



Patricia de Stacy Harrison
President and
Chief Executive Officer

December 22, 2023

The Honorable Ted Cruz
United States Senate
Washington, DC 20510

Dear Senator Cruz:

Thank you for your letter of December 8, 2023, and for the opportunity to respond to your questions and opinions regarding the Corporation for Public Broadcasting's ("CPB") Community Service Grant ("CSG") program and CPB's commitment to diversity, objectivity, and balance.

The Public Broadcasting Act ("Act") tasks CPB with supporting telecommunications services that "will constitute an expression of diversity"¹ and to "encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities."² CPB defines diversity broadly as Congress implied in the Act, including geography, age, economic status, ethnicity, gender, race, ability/disability, and point of view.³ This inclusive definition informs what CPB does to fulfill its principal statutory responsibilities to fund public media content and administer the Community Service Grants ("CSGs").

I will first address certain opinions or conclusions in your letter which, I respectfully submit, do not fully or accurately reflect CPB's performance of its obligations under the Act.

Opinion (1): CPB has misconstrued the Public Broadcasting Act statement that it should support telecommunications services "which will constitute an expression of diversity"⁴ to restrict its CSGs to stations that strive to *be* "diverse" by considering traits like race and ethnicity in hiring and workforce development, rather than as a mandate to fund different types of television and radio stations, broadening the range of public media content.

Response: CPB's current and former CSG diversity policies do not require any unlawful employment preferences or quotas. CPB encourages its CSG grantees to reflect their local communities in their employment and governing boards under this definition of diversity. They are no more discriminatory than the policies for federal agencies with which CPB, as a private

¹ 47 U.S.C. § 396(a)(5).

² 47 U.S.C. § 396(a)(6).

³ CORPORATION FOR PUBLIC BROADCASTING APPROPRIATION REQUEST AND JUSTIFICATION FY 2024/FY 2026, pg.6 (Mar. 13, 2023), <https://cpb.org/sites/default/files/FY24-26%20CPB%20Budget%20Justification%20Public.pdf>

⁴ 47 U.S.C. § 396(a)(5).

corporation, voluntarily complies. Hiring decisions are still based on non-discriminatory selection of the best qualified applicants. Moreover, CPB has never denied a CSG to a station based on its diversity requirements.

Opinion (2): CPB board members openly discuss circumventing civil rights laws to allow for unlawful discrimination. “The way the CSG diversity amendment was debated—the tacit, but indifferent, recognition that the rules might violate the Constitution’s promise of equality; the knowing allusions to ‘our values’ while excoriating ‘places like that’—suggests that CPB already knows which side it’s on.⁵ And that makes it less capable of fulfilling its statutory mission.”

Response: Under 47 U.S.C. § 396(k)(4), CPB’s Board of Directors meets to consider policies and initiatives affecting CPB’s mission, ensure compliance with the law, and provide clear direction on corporate strategies and initiatives which management must execute. CPB’s Code of Ethics charges Directors with three fiduciary duties to the Corporation: Loyalty, Care, and Candor. The latter two ensure that Directors are fully informed of the facts necessary to make decisions about CPB policy, and that they disclose to their fellow directors everything they know that is relevant to the Board’s consideration of the issues before it.

At its October 2023 meeting, the Board reviewed CPB’s 2011 policy requiring CSG recipients to produce and publish a 500-word statement reflecting on elements of diversity they found important to their public media work, including the extent to which their staff and governance reflected such diversity; the progress they had made to increase diversity in the last two to three years; and the station’s diversity plans for the coming year.⁶ The Board approved a change in the 2011 policy that eliminated the 500-word statement requirement and instead required stations to publish a “community representation statement.”⁷

In 2011, many of those CSG requirements mirrored existing Federal Communication Commission, Equal Employment Opportunity Commission, and state and local nondiscrimination requirements. The excerpts of the Board’s October 2023 discussion cited in your letter reflect the Directors’ Care and Candor in responsibly considering the potential impact of state DEI laws as well as the Supreme Court’s decision in Students for Fair Admissions v.

⁵ Accord Mike Jansen, *CPB Has ‘No Immediate Plans’ to Recruit New Ombudsman*, CURRENT (May 7, 2021), <https://current.org/2021/05/cpb-has-no-immediate-plans-to-recruit-new-ombudsman/>.

⁶ Memorandum from Public Television CSG Review Panel to Pat Harrison, President & CEO, Corporation for Public Broadcasting, Final Report and Recommendations (Aug. 25, 2010); Results of the 2010 Television Community Service Grant Policy Review As Approved by the CPB Board of Directors (Sept. 2010)

⁷ Resolution re: Community Representation Statement, CPB Board of Directors, (October 16, 2023) <https://cpb.org/aboutcpb/leadership/board/resolutions>

Harvard⁸ on the 2011 CSG diversity policy.

The Board's full discussion of the issue and of management's recommendation reflect no discriminatory intent or consequences. The Board decided to simplify the CSG diversity policy solely because (a) the Inspector General's limited review audits found that several stations failed to comply with its non-substantive requirements; (b) the policy unnecessarily overlapped existing FCC and EEOC requirements, as well as CPB's civil rights enforcement responsibilities under 47 U.S.C. § 398; and (c) emerging state laws barring DEI activities or initiatives could potentially disqualify state-owned public media stations from accepting CSG funds. The Board therefore revised the policy to require a brief community representation statement with fewer detailed requirements. Importantly, the revised policy is equally non-discriminatory.

Opinion (3): CPB's Office of the Inspector General ("OIG") in *Evaluation of WOJB-FM Compliance with Selected Diversity Requirements Included in Radio Community Service Grants General Provisions and Eligibility Criteria* (Aug. 30, 2023) and *Evaluation of KSHI-FM, Zuni Communications Authority, Compliance with Selected Communications Act, Diversity, and Transparency Requirements* (Mar. 31, 2023) chided two Native American-owned radio stations for not meeting CSG diversity requirements,⁹ finding the stations' published diversity statements were too short; failed to adequately disclose employee gender, ethnicity, or race; and lacked specific action items,¹⁰ and disregarded the fact that the stations offered distinctive perspectives from the Zuni and Ojibwa peoples.

Response: Although CPB is a private corporation, it is a "Designated Federal Entity" under the Inspector General Reform Act of 2008, so it has an independent Inspector General like a government agency. CPB's Office of the Inspector General conducts audits and investigations; promotes economy, efficiency, and effectiveness; and deters and prevents fraud, waste, and mismanagement in CPB programs and operations. CPB's Board and management cannot direct the subject matter of audits or which grantees are selected for audits.

The above-referenced audits of Native American stations are representative of the consequences of CPB's detailed 2011 policy which had not been audited until the Inspector General commenced these and selected other reviews in 2022 and 2023. CPB did not penalize

⁸ *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023).

⁹ CPB OIG, *Evaluation of WOJB-FM Compliance with Selected Diversity Requirements Included in Radio Community Service Grants General Provisions and Eligibility Criteria* (Aug. 30, 2023), https://cpboig.oversight.gov/sites/default/files/reports/2023%2D08/ECR2310%2D2311_WOJB%2DFM_%28Issued_08_30_2023%29_WEB.pdf; CPB OIG, *Evaluation of KSHI-FM, Zuni Communications Authority, Compliance with Selected Communications Act, Diversity, and Transparency Requirements* (Mar. 31, 2023), https://cpboig.oversight.gov/sites/default/files/reports/2023%2D03/ECR2305%2D2306_KSHI%2DFM_%28Issued_033123%29_WEB.pdf.

¹⁰ *E.g., Diversity Statement*, WOJB-FM, <https://web.archive.org/web/20230129102112/https://www.wojb.org/cpb-requirements.html> (Jan. 29, 2023) (since revised); *KSHI Radio Station Diversity Statement*, KSHI-FM, https://www.ashiwi.org/Documents/KSHI_TRANSPARENCY2023.pdf (last visited Dec. 8, 2023)

these audited grantees for their non-compliance with the diversity requirements. The Board and management appreciate the Inspector General's assistance in identifying the need for a policy change.

Below are my responses to your questions, including the attached documents as requested in Questions 6 and 8.

1. Do the previous CSG "diversity statement" requirements or the newly adopted "community representation statement" requirements violate the Fourteenth Amendment of the U.S. Constitution or Title VI of the Civil Rights Act of 1964? Why or why not?

No. Neither requirement discriminates in favor of or against any particular demographic nor do they establish any prohibited preferences or quotas. The CSG diversity policies, former and current, simply encourage grantees to reflect the diversity of populations served in programming, employment, and governance. Specifically, grantees are required to produce a "statement that documents their support of these goals and how they plan to achieve them."

2. How does CPB ensure "strict adherence to objectivity and balance in all programs or series of programs of a controversial nature" in the public telecommunications it funds while avoiding editorial "control over the content or distribution of public telecommunications programs and services?"¹¹

Reflecting the notion that trust is the most important asset public media holds, CPB's Board and management take editorial integrity very seriously. CPB is in a unique position where it is expected to honor two conflicting concepts. On one hand, the Public Broadcasting Act requires CPB to support programming that is objective and balanced (47 U.S.C. § 396 (g)(1), yet on the other it prohibits CPB from interfering with the program content or other activities of public media entities (47 U.S.C. § 396(g)(3)). While CPB may neither dictate nor edit the content of individual programs, it includes the Act's objectivity and balance requirements in CPB-funded program production grant agreements. CPB also reminds producers and distributors of public media content of the Act's requirements and urges them to ensure transparency in the sources of information in their programs.

¹¹ 47 U.S.C. § 396(g)(1)(A) ("[T]he Corporation is authorized to—facilitate the full development of public telecommunications...with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature.") with 47 U.S.C. § 398(c) ("Nothing in this section shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the content or distribution of public telecommunications programs and services.").

Since the Act prohibits CPB from producing, scheduling, or disseminating programs on its own,¹² CPB must meet its objectivity and balance mandate through other statutorily authorized functions related to programming, such as funding, research, training, and communications. This has included commissioning a series of White Papers on Objectivity, Balance, and Editorial Independence; funding the development of a Code of Editorial Integrity for public media stations to adopt or adapt; funding a Public Media Journalists Association Editor Corps to provide immediate editing assistance to small and rural public media stations; as well as funding professional development programs focused on editorial integrity for public media newsroom leaders.

3. The website of the federally funded Independent Television Service (“ITVS”) prominently includes an “Impact” page to show how its documentaries are “[i]nspiring audiences to take action” on controversial political issues like criminal justice reform.¹³ Does ITVS adhere to “objectivity and balance?”¹⁴

ITVS was founded by Congress to bring more balanced programming to public television by reflecting voices and visions of underrepresented communities and addressing the needs of underserved audiences, particularly minorities and children. From its inception, ITVS has funded and advanced documentaries by producers who take creative risks, explore complex issues, and express points of view that are seldom aired on television. These point-of-view documentaries are inherently and qualitatively different from news reporting that strives for the objectivity contemplated in Section § 396(g)(1)(A) of the Communications Act of 1934.

4. Is CPB statutorily obligated to fund ITVS?¹⁵

Yes. The Act, in 47 U.S.C § 396(k)(3)(B)(i), requires CPB to provide “a substantial amount” of its discretionary programming funds for TV and radio to “independent producers and production entities, producers of national children’s educational programming, and producers of programming addressing the needs and interests of minorities.” Further, 47 U.S.C § 396(k)(3)(B)(iii) requires CPB to “provide adequate funds to an independent production service,” and it required establishment of that service as a District of Columbia corporation which ITVS became.

¹² 47 U.S.C. § 396 (g)(2)(I)(3)(B).

¹³ See *Impact*, ITVS (last visited Dec. 8, 2023), <https://itvs.org/impact/>.

¹⁴ 47 U.S.C. § 396(g)(1)(A).

¹⁵ See 47 U.S.C. § 396(k)(3)(B)(i).

5. Is CPB statutorily obligated to fund the National Multicultural Alliance?¹⁶

No. However, a Congressional declaration of policy in 47 U.S.C. § 396(a)(6) provides that it is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities. Over the past 35 years, Congressional appropriators have expressed their support for funding the National Multicultural Alliance (NMCA).

6. Provide the “memo” prepared for the CPB Board of Directors regarding the proposed community representation statement.¹⁷

See attached.

7. List all state laws that CPB, including its directors and staff, believed might “conflict” with CSG diversity statement requirements or put stations in a “precarious position when it comes to state funding.”

According to [City Journal](#), legislatures in 22 states have proposed 40 bills to regulate DEI this year. Only seven have become law.¹⁸ As of this past summer, at least five states (Florida, Texas, North Carolina, North Dakota, and Idaho) have banned the use of DEI statements in university hiring through legislation or administrative action.¹⁹ Two states (Florida and Texas) prohibited the establishment of DEI offices; several others (including North Carolina, North Dakota, Tennessee, Texas, and Florida) have prohibited mandatory DEI training for employees.²⁰

8. Provide all versions of CPB’s personnel policies, Manager’s Guidebook, and diversity, equity, and inclusion trainings for staff or leadership from Fiscal Year 2019 to present.

See attached documents. CPB does not have a Manager’s Guidebook that includes diversity, equity, or inclusion topics. From 2019 through 2023, all CPB employees completed Preventing Harassment and Discrimination: Gateway and Addressing Our Biases online courses through EverFi. During the Covid Pandemic in 2021, CPB employees also participated in the Medici Group’s Renaissance Program²¹ which

¹⁶ *Id.* See also 47 U.S.C. § 396(a)(6).

¹⁷ Board of Director’s Meeting, CPB (Oct. 16, 2023).

¹⁸ City Journal, How Red State Universities Evade DEI Restrictions, September 26, 2023. <https://www.city-journal.org/article/how-red-state-universities-evade-dei-restrictions>

¹⁹ *Id.*

²⁰ *Id.*

²¹ Medici Group, now d/b/a Via Renaissance, “combines thought leadership... with behavioral science, data science and technology to accelerate change in organizations...” <https://www.viarenaissance.io/>



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provided training for a hybrid workplace that included a section on diversity and inclusion.

Thank you again for the opportunity to respond. If you have any additional questions, please do not hesitate to contact me at PHarrison@cpb.org or Anne Brachman, CPB's Senior Vice President of External Affairs, at Abrachman@cpb.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia de Stacy Harrison", written in a cursive style.

Patricia de Stacy Harrison