

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NEW YORK STATE CLAIMED
UNALLOWABLE COMMUNITY
SERVICES BLOCK GRANT
RECOVERY ACT COSTS FOR
ACTION FOR A BETTER
COMMUNITY, INC.**

*Inquiries about this report may be addressed to the Office of Public Affairs at
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**James P. Edert
Regional Inspector General**

**September 2013
A-02-11-02020**

Notices

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

EXECUTIVE SUMMARY

BACKGROUND

The American Recovery and Reinvestment Act of 2009 (Recovery Act), P.L. No. 111-5, authorized supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization. The Recovery Act provided \$1 billion to the Community Service Block Grant (CSBG) program for fiscal years (FY) 2009 and 2010. As with annually appropriated CSBG funds, Recovery Act funds were to be used to reduce poverty, revitalize low-income communities, and help low-income Americans. In addition, CSBG services funded by the Recovery Act were to be provided on or before September 30, 2010.

The CSBG program was re-authorized by the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (CSBG Act), P.L. No. 105-285, to provide funds to alleviate the causes and conditions of poverty in communities. Within the U.S. Department of Health and Human Services (HHS), the Administration for Children and Families (ACF), Office of Community Services administers the CSBG program.

The CSBG program funds a State-administered network of more than 1,000 local community action agencies (CAA) that deliver programs and services to low-income Americans. The CAAs provide services addressing employment, education, better use of available income, housing, nutrition and health to combat the causes of poverty. Recovery Act grant funds were intended to cover additional costs for the same types of services.

By accepting grant awards, States agree to comply with Federal regulations governing the administration of the grants, including compliance with various cost principles. Section 676(a) of the CSBG Act requires each State to designate an appropriate State agency to act as the lead agency for carrying out the State's CSBG activities. In New York State, the Department of State (the State) administers the CSBG program through the Division of Community Services. ACF awarded the State \$86,780,940 in Recovery Act funds for its CSBG program, which includes 52 CAAs.

Action for a Better Community, Inc. (ABC) is a nonprofit CAA that promotes and provides opportunities for low-income individuals and families living in upstate New York to become self-sufficient. The State awarded ABC \$2,662,008 in CSBG Recovery Act funds for the period April 1, 2009, through September 30, 2010.

OBJECTIVE

Our objective was to determine whether the State claimed selected CSBG Recovery Act costs on behalf of ABC that were allowable under the terms of the grant and applicable Federal requirements.

SUMMARY OF FINDINGS

Of the \$1,273,314 in CSBG Recovery Act costs that the State claimed on behalf of ABC and that we reviewed, \$477,706 was allowable under the terms of the grant award and applicable Federal requirements. However, the State claimed \$795,608 in costs for services on behalf of ABC that were unallowable. The unallowable costs included:

- \$730,817 in unsupported salaries and related costs;
- \$57,349 in unsupported training, education, and delegate agency costs;
- \$4,000 in unallocable consulting costs; and
- \$3,442 in unallowable entertainment costs.

ABC charged these unallowable costs because its internal controls were not adequate to ensure that CSBG costs complied with Federal regulations. In addition, the State's procedures for monitoring ABC were not sufficient to identify certain deficiencies related to personnel activity reporting.

RECOMMENDATIONS

We recommend that the State:

- refund the Federal Government \$795,608 for unallowable costs;
- ensure that ABC improves its internal controls to ensure that its CSBG costs comply with Federal regulations; and
- revise its procedures for monitoring to ensure ABC complies with Federal regulations on personnel activity reporting.

ACTION FOR A BETTER COMMUNITY, INC., COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, ABC disagreed with our findings. ABC offered explanations as to why it believed the costs questioned in our initial draft report were allowable and provided additional documentation that it believed supported these costs.

After reviewing ABC's comments and the additional documentation, we revised our draft findings and financial disallowance related to salaries and related costs, and delegate agency costs.

**DEPARTMENT OF STATE COMMENTS AND
OFFICE OF INSPECTOR GENERAL RESPONSE**

In written comments on our draft report, the State generally disagreed with our first recommendation (financial disallowance) and provided documentation that it believed supported the costs for which it disagreed with our determinations. The State did not indicate concurrence or nonconcurrence with our remaining recommendations but described the steps it has taken to ensure that CSBG costs claimed by ABC comply with Federal regulations and its procedures for monitoring ABC's compliance with Federal regulations on personnel activity reporting.

After reviewing the State's comments and the provided documentation, we maintain that our findings and recommendations are valid. Specifically, the documentation provided by the State did not adequately support the questioned costs.

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INTRODUCTION

BACKGROUND

The American Recovery and Reinvestment Act

The American Recovery and Reinvestment Act of 2009 (Recovery Act), P.L. No. 111-5, authorized supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization. The Recovery Act provided \$1 billion to the Community Service Block Grant (CSBG) program for fiscal years (FY) 2009 and 2010. As with annually appropriated CSBG funds, Recovery Act funds were to be used to reduce poverty, revitalize low-income communities, and help low-income Americans. In addition, CSBG services funded by the Recovery Act were to be provided on or before September 30, 2010.

Community Services Block Grant Program

The CSBG program was re-authorized by the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (CSBG Act), P.L. No. 105-285, to provide funds to alleviate the causes and conditions of poverty in communities. Within the U.S. Department of Health and Human Services (HHS), the Administration for Children and Families (ACF), Office of Community Services administers the CSBG program.

The CSBG program funds a State-administered network of more than 1,000 local community action agencies (CAA) that deliver programs and services to low-income Americans. The CAAs provide services addressing employment, education, better use of available income, housing, nutrition and health to combat the causes of poverty. Recovery Act grants funds were intended to cover additional costs for the same types of services.

New York State Department of State

In New York State, the Department of State (the State) administers the CSBG program through the Division of Community Services. ACF awarded the State \$86,780,940 in Recovery Act funds for its CSBG program, which includes 52 CAAs.

Action for a Better Community, Inc.

Action for a Better Community, Inc. (ABC) is a nonprofit CAA that promotes and provides opportunities for low-income individuals and families living in upstate New York to become self-sufficient. ABC operates multiple programs to achieve its goals, including CSBG, Head Start and a home energy assistance program. The State awarded ABC \$2,662,008 in CSBG Recovery Act funds for the period April 1, 2009, through September 30, 2010.

Federal Requirements for Grantees

By accepting grant awards, States agree to comply with Federal regulations governing the administration of the grants, including compliance with various cost principles. Section 676(a) of the CSBG Act requires each State to designate an appropriate State agency to act as the lead agency for carrying out the State's CSBG activities. Section 678D(a)(1)(B) of the CSBG Act requires that States receiving CSBG funds ensure that cost and accounting standards of the Office of Management and Budget (OMB) apply to a recipient of the funds. Nonprofit CAAs are subject to 45 CFR part 74, through which HHS applies the provisions of OMB Circular A-110. Regulations at 45 CFR § 74.27(a) state that the allowability of costs will be determined in accordance with 2 CFR part 230, *Cost Principles for Non-Profit Organization*.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State claimed selected CSBG Recovery Act costs on behalf of ABC that were allowable under the terms of the grant and applicable Federal requirements.

Scope

We reviewed \$1,273,314 of the State's claim of \$2,507,544¹ for ABC's program expenditures funded by the Recovery Act award for the period April 1, 2009, through September 30, 2010. This review is part of a series of audits planned by the Office of Inspector General to provide oversight of funds provided by the Recovery Act. We did not review the overall internal control structure of the State or ABC. Rather, we limited our review of internal controls to those that were significant to the objective of our audit.

We performed our fieldwork at the State's offices in Albany, New York, and ABC's offices in Rochester, New York.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance requirements;
- interviewed State officials to gain an understanding of the State's procedures for monitoring its CSBG program;
- reviewed the State's process and guidelines for monitoring CAAs;

¹ Although, the State awarded ABC CSBG Recovery Act funds totaling \$2,662,008, the State only claimed \$2,507,544 of that amount. The claim was for \$1,299,465 in salaries and related costs and \$1,208,079 in other direct costs.

- reviewed the State’s Recovery Act notices of grant award;
- reviewed the terms and conditions of the CSBG Recovery Act agreement between the State and ABC;
- reviewed the State’s FYs 2008 through 2010 monitoring reports of ABC;
- interviewed ABC officials to gain an understanding of their CSBG program;
- reviewed ABC’s policies and procedures related to the CSBG Recovery Act program;
- reviewed ABC’s independent auditor’s reports and its Office of Management and Budget (OMB) Circular A-133 audit reports² for FYs 2008 through 2010;
- reconciled ABC’s CSBG Recovery Act quarterly expenditures reports to its accounting records;
- judgmentally selected and reviewed 209 transactions totaling \$1,273,314 (\$896,813 in salaries and related costs and \$376,501 in other direct costs);
- reviewed, for the selected transactions, ABC’s documentation supporting its expenditures incurred under the CSBG Recovery Act agreement;
- reviewed contracts that ABC entered into with delegate agencies,³ interviewed the representatives from these agencies, and reviewed the agencies’ supporting documentation for CSBG Recovery Act costs submitted to ABC; and
- determined whether the expenditures charged to the CSBG Recovery Act agreement were allowable and in accordance with Federal requirements.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

² Per OMB Circular A-133, § __.200(a), non-Federal entities that expend \$500,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year.

³ ABC entered into contracts with delegate agencies – private, not-for-profit corporations capable of providing services to the low-income community – to perform some of its CSBG services.

FINDINGS AND RECOMMENDATIONS

Of the \$1,273,314 in CSBG Recovery Act costs that the State claimed on behalf of ABC and that we reviewed, \$477,706 was allowable under the terms of the grant award and applicable Federal requirements. However, the State claimed \$795,608 in unallowable costs for services on behalf of ABC. The unallowable costs included:

- \$730,817 in unsupported salaries and related costs;
- \$57,349 in unsupported training, education and delegate agency costs;
- \$4,000 in unallocable consulting costs; and
- \$3,442 in unallowable entertainment costs.

ABC charged these unallowable costs because its internal controls were not adequate to ensure that CSBG costs complied with Federal regulations. In addition, the State's procedures for monitoring ABC were not sufficient to identify certain deficiencies related to personnel activity reporting.

UNALLOWABLE COSTS

Federal Requirements

Section 3(a) of the Recovery Act states that the purposes of the Recovery Act were, among other things, to preserve and create jobs and promote economic recovery; assist those most impacted by the recession; and stabilize State and local government budgets to minimize and avoid reductions in essential services.

Division A, Title VIII, of the Recovery Act provided additional CSBG funds to States for carrying out activities under sections 674 through 679 of the CSBG Act. Section 672 of the CSBG Act states that the purposes and goals of the CSBG program are to reduce poverty, revitalize low-income communities, and empower low-income families and individuals in rural and urban areas to become fully self-sufficient.

Pursuant to 2 CFR § 230.20(b), all cost reimbursement subawards (subgrants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned.

Federal cost principles (2 CFR part 230, Appendix A, section A.2.g.) state that to be allowable under an award, costs must be adequately documented.

Regarding the allocability of costs, Federal cost principles (2 CFR part 230, Appendix A, section A.4.) state:

- a. A cost is allocable to a particular cost objective, such as a grant... in accordance with the relative benefits received. A cost is allocable to a Federal award if it is treated

consistently with other costs incurred for the same purpose in like circumstances and if it:

- (1) Is incurred specifically for the award.
- (2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received

Pursuant to 2 CFR part 230, App. B, section 8(m), the distribution of salaries and wages to awards must be supported by personnel activity reports which reflect an after-the-fact determination of the actual activity of each employee.⁴

Pursuant to 2 CFR part 230, App. B.14, entertainment costs and any costs directly associated with such costs (such as tickets to shows or sports events) are unallowable.

Unallowable Salaries and Related Costs

The State claimed \$730,817 in CSBG Recovery Act funds for salaries and related costs charged by ABC that were not supported by after-the-fact determination of the actual activity of each employee.⁵ According to ABC's policies and procedures manual, employees are required to allocate their time by activity. However, ABC could not provide adequate support for a majority of the time charged by its employees to the CSBG grant. Although ABC employees reported the number of hours worked on their time sheets, which were certified by the employees and their supervisors, the time sheets did not specify the ABC activity or program that the employees worked on.

Unsupported Training, Education, and Delegate Agency Costs

The State claimed \$40,000 in CSBG Recovery Act funds for beneficiary training and education costs charged by ABC that were not supported by adequate documentation. ABC contracted with various community colleges to provide continuing education courses to its beneficiaries. However, ABC's documentation did not always identify the beneficiaries that attended these courses. Thus, ABC's documentation was inadequate to support the costs the State claimed.

The State also claimed \$17,349 in CSBG Recovery Act funds for delegate agency costs charged by ABC that were not supported by adequate documentation. ABC's delegate agencies (private, not-for-profit corporations) were required to comply with all applicable Federal requirements. However, ABC did not ensure that costs incurred by the delegate agencies were adequately supported.⁶ Specifically, the delegate agencies' invoices to ABC were not always supported by vendor receipts or other documentation.

⁴ The reports must be signed by the individual employee or by the supervisor that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods.

⁵ This represented more than 80 percent of the salaries and related costs that we judgmentally selected for review.

⁶ Neither ABC nor the delegates could provide adequate supporting documentation for the costs claimed by ABC on behalf of the delegates.

Unallocable Consulting Costs

The State claimed \$4,000 in CSBG Recovery Act funds for consulting services charged by ABC, related to the development of ABC's 2011-2013 strategic plan. These services were unallowable because they did not benefit ABC's CSBG program during the award period and therefore should not have been allocated to the CSBG Recovery Act grant.

Unallowable Entertainment Costs

The State claimed \$3,442 in CSBG Recovery Act funds for entertainment expenses charged by ABC that were not allowable. Specifically, ABC charged the State for the cost of trips to send program beneficiaries to the Seabreeze Amusement Park and a comedy show.

CAUSES OF UNALLOWABLE COSTS

ABC charged these unallowable costs because its internal controls were not adequate to ensure that CSBG costs complied with Federal regulations. In addition, the State's procedures for monitoring ABC were not sufficient to ensure that ABC complied with all applicable Federal requirements. Specifically, the State's monitoring did not identify ABC's noncompliance with the Federal regulations on personnel activity reporting.

RECOMMENDATIONS

We recommend that the State:

- refund the Federal Government \$795,608 for unallowable costs;
- ensure that ABC improves its internal controls to ensure that its CSBG costs comply with Federal regulations; and
- revise its procedures for monitoring to ensure ABC complies with Federal regulations on personnel activity reporting.

ACTION FOR A BETTER COMMUNITY, INC., COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, ABC disagreed with our findings. ABC offered explanations as to why it believed the costs questioned in our initial draft report were allowable and provided additional documentation that it believed supported these costs. ABC's comments are included as Appendix A.⁷

⁷ Attachments to ABC's comments are not included because of their voluminous nature and because some of them contained personally identifiable information (PII).

After reviewing ABC's comments and the additional documentation, we revised our draft findings and financial disallowance related to salaries and related costs, and delegate agency costs.

Unallowable Salaries and Related Costs

Action for a Better Community, Inc., Comments

ABC stated that the salaries and related costs questioned in our initial draft were supported by payroll reports signed by a manager or employee that identified the CSBG Recovery Act program. ABC further stated that timesheets for these individuals included signed statements that they worked 100 percent of their time on CSBG Recovery Act programs. ABC also stated that salaries for two employees were incorrectly charged to the CSBG Recovery Act program and that it had corrected the error. Finally, for one employee, ABC indicated that the employee was assigned to a program that was fully funded by the CSBG Recovery Act and provided a timesheet and the worksite agreement to support this.

Office of Inspector General Response

We revised our draft findings and related financial disallowance for the two employees incorrectly charged to the CSBG Recovery Act grant but subsequently corrected. However, we maintain that the remaining salaries and related costs were not supported by after-the-fact determinations of employees' actual activities. ABC's payroll reports did not indicate what CSBG Recovery Act activities the associated employees worked on and were dated 2 years after the Recovery Act period ended. Similarly, ABC's timesheets did not specify CSBG Recovery Act activities and were dated 3 years after the Recovery Act period ended. Finally, the timesheet that ABC provided to support salaries for the one employee that worked on a program that was fully funded by the CSBG Recovery Act did not specify a month or year. Accordingly, we could not determine whether this employee worked on the program during the period of the CSBG Recovery Act grant.

Unsupported Training, Education, and Delegate Agency Costs

Action for a Better Community, Inc., Comments

In a series of attachments to its comments, ABC submitted invoices and other documentation related to training, delegate agency, and related costs questioned in our initial draft report. Among its documentation, ABC provided payroll reports, employee timesheets and other documentation that included statements signed by employees and supervisors indicating that the questioned costs were associated with work related to the CSBG Recovery Act program.

Office of Inspector General Response

After reviewing ABC's invoices and other documentation, we revised our draft findings and related financial disallowance for the delegate agency costs not supported by adequate documentation.

Most of the documentation that ABC attached to its comments was previously provided and found to be inadequate. Documentation such as a list of beneficiaries scheduled to attend a training event is not adequate to support ABC's assertion that the beneficiaries actually attended the training. In addition, the payroll reports, timesheets, and other documentation ABC provided to support the delegate agency costs did not indicate that the associated employees worked on CSBG Recovery Act activities. Finally, the signed statements provided were dated 2 years after the Recovery Act period ended and did not provide contemporaneous evidence of each employee's actual activity.

Unallocable Consulting Costs

Action for a Better Community, Inc., Comments

ABC stated the objective of the CSBG Recovery Act program was to create and preserve jobs, and to alleviate the causes and conditions of poverty, and that the consulting costs questioned were consistent with that objective.

Office of Inspector General Response

We are questioning consulting costs related to the development of ABC's 2011–2013 strategic plan, which we maintain did not benefit ABC's CSBG Recovery Act program, as the CSBG Recovery Act award period ended in September 2010. Accordingly, these costs should not have been allocated to the CSBG Recovery Act grant.

Unallowable Entertainment Costs

Action for a Better Community, Inc., Comments

ABC disagreed with our characterization of costs to send program beneficiaries to an amusement park and a comedy show as entertainment expenses. Specifically, ABC stated that these costs were for beneficiaries in CSBG Recovery Act programs and that these trips helped to achieve one of the programs goals of improving family functioning and parenting skills.

Office of Inspector General Response

We maintain that entertainment costs, such as tickets to shows, are unallowable for Federal reimbursement (2 CFR pt. 230, App. B.14).

DEPARTMENT OF STATE COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State generally disagreed with our first recommendation (financial disallowance). The State did not indicate concurrence or nonconcurrence with our remaining recommendations but described the steps it has taken to ensure that CSBG costs claimed by ABC comply with Federal regulations and its procedures for monitoring ABC's compliance with Federal regulations on personnel activity reporting.

The State agreed that \$26,000 of the \$795,608 recommended disallowance was incorrectly claimed but did not concur with the remaining disallowance. Specifically, the State concurred with our findings related to unallocable consulting costs (\$4,000), unallowable entertainment costs (\$3,442), and partially agreed with unsupported salaries and related costs (\$5,929) and unsupported delegate agency costs (\$12,629). The State provided documentation that it believed supported the costs for which it disagreed with our determinations.

The State's comments are included as Appendix B.⁸

After reviewing the State's comments and the provided documentation, we maintain that our findings and recommendations are valid. Specifically, the documentation provided by the State did not adequately support the questioned costs.

Unallowable Salaries and Related Costs

Department of State Comments

The State contended that the majority of the unallowable salaries and related costs were supported by documentation that complied with Federal regulations (2 CFR part 230, App. B, section 8(m)), and that the OIG's interpretation of these regulations was fundamentally flawed. Specifically, the State stated that timesheets and payroll reports previously provided by ABC sufficiently supported the salaries and related costs charged by ABC, and that the OIG did not consider this documentation as a whole. Nevertheless, the State provided signed affidavits for each ABC employee indicating that the employee worked on the CSBG Recovery Act program. The State contended that, when taken together with the previously provided records, the affidavits support ABC's costs. Finally, the State cited an HHS Departmental Appeals Board (Appeals Board) decision⁹ to support its position that ABC's documentation complied with Federal regulations.

Office of Inspector General Response

We maintain that the salaries and related costs charged to the CSBG Recovery Act were not supported by after-the-fact determinations of employee's actual activities. We considered in totality all documentation provided as support of the salaries and related costs, and maintain that ABC's timesheets did not specify CSBG Recovery Act activities. Further, ABC's payroll reports did not indicate what CSBG Recovery Act activities these employees worked on. Finally, the affidavits provided by the State were dated 3 years after the Recovery Act period ended and do not constitute contemporaneous evidence of each employee's activities.

⁸ Attachments to the State's comments are not included because of their voluminous nature and because some of them contained PII.

⁹ HHS Departmental Appeals Board Decision No. 2297, *Philadelphia Parent and Child Center, Inc.*, issued December 31, 2009.

The Appeals Board decision cited by the State to support its position that ABC's documentation complied with Federal regulations sustained a disallowance of Head Start salaries and related costs for the same reasons that we questioned ABC's salaries and related costs (i.e., personnel costs were not supported by after-the-fact determinations of the actual activity of each employee). Specifically, the Appeals Board stated that payroll reports showing the amount of salaries charged to different programs did not verify the amount of time the employees actually spent working on Head Start programs. Further, the Appeals Board stated that it was reluctant to accept non-contemporaneous documentation as adequate support of personnel costs.

Unsupported Training, Education, and Delegate Agency Costs

Department of State Comments

The State agreed that \$12,629 of the delegate agency costs questioned were unsupported; however, it stated that the remaining delegate agency costs, as well as all of the questioned training and education costs, were supported by adequate documentation. The State provided documentation that it believed supported the training and education costs as well as the remaining delegate agency costs.

Office of Inspector General Response

We maintain that the training, education, and delegate agency costs charged to the CSBG Recovery Act were not supported by adequate documentation. Most of the documentation that the State submitted to support these costs was previously provided by ABC and found to be inadequate. The only new documentation was a letter from the training institution dated 2 years after the Recovery Act period ended. The letter attested to the authenticity of the institution's invoices and class lists (i.e., lists of beneficiaries scheduled to attend the institution's training). However, this documentation does not support ABC's assertion that beneficiaries on the class lists actually attended the training.

APPENDIXES

APPENDIX A: ACTION FOR A BETTER COMMUNITY, INC., COMMENTS



Jerome Underwood
Board Chair

James H. Norman
President & CEO

May 9, 2013

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RE: Report Number: A-02-11-02020

Dear Mr. Edert:

This communication is written in response to your letter dated April 18, for which Action for a Better Community, Inc. (ABC) requested and was granted a 15 day extension to respond. This response (filed electronically or by hard copy) addresses each of the four areas of proposed disallowance, in the order presented within the draft audit. Due to the voluminous nature of the supporting documentation, only a portion of the very lengthy attachments are being included with the submission of the hardcopy, while the complete attachments are being submitted electronically.

I. Unallowable Salaries and Related Costs

According to the OIG \$731,418 costs is proposed for disallowed because the costs were "not supported by after-the-fact determination of the actual activity of each employee, could not provide adequate support for a majority of the time charged by its employees to the CSBG grant, and "the timesheets did not specify the ABC activity or program that the employees worked on".

ABC's Response:

- Payroll reports were generated which clearly identify the CSBG ARRA program in the upper left hand corner of each report for the employees whose salaries are questioned. These reports list all the pay periods included and are signed by the managers who also signed the timesheets or



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by the employees themselves to attest to their accuracy. (**Attachment A1**)¹

- [REDACTED] and [REDACTED], two of the employees whose salaries are in question, were originally charged incorrectly to the ARRA program. The mistake was corrected in October, 2010, shortly after the program ended, and the final financial report was filed. Our payroll records verify this. (**Attachment A2**)
- The salary for [REDACTED] is in question. This employee was a youth in our Summer Youth program who was assigned to one of the community worksites with which we have a worksite agreement. The summer youth program was fully funded by ARRA. The timesheet and the worksite agreement for [REDACTED] has been attached. (**Attachment A3**)
- Timesheets, with the employee or manager who signed the original timesheets, to include a signed statement that the timesheets reflect that the activities for which they worked on during this period was the CSBG ARRA programs. Due to the high volume of documents involved, we are sending only the sample of one employee, [REDACTED] (**Attachment B**)²

It is important to note that 85% of the employees in the disallowed cost were hired specifically and worked exclusively for the CSBG ARRA programs. This fact is supported by the job descriptions; the recruitment ads placed for hiring; the hiring and termination documents; the payroll records; and the quarterly ARRA reports filed to the State. These documents provide overwhelming evidence that the employees worked for the CSBG ARRA programs. Most of the documents were presented to, and reviewed by, the auditors, so they are not included in this communication to avoid redundancy. However, the supporting documentation for each employee is available upon request.

II. Unsupported Training, Education, and Delegate Agency Costs

The two items in this proposed disallowance which include: a) \$40,000 of beneficiary cost for continuing education classes for which "ABC's documentation did not always identify the beneficiaries that attended these courses", and b) \$18,969 costs incurred by ABC's delegate agencies because "the delegate agencies' invoices to ABC were not always supported by vendor receipts or other documentation".

ABC's Response:

- a) The \$40,000 is related to invoices 212010, 3292010, and 612010 from Finger Lakes Community College as identified by OIG. 612010 is a rebilling of 3292010 by the college. We are sending the payment history report generated from our accounts payable system, the payment checks front and back, the

¹ Attached to this hardcopy is an excerpt from attachment A1. The full attachment of 53 pages has been submitted electronically.

² Attached to this hardcopy is an excerpt from Attachment B. The full attachment of 21 pages has been submitted electronically.

check stubs, and lists of students (beneficiaries) related to each invoice for your review. The lists of students are provided by the college when we were invoiced. All students are identified by name and student ID# from the college's computer system. Both reports are provided here for your review. **(Attachment C)**

- b) The following will detail the supporting documentation provided by ABC's delegate agencies, Catholic Charities of the Finger Lakes (CCFL) and Pathstone, to support cost incurred for the \$18,969 disallowance.
- \$5,168.49 of the \$18,969 was for beneficiary costs incurred by CCFL. CCFL has provided four groups of documents; each group individually supports the assistance for Food, Housing, Medical and Other Services provided to the beneficiaries. The documents include the front and back of checks issued to vendors, the check stubs with the beneficiaries listed, and CCFL's authorizations with approved assistance amounts for each beneficiary. The documentation clearly shows that the vendors received the payments that were specifically for the beneficiaries. **(Attachment D1-D4)**³
 - In addition, CCFL has provided two PDF files of documentations to support the \$9,039.40 personnel cost which were disallowed. The documents include the Lotus Notes Calendar of [REDACTED], one of the staffs' costs disallowed, and payroll job costing reports with the ARRA program identified (CCFL code 705). **(Attachment E)**⁴
 - PathStone, also provided a certification by the supervisor that [REDACTED] whose cost of \$1,931.40 was disallowed, had worked on the CSBG ARRA program. **(Attachment F)**

III. **Unallocable Consulting Costs**

\$4,000 for consulting services to develop ABC's 2011-2013 strategic plan was questioned because "they did not benefit ABC's CSBG program during the award period".

ABC's Response:

The benefit to the ARRA program was creation of employment. As the background of the findings states: "The American Recovery and Reinvestment Act of 2009 authorized supplemental appropriation for job preservation and creation, infrastructure investment....." and the CSBG program was "to provide funds to alleviate the causes and conditions of poverty in communities". The \$4,000 for consultant services was consistent with these goals and objectives. It provided a local resident an employment opportunity during an economic downturn when such opportunities were increasingly rare for consultants and at

³ Attached to this hardcopy is an excerpt from Attachment D1. The full attachment of 426 pages, which contains D1- D4, has been submitted electronically.

⁴ Attached to this hardcopy is an excerpt from Attachment E. The full attachment of 44 pages has been submitted electronically.

the same time, permit the agency to build capacity by developing a strategic plan. The job it created was clearly during the award period.

IV. Unallowable Entertainment Costs

\$3,442 was questioned "for entertainment expenses" "to send program beneficiaries to the Seabreeze Amusement Park and a comedy show.

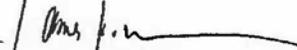
ABC's Response:

We disagree with the characterization of the costs as entertainment expenses. They are beneficiary costs, which are allowable.

- The program beneficiaries who went to the Seabreeze Amusement Park and a comedy show were participants in the Family Opportunity Created Utilizing Support (FOCUS) program, which is a peer-support program using the family development model to assist families to achieve greater self-sufficiency and obtain/sustain employment.
- One of the program's goals was to improve family functioning skills and parenting skills (both CSBG National Performance Indicators), and sending families of participants to social events such as the Amusement Park helps to achieve this goal. Social events also provide participants a non-threatening peer-learning environment to improve social and networking skills and enhance their employability.

Please review ABC's response and take into consideration the additional supporting documentation for consideration as you finalize your audit findings. If you have any questions or need additional information, please contact me at 585-295-1825 or Anthony Yeung, CFO, at 295-1721.

Sincerely,



James H. Norman

CC: Anthony Yeung

APPENDIX B: DEPARTMENT OF STATE COMMENTS



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

ANDREW M. CUOMO
GOVERNOR

CESAR A. PERALES
SECRETARY OF STATE

September 13, 2013

Mr. James P. Edert
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of Inspector General
Office of Audit Services Region II
Jacob K. Javits Federal Building
26 Federal Plaza, Room 3900
New York, New York 10278

Re: Response to Draft Audit Report Number: A-02-11-02020

Dear Mr. Edert:

The enclosed document is the response of the New York State Department of State Division of Community Services (DCS) to the captioned draft audit report entitled *New York State Claimed Unallowable Community Services Block Grant Recovery Act Costs for Action for a Better Community, Inc.* and dated July 2013. As requested in your July 31, 2013 letter, DCS's written comments include a statement of concurrence or nonconcurrence with each recommendation of the draft audit report. For each concurrence, a statement describing the action taken or planned is included. For each nonconcurrence, the specific reasons for the nonconcurrence are stated along with a statement of any alternative corrective action taken or planned is provided.

Thank you for your courtesy and attention to this important matter. Should you have any questions or wish to discuss this matter further, please feel free to contact my office at (518) 474-6740.

Sincerely,

/s/

Linda M. Baldwin
General Counsel
New York State Department of State

Cc: Veronica Cruz, Director, Division of Community Services, NYS Department of State



STATE OF NEW YORK
 DEPARTMENT OF STATE
 ONE COMMERCE PLAZA
 99 WASHINGTON AVENUE
 ALBANY, NY 12231-0001

ANDREW M. CUOMO
 GOVERNOR

CESAR A. PERALES
 SECRETARY OF STATE

Response of the New York State Department of State Division of Community Services

This letter, with attachments, is the response of the New York State Department of State Division of Community Services (DCS) to the draft audit report numbered A-02-11-02020, entitled *New York State Claimed Unallowable Community Services Block Grant Recovery Act Costs for Action for a Better Community, Inc.* and dated July 2013 (hereinafter, Draft Audit Report).¹ DCS's written comments include a statement of concurrence or nonconcurrence with each recommendation of the Draft Audit Report. For each concurrence, a statement describing the action taken or planned is included. For each nonconcurrence, the specific reasons for the nonconcurrence are stated along with a statement of any alternative corrective action taken or planned.

I. Introduction.

The New York State Department of State Division of Community Services (DCS) received \$86,780,940 in Community Services Block Grant funding through the American Recovery and Reinvestment Act of 2009 (hereinafter, CSBG ARRA). Prior to awarding CSBG ARRA funds, DCS conducted individual meetings with each recipient entity, including one with Action for a Better Community, Inc. (ABC), provided all federal guidance received by DCS to each recipient entity, and provided additional instruction and direction to recipient entities. DCS worked with federal, state, and local entities to assure that the CSBG ARRA funds distributed to Community Action Agencies (CAAs) and Community Action Programs (CAPs) were used for programs and services designed to reduce poverty, revitalize low-income communities, and empower low-income families and individuals. DOS encouraged local entities to focus efforts on job creation, job retention, and the creation of sustainable economic resources in communities to make meaningful and measurable progress consistent with the CSBG ARRA goals.

Many CAAs used these funds to provide training and career opportunities in fields such as building trades, home health care, commercial driving, child care, green technologies and culinary arts. CAAs and CAPs also used CSBG ARRA funds for summer youth employment programs and to provide employment supports such as employment-related literacy training, job-related transportation, and entrepreneurial assistance. DCS administered these funds to facilitate the creation or retention of over 5,300 jobs within the State of New York during the CSBG ARRA funding period. At ABC alone, 273 jobs were created or retained. In addition, ABC reported 1,268 specific positive outcomes in the lives of low-income persons and families resulting from the use of CSBG ARRA funding. DCS is proud of its record of success in carrying out its mission of stewardship² and efficacy in the administration and use of CSBG ARRA funding within New York State.

¹ Please be advised that the Draft Audit Report repeatedly refers to the Community Services Block Grant (CSBG) as the "Community Service Block Grant" (Draft Audit Report No. A-02-11-02020, at pp. i and 1).

² It should be noted that, prior to the HHS OIG audit, DCS disallowed and refunded to the federal government approximately \$70,000 in CSBG ARRA charges made by ABC, based on DCS's prior programmatic and fiscal reviews.

II. DCS does not concur with the recommendation that the State refund the Federal Government \$795,608 for purportedly unallowable costs.

The Draft Audit Report recommends that the State "refund the Federal Government \$795,608 for unallowable costs" (Draft Audit Report, at 6). The unallowable costs at issue are:

- \$730,817 in unsupported salaries and related costs;
- \$57,349 in unsupported training, education, and delegate agency costs;
- \$4,000 in unallocable consulting costs; and
- \$3,442 in unallowable entertainment costs.

For the reasons stated below, DCS does not concur with the validity of facts cited by the HHS OIG in support of its recommendation, and maintains that the recommendation is not reasonable. Based on a review of the records relevant to this Draft Audit Report, DCS believes that the finding of unallowable costs should be reduced from \$795,608 to \$25,999.64.

A. The Draft Audit Report's finding that the State did not sufficiently support its claim for \$730,817 in salaries and related costs charged by ABC, and the resulting recommendation of disallowance and repayment, is not valid on the facts, is unreasonable, and should be removed.

The Draft Audit Report found that "the State claimed \$730,817 in CSBG Recovery Act (CSBG ARRA) funds for salaries and related costs charged by ABC that were not supported by an after-the-fact determination of the actual activity of each employee" (Draft Audit Report, at 5). The audit team considered the records of 50 ABC employees, 48 of whom were paid with CSBG ARRA funds during the funding period, and disallowed salary and fringe costs associated with 44 of the 50 employees reviewed. Applying the standards of 2 CFR Part 230, App. B, section 8(m) to those records, the draft report concludes that ABC "could not provide adequate support for a majority of the time charged by its employees to the CSBG grant" (Draft Audit Report, at 5). DCS does not concur.

I. The records supplied by ABC fully satisfy the 2 CFR Part 30 Appendix B requirements for "Support of Salaries and Wages" for 47 of 50 audited employees.

The totality of the documentation provided by ABC clearly shows that ABC satisfied the standard of 2 CFR Part 230, App. B, section 8(m) for 47 of the 50 employees reviewed, and that the recommended disallowance is unreasonable and misplaced. 2 CFR Part 230, Appendix B, Section 8(m)(2), "Support of salaries and wages," provides in pertinent part:

"Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards ... Reports maintained by non-profit organizations to satisfy these requirements must meet the following standards:

- (a) The reports must reflect an after-the-fact determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having firsthand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.³

For each of the 47 ABC employees referenced above, the HHS OIG has been provided with the following documentation from ABC's records:

- (1) **Timesheets** – For each of these 47 employees, ABC maintained timesheets showing an after-the-fact determination of the total activity for which the employees were compensated. The timesheets are signed by the employee and/or the employee's supervisor, are dated,³ and reflect submission on a bi-weekly basis during the CSBG ARRA funding period.

The Draft Audit Report's statement that "ABC's timesheets ... were dated 3 years after the Recovery Act period ended" is clearly erroneous and contradicted by the record (Draft Audit Report No. A-02-11-02020, at 7). The timesheets were dated, signed, and submitted during the CSBG ARRA period for each bi-weekly pay period in which work was performed (*see, e.g.*, Affidavit of supervisor [REDACTED] dated August 28, 2013, regarding ABC's CSBG ARRA time and activity records for employee [REDACTED], attached at Exhibit 9). Additionally, the record clearly demonstrates that 35 of the 50 ABC employees reviewed were hired, budgeted, and performed work exclusively and specifically for the CSBG ARRA award (*see* Affidavits, attached as Exhibits 9 through 55).⁴

³ Although ABC's records include one undated timesheet for [REDACTED], reflecting 35 hours of work, a second timesheet—which includes the month and date in the left column, a signature, and a date stamp showing the month, date, and year of submission ("07/30/2010") during the CSBG ARRA period—denotes 40 hours of work on a program fully and solely funded by CSBG ARRA. ABC's payroll report for [REDACTED] shows that he was paid for only the 40 hours of work reflected on the second timesheet. Therefore, HHS OIG's comment in the Draft Audit Report regarding [REDACTED]'s records (stating that "the timesheet that ABC provided to support salaries for the one employee that worked on a program that was fully funded by the CSBG Recovery Act did not specify a month or a year" and that "[a]ccordingly, we could not determine whether this employee worked on the program during the period of the CSBG Recovery Act grant," (Draft Audit Report, at 7)) is erroneous in consideration of the records provided and does not warrant the disallowance recommended.

⁴ DCS is encouraged by an ARRA Audit Report issued to the State of Hawaii in a matter with a similar fact pattern (HHS OIG CSBG ARRA Audit Report A-09-11-01014, *Hawaii Claimed Unallowable Community Services Block Grant Costs for Hawaii County Economic Opportunity Council's Expenditures Under the Recovery Act*, July 30, 2012), in which the HHS OIG concluded as follows:

"The \$303,964 of allowable salaries and wages for the Council's direct employees was supported with timesheets that reflected an after-the-fact determination of the actual time of each employee. Direct employees charged 100 percent of their time to the CSBG Recovery Act grant." (Audit Report A-09-11-01014, at p. 4, footnote 3).

Likewise, here, the ABC employee timesheets reflect an after-the-fact determination of the actual time of each employee, and 35 of the 50 employees reviewed at ABC charged 100 percent of their time to the CSBG ARRA grant (*see* Affidavits, attached as Exhibits 9–55).

- (2) **Payroll Reports** – For each of these 47 employees, ABC maintained a Payroll Report, updated on a bi-weekly basis throughout the CSBG ARRA funding period, showing an after-the-fact determination of hours spent specifically on CSBG ARRA activity during each bi-weekly pay period. Each Payroll Report is coded in the upper left-hand corner with the program activity/element code used by ABC for CSBG ARRA, such as “600035 CSBG ARRA,” clearly indicating that the employee was allocating time to ABC’s CSBG ARRA-funded program (see Affidavit of supervisor [REDACTED] dated August 28, 2013, regarding ABC’s CSBG ARRA time and activity records for employee [REDACTED] attached as Exhibit 9; see also ABC YTD Timesheet Charges by Activity, [REDACTED] at 5, attached as Exhibit 7). Each Payroll Report was contemporaneously produced during the CSBG ARRA funding period (see, e.g., Affidavit of supervisor [REDACTED] dated August 28, 2013, regarding ABC’s CSBG ARRA time and activity records for employee [REDACTED] attached as Exhibit 9).

While the Draft Audit Report states that “ABC’s payroll reports did not indicate what CSBG Recovery Act activities the associated employees worked on,” there is no specific binding requirement that an “activity” must be parsed more narrowly than by the specific funding source (i.e., CSBG ARRA), and “CSBG ARRA” was the “activity” noted and separately tracked by the Payroll Reports maintained by ABC and submitted to HHS OIG. Therefore, DCS does not concur with the Draft Audit Report’s factual determination that the payroll reports did not indicate what activities the associated employees worked on.

After the HHS OIG’s preliminary audit findings were shared with ABC, ABC asked the appropriate supervisors to indicate their prior review and approval of these payroll reports by signing them after the fact. Although the payroll reports had been generated contemporaneously with the timesheets, the reports were not routinely signed either by the employees or their supervisors at the time. Unfortunately, it now appears that the HHS OIG has used this effort by ABC to support its claim of unsupported salaries and related expenditures. The Draft Audit Report cites the after-the-fact signing of the Payroll Reports as justification for dismissing consideration of the reports, rather than considering the later signature as further validation of the accuracy of the statements made therein. This perceived deficiency has been addressed through the submission of affidavits authenticating the payroll reports as well as other previously submitted records (see Affidavits, attached as Exhibits 9–55; see also Point II.A.2., below). The authenticating affidavits are each sworn to by an ABC supervisor or employee with first-hand knowledge of the truth of the contents of the attached payroll report, and state that the attached payroll report was “produced during the CSBG ARRA funding period by ABC in the ordinary course of business and provides a true and correct after-the-fact determination of the Employee’s time spent working on CSBG ARRA-related projects” (see Exhibits 9–55).

- (3) **Year-To-Date (YTD) Timesheet Charges by Activity** – On a monthly basis, at the request of the Division of Community Service, ABC produced and maintained a report entitled, “YTD Timesheet Charges by Activity.” This document was an after-the-fact report showing the hours worked by each ABC employee on CSBG ARRA activity, along with the corresponding dollar value of the labor, and further breaking down the CSBG ARRA activity of each employee by underlying CSBG ARRA programmatic task. On a quarterly basis, DCS conducted onsite visits to ABC during which DCS analysts reviewed and verified this document using the Timesheets, Payroll Reports, physical observations of the conduct of CSBG ARRA programs by ABC employees, and interviews with supervisory personnel (see DCS Grantee Services Contact Reports (GSCRs) for ABC Site Visit Contact Dates 7/9/09, 10/26/09, 1/27/10, 4/20/10, 7/20/10, and 10/13/10, attached as Exhibit 3).

- (4) **CSBG ARRA Full-Time Equivalent (FTE) Reports** – On a quarterly basis, ABC was required to submit to DCS a Full-Time Equivalent (FTE) Report tracking the various jobs created and jobs retained at ABC with the use of CSBG ARRA funds. The FTE Reports show each employee paid with CSBG ARRA funds by title, list the budgeted number of CSBG ARRA hours for each employee, as well as the actual number of hours spent by the employee on CSBG ARRA activities. Each quarter, the assigned Division of Community Services Program Analyst traced the FTE report submitted by ABC to the YTD Timesheet Charges by Activity Report, the Payroll Report, and the Timesheets to verify the information submitted (*see, e.g., DCS GSCR, ABC CSBG ARRA Site Visit, Contact Date 10/13/10, at FTE Spreadsheet Report, attached as Exhibit 3*).⁵
- (5) **ABC Year-To-Date Timesheet Charges By Employee Report (ABC Employee Summary Time and Activity Report)** – ABC also produced a summary report for the CSBG ARRA time period, which documented the time and activity distribution for ABC employees, generally, including employees dedicated to CSBG ARRA activity and those who were not. This document shows the distribution of activities among each employee and further corroborates ABC's tracking and documentation of time and activity as shown in the foregoing documents (*see ABC Year-To-Date Timesheet Charges by Employee / ABC Employee Summary Time and Activity Report, attached as Exhibit 8*).

In accordance with the requirements of 2 CFR Part 230, Appendix B, Section 8(m)(2), the records discussed above demonstrate: (a) that an after-the-fact determination of the actual activity of each employee was made; (b) that the total activity of each employee during the applicable CSBG ARRA period was recorded; (c) that ABC recorded an after-the-fact distribution of each employee's activity representing a reasonable estimate of the actual work performed by the employee during the periods covered by the reports, and that the distribution was signed by the employee or responsible supervisory official having firsthand knowledge of the activities performed by the employee; and (d) that the reports were prepared at least monthly and coincided with applicable payroll periods. Thus, ABC has met its burden to "document, with records supported by source documentation, that the costs were actually incurred and represent allowable costs, allocable to the grant" (*Northstar Youth Servs., Inc., HHS Departmental Appeals Board (DAB) No. 1884, at 5 (2003)*).

2. Notwithstanding the sufficiency of the ABC records, DOS is providing after-the-fact affidavits authenticating the critical records maintained by ABC: Timesheets, Payroll Reports, YTD Timesheet Charges by Activity, and ABC Employee Summary Time and Activity Report.

Recognizing that the HHS OIG audit team did not accept the later signature on the payroll reports as appropriate after-the-fact support for the time that its employees worked on CSBG ARRA-related projects, ABC has now submitted to DOS signed affidavits which authenticate the earlier records

⁵ Also included within the attached employees files are the following documents, which provide further substantiation of the employee's work on the CSBG ARRA program: (1) a position listing showing the employee's position on ABC's approved CSBG ARRA budget is present for 48 employees; (2) job descriptions are present for 47 employees; (3) employment ads posted by ABC are present within 43 employee files; (4) a hiring letter or similar document with the CSBG ARRA position listed is present within 38 employee files; (5) a payroll roster with the ARRA program identified exists within 49 employee files; (6) employee evaluations are present in 12 employee files; (7) a termination letter or termination document listing the CSBG ARRA position/title is present in 36 employee files; (8) an employment application is present in 12 of the employee files; and (9) a summer youth 2010 ARRA attestation form is present in 9 of the employee files. (*see ABC Emp. Files, attached*).

provided. Additionally authenticated from firsthand knowledge are weekly timesheets for each of the subject employees, as well as YTD Timesheet Charges by Activity and ABC Employee Summary Time and Activity Reports. These affidavits are attached hereto as Exhibits 9-55. The HHS Department of Appeals Board has previously held in principle that non-contemporaneous affidavits supportive of records such as summary time sheets "constitute adequate documentation of wage and salary expenditures" (*Philadelphia Parent and Child Center*, HHS DAB No. 2297, at 6 (2009), 2009 WL 5945460 (H.H.S.)). Accordingly, DCS urges the OIG to reconsider its determination in light of the overwhelming documentation showing the appropriate use and disposition of the contested CSBG ARRA monies.

3. The HHS OIG Draft Audit Report's interpretation and application of 2 CFR Part 230, Appendix B, section 8(m)(2) is fundamentally flawed, unreasonable, and ignores the deference accorded to states under applicable block grant regulations.

In its application of 2 CFR Part 230, Appendix B, Section 8(m)(2) to ABC's documentation, the HHS OIG audit team appears to have required that ABC have one document for each employee that in-and-of-itself satisfies subparagraphs (a) through (d) of Section 8(m)(2). Despite the fact that the ABC employee timesheets and payroll records were produced concurrently, it is apparent that the HHS OIG audit team determined that each document should be considered individually, rather than collectively; as a result, the HHS OIG audit team dismissed each document one-by-one as insufficient.⁶ Employing a rigid "single-record" approach, the HHS OIG audit team ignores the intent and rationale for the regulation, i.e., that sufficient records be maintained by grantees to assure that federal funds are paid in appropriate amounts to those employees who have actually earned them by working in support of the federal award.⁷ The untenable and unjust nature of the HHS OIG's current interpretation and application of Section 8(m) in this Draft Audit Report is obvious: work that was actually done in furtherance of an award may be discounted at the significant expense of a not-for-profit despite the existence of supporting documentation simply because the documents had not been bound together but, rather, were maintained separately in the files.

DCS maintains that the regulatory intent of Section 8(m)(2) is satisfied when a not-for-profit, such as ABC, produces documentation that, taken together, satisfies the requirements of paragraphs (a) through (d) above.⁸ Instead of searching for one document that satisfies all of the above criteria, DCS

⁶ In its response to ABC's comments on the Draft Audit Report, HHS OIG evaluates each document for satisfaction of the 2 CFR Part 230, App. B, section 8(m) standard individually, dismissing each in turn, and apparently ignoring entirely the Year-To-Date Timesheet Charges by Activity Report and the FTE Reports, stating:

"However, we maintain that the remaining salaries and related costs were not supported by after-the-fact determinations of employees' actual activities. ABC's payroll reports did not indicate what CSBG Recovery Act activities the associated employees worked on Similarly, ABC's timesheets did not specify CSBG Recovery Act activities" (Draft Audit Report, at p. 7).

⁷ See *Partnership for Youth and Community Empowerment*, HHS DAB No. 2306, at 13 (2010) (the purpose of 2 CFR Part 230, Appendix B, Section 8(m)(2), is "to ensure that salary expenses are properly charged to an award, accurately reflecting the amount of employee time worked in support of the federally-sponsored project.")

⁸ As noted in the Draft Audit Report, the American Recovery & Reinvestment Act of 2009 (ARRA) provided funding to the Community Services Block Grant (CSBG), to be distributed in the form of block grant funds to the various states, including the State of New York. As stated in the Notice of Grant award issued to the State of New York by the Department of Health and Human Services for the use of CSBG ARRA funds, the funding was subject to "45 CFR Part 96 - Block Grants" (Notice of Grant Award, HHS ACF to DCS, April 14, 2009, attached). 45 CFR Part 96 provides deference to the State in interpreting the standards applicable to block grant funds it receives, which includes CSBG ARRA funding. Specifically, 45 CFR § 96.50(e) states, in relevant part:

submits that the HHS OIG Audit Team should have considered several payroll documents which, when taken together, easily constitute the requisite "report." Such an interpretation is not "clearly erroneous" and should be given deference by the Department of Health and Human Services in reviewing and resolving this issue regarding the use of block grant funds (*see* 45 CFR §96.50(e)).⁹ While a single sheet of paper or a bound set of papers may be the preferred method of retention, it cannot be adopted as the threshold used to determine compliance, especially when, as here, determinations of noncompliance may result in a recommendation of complete disallowance of all payments made to the subject employees where no fraud, waste, or abuse is alleged and where there is no dispute as to whether programmatic services in furtherance of the award were truly rendered.

With the addition of 47 new affidavits (attached hereto as Exhibits 9 through 55), the record before HHS OIG now unequivocally shows the appropriate disposition of CSBG ARRA monies for 47 of the 50 audited employees. When taken as a whole, the documentation amply supports a finding that these employees were appropriately compensated and that no fraud, waste, or abuse occurred in the provision of allowable anti-poverty services. HHS OIG can and should modify the primary finding of the Draft Audit Report to reduce the recommended disallowance for unallowable salaries and related costs from \$730,817.00 to \$5,929.17.¹⁰

4. The HHS OIG's finding of \$730,817 in "unallowable" salaries and related costs and recommendation of a refund of the entire amount is unreasonable, inequitable, and inconsistent with past HHS practice.
 - a. HHS OIG's recommendation to disallow \$730,817 in CSBG ARRA funds without even a cursory inquiry into the actual salaries that should have been charged to the award is unreasonable and inequitable.

The Draft Audit Report's recommendation to disallow \$730,817 in CSBG ARRA funds claimed by the State for salaries and related costs charged by ABC is unreasonable. The HHS OIG has not alleged that the ABC employees whose timekeeping records are under dispute failed to perform the work for which they were paid by ABC. Nor has the HHS OIG alleged that ABC failed to perform the beneficial services for which it received CSBG ARRA funds. There is no evidence or allegation that ABC or the State intentionally disregarded any federal directive or guidance provided on this matter. In fact, DCS monitoring reports completed during the applicable funding period verify that services were

"The Department recognizes that under the block grant programs the States are primarily responsible for interpreting the governing statutory provisions. As a result, various States may reach different interpretations of the same statutory provisions. This circumstance is consistent with the intent of and statutory authority for the block grant programs. In resolving any issue raised by a complaint or a Federal audit the Department will defer to a State's interpretation of its assurances and of the provisions of the block grant statutes unless the interpretation is clearly erroneous."

⁹ In addition, there is no record of any binding guidance having been provided to the New York State Department of State Division of Community Services before or during the CSBG ARRA funding period that would have imposed or given notice of the strict and formalistic interpretation of 2 CFR Part 230, Appendix B, section 8(m)(2) now being advanced by the Draft Audit Report, nearly three years after the close of the applicable CSBG ARRA funding period.

¹⁰ Two (2) of the 50 ABC employees whose salaries and wages were reviewed by the HHS OIG Audit Team were originally charged incorrectly to the CSBG ARRA funding by ABC, but the mistake was corrected by ABC in October of 2010. This was recognized in the recent draft audit report and the disallowance proposed for the two employees (██████████ and ██████████) was removed (*see* Draft Audit Report, at 7). One additional ABC employee, ██████████, was found by DCS to have been improperly charged to CSBG ARRA as the nature of her work at ABC related to unallowable fundraising costs. Therefore, the salary and fringe costs attributable to that employee (\$5,929.17) should be considered unallowable.

satisfactorily performed and indicate that both DCS and ABC were consistently acting in good faith to comply with their respective responsibilities and to follow the instructions provided to them by the Federal Government (*see* Exhibits 3 and 8, attached).

The recommendation of disallowance contained in the Draft Audit Report is unreasonable because it is unduly harsh and premature. After concluding that the salaries for the ABC employees discussed above lacked adequate supporting documentation—a conclusion with which DCS disagrees—the HHS OIG made no attempt to determine the correct amount of salaries and fringe that should have been charged to the award. Nor did the HHS OIG recommend any follow-up process that could result in an accurate and reasonable resolution of this question, such as a set-aside for ACF resolution. Rather, the Draft Audit Report simply and unreasonably rushes to the recommendation of disallowance of the entire questioned amounts, implying that *none* of the questioned salary or fringe paid to the aforementioned ABC employees with CSBG ARRA funding should have been charged to the award. That conclusion is wrong and belied by the record. Based on ABC's records and the State's monitoring of ABC during the CSBG ARRA funding period, it is clear that \$0 is not the correct amount of questioned salaries and fringe that should have been charged to the award for any of the 47 ABC employees discussed above. Therefore, the recommended disallowance is unreasonable and should be revised.

- b. HHS OIG's recommendation is inconsistent with past HHS practice, which provides for an inquiry into and determination of actual salaries that should have been charged to a CSBG ARRA award.

The Draft Audit Report's recommendation to require the State to refund to HHS, as "unallowable," \$730,817 in CSBG ARRA funds charged by ABC for salaries and related fringe is inconsistent with the past practice of the HHS OIG in its reviews of such CSBG ARRA charges (*see Oregon Claimed Some Potentially Unallowable Community Services Block Grant Costs for Multnomah County's Expenditures Under the Recovery Act*, Audit Report A-09-11-01013, at pp. 5-6; *see also Hawaii Claimed Unallowable Community Services Block Grant Costs for Hawaii County Economic Opportunity Council's Expenditures Under the Recovery Act*, Audit Report A-09-11-01014, at p. 4). In the April 2013 HHS OIG Final Audit Report entitled *Oregon Claimed Some Potentially Unallowable Community Services Block Grant Costs for Multnomah County's Expenditures Under the Recovery Act*, the HHS OIG found that a not-for-profit recipient of CSBG ARRA funding failed to comply with the requirements of 2 CFR part 230, Appendix B, section 8(m) by charging salaries and wages and related fringe to CSBG ARRA based only on budgeted estimates of time and effort calculated by the program director rather than actual after-the-fact determinations of the actual activity of each employee reflected in personnel activity reports (*see* Audit Report A-09-11-01013, at pp. 5-6). In that matter, the HHS OIG stated as follows:

"Because of the use of budget estimates and the lack of adequate supporting documentation, we could not determine the correct amount of salaries and wages that should have been charged to the award. Therefore, we *set aside* the \$49,683 for ACF resolution" (Audit Report A-09-11-01013, at p. 5).

The Final Audit Report further provided:

"Because of the lack of adequate supporting documentation, we could not determine the reasonableness of the salary reallocation charged to the award. Therefore, we *set aside* the \$10,405 for ACF resolution" (Audit Report A-09-11-01013, at p. 5).

Finally, with regard to fringe benefit charges associated with the questioned salaries and wages, the Audit Report provided:

"We set aside for ACF resolution the remaining \$18,528, which consisted of \$14,834 claimed for Impact Northwest and \$3,694 claimed for Human Solutions. These costs related to the *set-aside* salaries and wages discussed in the previous section" (see Audit Report A-09-11-01013, at p. 6; see also Audit Report A-09-11-01013, at Appendix A, finding "\$0" in "Unallowable" salaries and wages and "\$0" in "Unallowable" fringe benefits).

Similarly, the July 30, 2012 HHS OIG final CSBG ARRA Audit Report entitled *Hawaii Claimed Unallowable Community Services Block Grant Costs for Hawaii County Economic Opportunity Council's Expenditures Under the Recovery Act*, provided:

"We set aside the remaining \$28,796 for ACF resolution because the Council charged salaries and wages for its administrative and program employees based on budget estimates instead of charging the costs based on actual activity of each employee. ... Although the Council maintained timesheets for each employee, Council officials indicated that the timesheet clerk adjusted the administrative and program employees' timesheets to match the Council's budget. In addition, the employees' timesheets did not clearly identify which activities were related to CSBG program activities funded under the Recovery Act. Therefore, we could not determine the correct amount of time that should have been charged to the award." (Audit Report A-09-11-01014, at p. 4).

It is puzzling that the same preliminary finding made in the Draft Audit Report for New York State would lead HHS OIG to recommend the immediate refund of all associated costs as "unallowable," while final HHS OIG Audit Reports in Oregon (April 2013) and Hawaii (July 2012) resulted in recommendations that associated salary and fringe be "set aside" for later ACF resolution with the State. To the extent that the HHS OIG is unwilling to modify the recommended disallowance from \$730,817.00 to \$5,929.17, DCS requests that the OIG modify the Draft Audit Report to replace its recommendation of disallowance and refund with a recommendation to "set aside" the disputed amounts for later ACF resolution.

- B. The Draft Audit Report's finding that the State's claim for \$40,000 in CSBG Recovery Act funds for beneficiary training and education costs charged by ABC is not supported by adequate documentation, is not valid on the facts, and should be withdrawn.

DCS does not concur with the Draft Audit Report's finding that:

"The State claimed \$40,000 in CSBG Recovery Act funds for beneficiary training and education costs charged by ABC that were not supported by adequate documentation. ABC contracted with various community colleges to provide continuing education courses to its beneficiaries. However, ABC's documentation did not always identify the beneficiaries that attended these courses. Thus, ABC's documentation was inadequate to support the costs the State claimed." (Draft Audit Report, at 5 and 8.)

The Draft Audit Report maintains that ABC's documentation did not identify the beneficiaries that attended the training and education courses. However, documentation provided by Finger Lakes

Community College (FLCC) lists and confirms that the beneficiaries attended each of the four CSBG ARRA funded courses provided through ABC. The documentation provided by FLCC confirms the class date, whether the student/beneficiary passed or failed the identified course, and identified ABC as the funding source for the course (*see* Finger Lakes Community College Supporting Records, attached as Exhibit 4). This documentation, in addition to the ABC records showing the beneficiaries scheduled to attend the training event, adequately substantiates the \$40,000 in resulting costs claimed for beneficiaries who actually attended the event. Accordingly, based on ABC's records and the records provided by FLCC, DCS maintains that the \$40,000 in resulting costs were fully supported, and that the associated recommended refund should be withdrawn.

C. DCS requests a modification in the Draft Audit Report's finding that \$17,349 in CSBG Recovery Act funds for delegate agency costs charged by ABC were not supported by adequate documentation and a reduction in the resulting recommendation.

DCS does not concur with the Draft Audit Report's finding that:

"The State claimed \$17,349 in CSBG Recovery Act funds for delegate agency costs charged by ABC that were not supported by adequate documentation ... Specifically, the delegate agencies' invoices to ABC were not always supported by vendor receipts or other documentation." (Draft Audit Report, at 5.)

Following notification to DCS of this draft audit finding, the DCS-assigned program analyst and fiscal analyst conducted an in-depth review of additional documentation provided from Catholic Charities, a delegate agency of ABC during the CSBG ARRA funding period. During that review, additional invoices, landlord statements and other records were reviewed by DCS (*see* Catholic Charities Supporting Records, attached as Exhibit 5). Based upon a review of these additional records, DCS has found that \$4,720.53 of the delegate agency costs was adequately supported. Accordingly, DCS requests that the disallowance and recommended refund be reduced from \$17,349 to \$12,628.47.

Assuming HHS OIG concurs with the requested reduction, once the Audit Report is finalized, DCS will issue a notice of disallowance to ABC and require repayment of the amount of the unallowable costs with which DCS concurs. To the extent that a lump sum repayment of \$12,628.47 may not be practicable, DCS will negotiate a repayment plan with ABC for the return of these funds to the federal government.

D. DCS concurs with the Draft Audit Report's finding that \$4,000 in CSBG Recovery Act funds for consulting services costs charged by ABC were not allocable to the CSBG ARRA grant.

DCS concurs with the Draft Audit Report's finding that the use of "\$4,000 in CSBG Recovery Act funds for consulting services charged by ABC, related to the development of ABC's 2011-2013 strategic plan," was not allocable to the CSBG ARRA award. DCS agrees that "these services were unallowable because they did not benefit ABC's CSBG program during the award period and therefore should not have been allocated to the CSBG Recovery Act grant" (Draft Audit Report, at 6). Although strategic planning is a foundation of Results Oriented Management and Accountability (ROMA), and a cornerstone of the CSBG program, DCS concurs upon review that the strategic planning costs incurred by ABC did not benefit its CSBG ARRA program during the award period. Therefore, DCS concurs with the Draft Audit Report's recommended disallowance of \$4,000. In light of this concurrence, once the Audit Report is finalized, DCS will issue a notice of disallowance to ABC and require repayment of the unallowable costs found herein with which DCS concurs. To the extent that a lump sum repayment

may not be practicable, DCS will negotiate a repayment plan with ABC for the return of these funds to the federal government.

E. DCS concurs with the Draft Audit Report's finding that \$3,442 in CSBG Recovery Act funds were charged by ABC for unallowable entertainment costs.

DCS concurs with the Draft Audit Report's finding that "... \$3,442 in CSBG Recovery Act funds for entertainment expenses charged by ABC" were unallowable (Draft Audit Report, at 6). As noted in the Draft Audit Report, ABC charged the State for the cost of trips to send program beneficiaries to the Seabreeze Amusement Park and a comedy show. DCS agrees that such costs were not allowable under the CSBG ARRA program, and notes that such costs were not expressly authorized by the State. Once the Audit Report is finalized, DCS will issue a notice of disallowance to ABC and require repayment of this unallowable cost.

III. The State is continuing its efforts to ensure that ABC has sufficient internal controls to ensure that its CSBG costs comply with Federal regulations.

The Draft Audit Report recommends that DCS ensure that ABC improves its internal controls to ensure that its CSBG costs comply with Federal regulations. DCS takes issue with this recommendation insofar as it implies that its monitoring and support of ABC have been deficient. DCS has and continues to work with ABC to ensure that its internal controls are sufficient to ensure that its CSBG costs comply with Federal regulations. DCS has a program analyst and a fiscal analyst assigned to monitor and work with ABC. The program analyst and fiscal analyst each conduct quarterly onsite monitoring visits at ABC and are in regular contact with ABC. DCS receives and reviews the ABC's federally required single audit each year, and incorporates any findings noted therein into its monitoring plan for ABC. DCS also provides direct training and technical assistance to ABC, and invests a significant amount of funding into the New York State Community Action Association, a not-for-profit entity dedicated to providing training and technical assistance to Community Action Programs and Community Action Agencies within the State of New York.

On November 6, 2012, DCS provided an information bulletin to all of its CSBG eligible entities reminding them of the requirements of 2 CFR Part 230 Appendix B, section 8(m), and of the importance of adherence to its standards. Thereafter, DCS program and fiscal analysts provided additional individualized guidance and assistance to all CSBG eligible entities regarding compliance with the federal requirements. In addition, a review of time and effort documentation has become a standard component of onsite visits conducted by DCS. With regard to ABC, DCS's Fiscal Analyst reviewed ABC's internal controls regarding 2 CFR Part 230, Appendix B, section 8(m) during site visits conducted on December 13, 2012 and April 30, 2013, at which time ABC's compliance with the applicable requirements was confirmed.

IV. DCS monitoring procedures, which are reviewed and updated on a continual basis, are extensive and sufficient to ensure that ABC complies with Federal regulations on personnel activity reporting.

The Draft Audit Report recommends that DCS revise its procedures for monitoring to ensure ABC complies with Federal regulations on personnel activity reporting. DCS has had and continues to have extensive monitoring procedures in place that are stricter than the requirements of the federal CSBG Act.

More specifically, DCS has implemented requirements that exceed those required by the CSBG Act, has been responsive to HHS guidance, and continually engages in thorough onsite monitoring of grantees. Onsite reviews of all CSBG eligible entities are conducted quarterly, and each agency is assigned both a program analyst and a fiscal analyst. As stated in Point III above, on November 6, 2012, DCS provided an information bulletin to all of its CSBG eligible entities reminding them of the requirements of 2 CFR Part 230 Appendix B, section 8(m), and of the importance of adherence to its standards. Thereafter, DCS program and fiscal analysts provided additional individualized guidance and assistance to all CSBG eligible entities regarding compliance with the federal requirements. In addition, a review of time and effort documentation has become a standard component of onsite visits conducted by DCS. DCS's Fiscal Analyst reviewed ABC's internal controls regarding 2 CFR Part 230, Appendix B, section 8(m) during site visits conducted on December 13, 2012 and April 30, 2013, at which time ABC's compliance with the applicable requirements was confirmed. While it is true that DCS and HHS audits have uncovered some recordkeeping errors and a small number of incorrect expenditures of CSBG ARRA funds on the part of ABC, upon careful analysis, these errors affected only a small fraction of the overall funding provided to ABC, and were discovered during the monitoring process. Therefore, the monitoring process did what it was designed to do, uncovering errors as required.

As stated by HHS OCS in Informational Memorandum No. 112 entitled *Risk Assessment for FY 2009 (States) CSBG ARRA Funds*, "Because States do not receive additional funds for monitoring or administrative activities, the process of assessing and mitigating risks of inappropriate expenditures with CSBG funds must be a partnership between Federal, State, and local agency levels of the Community Action Network with shared accountability and responsibility for internal controls at all organizational levels." During the CSBG ARRA funding period, which ended on September 30, 2010, numerous monitoring procedures and review standards were employed by DCS, which included the following activities and processes in relation to ABC: (1) a Department of State executive work group conducted a series of individualized face-to-face planning meetings with ABC and all CSBG eligible entities that were to receive CSBG ARRA funding to discuss each entity's proposed work plan and budget in detail prior to DCS approval; (2) DCS's assigned program analyst and assigned fiscal analyst reviewed and commented on ABC's proposed work plan and budget; (3) in September of 2009, DCS forwarded ABC the HHS OCS Informational Memorandum #112 entitled "Risk Assessment for FY 2009 CSBG ARRA Funds" along with a risk assessment chart for completion and submission to DCS; (4) an agency-specific CSBG ARRA risk assessment was completed by ABC in October of 2009 and submitted to DCS in accordance with HHS ACF Informational Memorandum #112 (the Risk Assessment submitted by ABC accurately stated that "the agency's most recent external audit demonstrates proper controls are in place"); (5) the CSBG ARRA risk assessment was used by the program and fiscal analyst in structuring the monitoring process for ABC; (6) a CSBG ARRA Monitoring Checklist was created and used by DCS for all site visits during the CSBG ARRA funding period; (7) the assigned DCS program analyst conducted onsite reviews at ABC for quality assurance purposes and compliance with CSBG ARRA on July 8-9, 2009, October 26, 2009, January 20, 2010, January 27 and 28, 2010, April 20, 2010, July 20, 2010, July 27, 2010, and October 13, 2010; (8) the assigned DCS fiscal analyst reviewed the three most recent A-133 audits for ABC and prior CSBG fiscal monitoring summaries for ABC in October of 2009 to assess risks during the CSBG ARRA funding period; and (9) the assigned DCS fiscal analyst conducted in-person and onsite reviews of ABC in relation to CSBG ARRA compliance on December 22, 2009, January 26-27, 2010, May 4, 2010, July 29-30, 2010, November 16, 2010, and December 14, 2010 (*see, e.g.*, DCS Fiscal Field Reports for ABC CSBG ARRA Site Visits, attached as Exhibit 6).

V. Conclusion.

Critical to any examination or audit to determine the proper expenditure and disbursement of government funds is truth seeking: that the funds were, in fact, spent for the intended purposes. By relying on an extraordinarily restrictive and narrow reading of federal record keeping requirements and erroneous factual determinations, the Draft Audit Report disregards this core inquiry. The Draft Audit Report not only fails to consider records which, in their totality, unequivocally demonstrate appropriate employee compensation and the honest and efficient provision of anti-poverty services, but, having concluded that a single record was necessary to demonstrate compliance, the Report inexplicably recommends a refund of all "unallowed" monies, without any inquiry or fact finding as to which salaries were actually attributable to the services provided.

A careful examination of the support documentation provided with this response, along with the comparison of decisions of the HHS Department Appeals Board in similar cases, amply support a modification of the findings and recommendations contained in the Draft Audit Report. Accordingly, DCS respectfully requests that the HHS OIG modify the recommendations contained in its Draft Audit Report to reflect unallowable costs of \$25,999.64, thereby reducing the associated recommended refund from \$795,608 to \$25,999.64.

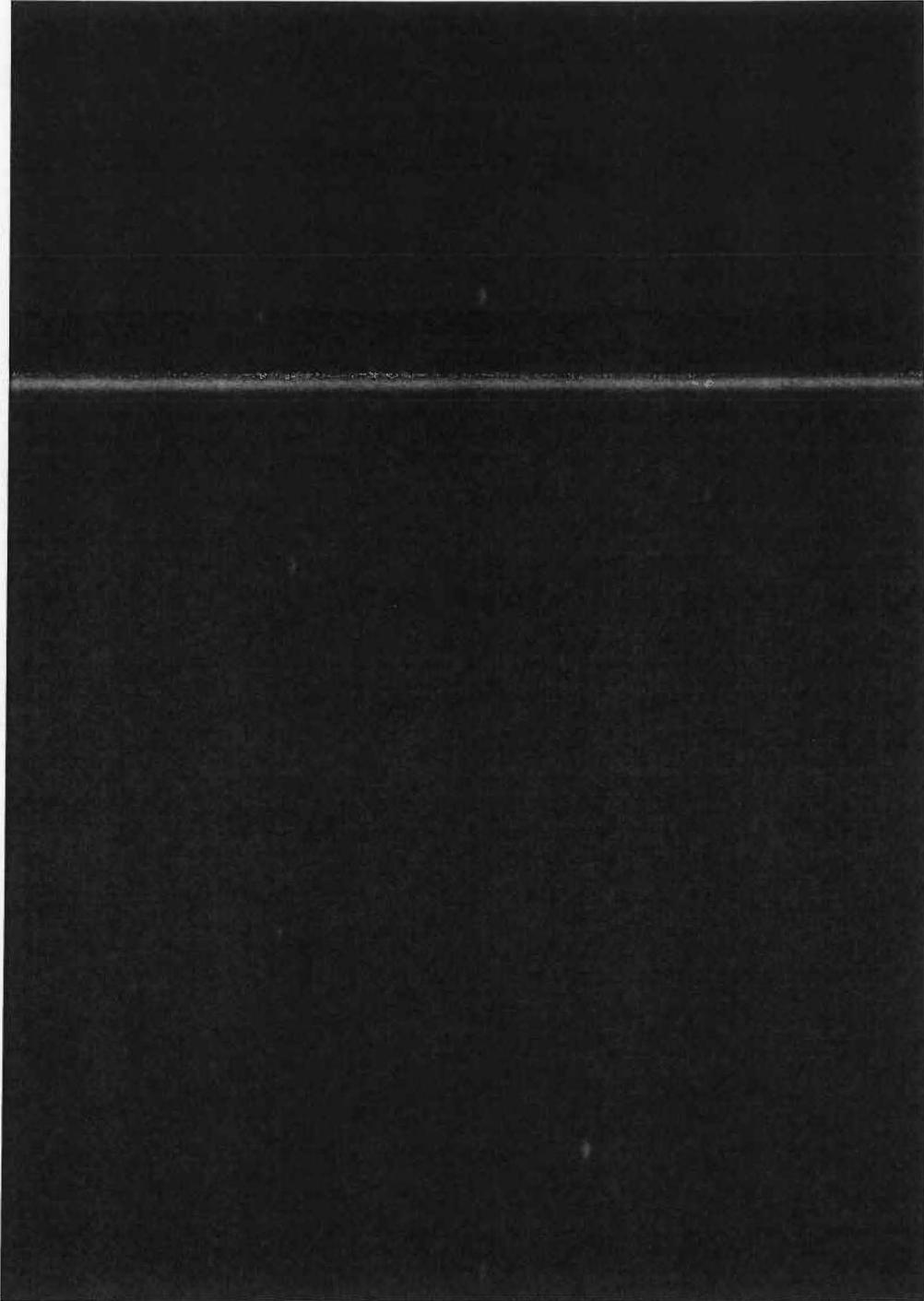
VI. List of Exhibits.

1. HHS OIG Draft Audit Report, *New York State Claimed Unallowable Community Services Block Grant Recovery Act Costs for Action for a Better Community, Inc.*, as provided on July 31, 2013 (A-02-11-02020);
2. Notice of Grant Award, CSBG ARRA, HHS ACF to DCS, dated April 14, 2009;
3. DCS Grantee Services Contact Reports (GSCRs) for ABC CSBG ARRA Site Visits, Contact Dates 7/9/09, 10/26/09, 1/27/10, 4/20/10, 7/20/10, and 10/13/10;
4. Finger Lakes Community College (FLCC) Supporting Records;
5. Catholic Charities Supporting Records;
6. DCS Fiscal Field Reports for ABC CSBG ARRA, Contact Dates of 12/22/09, 1/26-27/10, 5/4/10, 7/29-30/10, 11/16/10, and 12/14/10;
7. ABC Year-To-Date Timesheet Charges By Activity Report;
8. ABC Year-To-Date Timesheet Charges by Employee Report (ABC Employee Summary Time and Activity Report);
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Office of Inspector General Note—The deleted text has been redacted because it contains personally identifiable information. Exhibits 9 through 55 contain signed employee affidavits.

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