

Guide to Judiciary Policy, Volume 7A, Appendix 4A (Community Defender Organization: Grant and Conditions)

**JUDICIAL CONFERENCE
OF THE UNITED STATES OF AMERICA
AND
COMMUNITY DEFENDER ORGANIZATION
FOR THE _____ DISTRICT OF _____**

**FISCAL YEAR 2020
GRANT AND CONDITIONS**

The Community Defender Organization (CDO), _____ (hereinafter Grantee), operating as a non-profit corporation, has been authorized by the Criminal Justice Act Plan of the _____ District of _____ to provide representation and related defense services to eligible persons pursuant to paragraph (g)(2)(B) of the Criminal Justice Act, as amended, [18 U.S.C. § 3006A](#) (hereinafter CJA); and

Grantee has submitted the appropriate documentation to the Judicial Conference of the United States (hereinafter Conference) via the Administrative Office of the United States Courts (AOUSC) (hereinafter Grantor); and

Grantor provides a grant to grantee, subject to the availability of appropriated funds for fiscal year (FY) 2020, commencing on October 1, 2019, and terminating on September 30, 2020. The FY 2020 budget will be emailed to the Executive Director and Administrative Officer by Grantor on October 1, 2019. In the event that Congress fails to enact an annual appropriations act covering expenditures for the judiciary by that date, Grantor will provide Grantee a specific amount to continue operations until enactment of the judiciary's annual appropriations act. Grantor will amend this amount in writing as necessary to continue Grantee operations within the approved 2020 budget until sufficient budgetary resources are enacted and made available to Grantor to provide the amount provided in the final budget.

Pursuant to its authority under subsections (g)(2)(B) and (h) of the CJA, and in consideration of this grant, the Conference requires that each expenditure of funds from this grant comply with the terms and conditions contained in this agreement. Grantor may grant exceptions or waivers to any provision in this agreement, as appropriate and consistent with the CJA and other federal laws.

Grantee, by signature of its authorized representative, at the end hereof, signifies its acceptance of the terms and conditions set forth below, as well as its agreement to comply with the provisions of the CJA, the [Guidelines for the Administration of the Criminal Justice Act and Related Statutes \(CJA Guidelines\), Volume 7, Guide to Judiciary Policy](#), any other relevant policies or directives issued by the Conference or by its appropriate committees (e.g., the

Conference's Defender Services Committee (DSC)), and the CJA plans of the judicial district(s) and circuit in which Grantee will operate.

Any question with respect to the interpretation of terms, conditions, or provisions of this grant will be resolved by Grantor.

A signed copy of this agreement shall be returned to Grantor together with a list of the names, addresses, email addresses, and telephone numbers of all current board members.

1. USE OF GRANT FUNDS: Once awarded to Grantee, grant funds will be distributed generally pursuant to a schedule promulgated by Grantor. Grant funds are only available for expenditures and obligations incurred during FY 2019, and, except as provided in Clause 4, only in accordance with and in such amounts as are provided in designated budget categories as authorized by the Conference. Grantee will use such funds solely for the purpose of providing representation and other appropriate services in accordance with the CJA, the CJA Guidelines, and the CJA plans of the appropriate district and circuit courts.

2. BANK ACCOUNTS FOR GRANT FUNDS: Grantee will maintain grant funds in federally insured interest or credit bearing accounts in accordance with provisions of [31 CFR 202](#) and will ensure that amounts in excess of federal insurance limits are collateralized before depositing the funds. Grant funds, grant-related income, and any non-grant funds will be maintained separately and will not be commingled with one another. Credits or interest earned on the grant funds account may be used to offset account maintenance fees. Any excess interest on grant funds must be returned to Grantor within 60 days of the grant's expiration. Grantee shall submit to Grantor via AOUSC, Financial Operations Division, ATTN: Mail Stop FOD CR, the actual or estimated amount of grant-related interest. The amount of excess interest returned as an estimate will be adjusted, if necessary, following completion of the annual grantor audit specified in clause 8.

3. GRANT-RELATED INCOME: Grant-related income means any gross income earned by Grantee that is directly generated by a supported activity or earned as a result of the award. Grant-related income includes, but is not limited to, income from recovery of fees for services performed, the sale of commodities or items fabricated under the award, or interest earned on grant-related income. Interest earned on advances of grant funds from Grantor is not grant-related income and is addressed in clause 2.

Grant-related income shall be retained by Grantee and shall be used in accordance with the CJA and the terms and conditions of this agreement. Grant-related income shall not be commingled with any grant or non-grant funds maintained by Grantee. Grantee shall report the amount of grant-related income retained by Grantee on or about July 1, each year.

4. REALLOCATING FUNDS: Subject to such limitations as the DSC may establish, Grantee may reallocate grant funds between budget categories (i.e., for purposes not specifically identified in the funding justification), provided that the aggregate of the amounts transferred within the fiscal year does not exceed 15 percent of the organization's total fiscal year grant

amount approved by the DSC. Grantor may authorize reallocation between budget categories in any amount.

5. ACCOUNTING OF UNOBLIGATED BALANCES: Grantee shall perform a review of obligations of grant funds, at the close of the fiscal year, and will make records of this review available during the annual audit pursuant to clause 8. Within 60 days of the end of the fiscal year, Grantee shall submit to Grantor the actual or estimated amount of all unobligated grant funds awarded under this document, excluding any grant-related income, remaining at the end of the fiscal year, unless otherwise authorized by Grantor. The grant amount reflected in clause 3 of this agreement will be reduced by the final, prior-year unobligated balance set forth by the final audit report required under clause 8. Grantee shall include a statement identifying which portion of the unobligated balance represents grant funds and excess grant interest pursuant to clause 2.

6. ANNUAL REPORTS: In compliance with subsection (g)(2)(B) of the CJA, Grantee must submit an Annual Report of Operations setting forth its activities and financial position each fiscal year. Instructions for completing and submitting the Annual Report of Operations will be provided to Grantee by Grantor at least thirty (30) days prior to the submission date.

Other reports must be submitted to Grantor each month, including, but not limited to, the electronic status of funds report (ESFR), the monthly staffing and workload report (MWSR), the monthly caseload report (JS-50), the Timekeeper report, the dData disposition report, and the salary report.

7. GRANT RECORDS AND REPORTS: Grantee shall keep financial records in accordance with the federal fiscal year unless a waiver is granted by Grantor. Such records shall be maintained and submitted in such manner and form as required by Grantor. Such records shall disclose the amount of grant funds, grant interest, and grant-related income received during the fiscal year, as well as the amount of grant funds expended or obligated by budget category and the total amount of grant funds expended during the fiscal year.

The record-keeping procedures utilized by Grantee shall provide for the accurate and timely recordation and determination of all income and funds received, all expenditures and obligations, and the balance of unexpended and unobligated grant funds, grant interest, and grant-related income. In addition, Grantee shall maintain the records in such a manner as to permit the determination of the propriety of all expenditures and obligations of grant funds and the charges to specific budget categories.

Grantee shall maintain records concerning expenditures and obligations of all funds subject to audit (as specified in clause 8) in such a manner as to allow the auditor access to said records without compromising client files and other attorney-client privileged material. Grantee is obligated to maintain the confidentiality of information protected by the attorney-client privilege or any ethical, constitutional, statutory, or other mandate.

Grantor may inspect and audit the financial records, bank statements, and other records related to the expenditure of grant funds, at any reasonable time upon request. If, because of inadequate records, documentation, or explanation, the propriety of an expenditure cannot readily be determined, questionable costs and expenditures may be disallowed.

Grantee shall maintain and submit such statistical records and reports as may be required by Grantor. Grantee must keep financial and statistical records and reports for a period of at least seven years after the expiration of the fiscal year for which the grant was awarded unless otherwise authorized by Grantor. If audit issues remain unresolved, records must be retained until all such issues have been resolved.

8. AUDITS: Within 120 days of the end of the fiscal year, an auditor (hereafter, "Auditor") contracted and paid for by Grantor will perform an audit of Grantee's financial activities occurring during the grant period. Such audit will express an opinion on whether Grantee's financial statements, and notes to the financial statements, present fairly the financial position of Grantee. The financial statements shall include a statement of assets, liabilities and net assets; a statement of revenue, expenses, and other changes in net assets; and a statement of cash flows.

Grantee shall compile and prepare the required statements and reports and make all statements, reports, financial records/books and supporting documents available to the Auditor (as specified in clause 7). Incidents of identified fraud, waste or abuse must be disclosed to Grantor and reports of those incidents will be made available to the Auditor.

The Auditor will perform the audit in accordance with the Government Auditing Standards promulgated by the U.S. Government Accountability Office. In accordance with those standards, the Auditor also will report on Grantee's internal controls over its financial activities and Grantee's compliance with the terms and conditions of the grant and other rules and regulations pertinent to the grant. Audits performed by independent certified public accounting firms under contract with Grantor are performed in accordance with the American Institute of Certified Public Accountants Code of Conduct and integrity and confidentiality standards. Audit reports issued by Grantor or its contract audit CPA firms, are intended solely for the information and use by Grantor and Grantee, unless otherwise specified by those parties.

Grantee may contract with local accountants for any accounting and financial services necessary for the operation of its office, including, but not limited to, the preparation of all required federal and state tax returns; payroll, disbursing, and record-keeping services; and any additional annual reports required by the board of directors that do not duplicate the audit conducted under this section. Notwithstanding the foregoing, Grantee may use grant funds to contract with an expert for the purpose of responding to a finding of the Auditor in the annual audit when authorized in advance to do so by Grantor.

9. GRANTEE STATUS: Neither Grantee nor any of its employees are officers, employees, or agents of the United States. The United States shall in no way be obligated under leases, contracts, or other agreements entered into by Grantee.

10. PROPERTY AND SERVICES: Title to all property, including, but not limited to, real property, equipment, and supplies purchased with grant funds or grant-related income shall vest in Grantee subject to the condition that Grantee shall use the property for the purposes authorized by the CJA and the terms and conditions of this agreement. Grantee may not encumber any title to property without the approval of Grantor. Grantee shall maintain insurance, in reasonable amounts, to cover the costs of replacing or repairing property acquired with grant funds due to damage, loss or theft.

For equipment and real property interests, when property is no longer needed, Grantee shall request disposition instructions from Grantor except under the following conditions:

Grantee may sell, assign, transfer, dispose of, or encumber any property of the United States, having an acquisition cost of less than \$1,000, without the prior approval of Grantor.

Grantee shall maintain an inventory of all property reflecting the date and cost of purchase of such property; the date of receipt by transfer, if applicable; and the date and manner of disposition of excess or surplus property. This inventory shall be available to Grantor upon request.

Grantee shall (1) provide Grantor with at least 15 working days advance notification of its intention to enter into or renew a lease for office space and (2) obtain Grantor approval prior to initiating lease negotiations. Advance notification shall include the total number of square feet, cost per square foot, the duration of the lease, and certification that at least two other competitive proposals were considered.

All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, of all property and all services (other than services under subsection (e) of the CJA) shall be conducted in a manner promoting maximum open competition. Grantee must maintain and adhere to policies promoting full and open competition in all acquisitions made with grant funds. No employer, officer, or agent shall participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Grantee is the responsible procuring authority. By offering this grant, Grantor does not become a responsible party to any contract, lease, or licensing agreement entered into by Grantee; therefore, any party entering into a contract, lease, or licensing agreement with Grantee does so without recourse to Grantor regarding settlement and satisfaction of contractual and administrative issues arising out of procurements entered into in support of an award or other agreement.

Unless otherwise authorized by Grantor, no equipment, furniture, furnishings, or other property, and no services (except for services as contemplated under subsection (e) of the CJA, leasing of office space, and procurement of liability insurance) shall be obtained with such funds at a total cost of more than \$100,000 without advance approval of Grantor. In addition, hardware and software purchases must be made consistent with the specifications listed on the National Hardware and Software Lists and the national defender information technology architecture and infrastructure guidelines.

11. DISSOLUTION OF GRANTEE ORGANIZATION OR TERMINATION OF GRANT FUNDS: Grantee may dissolve on its own accord in accordance with the laws of the state in which it is organized. Grantee shall provide Grantor, chief judge of the district court, and chief judge of the court of appeals 90 days advance notice of its intent to dissolve. Additionally, the Conference in its discretion may determine to terminate or not renew the grant. The Conference, or its authorized representative, shall give written notice to Grantee of an intent to terminate the grant at least 60 days prior to taking action. Such notice shall indicate the intended action and the reason therefor and shall give Grantee the opportunity to respond in writing and to be heard within 30 days of that notice. In either event, unless otherwise authorized by Grantor, Grantee shall properly inventory and make available for reclamation, all property in the care and custody of Grantee purchased with grant funds or related income. Within 75 days of dissolution, the Auditor, selected by Grantor, will perform a final financial audit of the grant. The audit will be of the same scope as discussed in clause 8. Upon receipt of the report of this audit, Grantee shall remit to the AOUSC, Financial Operations Division, ATTN: Mail Stop FOD-CR, all remaining unobligated or unexpended grant funds, grant interest, and grant-related income. The United States shall not be responsible for any obligations or debts incurred by Grantee and Grantee shall hold the United States harmless for such obligations or debts.

12. MULTI-SERVICE DEFENDER ORGANIZATIONS: Consistent with clause 2 of this agreement, if Grantee is part of a larger defender organization which is not exclusively providing services under the CJA, grant funds received from the Conference pursuant to the CJA, grant interest, and grant related income may not be commingled with those of the general organization. Also, expenses, inventory, payroll, and other records pertaining to CJA funds and operations of Grantee must be maintained separately by Grantee unless otherwise approved by Grantor.

13. TRAVEL, MEALS, AND LODGING: Grantee's reimbursement policies regarding expenses for official travel, meals, and lodging shall be in writing. Grantee shall furnish Grantor a current copy of the written policies and all changes thereto. Unless approved by Grantor, Grantee's reimbursement policies for official travel, lodging, and meals shall not exceed the maximum allowances to be paid for per diem, actual expenses, and travel prescribed for federal judiciary employees. Grantee shall maintain records of travel and reimbursement in a form acceptable to Grantor.

Grantee must follow the policies and procedures outlined in the archived *Federal Defenders Operations Manual*, Chapter 8, available at <https://dweb.fd.org/DSO/Operations-Manual> (and attached), specifically applicable to CDOs, regarding travel inside and outside the district(s) served by Grantee.

14. PERSONNEL: Personnel policies and other terms and conditions of employment shall be in writing. Grantor shall be furnished a current copy of such policies, and subsequently, any changes to those policies. Grantee shall maintain leave records in a form acceptable to Grantor.

Grantee shall follow the policies and procedures contained in the Defender Organization Classification System (DOCS). No personnel vacancy shall be filled without prior notice to

Grantor. Such notice shall include all relevant data concerning the employee candidate, including his or her name, position, starting salary (including grade and step for graded employees or AD level for assistant defenders), education, experience and compensation history, and any annual leave credit for prior experience. Information regarding attorneys must indicate the month and year they received their law degree, the month and year they first became a member of a bar, and their prior relevant work experience.

Grantee shall conform employee benefit policies on leave, holidays, hours worked, and payment of bar dues to those applicable to federal public defender organizations, unless a request for a variance is submitted to and approved by the DSC. Grantee shall provide Grantor with notice at least 90 business days in advance of any proposed changes to the above referenced policies or any other policies that may impact the organization's current or future costs. Grantee's expenditures for employee benefits shall not exceed 36.53 percent of its expenditures of salaries for the fiscal year.¹ If, at any point during the fiscal year, it appears Grantee's expenditures for employee benefits will exceed the percentage authorized Grantee, Grantee shall submit a written justification to the DSC's Budget Subcommittee requesting approval to exceed the authorized benefit-to-salary ratio.

15. INVESTIGATIVE, EXPERT, OR OTHER SERVICES: Pursuant to subsection (e) of the CJA, and to the extent that they are necessary for adequate representation of a person who is financially eligible under the CJA, Grantee may engage and compensate investigators, experts, or others from grant funds made available for that purpose.

16. BUSINESS, ENTERTAINMENT, OR PERSONAL EXPENSES: Grantee may not expend grant funds for business or personal entertainment; professional or association dues, memberships, or fees; or items of property or services of a personal nature.

17. TRAINING: Funds for training of employees are provided in the "other services" budget category of the grant. Grantees shall submit annual reports of training activities including travel and other expenses associated therewith.

18. EMPLOYMENT: Grantee shall not discriminate against any employee, or applicant for employment, on the basis of race, color, national origin, religion, sex, age,² or disability. Grantee shall not hire, promote, or advance within the organization any individual who is a relative³ of: (1) the federal defender, (2) any superior of the federal defender, or (3) any member of the board of directors. No employee of Grantee shall hire, promote, advance, or advocate the hiring, promotion, or advancement of his or her relative by Grantee.

¹ The limit on benefits is calculated by adding three percentage points to the national average federal public defender organization benefit-to-salary ratio, based on the most recently completed fiscal year.

² Judicial Conference policy with respect to age discrimination is that the complainant must have been at least 40 years of age at the time of the alleged discrimination.

³ For purposes of this clause, the term "relative" is defined in [5 U.S.C. § 3110\(a\)\(3\)](#).

Grantee agrees to place in effect a program for providing equal employment to all persons regardless of their race, color, national origin, religion, sex, age, or disability. This program shall encompass all facets of personnel management including recruitment, hiring, promotion, and advancement. The program shall also provide for a system, whereby all applicants for employment, and all employees, may seek timely redress of discrimination complaints. A copy of Grantee's program will be filed with Grantor.

Upon request, Grantee shall submit to Grantor statistical and other reports relating to its equal employment opportunity practices. Grantee also agrees to notify Grantor of any equal employment opportunity-related grievance or suit filed against the organization or any of its employees and of the outcome of all such grievances or suits, and upon request, shall provide Grantor with any additional information regarding any such grievance or suit.

19. OUTSIDE PRACTICE OF LAW: Unless otherwise authorized by Grantor, no employee of Grantee organization (including the executive director) may engage in the practice of law outside the scope of his or her official duties with Grantee. Notwithstanding this prohibition, an employee may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the employee's family.⁴

20. LIABILITY INSURANCE: Grantee shall maintain insurance, in reasonable amounts, to cover the costs of representation and liability for claims alleging malpractice, negligence, unfair personnel practices, and "errors and omissions" of officers, directors, and employees of the organization. Upon receiving or amending coverage, Grantee shall notify Grantor of the amount of coverage per event, the aggregate limit, the amount of deductible, and the cost for each type of insurance obtained, and shall certify that competitive proposals were sought.

Grantee also agrees to notify Grantor of any such claims filed and their disposition, and upon request shall provide Grantor with any additional information regarding any such claim.

21. CODE OF CONDUCT: Grantee must adopt the [Model CDO Code of Conduct](#). Grantee may seek a variance of one or more of the provisions from Grantor.

A copy of Grantee's code of conduct and any subsequent revisions must be filed with Grantor. Grantee must inform Grantor of significant violations of the code of conduct and, upon request, must provide a written report to Grantor.

22. CHANGES OR MODIFICATIONS: Upon their adoption, Grantee shall forward to Grantor any amendment to the articles of incorporation or the by-laws under which Grantee operates; Grantee shall also notify Grantor of any changes in Grantee's board of directors.

23. PAYMENTS FROM OR ON BEHALF OF CLIENTS: Except as authorized pursuant to subsection (f) of the CJA and corresponding provisions in the CJA Guidelines, neither Grantee nor its employees will take, request, demand, accept, receive, or agree to receive anything of

⁴ For purposes of this clause, the term "family" includes all relatives listed in [5 U.S.C. § 3110\(a\)\(3\)](#).

value from or on behalf of a person who is to be, is being, or has been furnished representation by Grantee. Grantee will take appropriate measures to enforce this clause and advise Grantor of any violation.

24. NON-ASSIGNABILITY: No obligations or responsibilities of Grantee, and no grant funds or benefits accruing under the grant, may be transferred, assigned, sub-contracted, or otherwise conveyed without the express written approval of Grantor, except as specifically authorized in the Grant and Conditions.

25. FAILURE TO COMPLY WITH TERMS AND CONDITIONS: In the event Grantee fails to comply substantially with any of the terms or conditions of the grant award set forth herein, or it is unable to deliver the representation and other services which are the subject of this agreement, Grantor may temporarily reduce or suspend, payments under this grant award as it deems appropriate. At the time of a reduction or suspension of payments under this clause, Grantor will provide Grantee with a written explanation for its actions. Grantee may seek reinstatement of payments by submitting a written response, which may include a request to be heard within ten days of receipt of Grantor’s explanation. If the request for reinstatement is not granted based on the written submission, Grantor will provide a conference with Grantor, or authorized representative, on this request for reinstatement within five business days of receipt of the request. Grantor reserves the right to pursue all remedies, including, but not limited to, recovery of monetary damages and accrued interest, for Grantee’s failure to comply with any of the terms and conditions of the grant award or to deliver the representation and other services which are the subject of the agreement.

26. SYSTEM FOR AWARD MANAGEMENT (SAM) REGISTRATION REQUIRED: Grantee must have an active registration in SAM and ensure that all information in that registration is accurate and updated. If Grantee’s SAM registration is not active or accurate, Grantor will be unable to disburse grant funds timely in accordance with this agreement.

DATE **AUTHORIZED REPRESENTATIVE OF** _____

DATE **CHIEF, AO’S DEFENDER SERVICES OFFICE**