



Agenda

- The new FLSA overtime rule
- Travel time policies under the FLSA
- HR directives in CSBG Organizational Standards
- Role of CAA Board in overseeing personnel policies and employee grievances

FLSA Overview

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Fair Labor Standards Act – Overview

- **Must pay minimum wage & overtime for covered employees, unless exempt**
 - Includes public and private sector employees
- **“White collar” exemptions (29 C.F.R. Part 541)**
 - Cover certain executive, administrative, professional (EAP), outside sales, and computer employees
 - Three tests to determine if employee is exempt:
 - Salary basis test, salary level test, duties test
- **A CAA *may* treat an employee who meets all 3 tests as *non-exempt* (and pay overtime for work > 40 hours)**
 - *Cannot* agree to waive OT pay if the employee is non-exempt

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New Overtime Rule

Increased Standard Salary Level Test

CURRENT Overtime Rule	NEW Overtime Rule
Currently, salaried employees who meet one of the duties tests must earn at least \$455/week (\$23,660/year) in order to be classified as exempt from the FLSA's minimum wage and overtime protections	Beginning 1/1/2020, salaried employees who met the duties tests had to earn at least \$684/week (\$35,568/year) in order to remain exempt from the FLSA's minimum wage and overtime protections

29 C.F.R. § 541.607

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New Overtime Rule

Increased Highly Compensated Employee Compensation Level

CURRENT Overtime Rule	NEW Overtime Rule
Currently, HCEs who meet a minimal duties test must earn at least \$100,000/year and at least \$455/week in order to be classified as exempt from the FLSA's minimum wage and overtime protections	Beginning 1/1/2020, HCEs who met a minimal duties test had to earn at least \$107,432/year and at least \$684/week in order to be classified as exempt from the FLSA's minimum wage and overtime protections

29 C.F.R. § 541.607

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New Overtime Rule

Other Provisions

- **No change to standard duties tests**
- **No automatic updates to standard salary level**
 - DOL intends to update regularly, but will not update every 4 years (as originally proposed)
- **DOL info/guidance on the new rule:**
 - <https://www.federalregister.gov/documents/2019/09/27/2019-20353/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and>
 - 84Federal Register 51230 (Sept. 27,2019); codified at 29 C.F.R. § 541.607

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White Collar Exemptions

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Requirements for EAP White Collar Exemptions (29 C.F.R. Part 541)			
	Executive	Administrative	Professional
Salary Basis Test	Must be paid on salary basis	Must be paid on salary or fee basis	Must be paid on salary or fee basis <i>(except for doctors, lawyers & teachers)</i>
Salary Level Test	\$684 per week (\$35,568 per year)	\$684 per week (\$35,568 per year)	\$684 per week (\$35,568 per year) <i>(except for doctors, lawyers & teachers)</i>
Duties Test	(1) "Primary duty" must be managing org. or a dep't or subdivision; (2) must customarily & regularly manage 2+ other employees; and (3) must have authority to hire or fire other employees, or have significant input into hiring/firing/promotion decisions	"Primary duty" must: (1) involve office or non-manual work directly related to management or general business operations of the employer or customers; and (2) include exercise of discretion & independent judgment with respect to matters of significance	"Primary duty" must be to perform work that either: (1) requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or (2) requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor

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Part-Time or Seasonal Employees

- **Exempt status is determined on a workweek basis**
 - An employee who meets one of the white collar exemption duties tests and is paid at least \$913 per week on a salary basis in any week in which he/she performs any work (less any permissible deductions under the salary basis test) ***will be considered exempt that week***

Options for Compliance with the New Overtime Rule

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Steps for Compliance

- **Step 1: Evaluate duties of current exempt employees**
 - Those who do not meet one of the standard duties tests are not eligible for a white collar exemption

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Steps for Compliance

- **Step 2:** If an employee meets one of the standard duties tests, determine whether:
 - S/he makes less than \$684/week; and
 - If so, how many hours s/he generally works, including overtime hours
 - Have employees track all of their hours (if they don't already)

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Steps for Compliance

- **Step 3:** Determine the best and most efficient way to comply with the new overtime regulations for affected positions
 - Determine effect on program budgets

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Steps for Compliance

- **Step 4:** Generally, current exempt employees who make less than \$684 per week will need to be reclassified as non-exempt as of January 1, 2020
 - Non-exempt employees will need to track *all* hours worked
 - But if they don't work over 40 hours per week, their pay will not be affected

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Options for Compliance

1. Raise salaries to maintain exempt status
2. Convert to hourly employee and pay for all hours worked, including OT for hours worked over 40
3. Continue to pay a fixed salary and pay OT above salary for hours worked over 40
4. Reallocate earnings between regular wages and overtime to approximate same overall compensation
5. Restructure job duties

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How Does the New Overtime Rule Affect Head Start Teachers?

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Options for Classifying HS Teachers

If a CAA
currently
treats its
Head Start
teachers as

**EXEMPT
under the teacher
exemption**

The new overtime rule will not affect these teachers, as the salary level test does not apply to the teacher exemption. However, CAAs should ensure that their Head Start teachers meet all of the requirements of the teacher exemption, including the requirement that the CAA's Head Start program be considered an "educational establishment."

**EXEMPT
under the learned
professional
exemption**

The teachers must meet the new salary level test (\$684 per week) to maintain their exempt status. CAAs must evaluate each individual teacher's credentials to ensure the teacher satisfies the requirements of the learned professional exemption.

NON-EXEMPT

CAAs do not need to make any changes based on the new overtime rule and can continue to treat the Head Start teachers as non-exempt.

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Teacher Exemption

- A subcategory of the professional exemption
- Salary basis and salary level tests do NOT apply
 - New overtime rule does **NOT** affect Head Start teachers classified as exempt under the teacher exemption
- **Primary Duty:**
 - Employee's primary duty must be "teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge"
 - Employed and engaged in this activity as a teacher in **a school system or educational establishment or institution**

29 C.F.R. § 541.303

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Teacher Exemption

- **Educational Establishment: An elementary or secondary school system, an institution of higher education or other educational institution (29 C.F.R. § 541.204(b))**
 - **Elementary and secondary schools** defined as those day or residential schools that provide elementary or secondary education, **as determined under State law**
 - **2008 DOL Opinion Letter** (FLSA2008-13NA)
 - Do state's laws include nursery school or kindergarten programs within the scope of elementary education?
 - Is the child care center licensed by the state agency responsible for elementary education?
- **Note possible effect on unemployment eligibility if CAA is determined to be an "educational establishment"**

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Learned Professional Exemption

- A subcategory of the professional exemption
- Salary basis and salary level tests DO apply
- Primary Duty: Performing work that requires advanced knowledge that is “customarily acquired by a prolonged course of specialized intellectual instruction”
 - Professions where specialized academic training is a standard prerequisite for entrance into the profession
 - Best evidence that an employee meets this requirement is possession of the appropriate academic degree
 - But **exemption not available for occupations that require only a 4-year degree in any field or a 2-year degree** as a prerequisite for entrance into the field

29 C.F.R. § 541.301

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What Has Not Changed

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What Has Not Changed

- **Standard duties tests**
 - Executive, administrative, professional, outside sales, computer-related
- **Salary basis test**
 - Does not apply to doctors, lawyers, or teachers
- **Recordkeeping requirements**
 - CAAs do not have to convert all salaried employees to hourly employees

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Non-Exempt Employee Scheduling Myths

- Non-exempt employees need to punch a clock
- Non-exempt employees must sign in and out each time he/she starts and stops work
- Non-exempt employees must have a predetermined work schedule
- Non-exempt employees may not telecommute or work a flexible schedule

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FLSA Recordkeeping Requirements

- **Employers may use any timekeeping method, as long as it is complete and accurate**
- **Employees with relatively fixed schedules:**
 - CAA can keep a record of schedule (e.g., 8 hours per day) and merely note that the employee followed the schedule
 - Note any exceptions to schedule and report actual hours worked
- **Employees with flexible/varying schedules:**
 - Employee doesn't need to sign in/out or punch a clock
 - Employee should keep and record the total number of daily hours worked

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FLSA Recordkeeping Requirements

- **Employers must maintain certain records for non-exempt employees: (29 C.F.R. § 516.2)**
 - Time and day of week when workweek begins
 - # of hours worked each day
 - Total hours worked each workweek
 - Basis on which employee's wages are paid (e.g., "\$12 per hour" or "\$640 per week")
 - Regular hourly pay rate
 - Total daily or weekly straight-time earnings
 - Total OT earnings for the workweek
 - All additions to or deductions from employee's wages
 - Total wages paid each pay period

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Category Seven:

Human Resources Management

Technical Assistance Guides for each Category of Standards

**Technical Assistance Guide Category Seven:
Human Resource Management**

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This publication was prepared by the Technical Assistance of Community Action Agencies - Community Action Partnership, in the partnership of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Investment and Innovation (OCCI), and HR/OD, and WIPFLI, an unpaid, fee-based, and non-profit, organization, or representation agreement. All findings and conclusions of the authors and do not necessarily reflect the views of the U.S. Department of Health and Human Services, Administration for Children and Families.

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Category Seven: Human Resources Management



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Category 7: HR Management Three Types of Standards

HR POLICIES & PROCEDURES	EFFECTIVE HR GOVERNANCE	EFFECTIVE HR MANAGEMENT
7.1 Personnel policies reviewed by attorney & approved by board w/in past 5 years	7.4 Board conducts ED performance appraisal every calendar year	7.3 Written job descriptions updated w/in past 5 years
7.2 Policies/handbook available to all staff who are notified of changes	7.5 Board reviews & approves ED comp. every calendar year	7.6 Policy for regular written employee evaluations
7.7 Whistleblower policy approved by board		7.8 New employee orientation w/in 60 days of hire
		7.9 Conduct/make available staff development/training on ongoing basis

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HR Policies & Procedures

Standard 7.1

CSBG Org. Standard 7.1 (Nonprofit):

- The organization has written personnel policies that have been reviewed by an attorney and approved by the governing board within the past 5 years.

CSBG Org. Standard 7.2 (Public):

- Not applicable: Local governmental personnel policies are outside of the purview of the department and the tripartite board/advisory body, therefore this standard does not apply to public entities.

7.1 Guidance on Compliance

■ Laws to cover:

- Fair Labor Standards Act (FLSA)
- State wage and hour laws
- Leave policies (FLSA, FMLA, short-term disability, sick leave and state family/medical leave)
- Equal employment opportunity laws (e.g., ADA, Age Discrimination in Employment Act, Titles VII and IX of the Civil Rights Act)
- OSHA/workplace safety and security
- Data privacy and security
- National Labor Relations Act (social media, standards of conduct)
- Disciplinary policies
- Whistleblower policies and protection against retaliation

■ Attorney Review

- 7.1 does not stipulate a specific kind of attorney to conduct review
- Best practice for reviewing attorney to have expertise in state employment law issues and to be familiar with the CAA

7.1 Documentation Options

- Physical or electronic copy of the Personnel Policies
 - *No specific list of policies required*
- **Documentation may include:**
 - Written communication from attorney
 - A statement or invoice from the reviewing attorney with a specific billing entry for policy review
 - Board minutes showing:
 - Discussion of personnel policies review
 - Board resolutions approving personnel policies
 - Pre-meeting materials or packets including personnel policies

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HR Policies & Procedures

Standard 7.2

CSBG Org. Standard 7.2 (Nonprofit):

- The organization makes available the employee handbook (or personnel policies in cases without a handbook) to all staff and notifies staff of any changes.

CSBG Org. Standard 7.2 (Public):

- The department follows local governmental policies in making available the employee handbook (or personnel policies in cases without a handbook) to all staff and in notifying staff of any changes.

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7.2 Documentation Options

▪ Nonprofit CAAs:

- Physical or electronic copy of employee handbook
- Process or procedure document for staff communication (e.g., listed on checklist for new hire orientation)
- Samples of CAA communication of policy change notification to staff

HR Policies & Procedures

Standard 7.7

CSBG Org. Standard 7.7 (Nonprofit):

- The organization has a whistleblower policy that has been approved by the governing board.

CSBG Org. Standard 7.7 (Public):

- The department provides a copy of any existing local government whistleblower policy to members of the tripartite board/advisory body at the time of orientation.

7.7 Guidance on Compliance

- **Purpose**

- Encourages individuals to come forward with credible information on illegal practices or violations of adopted policies

- **Also satisfies requirements of:**

- Form 990, (Part VI, Sec. B, Line 13)
- Sarbannes-Oxley Act
- Other federal laws (ADA, FMLA, OSHA)

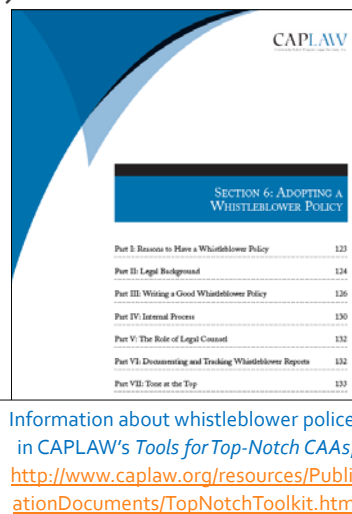
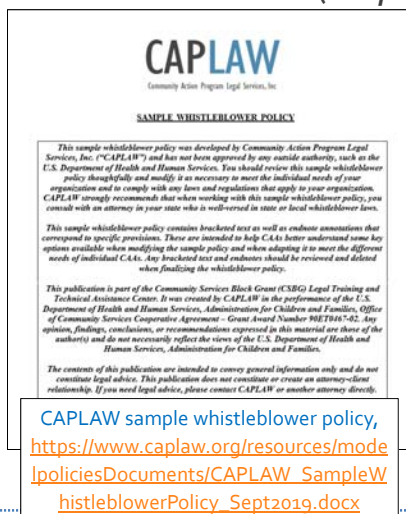
7.7 Documentation Options

- **Documentation may include:**

- Copy of whistleblower policy
- Board minutes approving whistleblower policy
- Board pre-meeting materials/packet containing copy of whistleblower policy approved by the board

HR Policies and Procedures

Standard 7.7 (Nonprofit CAAs)



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Effective HR Governance

Standard 7.4

CSBG Org. Standard 7.4 (Nonprofit):

- The governing board conducts a performance appraisal of the CEO/executive director within each calendar year.

CSBG Org. Standard 7.4 (Public):

- The department follows local government procedures for performance appraisal of the department head.

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7.4 Guidance on Compliance

- **Purpose**

- Clarifies expectation of board to oversee its sole employee (CEO/ED)
- Encourages accountability to public and funding sources

- **Options for Evaluating ED**

- Start with a board committee
- Decide on valuation tool and criteria for review
- Gather input from a variety of sources
- Set-up face-to-face evaluation meeting
- Create a written review and summary

7.4 Documentation Options

- **Documentation may include:**

- Board minutes discussing ED performance review
- Board resolutions approving/acknowledging performance review
- Board policies or procedures for executive performance review
- Official board communication to the ED or to the CAA
- Blank ED self-assessment forms

Effective HR Governance

Standard 7.5

CSBG Org. Standard 7.5 (Nonprofit):

- The governing board reviews and approves CEO/executive director compensation within every calendar year.

CSBG Org. Standard 7.5 (Public):

- The compensation of the department head is made available according to local government procedure.

7.5 Guidance on Compliance

- **Considerations when compensating ED**
 - Understand IRS requirements, such as intermediate sanctions
 - Establish presumption that ED's compensation reasonable by:
 - Use board committee
 - Assure board independence
 - Link pay to performance
 - Rely on meaningful comparables
 - Documenting the process
 - Recognize funding source requirements

7.5 Documentation Options

▪ Nonprofit CAAs:

- Board minutes discussing compensation review
- Board resolutions approving ED compensation
- Board policies or procedures for compensation review
- Wage comparability study
- Raw market data for compensation comparison
- Official board communication to the ED
- ED employment contract (if applicable)

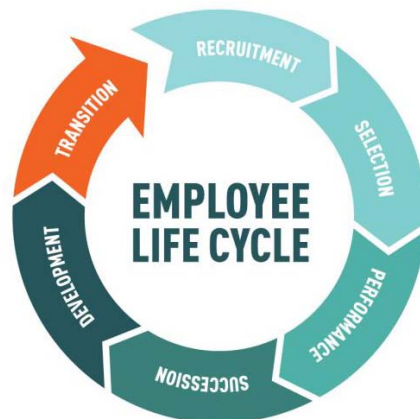
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Effective HR Management

Standards 7.3, 7.6, 7.8, 7.9
(Nonprofit CAAs)

- Up-to-date job descriptions
- Standard approach for staff performance evaluations
- Employee orientation for all staff
- Staff development & training aligned to results & accountability



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Effective HR Management

Standard 7.3

CSBG Org. Standard 7.3 (Nonprofit):

- The organization has written job descriptions for all positions, which have been updated within the past 5 years.

CSBG Org. Standard 7.3 (Public):

- The department has written job descriptions for all positions. Updates may be outside of the purview of the department.

7.3 Job Description Tips

- | | |
|---|---|
| <ul style="list-style-type: none"> ▪ Title ▪ Department ▪ Supervision/reporting structure <ul style="list-style-type: none"> – Management – Immediate supervisor – Subordinates | <ul style="list-style-type: none"> ▪ Classification? <ul style="list-style-type: none"> – Exempt or nonexempt status – Strategic decision to include (or not) ▪ Overview/summary of position |
|---|---|

7.3 Job Description Tips

- **Essential functions**
 - Those performed day-to-day, irregular but recurring and essential
 - Use active words/verbs
 - Describe frequency w/which function performed
 - Include “catch-all”
- **Physical requirements**
 - Sedentary & non-sedentary
 - Physical activity
- **Knowledge, skill & experience**
 - Minimum education
 - Minimum experience
 - Specialized skills?

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7.3 Job Description Tips

- **Disclaimers – add language to the description to:**
 - Permit the employer to add to, change and interpret the position
 - *The employer may, in its discretion, modify or adjust the position to meet the company's changing needs*
 - Clarify that the description is not a contract
 - *This job is not a contract and may be adjusted as deemed appropriate in the employer's sole discretion*

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7.3 Documentation Options

- **Documentation may include:**
 - Organizational chart/staff list
 - Job descriptions
 - Date of last review/update on job descriptions
 - Board or committee minutes noting documents have been reviewed or updated
 - Policy and procedures for updating job descriptions

Effective HR Management

Standard 7.6

CSBG Org. Standard 7.6 (Nonprofit):

- The organization has a policy in place for regular written evaluation of employees by their supervisors.

CSBG Org. Standard 7.6 (Public):

- The department follows local governmental policies for regular written evaluation of employees by their supervisors.

7.6 Guidance on Compliance

▪ Requires a policy be in place

- Policy should be included in personnel policies/employee handbook
- But does NOT imply that all employees must have an annual review

Tips:

- Make appraisals specific
- Include examples
- Avoid discriminatory stereotypes

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7.6 Performance Evaluation Delivery and Follow-Up Tips

Bad	Good
Does not get along with coworkers.	He has gotten into arguments with coworkers on four occasions without provocation; he does not volunteer to assist when co-workers are busy; and co-workers have complained regarding his rudeness.
Bad	Good
She is the best assistant I have ever had.	She gets along well with clients; she anticipates needs before asked; she is accurate in document preparation; and she delegates work well when I am unavailable.

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7.6 Documentation Options

- **Documentation may include:**
 - Physical or electronic copy of evaluation policy/process/procedure, likely found in personnel policies
 - Blank evaluation assessment forms
 - Signed employee evaluations

Effective HR Management Standard 7.8

CSBG Org. Standard 7.8 (Nonprofit):

- All staff participate in a new employee orientation within 60 days of hire.

CSBG Org. Standard 7.8 (Public):

- The department follows local governmental policies for new employee orientation.

7.8 Guidance on Compliance

- **Purpose**

- **Orientation:** Pay and benefits; rules and policies
- **Onboarding:** Office culture and organizational operations
- **Socialization**

7.8 Documentation Options

- **Documentation may include:**

- Personnel policies or employee handbook
- Orientation checklist(s)
- Orientation presentation or materials
- Onboarding presentation or materials
- Sampling of HR/personnel files for documentation of attendance

Effective HR Management

Standard 7.9

CSBG Org. Standard 7.9 (Nonprofit):

- The organization conducts or makes available staff development/training (including ROMA) on an ongoing basis.

CSBG Org. Standard 7.9 (Public):

- The department conducts or makes available staff development/training (including ROMA training) on an ongoing basis.

7.9 Guidance on Compliance

■ Purpose

- Promotes ongoing training to support employees after orientation
- Supports a learning and development culture across the Community Action Network
- Increase agency capacity without adding payroll expense

7.9 Documentation Options

- **Documentation may include:**
 - Training plan(s)
 - Documentation of trainings
 - Presentations, evaluations, attendee lists
 - Documentation of attendance at offsite training/events/conferences

This training is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance (T/TA) Center. It was created by Community Action Program Legal Services, Inc. (CAPLAW) in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement - Grant Award Number 90ET0467-03. Any opinion, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Health and Human Services, Administration for Children and Families.