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# **Communications Act Compliance**



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**June 2016**

June 1, 2016

## **Communications Act Compliance**

This document explains important provisions of the Communications Act of 1934, 47 U.S.C. §396, et seq. (Communications Act or Act) that apply to public broadcasting stations receiving a Community Service Grant (CSG) from the Corporation for Public Broadcasting (CPB). It also references related requirements established by CPB's General Provisions and Eligibility Criteria (the General Provisions). It does not supersede other provisions of the Act, specific terms of CPB grants, or other laws and regulations applicable to grantees. CSG recipients should consult their legal counsel for guidance in complying with specific provisions of the Act and other legal requirements.

In their annual CSG Agreement and Certification of Eligibility, Grantees must certify that they comply with the Communications Act, the General Provisions, CPB's Financial Reporting Guidelines and the Application of Principles of Accounting and Financial Reporting Applicable to Public Telecommunications Entities. This annual certification must be signed by two individuals: the head of the grantee and the licensee official. The head of the grantee is the highest ranking representative of the station's management responsible for station operations, such as its president and chief executive officer. Licensee official means the chair of the station's licensee's governing board, or a designated senior level representative of the licensee who is not a member of the station's management and who has the authority to enter into binding contracts and agreements on behalf of the licensee.

To ensure compliance, the Act enables CPB and its representatives, including the Inspector General, to audit grantees, including the right of access to their "books, documents, papers and records" (§396(l) (3) (D)). Stations may therefore find it helpful to develop procedures for documenting their compliance with each requirement. Such procedures would support consistency in a station's compliance, the accuracy of its annual certification to CPB, and evidence that may be useful to demonstrate compliance in the event of a station audit.

Failure to comply with the Communications Act and CPB's Certification Requirements may result in penalties, including forfeiture of all or part of a recipient's CSG funding, under CPB's CSG Non-Compliance Policy.

# I. Open Meetings

## A. Governing Legislation: The Communications Act provides:

*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 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.*

§ 396(k)(4)

*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. §397(5)*

## B. Open Meetings: Meetings that must be open to the public include, but are not limited to, the following (collectively Open Meetings):

1. board meetings;
2. board committee meetings; and
3. community advisory board (CAB) meetings.

## C. Prerequisites for a "Meeting": In order for a gathering of board, committee, or CAB members to constitute a meeting under the Act, the following are necessary:

1. the presence of a quorum; and
2. deliberations that determine or result in the joint conduct or disposition of business relating to public broadcasting.

Note that deliberations do not require any formal action or vote. Any discussion of public broadcasting issues that may influence the opinions of members makes it a meeting.

- D. **Access to Open Meetings:** The Act requires stations to allow anyone to attend any Open Meeting (or any portion of a meeting that is open) without requiring the person to register, or provide his or her name or other information. In the event such information is necessary to ensure a safe meeting environment, CPB would not consider such a request a violation of the Act.
- E. **Notice of Open Meetings:** The Act requires stations to provide the public with reasonable advance notice of an Open Meeting. Stations may satisfy that requirement by providing at least seven days advance notice of an Open Meeting, including the time and place of the meeting, by:
1. posting notice on the station's website<sup>1</sup>;
  2. broadcasting notice on-air between 6 a.m. and 11 p.m., as shown by the station's log;
  3. placing notice in the "Legal Notices" section of a local newspaper in general circulation in the station's primary coverage area; or
  4. giving notice through a recorded announcement accessible on the station's phone system.

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<sup>1</sup> "Station website," as defined in the General Provisions, includes the CSG recipient's station website, if it has one, and if not then its licensee's website or an affiliated station's website. If the CSG recipient has none of the foregoing, it may, with CPB's approval, use a website shared by other public broadcasting stations.

## II. Closed Meetings

### A. Governing Legislation: The Communications Act provides as follows:

*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. §396 (k)(4)*

*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." §397(5)*

### B. When may a meeting be closed? The Act allows stations to hold Closed Meetings, or to close an Open Meeting, when discussing any of the following:

1. matters concerning individual employees;
  2. proprietary information;
  3. litigation and other matters requiring confidential advice of counsel;
  4. commercial or financial information obtained from a person on a privileged or confidential basis; or
  5. the purchase of property or services, if the premature disclosure of the transaction would compromise the station's business interests.
- §396(k)(4)

### C. Closed Meeting Documentation: The Act requires stations to document and make available to the public the specific reason(s) for closing a meeting within a reasonable time after the meeting. CPB also requires that the written statement be made available for inspection, either at the CSG recipient's central office or posted on its station website, within 10 days after each closed meeting.

### III. Open Financial Records

**A. Governing Legislation:** The Communications Act provides as follows:

*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). §396(k)(5)*

Subsection (l)(3)(B) requires public telecommunications entities to comply with the following<sup>2</sup>:

- 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 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.*

**B. Public Telecommunications Entity:** The Act defines “public telecommunications entity” as any enterprise that:

- A. is a public broadcast station or a noncommercial telecommunications entity; and*
- B. disseminates public telecommunications services to the public. §397(12)*

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<sup>2</sup> Please refer to the General Provisions applicable to the reporting year for detailed reporting requirements.

C. **Public Telecommunications Services:** The Act defines “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. §397(14)*

D. **Noncommercial Telecommunications Entity:** The Act defines “noncommercial telecommunications entity” as any enterprise that:

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 or association; and*

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 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. §397(7)*

E. **The Public’s Access to Financial Information:** The Act requires stations to make available to the public their annual financial and audit reports and other financial information they are required to provide to CPB. CPB also requires that each CSG recipient post the following documents on its station website:

1. its most recent audited financial statement or un-audited financial statement for stations exempt from providing audited financial statements; and
2. its most recent annual financial report (AFR) or annual financial summary report (FSR) (whichever is applicable).

## IV. Community Advisory Board

A. **Governing Legislation:** The Community Advisory Board (CAB) requirements in the Communications Act are as follows:

*(A) Funds may not be distributed pursuant to this subpart to any public broadcasting 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 the 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 November 2, 1978, 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 November 2, 1978.*

*(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.*  
§396(k)(8)

- B. **CAB Required for Most Stations:** All stations other than those owned by a State, a political or special purpose subdivision of a State, or a public agency must have a CAB<sup>3</sup>.
- C. **CAB's Advisory Role:** The CAB's role is advisory in nature but may have other responsibilities delegated to it by the station or its governing body. However, the CAB must not exercise any control over the daily management or operation of the station.
- D. **Station's Oversight of CAB:** The Act requires that stations make good faith efforts to ensure that:
  - 1. the CAB meets at regular intervals;
  - 2. the CAB members regularly attend its meetings; and
  - 3. the CAB reasonably represents the diverse needs and interests of the communities served by the station.
- E. **CAB's Responsibilities:** A CAB may establish and follow its own schedule and agenda. The CAB's structure and composition, including the number of members, their terms, and method of appointment and removal, should be established by the station's governing body. The CAB's responsibilities include:
  - 1. the right to review the station's programming goals;
  - 2. the right to review the service provided by the station;
  - 3. the right to review significant policy decisions rendered by the station; and
  - 4. the obligation to advise the station's governing body on whether the station's programming and other significant policies are meeting the specialized educational and cultural needs of the communities served by the station, and to make recommendations the CAB deems appropriate to meet such needs.
- F. **CAB Annual Certification:** The Act requires stations to certify annually their compliance with the CAB requirements. This certification is a part of CPB's required Certification of Eligibility.

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<sup>3</sup> This requirement includes private college or university licensees that are not "owned and operated by a State, a political or special purpose subdivision of a State, or a public agency." §396(k)(8)

## V. CPB Employment Statistical Report

A. **EEO Legislation:** The EEO requirements of the Communications Act are as follows:

*(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 requirements 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 therefor. 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.*

396(k)(11)

- B. Employment Statistical Report:** The Communications Act requires stations with six or more full-time employees to annually report to CPB the race and sex of the number of employees in the full- and part-time categories below. CPB requires<sup>4</sup> all stations to provide this information annually in their Employment Statistical Report<sup>5</sup>.
1. officials and managers,
  2. professionals,
  3. technicians,
  4. semiskilled operatives,
  5. skilled craft persons,
  6. clerical and office personnel,
  7. unskilled operatives, and
  8. service workers.
- C. Access to the Employment Statistical Report:** The Act requires that stations make their Employment Statistical Report available for review by the general public at their central offices and at every location with six or more employees.
- D. Job Openings Annual Certification:** The Act requires stations to certify annually to CPB that it filled all job openings in accordance with FCC regulations, or to provide CPB with a statement explaining the reasons for each noncompliance. Stations are required to provide this certification and related information in their Employment Statistical Report.
- E. Annual EEO Certification:** The Act requires stations to certify annually to CPB that they comply with the EEO regulations published under Section 73.2080 of Title 47, Code of Federal Regulations or any successor regulations. Stations provide this certification through CPB's Certification of Eligibility.
- F. Other EEO and Nondiscrimination Requirements:** Stations are subject to additional EEO and nondiscrimination provisions in other federal, state, and local laws and regulations, including but not limited to, those listed below. Stations should consult their legal counsel to ensure their compliance.

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<sup>4</sup>Found in the applicable year's General Provisions, Section titled "Payment Schedule and Reporting Requirements."

<sup>5</sup>For radio stations it is the Employment (Section 1) of the Station Activity Survey (SAS).

1. Americans with Disabilities Act of 1990 (42 U.S.C. §12101);
2. Civil Rights Act of 1964 (42 U.S.C. §2000e);
3. Equal Pay Act of 1963 (29 U.S.C. §206);
4. Age Discrimination in Employment Act of 1967 (29 U.S.C. §621-34);
5. Title VI of the Civil Rights Act of 1964 (42 US.C. §2000d);
6. Title IX of the Education Amendment of 1972 (20 U.S.C. §1681); and
7. Title V of the Rehabilitation Act of 1973 (29 U.S.C. §790-94).

## VI. Donor Information

**A. Donor List and Political Activity Legislation:** The Act restricts disclosure of donor lists for political and other uses as follows:

*(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. §396(k)(12)*

**B. Definitions:** CPB defines the operative terms of the Act as follows:

1. Candidate – an individual seeking election to Federal, State, or local office, or nomination for such position.
2. Political Party – an association, committee, or organization that nominates a candidate for election to any Federal, State, or local office and whose name appears on an election ballot as the candidate of such association, committee, or organization.
3. Political Committee – a committee authorized by a candidate or whose primary purpose is the election of a candidate to any Federal, State, or local office.
4. Nonaffiliated Third Party – any person, company, partnership, or other party that is not controlled by or acting on behalf of, or at the request of, the station for the purpose of fundraising, underwriting, or development for the station.

- C. **Restricting the Exchange of Donor Information:** The Communications Act bars stations from renting contributor names, donor names, or other personally identifiable information (collectively Personal Information) to or from, or exchanging Personal Information with, any Federal, State, or local candidate, political party, or political committee.

The Act also bars stations, unless required by law, from disclosing a contributor or donor's Personal Information to any Nonaffiliated Third Party, unless the station:

1. clearly and conspicuously notifies contributors and donors that the station may release its Personal Information to Nonaffiliated Third Parties;
2. advises contributors and donors before any disclosure that they have the right not to have their Personal Information disclosed; and
3. explains to the contributor or donor how to exercise that non-disclosure option.

- D. **Safeguarding Donor Information:** Stations should maintain complete, accurate and secure records of all uses of membership and donor lists for fundraising. Stations should implement safeguards to maintain active control of contributor and donor lists, to avoid the unauthorized use of Personal Information by any employee or third party, including but not limited to list brokers, mail-list management organizations, friends organizations, and advertising or public relations agencies, unless otherwise required by law judicial process.

- E. **Lobbying Activity Restrictions:** The Act states that stations may not use any funds provided by CPB for purposes of:

*. . . conducting any reception or providing any other entertainment for any officer or employee of the Federal Government or any State or local government. §396 (k)(2)(A).*

Stations should keep in mind that the Internal Revenue Service restricts the amount of political and legislative (lobbying) activities a non-profit organization may engage in, as shown below:

*. . . exemption from taxation. . . shall be denied because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation . . . 26 USC §501(c)(3)*

## Compliance Checklist 2016

We recommend you use the checklist below as a guide to your station's compliance with the Communications Act and to ensure your station makes the required documentation available as required by the General Provisions.

	Date
<p>1. <b>Open Meetings:</b> Must provide 7 day advance notice of open board, board committee and CAB meetings by:</p> <ul style="list-style-type: none"> <li>(a) posting notice on the station website;</li> <li>(b) broadcasting notice on-air between 6 a.m. and 11 p.m., as shown by the station's log;</li> <li>(c) placing notice in the "Legal Notices" of a local newspaper in general circulation in primary coverage area; or</li> <li>(d) a recorded announcement accessible on the station's phone system.</li> </ul>	
<p>2. <b>Closed Meetings:</b> Must document and make available to the public the specific reason(s) for closing a governing body and its committee meetings, either at the station's central office or on its website, within 10 days of the closed meeting.</p>	
<p>3. <b>CAB Advice:</b> CAB must advise station's governing body whether the station's programming and significant policies are meeting the specialized educational and cultural needs of the communities served by the station, and to make recommendations the CAB deems appropriate to meet such needs.</p>	
<p>4. <b>CPB's Employment Statistical Report:</b> Must be made available for review by at the station's central office and each location with 6 or more employees.</p>	

<p>5. <b>Donor Information:</b> Stations that share donor/contributor's personal information with a Non-affiliated Third Party must:</p> <ul style="list-style-type: none"> <li>(a) clearly and conspicuously notify donor/contributor that the station may release its Personal Information<sup>6</sup> to Non-affiliated Third Parties<sup>7</sup>;</li> <li>(b) advise the donor/contributor before any disclosure that they have the right not to have this Information disclosed; and</li> <li>(c) explain to the donor/contributor how to exercise that non-disclosure option.</li> </ul>	
<p>6. <b>Station Senior/Executive Management:</b> Names, titles and contact information must be listed on the station website.</p>	
<p>7. <b>Governing Body:</b> Names must be listed on the station website.</p>	
<p>8. <b>CAB Members:</b> Names must be listed on the station website.</p>	
<p>9. <b>Financial Statement:</b> Most recent audited or unaudited financial statement, if permitted, must be posted on the station website.</p>	
<p>10. <b>AFR or FSR:</b> Most recent AFR or FSR must be posted on the station website.</p>	

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<sup>6</sup> Defined in the General Provisions.

<sup>7</sup> Defined in the General Provisions.



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