

---

**CAPLAW**

Community Action Program Legal Services, Inc.

---

# **CAA Board Basics for CSBG Administrators**

**2010 Orientation for  
Community Services Block Grant Administrators  
February 23, 2010**

Anita Lichtblau

Community Action Program Legal Services (CAPLAW)

178 Tremont Street Boston, MA 02111

[www.caplaws.org](http://www.caplaws.org) 617.357.6915

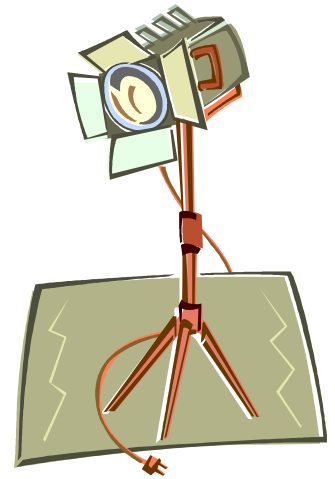
# Agenda



- 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”
  - <http://www.nonprofitpanel.org/Report/index.html>
- Sarbanes-Oxley Act



# What Law Governs CAA Boards?

- Federal CSBG Act
  - Tripartite board provision – 42 U.S.C. § 9910
  - OCS Information Memorandum 82 (IM 82) – guidance only, not binding; available on CAPLAW website:  
[http://www.capl原因.org/documents/OCSIMreTripartiteBoards\\_000.pdf](http://www.capl原因.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

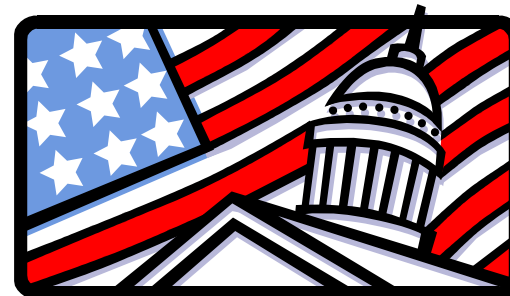
# Governing Documents

- 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

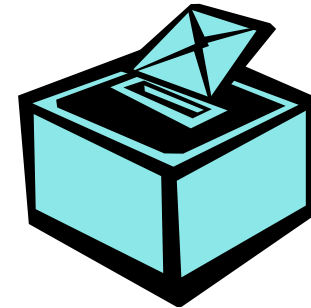
- Must be representative of low-income individuals and families in service area
- Must live in service area
- Must be able to participate actively in development, planning, implementation and evaluation of CSBG programs

# 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
- See OHS Policy Clarification OHS–PC–E–029 available at <http://eclkc.ohs.acf.hhs.gov/hslc> (“Regulations and Policies” drop down menu, under “Policy Clarifications”)

# 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

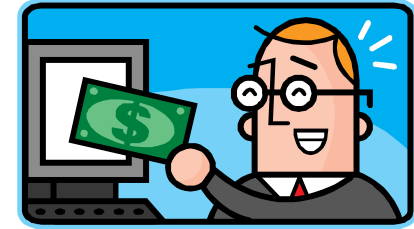
# Current Best Practices for Nonprofit Boards

- 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.caplaws.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.caplaws.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.capl原因.org/OTGovernance.htm>
- Self-Assessment Tools page of CAPLAW's website  
<http://www.capl原因.org/Selfassessment.htm>
- See "List of Governance Resources" handout – includes links to sample policies, training materials etc.

# CAPLAW

Community Action Programs Legal Services, Inc.

Save the  
Date

## National Training Conference

June 16-18 **2010**  
**SAVANNAH**

Photos Courtesy of [www.visitsavannah.com](http://www.visitsavannah.com)

