closed meeting.<sup>10</sup> The audit found that KEXP did not make such documentation available for 19 out of 21 closed meetings or meetings that were closed during the executive sessions. We agree that KEXP was not compliant in those instances.

The CSG Non-compliance Policy provides for a penalty of \$5,000 for non-compliance with each category in the Act. Since KEXP complied in most instances with the open meeting notice requirements, was compliant with the other Communications Act requirements, and has promptly identified the steps it will take to meet these requirements in the future, we will not require that it provide additional documentation but assess a reduced penalty of \$2,500 and require that the KEXP employee responsible for assuring KEXP's compliance with the Communications Act requirements attend our CSG Requirements and Resources on-line training that covers the same.

Action: KEXP must provide the \$2,500 penalty to CPB, within 45 days of the date of this correspondence and the KEXP employee responsible for assuring its compliance with the Communications Act requirements must attend our CSG Requirements and Resources on-line webinar, which will be held prior to November 1, 2020.

### **III. Recommendation 4: CPB Training**

The General Provisions require that CSG recipients provide annual harassment prevention training for all station officers, employees and interns and certify compliance in their annual CSG Agreement and Certification of Eligibility (CSG Agreement).<sup>11</sup> The training must be completed by October 1 of the applicable year.

Of 122 employees, the audit found that KEXP completed the training for all but 11 people within the required timeframe in 2018 but indicated that it was unclear if the remaining 11 had completed their training when KEXP certified its CSG Agreement on December 4, 2018. For FY 2019, the audit revealed that KEXP completed the training by the required deadline for all but 20 personnel, who were trained before KEXP submitted its certification to CPB. Additionally, for FY 2021, KEXP reported that all personnel have completed the required training ahead of the deadline and that it had adopted procedures to ensure it would meet the requirement going forward. The audit recommended that KEXP identify the corrective actions and controls it will implement to ensure compliance with this training requirement.

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<sup>8</sup> 47 U.S.C § 396(k)(4).

<sup>9</sup> Section 2A of the FY 2020 General Provisions.

<sup>10</sup> Section 2B of the FY 2020 General Provisions.

<sup>11</sup> Section 10A of the FY 2020 General Provisions.

Mr. Tom Mara  
Executive Director  
KEXP-FM

While we agree in principle with the finding, considering that KEXP is currently compliant and was compliant for almost all its staff during the prior two years, we will not assess a penalty or require further action.

Action: No further action is required.

Please make a check payable to CPB for \$2,766 for the penalties explained above and forward it to the attention of Nick Stromann, Vice President, Controller, Corporation for Public Broadcasting, 401 Ninth Street N.W., Washington, D.C. 20004-2129.

If you wish CPB to consider additional information relating to this matter, please provide the same in writing within 30 days of the date of this letter. Failing that, CPB will consider these determinations final and KEXP will be required to comply with the actions set forth above. CPB reserves the right to take any other action it deems appropriate until these issues are resolved to CPB's satisfaction.

Kind regards,

*Jackie J. Livesay*

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

CC: VIA ELECTRONIC MAIL

Jill Singh, Chair, KEXP-FM Board of Directors  
Michael Levy, Executive Vice President & Chief Operating Officer, CPB  
J. Westwood Smithers, Jr., Senior Vice President & General Counsel, CPB  
William P. Tayman, Jr., Chief Financial Officer & Treasurer, CPB  
Kimberly A. Howell, Inspector General, CPB  
Kathy Merritt, Senior Vice President, Journalism & Radio, CPB  
Katherine Arno, Acting Vice President, CSG & Station Initiatives, CPB  
Nick Stromann, Vice President, Controller, CPB  
Bill Richardson, Senior Director and Deputy Inspector General, CPB  
Andrew Charnik, Director, Radio CSG Policy & Administration, CPB  
Nadine Feaster, Director, Grants Administration, CPB  
Pat Saks, Director, Business & Administration, CPB