

Whistleblower Investigative Report

Community Action Agency of Butte County, Inc.

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April 20, 2018

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REPORT OVERVIEW

On February 9, 2018, the Department of Community Services and Development (CSD) received numerous whistleblower complaints against Community Action Agency of Butte County, Inc. (Butte or Agency). Summarizing the whistleblower complaints pertaining to Butte's financial health and practices, the complaints allege financial mismanagement, misuse of Agency property, funds, and vehicles for personal gain, and a chronic loss of federal programs and corresponding income that threaten the financial health of the Agency. Allegations were made concerning the change in use of Butte's Esplanade House and its impact on Agency operations. Finally, several whistleblowers call into question the Executive Director's, Mr. Tom Tenorio (Mr. Tenorio), expenditures and costs related to Agency business. Several whistleblowers claim Mr. Tenorio has used, and continues to use, Butte funds for personal use.

Additionally, the complaints outlined concerns with Butte's current Board makeup asserting chronic violations of federal and state law related to the tripartite requirement. Further, whistleblowers raised concerns related to board member turnover, alleged failures to communicate with members of the public, and undue influence applied by the Board Chair over other board members. Finally, several whistleblowers outlined concerns with Butte's failure to meet the directives outlined in the Agency's bylaws.

The following report outlines the CSD Audit Unit review of Butte's financial condition and Mr. Tenorio's alleged misuse of Agency funds. The Audit Team did not conduct an in-depth review of Butte's use of the Esplanade House as it is beyond the scope of CSD's overview authority. Daily operations at the Agency level, unless such operations give rise to fiscal concerns that impact CSD programs or funds, are not subject to CSD review. In addition to federal and state law, Butte is bound to comply with CSD's contract. Any financial mismanagement by the Agency may give rise to additional enforcement actions as required.

Staff from CSD's Community Services division provided additional information related to Butte's board and CSD's monitoring of any board deficiencies. Board issues related to membership generally will not give rise to additional enforcement actions beyond correction action plans unless board makeup impacts the Agency's ability to perform under its contract. The audit or monitoring of Agency bylaws is outside the scope of CSD's federal oversight requirements.

FINANCIAL AUDIT: BACKGROUND

BACKGROUND

On February 9, 2018, CSD received several whistleblower complaints alleging federal and state statutory violations related to fraud, waste, and abuse of grant funds, failure to meet the tri-partite board requirement, and general Agency mismanagement. In addition, several whistleblower complaints detailed potential issues stemming from the loss of federal funding due to the closure or cancellation of several federal programs. Additional concerns were raised concerning the use of the Esplanade House – a transitional housing facility operated by Butte.

OBJECTIVES

CSD developed the procedures enumerated in the Scope of Work to determine the validity of all whistleblower complaints received by the Department. CSD's Team performed the procedures outlined in the Scope of Work to investigate the allegations affecting funds administered by CSD. Through rigorous testing, reviews, and analysis, the audit team can determine whether Butte misused federal funds administered by CSD.

The Esplanade House operation as an emergency shelter or transitional housing unit was excluded from the scope as it is outside of CSD's purview.

SCOPE OF WORK

A. Allowable Cost Testing

1. Review a sample of Mr. Tenorio's travel claim expenditures for reasonableness and appropriate approvals.
2. Determine the reasonableness and allowability of Mr. Tenorio's use of or payment for vehicles, including personal use.

B. General Accounting

1. Test a sample of Mr. Tenorio's vacation accruals, usage, and cash-out for reasonableness.
2. Review Butte's equipment and inventory policies to ensure use for only business-related purposes.
3. Review the Board of Directors process for evaluating Mr. Tenorio's performance.

C. Financial Overview

1. Gather audited/unaudited financial statements for the past 2-3 years.
 - a. Identify any concerns with Butte's financial status.
2. Review the cause of the following programs' terminations;
 - a. Head Start;

FINANCIAL AUDIT: BACKGROUND

- b. Senior Nutrition Program;
 - c. The Energy Efficiency Training Academy; and
 - d. The Feeding America Partnership.
3. Review Butte's process to accept or forgo new grants.

FINANCIAL AUDIT: METHODOLOGY

METHODOLOGY

This audit was conducted at Butte's office from February 20, 2018 through February 23, 2018. CSD reviewed Butte's response to an Internal Control Questionnaire to ensure that appropriate separation of duties existed within the Agency's administrative processes. To investigate the allegations raised in the whistleblower complaints, CSD performed the following procedures:

- Obtained an understanding of internal control through inquiries, observations, inspection of documents, and records to aid in the audit planning.
- Reviewed audited and unaudited financial statements to determine financial status of the agency.
- Conducted interviews with Agency staff to obtain an understanding of the Agency's internal controls.
- Tested a sampling of property and equipment to determine compliance with CSD's contract.
- Tested a sampling of operating expenses, including, but not limited to, reimbursement for expenditures, late fees, interest expenses, per diem, and travel expenditures to ensure transactions were supported, reasonable, and properly recorded.
- Tested a sampling of personnel files, time sheets, payroll ledgers, and other supporting documents to determine if there were any overpayments or errors in the payroll or the payroll deductions.

The results are based on CSD's review of supporting documents, other information made available to the audit team, and interviews with staff directly responsible for administering funds.

FINANCIAL AUDIT: RESULTS

A. Allowable Cost Testing

1. Review a sample of Mr. Tenorio's travel claim expenditures for reasonableness and appropriate approvals.

a. Determine whether travel claims are excessive and expenses for family members are excluded.

CSD reviewed Butte's travel policy which stipulates that Agency staff must use the General Services Administration (GSA) travel rates and per diem. The Department also reviewed Mr. Tenorio's travel documentation for 2017, which amount to 12 total claims. No out-of-state travel by Mr. Tenorio was charged to CSD. Charges for travel (flights, hotels, and rental cars) were supported by receipts and/or credit card statements indicating the claimed travel did take place. Documentation also included brochures and/or agendas for trainings, conferences, and meetings, which appear to be reasonable and for legitimate business events and therefore was not questioned.

CSD reviewed the GSA travel rates and compared them to the hotel charges. Charges for hotel rooms were above the GSA rates on most occasions and no justification was noted as required by Butte's travel policy. Our review revealed \$246 in food and beverage charges on Mr. Tenorio's credit card statement during scheduled travel for which he was paid a per diem resulting in a potential double payment. Since the amount was minimal, and none of these expenses were charged to CSD grants, the audit team passed on further review. Hotel documentation indicates reservations were for one room and one adult – there was no indication that travel for spouses or other family members were paid for by the Agency.

Butte has two authorized credit cards for use by staff including one card assigned to Mr. Tenorio. CSD reviewed the Capital One statement charges from January 9, 2017 through December 1, 2017.

Most of Mr. Tenorio's travel costs were charged to this credit card and paid in full each month. Interviews with Butte's Board President and Chief Financial Officer (CFO) revealed board members pre-approve Mr. Tenorio's travel through the annual budget process. In addition, board members, during monthly board meetings, review and sign off on Mr. Tenorio's travel (after-the-fact) by initialing the general claim package which includes a credit card statement for the month, receipts, and other supporting documentation as applicable.

Some of Mr. Tenorio's travel expenses were reimbursed to Butte from national community organizations. Further, a review of the general claims and general ledger shows Mr. Tenorio's travel charged mainly to the Administration account code 50300, which is an unrestricted fund made up of donations and other non-CSD program funds. Expenses that were charged to

FINANCIAL AUDIT: RESULTS

a shared administrative cost pool, and ultimately to CSD, were traced to the general ledger and allocations appear reasonable and appropriate.

Overall, charges to CSD for travel were supported. CSD's audit team did not find any evidence of travel costs paid for family members.

b. Food purchases such as pizza, breakfast, and other meeting related expenditures.

CSD reviewed Butte's credit card policy and determined that it was adequate. Butte has two authorized credit cards for use by staff including one Capital One card assigned to Mr. Tenorio.

CSD reviewed the Capital One statement charges from January 9, 2017 through December 1, 2017. Total expenses charged to the credit card amounted to approximately \$23,000. A majority of the \$23,000 was for travel related expenses and properly supported by receipts and other documentation. Other charges made during this period were for the purchase of food, beverages, office supplies, etc. Receipts provided by Mr. Tenorio documented limited information regarding the purpose/activity of the claimed expenses. CSD noted that each month Butte's board signed off on these expenditures. Most of these food/beverage charges came from local establishments and were charged to the Administration account code 50300, which is an unrestricted fund made up of donations and other non-CSD program funds.

Overall, CSD found Butte's internal controls concerning Agency credit card use adequate. Mr. Tenorio's use of Butte's credit card for travel and meals were approved by the Board and charged to Administrative Account code 50300 thereby not impacting CSD funds.

c. Review Mr. Tenorio's use/claiming of gas card charges to determine no overlap or duplicate billings.

Gas cards for the administrative vehicles are in the fiscal office and kept in packets with the keys, registration, and insurance documents for each vehicle. Gas receipts are provided to the Account Clerk III upon return of the vehicles. The Account Clerk III reconciles the gas receipts to the Arco Fleet Card monthly billing statements, follows up on any missing receipts, and codes the expense to the appropriate program based on the individual vehicle charges. The CFO then reviews the paperwork and posts to the accounts payable ledger. Our review did not find Mr. Tenorio using either an administrative vehicle or gas cards during the review period.

Overall, CSD found the procedures utilized by Butte for its administrative vehicles to be sound and there was no evidence of Mr. Tenorio utilizing Agency gas cards or vehicles during the review period.

FINANCIAL AUDIT: RESULTS

2. Determine the reasonableness and allowability of Mr. Tenorio's use of, or payment for, Agency vehicles – including vehicles for personal use.

a. Review Mr. Tenorio's receipt of a car allowance.¹

Mr. Tenorio receives a car allowance each month per his contract, which the board renegotiates every three years. Prior to Mr. Tenorio's 2006 contract renegotiation, his car allowance was \$250 per month.

CSD sought documentation to support Mr. Tenorio's car allowance and was provided a memo dated June 12, 2006 from Mr. Tenorio to the Agency's Controller, Mr. David Houchin. In the memo, Mr. Tenorio stated he performed an analysis of his monthly mileage expenses using the IRS mileage rate of \$0.44 cents per mile. Based on Mr. Tenorio's calculations, his monthly mileage averaged \$650-\$700 per month, which included \$166 per month for insurance on the new car he purchased for business travel. Mr. Tenorio could not produce support for his original mileage calculation referred to in the memorandum.

CSD also obtained and reviewed a November 29, 2006 memo from Board President, Mr. Michael Bury, to Mr. Tenorio and the CFO, Dana Campbell, in which he stated Mr. Tenorio's car allowance was increased to \$1000 per the 2006 contract negotiations. In addition, Mr. Tenorio was no longer allowed use of the Agency gas card. Mr. Bury also indicated in the memo that the Agency credit card shall be used strictly for Agency business.

As part of Mr. Tenorio's 2009 contract renegotiations, the car allowance was increased to \$1100 per month. Since the allowance was to be reported as ordinary (W-2) income, it would be subject to employment taxes. Any expenses exceeding that amount would be unreimbursed expenses. Since it is reportable as income by IRS standards, it is considered "unaccountable" and therefore no receipts or documentation with respect to mileage/fuel costs need be turned into the Agency.

Overall, CSD found that while support was not provided for the 2006 car allowance analysis setting the original \$1000 per month amount, the allowance was approved by the board as part of Mr. Tenorio's salary during his 2006 contract renegotiation. Executive Director salary negotiations are under the authority of Butte's Board of Directors and not CSD.

b. Review Mr. Tenorio's use of or payment for vehicles.

CSD reviewed the vehicle log used for Butte's administrative staff from August 2017 to February 2018. There are currently two vehicles available for

¹ Several whistleblowers refer to Mr. Tenorio's receipt of a car allowance as a stipend. CSD reviewed Mr. Tenorio's payroll records and the agency's fiscal policy and determined that stipends are not currently provided to Mr. Tenorio or staff.

FINANCIAL AUDIT: RESULTS

use by administrative staff. The Vehicle Log book resides in the fiscal office. Drivers must fill in the Vehicle Usage Log indicating the driver's name, vehicle number, reason for usage, checkout date, signature, return date, and initials. The drivers also fill out the Vehicle Mileage Log with the date, driver initials, destination, purpose of trip, starting mileage, departure time, ending mileage, arrival time, and gas level upon return.

Vehicle keys, registration, proof of insurance, and gas cards are placed in fastened folders on a shelf under the Vehicle Log book. Only administrative staff can use the vehicles – including the Esplanade House program manager, Information Technology staff, and the Administrative Assistant. Case workers generally use the Esplanade House van because they usually transport clients.

Overall, mileage logs and procedures regarding use of Butte's administrative vehicles appear adequate. CSD did not find evidence of Mr. Tenorio using either administrative vehicles or gas cards during the review period.

B. General Accounting

1. Test a sample of Mr. Tenorio's vacation accruals, usage, and cash out for reasonableness.

There were no policies for cash out of vacation since the Agency no longer allows for that practice. CSD found no recent incidences of Butte employees cashing out vacation time. Mr. Tenorio did cash out vacation time he accrued under his negotiated contract – a cash out that occurred over 12 years ago.

2. Review the Agency's equipment and inventory policies to ensure use for only business-related purposes.

The sample of equipment/property tested was located and appeared to be in working condition. Our procedures did not identify any equipment/property being used by Mr. Tenorio for personal purposes.

3. Review the Board of Directors process for evaluating Mr. Tenorio's performance.

The Board of Directors has a process whereby they evaluate Mr. Tenorio's performance annually in August. Each board member receives a packet in the mail with an evaluation form to fill out and write notes/comments. Those completed forms are sent to the Board President who consolidates all the responses into one evaluation. In addition, the Board President tallies all scores and calculates an average. This final report is then presented to the Board for discussion and vote. Executive Director evaluations are related to Butte's day-to-day operations and beyond CSD's federal oversight authority. However, on its face, the Executive Director evaluation process appears reasonable.

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Overall, CSD finds Butte's general accounting practices as related to Mr. Tenorio's vacation accruals, Agency equipment and inventory policies, and the Board's Executive Director review process to be reasonable with no apparent risk to CSD-administered funds.

C. Financial Overview

1. Gather audited/unaudited financial statements for the past two to three years to identify any fiscal concerns with Butte.

CSD conducted a financial analysis to assess Butte's financial status. The financial analysis included review of audited financial statements from the years ended December 31, 2015, through December 31, 2016, as well as the unaudited financial statements from the year ended December 31, 2017. Based on CSD's review of Butte's financial statements, the Department notes the following:

- 1) Over the last three years, reliance on federal and state funding has slightly increased from 67% to 71%.
- 2) During the same period, there was a decrease in total public support and revenue from \$6,335,380 to \$4,982,840. Butte's expenses decreased proportionately with revenue.
- 3) The unaudited 2017 statement of activities shows a \$62,518 decrease in net assets.
- 4) Financial ratios appear adequate.
- 5) The Agency has minimal debt, except as noted below, per the 2016 Single Audit Report regarding custodial liabilities:

Terms are 55 years from the date of May 30, 2003. The Agency agrees that for the 55-year term of the grant agreement it will cause the Esplanade House to be held and used as a transitional residence for very low-income tenants. Interest on the unpaid principal balance accrues from the date of the advance at the simple interest rate of 5% per annum. Repayment of principal and interest shall be deferred as long as the property is operated as an emergency shelter or transition housing unit. Interest accrual began in May 2004 after the project was completed. The debt and related accrued interest is forgivable upon performance of the Esplanade House contract. Management's operational and strategic plans reflect the intention to operate the facility in accordance with this agreement.

Because the Esplanade House financial transaction is not subject CSD's federal oversight authority, the Department did not have access to the underlying documentation regarding this potential future liability and makes

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no statements as to the appropriateness of the agreement regarding the Esplanade House.

Overall, while there are some negative trends related to loss of federal and state funding, the financials are still adequate and show little debt. However, a higher concentration of federal/state funds and decreasing revenues may put the Agency's fiscal health at risk should there be federal or state budget delays or cuts. Also, should Butte fail to operate the Esplanade House as an emergency shelter or transitional housing unit through May 30, 2058, the debt and accrued interest would no longer be deferred, which may put the Agency's existence in serious doubt. After May 30, 2058, all debt and accrued interest would be forgiven for performance under the Esplanade House agreement.

2. Review of Butte's ability to meet payroll or other obligations, including a review of the Agency's accounts payable report.

Payroll

CSD requested the Agency provide Mr. Tenorio's timesheets from January 1, 2017 through January 31, 2018. During the review, audit staff noted Mr. Tenorio's timesheets were not signed or dated by a board member as required by the Agency's "Preparation of Timesheet" policy, which states: "The timesheet shall be signed by the supervisor or the designated alternate."

Accounts Payables

CSD requested an aged payables report as of January 31, 2018. Based on the report provided by Butte staff, it appears the Agency does not pay its vendors by the due dates. In response to CSD's inquiry concerning vendor payment timing, Butte's CFO stated, "...our system automatically assigns a due date 30 days after the invoice date." Thus, it appears that the due dates generated in the system may not agree to the actual due dates on the invoices.

CSD requested Butte generate an exception report for the Agency's late fees and interest payments from January 1, 2017 through December 31, 2017. The exception report identified four vendors who charged Butte late fees and interest totaling \$1,264.80. CSD noted that these charges were not billed to CSD. However, CSD informed the Agency that it should manage its accounts payable to reduce future late fees and interest charges.

Overall, CSD found Butte does not always pay its vendors on time. The audit team confirmed any late payments or penalties were not charged to CSD funds.

3. Review the cause of the following programs' terminations.

CSD interviewed staff and reviewed board minutes for information on loss of funding. According to the Agency, below are the reasons for the loss of the following programs:

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Head Start – Head Start was lost over ten years ago. The funding agency conducted an on-site visit at Butte and noted areas of non-compliance and subsequently pulled funding.

Senior Nutrition Program – The Senior Nutrition Program was voluntarily discontinued by the Board around 2014-2015. Butte stated they could not continue to operate the congregate component of the program without sustaining significant losses due to rising food costs, no funding increases, and a lack of senior participants.

Energy Efficiency Training Academy (Academy) – The Academy was established with American Recovery and Reinvestment Act of 2009 (ARRA) funds. Once the ARRA contract ended in 2012, the demand for the training facility diminished and Butte voluntarily discontinued participation.

Feeding America – Butte discontinued its partnership program with Feeding America in October 2017 due to continued operating losses.

4. Review Butte's process to accept or forgo new grants.

The Board President stated Mr. Tenorio and his staff frequently search for grant opportunities. Mr. Tenorio also stated the Agency leadership routinely conducts Results Oriented Management and Accountability (ROMA)-cycle processes to determine whether a new grant or funding source is congruent with Butte's mission, administrative, and program needs. This enables Butte to assess the operational impact of proposed grants. In addition, Butte also contracts with a company for fundraising through social media, as well as website administration, Agency blogs, and capacity building.

FINANCIAL AUDIT: CONCLUSION

CONCLUSION

Summarizing the whistleblower complaints pertaining to Butte's financial health and practices, the concerns raised outline the potential for financial mismanagement, the misuse of Agency funds, property, which includes vehicles for personal gain, and a chronic loss of federal programs and corresponding income that threaten the financial health of the Agency. CSD's Audit Team focused on Mr. Tenorio's expenditures and costs related to Agency business as well as an overall look at Butte's financial position.

Generally, CSD found no issues with Butte's accounting practices and charges to CSD for travel were supported. CSD's audit team did not find any evidence where travel costs were paid for family members. Butte's internal controls concerning Agency credit card use are adequate with Mr. Tenorio's use of Butte's credit card for travel and meals approved by the Board and charged to Administrative Account code 50300 thereby not impacting CSD funds.

Mr. Tenorio's car allowance was approved by the Board as part of Mr. Tenorio's salary during his 2006 contract renegotiation. Executive Director salary negotiations are under the authority of Butte's Board of Directors and not CSD. Furthermore, mileage logs and procedures regarding use of Butte's administrative vehicles appear adequate. CSD did not find evidence of Mr. Tenorio using either administrative vehicles or gas cards during CSD's review period.

CSD found no recent incidences of Butte employees cashing out vacation time. Mr. Tenorio did cash out vacation time he accrued under his negotiated contract – a cash out that occurred over 12 years ago. CSD's review did not identify any equipment/property being used by Mr. Tenorio for personal purposes. CSD finds Butte's general accounting practices as related to Mr. Tenorio's vacation accruals, Agency equipment and inventory policies, and the Board's Executive Director review process to be reasonable with no apparent risk to CSD-administered funds.

CSD found some procedures that could use Butte's attention – procedures that are incidental to the Department's review but would evidence best financial practices. Mr. Tenorio's timesheets were not signed or dated by a board member as required by the Agency's "Preparation of Timesheet" policy, which states: "The timesheet shall be signed by the supervisor or the designated alternate." CSD found Butte does not always pay its vendors on time and the audit team confirmed any late payments or penalties were not charged to CSD funds.

Butte's programmatic changes and corresponding loss of funds do not appear to impact the Agency's ability to effectively administer CSD's programs and funds. According to Agency staff, participation in several programs were forcing Butte to operate with losses due to rising program costs. CSD finds Butte's program and fund-raising activities adequate and having no adverse impact on CSD programs or funds. Overall, while there are some negative trends related to loss of federal and state funding, the financials are still adequate and show little debt. However, a higher concentration of federal/state funds and decreasing revenues may put the Agency's fiscal health at risk

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should there be federal or state budget delays or cuts. Also, should Butte fail to operate the Esplanade House as an emergency shelter or transitional housing unit through May 30, 2058, the debt and accrued interest would no longer be deferred, which may put the Agency's existence in serious doubt. After May 30, 2058, all debt and accrued interest would be forgiven for performance under the agreement.

AGENCY BOARD REVIEW

Based on several of the whistleblower complaints, CSD reviewed whether Butte failed to maintain a full roster of its tripartite board and, if so, what are the implications and consequences of such failure.

Background Legal Requirements

State and Federal Law states that an eligible entity, in this case Butte, must have a tripartite board, which means one-third of the board membership must be each in the low-income sector, public sector, and private sector.² The California Code of Regulations states that the Community Action Agency tripartite board must have at least 12 members.³

Federal and State oversight authorities expect that agencies will work diligently to develop innovative strategies and procedures to recruit and maintain a full roster of board members. CSD recognizes the challenges for private non-profit and local governmental agencies face related to board recruitment and consideration is given so long as a good faith effort is made to identify and recruit potential board members from all sectors. Any shortcoming with respect to board membership becomes egregious upon a showing that the problem is being ignored or that there is affirmative disregard for the interests and preferences of the low-income community.

The challenge of maintaining a full board roster, particularly those members representing the low-income sector, is not unique to Butte. Indeed, many community action agencies administering CSBG funds in California have some difficulty recruiting and retaining board members who, in accordance with program guidelines, serve on a voluntary basis without compensation. Finding qualified candidates, particularly from the low-income community and/or from organizations serving the low-income community, is a chronic problem.

Review of Butte's Board of Directors and Legal Impact

Each agency who receives a Community Services Block Grant (CSBG) is annually monitored by CSD staff conducting a "desk review" or a "field monitoring visit." The desk review conducted by CSD is a remote programmatic review of the agency's contractual performance. A field monitoring visit is a similar review; however, it is conducted onsite at the agency. The desk review and site visit are conducted in alternate years. Every report, whether remote or onsite, summarizes challenges related to administration of the grant, board governance, and meeting programmatic or contractual requirements.

CSD conducted its most recent Desk Review Report of Butte on December 14, 2017. The Department issued a single finding, which related to compliance with the tripartite board requirement. At that time, Butte had only seven board members, rather than the required 12 members, which is out of compliance with regulatory obligations. The field monitor issued a "corrective action" with the finding requiring Butte to complete

² 42 U.S. Code § 9910; Cal. Gov. Code § 12751

³ 22 CCR § 100605

AGENCY BOARD REVIEW

“quarterly written status report[s]” to describe its efforts in obtaining full board membership.

Pursuant to the corrective action plan, Butte’s Executive Director provides quarterly written status reports to CSD, which includes the total number of sitting Butte board members and what sectors they represent, whether there were any recent resignations or additions, and whether outreach has been conducted to recruit additional members.

Conclusion

CSD closely monitors tripartite board membership and participation in the activities of each private non-profit and local governmental agency that administers CSBG funding and requires that deficiencies be addressed when noted. While improvement is always possible, the Department has found no evidence that Butte’s challenges are particularly egregious compared with other agencies, or that the problems concerning board recruitment are not being addressed. The internal workings or decisions of the Board are beyond the scope of CSD’s review. Unless and until any deficiencies become acute, requiring more directed action, CSD will continue to monitor the status and developments with respect to Butte’s tripartite board and render such assistance as may be required.