CAA Board Basics for CSBG Administrators

2010 Orientation for Community Services Block Grant Administrators
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Anita Lichtblau
Community Action Program Legal Services (CAPLAW)
178 Tremont Street Boston, MA 02111
www.caplaw.org  617.357.6915
Agenda

• Why the focus on governance?
• What law governs CAA boards?
• Who should be on the board and how should they be chosen?
• What are the board’s powers and duties?
• What are current best practices for CAA boards?
Spotlight on Governance

- ARRA – focus on accountability and transparency
- IRS: 990 revision, guidelines for good governance
- Head Start reauthorization
- CSBG Act and 2005 OCS guidance
- Panel on the Nonprofit Sector: “Principles for Good Governance and Ethical Practice”
- Sarbanes-Oxley Act
What Law Governs CAA Boards?

• Federal CSBG Act
  – OCS Information Memorandum 82 (IM 82) – guidance only, not binding; available on CAPLAW website: [http://www.caplaw.org/documents/OCSIMreTripartiteBoards_000.pdf](http://www.caplaw.org/documents/OCSIMreTripartiteBoards_000.pdf)
  – State CSBG or community action laws, regulations, policies, contracts

• For private CAAs – state nonprofit corporation law

• For public CAAs – delegation of authority from government entity
Governing Documents

• Articles of incorporation (private CAAs)
  – Filing with Secretary of State creates nonprofit corporation
  – Articles should be consistent with current purposes and activities and with state nonprofit corporation law
Governing Documents

• Bylaws (all CAAs)
  – Establish basic governance structure and rules of procedure for organization/tripartite board
  – Should deal with more specific issues than articles of incorporation re: corporate structure and governance procedures
  – Subordinate to articles and must be consistent with them
Federal CSBG Act

• Tripartite board administers CAA’s CSBG program
  – Except for public CAAs in cases where state specifies another mechanism that assures decision-making and participation by low-income individuals

• Tripartite board must fully participate in CAA’s CSBG program’s: development, planning, implementation, and evaluation
Tripartite Board Composition

• Three sectors:
  – Exactly 1/3 public officials or their representatives
  – At least 1/3 low-income representatives
  – Balance from major groups or interests in the community served
Tripartite Board Selection

- Board members are to be chosen by grantee (private CAA or for public CAA, gov’t entity)
  - Must use democratic selection process for low-income sector board members
  - Public CAA – tripartite board can make recommendations to governing officials
Public Sector

• Under federal law, no longer required to include or be chosen by “chief elected officials”
  – For private CAAs, best to specify in bylaws that CAA itself elects public sector board members – but not to specify which ones

• If elected officials not available, may include appointed
Public Sector

• CSBG Act says “holding office at time of selection”
  – Many state CSBG laws say “currently holding public office”
  – OCS IM 82 recommends that public officials serve only while they are in office
• For private CAAs – if public official designates a representative to serve in his/her place, that person (and not the public official) should be the board member
Public Sector

• Good idea to have specific terms rather than permitting public officials to stay on board as long as they are in public office

• Public official or representative must serve CAA’s interests (especially for private CAAs)
Low-Income Sector – Private CAAs

• Must be democratically selected to assure that they are representative of low-income people in service area

• If chosen to represent a particular neighborhood, must live there
Low-Income Sector – Public CAAs

- Must be representative of low-income individuals and families in service area
- Must live in service area
- Must be able to participate actively in development, planning, implementation and evaluation of CSBG programs
Do They Need to Be Low-Income Themselves?

- Should represent current low-income residents, but don’t need to be low-income themselves
  - **Best practice:** Have at least some (if not all) low-income board members who are low-income themselves
Democratic Selection

- Broad array of democratic selection techniques available, e.g.:
  - Election by ballot or at community meeting
  - Elected by or designated from elected leaders of low-income groups (e.g. Head Start Policy Council, neighborhood ass’n, public housing tenants’ ass’n, community health center board, etc.)
Democratic Selection

• Should **not** be chosen simply by CAA board or nominating committee

• Should **not** be staff of another low-income service provider picked by CAA board or nominating committee or by executive director of other organization
Democratic Selection

- Bylaws may, but do not need to, describe democratic selection procedure
  - If not described in bylaws, selection procedure should be described in a separate document referred to in the bylaws and approved by the board
Private Sector

• Should be officials or members of business, industry, labor, religious, welfare, education, law enforcement, or other major groups and interests in the community served
  – May include both public and private sector groups and interests

• Usually grantee may choose representatives from organizations or individuals
  – But some state CSBG laws/regs require CAAs to choose organizations to designate private sector board members
  – If choosing reps from organizations, board has more flexibility if bylaws don’t specify which organizations
Petitions for Board Representation

• CSBG Act: CAAs must establish procedures for low-income individuals, community organization, religious organization or representative of low-income individuals that considers its organization or low-income individuals to be underrepresented on the board to petition for representation

• If state CSBG law/regs don’t specify petition procedures, CAAs can develop their own
Head Start Board Composition Rules

• Board of directors must include:
  – At least one member with financial expertise
  – At least one member who is a licensed attorney familiar with issues that come before the board
  – At least one member with early childhood education expertise
Head Start Rules

- If people with such expertise aren’t available to serve on board non-board members with those qualifications may work directly with board on those issues instead
  – Can be paid or pro bono
Head Start Rules

• Other board members should:
  – Reflect community and include current or former Head Start parents
  – Be selected for their expertise in education, business administration, or community affairs
Head Start Rules

• No financial conflict of interest
  – Board members may not have financial conflict of interest with grantee or delegate agency and may not receive compensation for serving on board or for providing services to grantee

• Board members and immediate family members may not be employed by grantee or delegate agency

• Board must operate independently of grantee staff

Board Selection Suggestions

• Have board development/governance committee oversee the recruitment and selection process
• Require all candidates for board positions to complete an application
• Have full board elect all board members once they have been chosen through the appropriate selection process
Board Size

• Federal CSBG Act doesn’t address board size
  – Some state CSBG laws/regs impose board size requirements
  – Most CAAs have between 15 and 36 board members
Terms and Term Limits

• Federal CSBG Act doesn’t address CAA board members’ terms or term limits
  – Some states’ CSBG laws/regs specify maximum term length and term limits

• Best practice: Specify board members’ terms in bylaws
  – May provide for staggered terms
  – Terms can be different lengths for different sectors
Alternates and Other Voting Issues

- For private CAAs, state nonprofit corporation law generally prohibits:
  - Voting by alternates
    - However, alternates can be used to fill vacancies (especially in low-income sector)
  - Voting by public official if s/he designated a representative
  - Proxy voting
  - “Votes-in-absence”
  - Votes by email or phone polling
Removal of Board Members

• **Best practice:** Include strong removal provisions in bylaws
  - Permit the board to remove any board members (including public official board members) for cause
    • Examples of cause: false certification on board application, unexcused absences from a certain number of board meetings, failure to comply with CAA policies, taking actions against the best interests of the CAA, incapacity
  - Private CAAs should consult their state’s nonprofit corporation law for required procedures
Vacancies

• Vacancies should be filled as quickly as possible
• **Best practice:** Bylaws should specify how vacancies in each sector will be filled, term length of replacement and how partial term counts toward term limits, if any
  – Board seats replacement once chosen through appropriate process
Board Powers – Private CAAs

- For private CAAs, board’s powers set by state corporate law
  - For example: “All corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board of directors”
Board Powers – Public CAAs

• For public CAAs, tripartite boards’ powers depend on authority delegated to it by gov’t entity
  – Should not be merely advisory
  – Should have power to:
    • Administer CSBG program
    • Make some decisions and provide meaningful input – especially from low-income sector – to gov’t officials
    • Fully participate in development, planning, implementation, evaluation
Duties of All CAA Boards

• Every tripartite board must fully participate in CAA’s CSBG program’s
  – Development
  – Planning
  – Implementation
  – Evaluation

• See IM 82
Duties of Private CAA Boards

• Board members of private CAAs have “fiduciary” duties under state nonprofit corporation law
  – Duty of care in governing CAA
    • Be reasonably informed
    • Participate in decisions, reasonably inquire about matters coming before the board
    • Do so in good faith and with the care of a prudent person in similar circumstances
  – Duty of loyalty
    • Act in the CAA’s best interests, not own or someone else’s
Current Best Practices for Nonprofit Boards

• Ensure accountability and transparency
• Review and approve mission and strategic direction
• Oversee executive director
• Oversee finances
• Ensure audits are independent, effective
Current Best Practices for Nonprofit Boards

• Adopt and implement essential governance policies (code of ethics, conflict of interest policy, whistleblower policy, record retention policy)
• Implement effective internal controls
• Ensure legal compliance
• Be sure board functions well
  – Active, informed, independent
  – Liaison to community
Board-Executive Director Relationship

• Board sets mission and policy, executive director and management staff implement policy

• Board supervises only one employee: the executive director
  – Board hires, evaluates, sets compensation for and (if necessary) terminates ED
  – ED hires staff in accordance with personnel policies set by board (and may consult with board)
  – Staff generally communicate with board through ED
  – ED meets regularly with board chair/executive committee
  – Board provides a balance of support and accountability for ED
Financial Literacy and Oversight

• Board responsible for overseeing CAA’s finances
  – Regular review, discussion and votes on financial statements and other financial info – e.g., annual audit, Form 990
  – Review and approve CAA’s annual budget and monitor performance against it during the year
  – Make decisions on major financial transactions
  – Establish fiscal policies and internal controls and ensure they are being followed
Financial Literacy and Oversight

• **Best practices:**
  - Include one or more financial experts on board
    • Required for Head Start grantees
  - Ensure that other board members are financially literate through training etc.
  - Establish audit committee or another committee to perform functions of audit committee – include financial expert(s)
Governance and Other Policies

- Adopt and implement:
  - Code of ethics
  - Conflict of interest policy
    - Required for Head Start grantees
  - Whistleblower policy
  - Record retention policy

- Regular board review of these and other policies and how they are implemented – e.g., personnel policy, financial policies and procedures, procurement policy etc.
  - Work with an attorney to review/revise
Governance Resources

• CAPLAW Bylaws Toolkit – overview of main issues CAA articles and bylaws usually address, includes sample language
  – Info on ordering at http://www.caplaw.org/publications.html

• CAPLAW Legal Liability Audit – self-assessment tool for CAAs to evaluate their legal compliance re: CSBG, nonprofit law, Head Start and employment law
  – Info on ordering at http://www.caplaw.org/publications.html
Governance Resources

• CAPLAW Governance Case Studies
  – Designed to educate board members and nonprofit managers about the challenges involved in creating an effective, well-managed board
  – Each case study includes discussion questions and suggested solutions to the issue in question
  – Available free on CAPLAW’s website http://www.caplaw.org/OTGovernance.htm

• Self-Assessment Tools page of CAPLAW’s website http://www.caplaw.org/Selfassessment.htm

• See “List of Governance Resources” handout – includes links to sample policies, training materials etc.
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