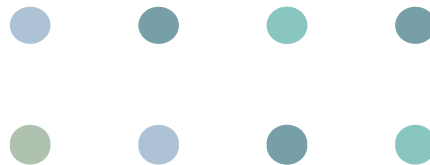




# DYNAMIC DUO

## A Guide to Enhancing the Board & Executive Director Partnership

A Publication by:



In Partnership with:



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Engaged, informed and enthusiastic executive directors and board members working as a team are essential to the success of a Community Action Agency (CAA). Cultivating a positive, open and flexible relationship is an ongoing task for all board members and executive directors. Because of a CAA's unique tripartite board structure, preserving and growing such a relationship can sometimes be challenging. However, maintaining a balance of duties perpetuates good governance practices and ensures that the organization is engaged in activities that further its mission and achieve its funding source goals.

With this Guide, we analyze the board and executive director relationship including roles and responsibilities; board recruitment and development; internal and external communications; the executive director and board chair relationship; executive director transition; executive director compensation; and executive director supervision and evaluation. The Guide includes references to the applicable CSBG Organizational Standards and explains how the Standards as well as the topics discussed apply to both nonprofit and public CAAs. Throughout the Guide, we suggest actions each party can take to strengthen their working relationship and further the shared goal of creating a compliant and sustainable organization.

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This Guidebook has been prepared for general information purposes only. The information in this Toolkit is not legal advice nor should it be relied on as such. Legal advice is dependent upon the specific circumstances of each situation.

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# I. ROLES AND RESPONSIBILITIES

One key to a successful partnership is for the board and executive director to understand their shared and distinct responsibilities. Doing so will not only assist with managing expectations, but will also help ensure that each party maximizes the expertise and skills it brings to the leadership of the organization.

“...the board and its committees focuses on organizational oversight and developing policies that the executive director is then charged with implementing.”

## A. Clarifying Roles at Board and Committee Meetings

Generally, executive directors of nonprofit organizations do not also serve as board members but rather act as a resource for the board and its committees to ensure that each is receiving the information needed to successfully execute their duties. It is often recommended that an executive director not serve as a voting member of either the board or a board committee. Both the executive director and the board with its committees fulfill distinct roles for an organization – the board and its committees focuses on organizational oversight and developing policies that the executive director is then charged with

implementing. The federal funding that a CAA receives also makes it difficult for executive directors to serve as board members. The federal CSBG Act tripartite board structure limits the number of board seats for which a CAA’s executive director may be eligible to mostly the private sector. Moreover, the Head Start Act specifically prohibits board members from receiving compensation for providing services to the organization and also prohibits the organization from employing board members and their immediate family members.<sup>1</sup>

An executive director is usually present for meetings of the full board but not for every committee meeting and may designate other staff members with expertise about the matters being addressed to be present at some meetings. For example, the executive director may designate one or more program directors to attend program committee meetings. Alternatively, an executive director is most likely to be regularly present for executive committee meetings as that committee is typically authorized to act on behalf of the full board. The executive director may also attend certain committee meetings with other staff persons such as attending the audit and finance committee meetings with the CAA’s fiscal director. In addition to designating other staff to attend committee meetings either on behalf of the executive director or with him/her, the executive director may designate a staff person to serve as a liaison for a board committee to ensure that the committee is receiving the information it needs to successfully fulfill its duties. For example, the fiscal director may not only attend the audit and finance committee meetings with the executive director, but may also act as the link between the board committee and the CAA in the intervals when the committee is not meeting.

## B. Understanding Board Executive Sessions

An executive session is generally an option under a state's open meeting laws which recognizes that certain sensitive matters that arise at board meetings are best discussed in a private forum. If a CAA is subject to its state's open meeting laws, such laws usually permit boards to adjourn to an executive session, which simply means the public is excluded from that portion of the meeting. A board may also ask staff to leave the meeting. If a board is unsure whether it is subject to its state open meetings laws, it should work with an attorney in its state with expertise in government matters to determine what, if any, obligations the board may have with respect to the state's open meeting laws.

“...the list of items that can be discussed in an executive session vary from state to state...”

For a CAA subject to state open meeting laws, the list of items that can be discussed in an executive session vary from state to state, but often include pending litigation and employment-related matters. In many instances, if the board makes a decision regarding the matter, it must take the formal action in the public portion of the meeting. Because boards are comprised of human beings, they have a tendency to like secrecy, which means that other sensitive topics — topics that are not on the permitted list of matters set forth in the law which are reserved for executive sessions—often seep into the discussions during executive

sessions. As in, “As long as the door is closed, I’ve been meaning to raise this topic that I don’t want the press to know about.” Everyone present during an executive session should be sensitive to what is a permissible topic and what is not. When someone strays beyond the bounds of permissible topics, the group should immediately cut off the discussion. There may be criminal liability for violating open meeting laws or actions taken based on those discussions may be invalid.

If a CAA is not subject to its state's open meeting laws, the board may use the executive session mechanism for additional scenarios not set forth in the state's open meetings laws to exclude staff, volunteers and stakeholders from a meeting. However, calling an executive session may generate unnecessary anxiety and concern amongst such groups. The board can help alleviate any unintended reactions by being judicious about when it calls for an executive session and communicating in advance, when possible, about the need for one.



Minutes of a board meeting should indicate that the board met in executive session and usually report on the topic of discussion without providing details deemed confidential. While minutes should be maintained for executive sessions, they should be stored in a separate minute book from the minutes of the regular board meetings. If a CAA is required to comply with its state's open meeting laws, it should ensure that it is familiar with the requirements for executive session minutes. Here are a few tips for drafting and maintaining such minutes:

### Establish Basis for Executive Session

If statutes or bylaws restrict what can be discussed in executive session, the minutes should state the legal basis for the executive session.

### Watch Tone

Whoever drafts executive session meeting minutes should always do so with an eye toward avoiding controversy or creating potentially damaging language should the minutes become public or the subject of a discovery request from the opposing side during litigation. This is particularly true in the case of minutes for executive session meetings given the sensitive nature of the matters typically reserved for those sessions.

For tips on drafting executive session, committee and board meeting minutes, see [CAPLAW's Tools for Top-Notch CAAs](#), Section 1: Making Board Meetings Matter; Part IV: Board Meeting Minutes.

## C. Setting the Tone at the Top

The “tone at the top” is the message about ethics and integrity that organization leaders send through their words and behavior. Visible commitment by the organization's board and senior management is essential to cultivating a culture of compliance and high ethical standards. While a code of ethics and organizational policies are important, compliance is more than just having these documents in place. The board and executive director should model the principles in the organization's code of ethics and apply the code and organizational policies consistently. If board members and the executive director ignore or override the organization's policies, staff will get the message that the organization does not truly value compliance and ethical behavior. Keep in mind that modeling and reinforcing compliance and ethical behavior is a continuous, everyday process. The board, managers and supervisors must lead by example.

“The board should evaluate the executive director, in part, on his or her success in implementing systems that promote compliance and ethical behavior...”

Although it is not involved in the day-to-day management of the CAA, the board plays a critical role in ensuring that the organization is operated ethically and in compliance with applicable laws, regulations and contract terms. The following are some important steps a CAA board can take in this regard:



## Prioritize Ethics and Compliance

When hiring an executive director, the board should ask candidates and their references about the candidates' attitudes on ethics and compliance and about situations in which the candidates demonstrated leadership in these areas. The board should also conduct a background check of the chosen candidate before he or she is hired – including a criminal record check, a credit check, and a check on [www.sam.gov](http://www.sam.gov) to determine whether the candidate is excluded from participating in federal awards and contracts. The board should evaluate the existing or recently hired executive director on his or her success in implementing systems that promote compliance and ethical behavior throughout the organization and in addressing instances of non-compliance or unethical behavior. If the board receives reports that the executive director has engaged in or approved unethical or unlawful behavior, it should promptly investigate and take disciplinary action if it is warranted (with the advice of legal counsel as necessary).

## Adopt (or Update) and Adhere to Policies

The board should adopt (or update) a code of ethics for the organization, as well as a whistleblower policy and a conflict of interest policy. Board members should adhere to these documents and those who do not should be removed or otherwise sanctioned for their failure to do so. To ensure that they understand these documents and what it means to comply with them, board members should receive regular training with examples of what to do and what not to do under the code of ethics and conflict of interest policy, as well as how to respond under the whistleblower policy if someone approaches them with a concern about the organization's compliance or ethical practices.

CAAs should, and in many cases are required to, have a written conflict of interest policy. **Standard 5.6** of the CSBG Organizational Standards requires nonprofit and public CAA board members to sign a conflict of interest policy (or other comparable local government document for public CAAs) within the past two years. Some CAAs adopt two such policies – one for board members and the other for senior staff, officers and agents who are engaged in the awarding and administering of contracts. Federal grant administration rules prohibit employees, officers and agents of federal grantees from participating in the selection, award, or administration of a procurement contract paid for with federal funds if they have a real or apparent conflict of interest. A conflict of interest occurs whenever an employee, officer or agent of the organization – a member of his or her immediate family; his or her partner; or an organization that employs or is about to employ any of those identified – has a financial or other interest in the firm selected to receive the contract. The rule also prohibits the receipt of vendor gifts other than those of nominal value.<sup>2</sup> With a written conflict of interest policy or policies, CAA boards and senior staff will be less likely to adopt an ad hoc approach to conflicts that could result in ethically questionable and potentially illegal transactions, or reasonable and defensible transactions that lack sufficient documentation to withstand scrutiny.

For suggestions on drafting and implementing conflicts of interest policies and for sample policies, see [CAPLAW's Tools for Top-Notch CAAs](#), Section 5: Dealing with Conflicts of Interest; listen to



a recording of CAPLAW's [Roadmap for Resolving CAA Conflicts of Interest](#) webinar; and review CAPLAW's [sample conflict of interest policies](#) – one for board members and one for senior staff.

Additionally, **Standrd 7.7** of the CSBG Organizational Standards requires nonprofit CAA boards to approve a whistleblower policy and public CAA boards to receive a copy of an existing local government whistleblower policy at the time of orientation. For more information about whistleblower policies see Section I.E. Managing Employee Grievances, Employment Actions and Whistleblower Claims of this Guide.

## Adopt and Monitor Compliance and Ethics Program

The board should adopt a resolution:

- Stating that the CAA is committed to the highest ethical standards and to complying with all applicable legal requirements;
- Outlining a program to ensure compliance with laws and ethical practices; and
- Delegating responsibility for the program's implementation to specific committees and individuals.

This resolution should be communicated to staff, volunteers and clients. The board may choose to designate a board committee (such as the audit committee) to oversee the compliance and ethics program.

## Communicate the Importance of Compliance and Ethics

The board and senior management should communicate the CAA's commitment to compliance and ethical behavior through various means, such as memos, emails, newsletters, the CAA's internal website, meetings, and trainings. Both the executive director and board chair should sign written communications to staff, volunteers and clients about the organization's commitment to compliance and high ethical standards and its compliance and ethics program. In addition, the board chair, along with the executive director, should periodically address organization-wide meetings and emphasize the importance of compliance and adherence to ethical standards. If it is not practical to hold organization-wide meetings (for example, because the staff size is too large), the CAA may consider distributing a video of the board chair and executive director discussing these topics.



## Take Action on Reports of Ethical or Compliance Concerns

It is the board's responsibility to take action on ethical or compliance concerns reported to it. Rather than burying their heads in the sand upon receiving such reports, board members must take affirmative steps to notify the appropriate board committee and the full board and to ensure that the concerns are investigated and addressed.

For more information about practical steps CAA boards and management can take to ensure that their organizations operate effectively and in compliance with the many requirements that apply to them, read [CAPLAW's Exemplary Legal Practices and Policies Guidebook](#).

## D. Managing Risk and Compliance

It is important for CAAs to have procedures and policies in place that help mitigate risks and ensure compliance. **Standard 4.6** of the CSBG Organizational Standards requires nonprofit CAAs to ensure that "an organization-wide, comprehensive risk assessment has been completed within the past 2 years and reported to the governing board."

Standard 4.6 requires of public CAAs that "[t]he department complies with its local government's risk assessment policies and procedures."

Generally, the board of a nonprofit CAA would either designate a board committee to oversee the conducting of an organizational risk assessment or ensure that the executive director is working with his/her staff to conduct the assessment. The board would receive the results from the assessment and determine what actions the organization needs to take, if any, to further mitigate risks and ensure compliance. The national Community Action Partnership, in collaboration with the Nonprofit Risk Management Center, created a risk management assessment tool and sample policies specific to CAAs which may be accessed via the [Nonprofit Risk Management Center Affiliate icon](#) on the Partnership website. The resources also include risk management webinars and the option to receive answers to your organization's specific risk questions.

"The board would receive the results from the assessment and determine what actions the organization needs to take, if any, to further mitigate risk..."

## E. Managing Employee Grievances, Employment Actions, and Whistleblower Claims

When formulating a staff grievance policy including policies addressing employment actions, CAAs should be careful about involving board members in an employee complaint and/or employment action. Doing so may result in the board micromanaging the organization when its focus should be on governance and oversight. Moreover, employment laws are complex and ever-changing and few board members are likely to have experience in navigating and working with those laws in relation to employee complaints and employment actions such as terminations. CAPLAW generally recommends that the board delegate the authority to handle employee actions and complaints to the executive director who will then work with his/her staff (and employment counsel, as

necessary) in doing so. The board will be involved in overseeing the development of the policies and procedures that will govern the employee complaints and/or employment actions.

A distinction is often made between employee grievances and reports of illegal or unethical activities (such as fraud or misuse of funds or property). The latter type of complaint will typically be made pursuant to the organization's whistleblower policy which is intended to capture complaints of suspected fraudulent or dishonest use of or misuse of organizational resources or property by staff, board members, consultants, volunteers or clients. Often times in a whistleblower policy, there will be the option to report complaints to the executive director, board committee or board chair; however, this option is usually limited to when a person finds it difficult to report a concern to another designated member of the management team, such as a compliance officer, fiscal director, or human resources director. For more information on board involvement in employee grievances and employment actions, we recommend two Blue Avocado articles on this subject, [Should Staff Contact with the Board Be Restricted?](#) and [The Nonprofit Board's Role in HR](#). For more information about whistleblower claims and policies see CAPLAW's [Sample Whistleblower Policies](#) and [webinars](#).

Employees with grievances may try to contact individual board members. The board should have a policy in place that educates the board on who fields these kinds of complaints (e.g., board chair) and the best way for a contacted board member to respond to them. CAPLAW recommends that a CAA limit its organization's personnel policies to current employees because once an employee has been terminated, there are legal avenues available if he or she believes a termination was illegal.

## F. Overseeing and Managing the CAA's Financial Well-Being

Every regular board meeting should include a review of the CAA's financial statements. **Standard 8.7** of the CSBG Organizational Standards for private CAAs requires the board to receive "financial reports at each regular meeting that include the following: 1. [o]rganization-wide report on revenue and expenditures that compares budget to actual, categorized by program; and 2. [b]alance sheet/statement of financial position." For public CAAs, the Standard requires the tripartite board/advisory body to receive "financial reports at each regular meeting, for those program(s) the body advises, as allowed by local government procedure." Section 4. Getting the Most Out of Your Financial Statements of [CAPLAW's Tools for Top Notch CAAs](#) not only includes a discussion of the different financial statements a board reviews (including those required by the Standards) but also recommends a five-step approach to a regular review of such financial statements and explains topics that would be discussed as part of the review.

"The executive director is responsible for ensuring that the board receives the information it needs to maintain the financial viability of the organization."

The executive director is responsible for ensuring that the board receives the information it needs to maintain the financial viability of the organization. The executive director will usually designate the fiscal director as the staff person who works with the finance committee to prepare monthly interim financial statements to be used as a tool to monitor the CAA's financial health. The finance committee should work with the fiscal director and executive director, as necessary, to ensure that financial statements are up-to-date and comprehensive and that the reporting shows both

budgeted and actual revenue and expenses. For more information about the executive director's role in the fiscal leadership of the organization, read the [Fiscal Fundamentals for Executive Directors](#) toolkit developed by the national Community Action Partnership in partnership with WIPFLI.

The executive director, fiscal director and the finance committee will work together to identify ways to present what can often be complex financial information so that all board members can understand the information presented, receive an accurate view of the organization's current and projected future financial standing, ask questions about the CAA's financial well-being, and use the information to make strategic decisions. One option for doing so is to develop financial dashboards. A dashboard is typically a brief snapshot of the entire organization at a fixed point in time – like a car dashboard that gives an instant update on many important factors (speed, gas left in the tank, engine temperature, etc.). An organizational dashboard is similar: it gives important information to decision makers such as executives and boards in a quick-read way. The purpose of a dashboard is to easily and visually raise strategic questions which, when answered, would lead to more informed decisions. Thus, they should be comprehensive, but not so detailed as to hinder high-level, strategic questions and should include explanations of the metrics used to provide the data summaries that make-up the snapshot. For information on creating an effective dashboard – one that distills data to key measures and makes meaningful comparisons to benchmarks and goals – listen to CAPLAW's webinar [Constructing a Community Action Agency Dashboard](#).

## G. Creating the Annual Budget

The annual operating budget is a comprehensive financial plan that projects all income and all expenses that are expected to be received or incurred within a CAA's fiscal year. **Standard 8.9** of the CSBG Organizational Standards requires for private CAAs that the board “annually approves an organization-wide budget” and for public CAAs that the “tripartite board/advisory body has input as allowed by local governmental procedure into the CSBG budget process.”

The annual budget fulfills two key functions: planning and authorization. As a planning tool initiated by management, the budget functions as a comprehensive plan to obtain and use resources to fulfill the CAA's mission and meet all contractual and legal obligations. Board approval of the annual operating budget authorizes management to proceed with implementation of the plan. Board approval also provides evidence that board members are fulfilling their responsibilities to direct the use of resources to fulfill the CAA's mission and ensure compliance with legal obligations. In



addition to the key planning and authorization functions, the annual operating budget functions as an important internal control when it is used as a point of comparison with actual financial results achieved, facilitating identification of errors or irregularities and needed corrections. Section 3. Creating the Annual Operating Budget of [CAPLAW's Tools for Top-Notch CAAs](#) walks through how a CAA creates an annual budget and the roles that the board and the CAA's executive management each play in doing so.

## H. Authorizing Expenditure of Funds and Execution of Transactions

The board will work with the executive director to develop a policy that establishes who has the authority to financially and contractually bind the organization, i.e., sign checks; order a wire transfer; sign contracts such as leases, loan, vendor or grant agreements. The finance committee of the board will often work with the executive director and finance director to ensure that the policies establish a framework of internal controls to safeguard funds and minimize the risk of fraud, waste and abuse. The policy, which is adopted by board resolution, usually details the authorized signatories for the organization and what type of transactions will be subject to the policy, including threshold amounts. The types of contracts and thresholds will vary according to the size and type of CAA. A CAA's bylaws will either specify who is authorized to sign checks and contracts or state that the board will specify by a resolution who is authorized to sign them.

## I. Establishing Roles Around the Audit

A single or program-specific audit is required if a CAA expends \$750,000 or more in federal funds during the CAA's fiscal year. If a CAA's spending falls below this threshold, it is exempt from the federal audit requirements but must make its records available for review or audit by federal awarding agency officials, a pass-through entity, and the General Accounting Office.<sup>3</sup> **Standards 8.1 through 8.5** of the CSBG Organizational Standards requires of private CAAs that:

- The organization's annual audit (or audited financial statements) is completed by a Certified Public Accountant on time in accordance with federal grant laws and/or state audit threshold requirements;
- All findings from the prior year's annual audit have been assessed by the organization and addressed where the board deems it appropriate;
- The organization's auditor presents the audit to the board;
- The board formally receives and accepts the audit; and
- The organization has solicited bids for its audit within the past 5 years.

The same Standards also exist for public CAAs with the exceptions that local government procedures must be followed including with respect to the audit bid process and the tripartite board/advisory board is notified of the audit and audit findings but is not required to approve it.



Generally, an audit is designed to confirm that the assertions underlying the CAA's financial statements are correct. In its oversight role, a nonprofit CAA's board is charged with retaining an auditor, reviewing the audit and reports, and assessing actions

“Generally, an audit is designed to confirm that the assertions underlying the CAA's financial statements are correct.”

to be taken pursuant to audit findings. Conversely, the executive director works with his or her financial staff to prepare the CAA's financial statements for the audit. For more information about the executive director's role in preparing for an audit versus the board's responsibilities with respect to forming an audit committee, selecting the auditor and reviewing the audit and management letter, see Section 2. Improving a CAA's Financial Capacity in [CAPLAW's Tools for Top-Notch CAAs](#) toolkit. The national

Community Action Partnership also offers board members the guide [Audit Essentials: What Every Board Needs to Know](#) which walks through the terms and processes of an audit report and how to read financial statements.

## J. Preparing for and Responding to Monitoring

Monitoring preparation is an ongoing task that begins when funding is initially received. The degree of involvement by the board and staff in preparing for a monitoring will be influenced by the amount of funding the CAA receives and the funding source requirements. Generally, the board will create one or more committees to help oversee compliance with different funding source requirements. The executive director should obtain, as soon as possible, the monitoring tool, if one exists, and review it and the funding contract with the board committee and identify senior management such as the fiscal director and program director(s) that will be facilitating and managing the program(s). The executive director should designate a member of the senior management team, most likely a program director, who will develop and facilitate the program(s) associated with the funding and manage compliance with funding source requirements. The monitoring tool and funding source requirements should be used by the executive director and senior staff as a guide in the development of internal procedures and processes that will govern the use of the funds received.

For funding sources with more involved and extensive monitoring procedures, an executive director should work with senior management and a board committee to prepare responses to monitoring questions and locate information that monitors may want to review. For such reviews, a CAA may



consider placing information in binders so that it is easily accessible and well-organized. If the funding source interviews board members as part of the review process, the executive director and board members may consider conducting mock interviews with each other to ensure that the board is well-informed and able to offer concise and direct answers to a monitor's inquiries. The executive director should also ensure that the board is regularly receiving financial and program reports from management.

With respect to CSBG funds, since the Organizational Standards will be impacting the monitoring conducted by a state CSBG office, the following tools and resources developed by the national Community Action Partnership and available on its [website](#) may be used by a board committee and the executive director along with senior management to assess a CAA's level of compliance with the Standards:

- *Self-Assessment Tool – Nonprofit CAAs*
- *Self-Assessment Tool – Public CAAs*
- *Organizational Standards and Community Action Boards*
- *YouTube videos for Boards*
- *Schedule of Actions for Boards*
- *CSBG Organizational Standards Technical Assistance Guides and Webinars (one for each of the nine categories)*

Once the monitoring is completed, board members, and/or a board committee, along with the executive director, should review the monitoring report and formulate an approach for responding to it. The executive director with the help of senior staff will facilitate the corrective actions, if any need to be taken. The board should ensure that either a board committee or the executive director via a senior staff person is charged with managing report deadlines and regularly communicating with the funding source regarding the CAA's response to the report. For more information about the CSBG monitoring process, see [Monitoring Map for CAAs: A Guide for Navigating the Monitoring Review Process](#) developed by the national Community Action Partnership in collaboration with CAPLAW.

## K. Generating Funds

A key responsibility of the board is to ensure that the organization is financially sustainable. Because many CAAs rely heavily on federal and state funding which is restricted (i.e., may only be used for grant purposes) and often subject to political whims, it is important that boards focus on ways to continually bring in unrestricted as well as restricted funds. Financial sustainability discussions are a crucial piece in a board's strategic planning process. **Standards 6.1 through 6.5** of the CSBG Organizational Standards for both nonprofit and public CAAs focus on an organization's strategic plan and require, among other tasks, that it be approved by the board within the past five years and reviewed at least



annually by the board in relation to progress updates. The national Community Action Partnership offers a few CAA-specific strategic planning resources on its [website](#) including:

- *Strategic Planning: The Basic Elements of Developing an Organizational Strategic Plan* webinar and
- *Are We Results Oriented?* guide and webinar.

Boards will often form a committee referred to as a fundraising, resource development or sustainability committee to spearhead the organization's revenue-generating efforts. This committee will work via the executive director with senior staff charged with managing the organization's fundraising and resource development activities. Generally, the committee and the executive director will develop a plan for obtaining additional funds which may include soliciting donations from individuals and corporations; engaging in activities such as special events, poverty simulations or social enterprises; and applying for operational as well as programmatic grants from foundations.

The committee, working with the full board, will be instrumental in identifying potential fundraising prospects and accompanying staff on key visits with funders. Board members may also assist with thanking donors, when appropriate. Another important action board members can take is to financially contribute to the organization. Some foundations require that every board member donate money to the organization – even if it is just \$1 – to receive foundation support. Lastly, always being an advocate for the organization – regularly sharing with peers and the general public the value the CAA adds to the community – is a way to stimulate support that may lead to financial gains for the organization. A few informative and instructive resources and articles about a board's and the executive director's roles in fundraising include:

- [Getting to 100% Board Giving](#) article by Jan Masaoka of Blue Avocado;
- [Grassroots Institute for Fundraising Training](#) website which includes both free and paid fundraising resources focused on promoting the connection between fundraising, social justice and movement-building; and
- Articles about fundraising for both boards and executive directors on the [Guidestar website](#), which not only provides information about tax-exempt nonprofit organizations but also about the issues facing these organizations.

## II. BOARD COMPOSITION AND DEVELOPMENT

For both public and nonprofit CAAs, the federal CSBG Act dictates much of the board's composition and selection of its members. A nonprofit CAA board selects its own members subject to the democratically selected low-income representatives that comprise one-third of the board's composition. Members of a public CAA board are either selected by the local governing officials (i.e., city council, county commissioners) pursuant to recommendations by the board or by the board if the authority to do so is delegated to it by the local governing officials. Either way, the selection of public CAA board members is also subject to the democratic selection process for the low-income representatives. Even though board composition and development is a responsibility of the board, both public and nonprofit CAA boards will often solicit the executive director's assistance in identifying and educating new board members. While an executive director will not vote in the actual election of board members, he/she offers invaluable operational insights and perspectives for the board that can help guide its process and growth.

### A. Understanding Board Composition Requirements

The tripartite board requirement remains a hallmark of Community Action. Like its predecessor, the Economic Opportunity Act, the federal CSBG Act generally requires that each CAA have a tripartite board made up of three sectors – representatives of the low-income people being served, elected or appointed public officials, and other major groups and interests in the community. The purpose of this requirement is to obtain input from each of the sectors on community needs, resources and program effectiveness. Federal Office of Community Services [Information Memorandum 82](#) provides further federal guidance on tripartite boards. Although neither states nor CAAs are bound by this guidance, they may find it helpful in understanding the composition, role and responsibilities of the tripartite board. These issues are often also addressed in state CSBG or Community Action laws and regulations, which must be consistent with federal and state law.

“Other sources of law governing CAA tripartite boards vary depending on whether a CAA is a nonprofit corporation or a government entity.”

Other sources of law governing CAA tripartite boards vary depending on whether a CAA is a nonprofit corporation or a government entity. A nonprofit CAA's board is governed by the nonprofit corporation law in its state, while a public CAA's tripartite board is governed by whatever authority the local governing body (such as a city council or board of county commissioners) may have delegated to it through a local ordinance or other official act. CAPLAW has created self-training tools for both [nonprofit](#) and [public](#) CAAs to provide boards of each with the guidance and information they need to teach themselves about the federal CSBG

Act tripartite board composition and selection requirements. The tools consists of questions, quizzes, exercises and resources that the board is instructed to work through with the help of a board member facilitator.

Other grant programs may impose board requirements. For example, the boards of CAAs with Head Start programs are subject to the Head Start Act’s requirements on composition, responsibilities and conflicts of interest. Additionally, the board of a CAA that operates a community health center or intends to qualify as a Community Housing Development Organization (CHDO) under the U.S. Department of Housing and Urban Development (HUD) rules must meet additional composition requirements.

## B. Facilitating Strategic Board Recruitment

Recruiting effective and committed board members requires a proactive, ongoing process of searching for those who have the time, talent, and willingness to help achieve the CAA’s mission. A board should continually refer to its bylaws and other board policies that set forth board recruitment requirements and procedures to ensure that it maintains compliance with its governing documents. Effective board recruitment involves minimizing vacancies and ensuring compliance with board composition requirements.

Establishing a board governance committee that is regularly and actively engaged in board recruitment is one way to help minimize vacancies and facilitate a more targeted approach to recruitment. A governance committee typically oversees the selection process, researches and recommends candidates, and facilitates and maintains board self-assessments. The committee may engage the executive director as well as senior staff via the executive director to help identify potential board members, i.e., such as current and former clients; other social service providers; etc. Such committees are typically set forth in a CAA’s bylaws and may also provide for the “care and feeding” of the board, i.e., identifying and coordinating the training and education of board members.

“A board matrix is another way for the board to track its current needs and identify the characteristics it is seeking in future members.”

Understanding your CAA’s leadership needs is an important initial step in the recruitment process. By doing so, the board strengthens its ability to strategically seek out those who have attributes, skills, abilities, and background to fill those needs. Conducting individual and group assessments of the board will help the board track its current characteristics and identify the attributes the board needs to look for in future candidates. Sample [assessment tools](#) are available on CAPLAW’s website. A board [matrix](#) is another way for the board to track its current needs and identify the characteristics it is seeking in future members. When

using a matrix, it is important that other factors, in addition to those identified by the matrix, be considered in board selection to ensure that the board attracts and retains members who can actually do what the board needs. Meeting certain criteria does not always equate to actually accomplishing goals.

A board may choose to form an advisory board populated with potential board members as a way to groom prospective members and minimize vacancies. If an advisory board will be used to fill vacancies, the board must ensure that the advisory board members are chosen through the selection procedures set forth in the CAA’s bylaws. For example, if an advisory board member

is to fill low-income representative sector seats, the advisory board member must have been democratically selected to serve on the board pursuant to the procedures established by the board.

The board, or governance committee, and the executive director will often work together to create a board recruitment packet with information that will help candidates understand the organization as well as board responsibilities and expectations. Board recruitment packets may include an overview of the organization's programs, an annual report, a summary of board committees and a board member job description. The packet should also include a board application. Asking candidates to complete an application will help the CAA maintain compliance with recruitment requirements and policies as well as expose conflicts of interest that may prevent any board member from serving. For example, if a nonprofit CAA imposes a residency requirement for all board members in its bylaws, then a board application should ask prospective board members if they meet the requirement. Also, if a CAA receives Head Start funds, the application may ask if any of prospective board member's immediate family members work for the CAA to ensure compliance with the Head Start requirement prohibiting board members and their immediate family from being employed by a Head Start grantee. Moreover, it is a good idea for the application to ask if a board member has been debarred or suspended from working on federal grants. A sample CAA board application is available on CAPLAW's [website](#).

## C. Orienting and Training New Board Members

“...the board plays the lead role for orienting and training board members, but executive directors also play a vital support role in partnering with the board to educate and assimilate new members.”

As with recruitment, the board plays the lead role for orienting and training board members, but executive directors also play a vital support role in partnering with the board to educate and assimilate new members. The executive director and his/her staff are responsible for, and are most familiar with, the day-to-day management of the organization and its programs. They are often in the best position to provide materials and information on the history of the organization and goals and outcomes of its current programs and services; an overview of operational policies and procedures; a review of the organization's funding sources and financial condition; and an explanation of organizational structure.

**Standard 5.7** of the CSBG Organizational Standards requires both nonprofit and public CAA boards to establish a process to provide structured orientation for board members within six months of members being seated on the board. Topics to consider including in board member orientation are:

- Overview of the roles and responsibilities of board members;
- Structure and purpose of board meetings;
- Fiduciary duties of nonprofit board members;
- Expectations of board membership and list of upcoming, scheduled board meetings;

- Overview of the organization – the mission, the programs, the funding received, key staff, the latest strategic plan, results of the organization’s last community needs assessment, etc.;
- Tripartite board requirement and any other specific board composition requirements;
- Standing and current ad hoc board committees;
- Bylaws with a brief discussion of the main provisions (quorum, voting thresholds, removal, alternates, vacancies, etc.);
- Articles of incorporation for nonprofit CAAs and local ordinances/rules, if any exist, governing public CAAs;
- All applicable board policies and procedures, including, among others, the conflict of interest policy, whistleblower policy, and low-income board member democratic selection procedures; and
- Brief bios of board members and senior staff.

We recommend reviewing Section 1: Making Board Meetings Matter from CAPLAW’s [Tools for Top-Notch CAAs](#) for more information on the different topics often addressed in board orientation.

## D. Addressing Problematic or Ineffective Board Members

It is not unusual for boards to struggle with difficult board members – for example, board members who never attend meetings, those who aggressively promote their own views without regard to others’ input, or those who create divisive factions on the board. CAA boards are particularly susceptible to tensions among board members because of the variety of individuals selected from various sectors of the community pursuant to the federal CSBG Act’s tripartite board composition requirements. When a board becomes fractured such that business of the board cannot be conducted as usual, the board should consider working with the executive director to locate an independent, third party consultant who can help identify the root of the problem(s) and potentially mediate a solution. In addition to bringing in an outsider, the inclusion of the following provisions in a CAA’s bylaws may help the board manage difficult board member scenarios:



## Board member terms

Board terms are an easy way to help manage how long someone serves as a board member. A term is the number of years that a board member serves on the board before he or she must be reelected or democratically selected to serve for another term. For nonprofit CAAs, if the bylaws are silent as to term length, state nonprofit corporate law will often specify a default term length of one year. The local ordinances governing public CAAs, if any exist, may include default terms lengths for public CAA board members. Additionally, a state's CSBG laws may impose term length requirements that apply to both nonprofit and public CAA board members. For example, some states require that the public sector board members be appointed annually to the board while low-income and community representative board members may have multiple-year terms. Three-years is a common length chosen by organizations for a board member term.

## Board member term limits

Term limits restrict the number of consecutive terms a board member may serve and can offer another, more routine way of managing board membership. For instance, the bylaws may state that board members may serve two, five-year terms before they must step down from the board. Term limits are generally not required for CAA boards; thus, some CAAs have chosen to adopt them while other CAAs have not. State nonprofit corporate laws do not usually set term limits for board members of nonprofit corporations. Moreover, local ordinances do not typically require them for public CAA boards. However, state CSBG laws may impose term limits for board members from each of the three sectors of the tripartite board or just certain sectors.

The advantages of term limits include: insuring a variety of perspectives on the board; helping an organization expand its base of contacts for fundraising and other purposes; educating a larger sector of the community about the organization and its programs; preventing a concentration of power among a small group of long-time leaders; and providing a diplomatic means of getting difficult or ineffective board members off the board. On the other hand, the disadvantages include: the loss of board members with specific expertise regarding the organization's programs; the loss of institutional memory; and the difficulty of regularly identifying and recruiting new board members.

## Removal of board members

Removal provisions in bylaws enables the board to manage particularly disruptive board members pursuant to established procedures. For nonprofit CAAs, most states' nonprofit corporate laws include provisions around removal and may require specific language to be included in the bylaws for certain types of removal to occur automatically, such as removal for failure to attend meetings. State nonprofit corporate laws may also impose on nonprofit CAAs other parameters for removal of directors. For example, in some states, a board member may only be



removed by a super-majority of the board (for example, a majority of the board members in office, rather than a majority of board members at a meeting at which a quorum is present). Even when not required by state law, many organizations require that removal be approved by a super-majority of the board. This helps temper the use of removal of directors for political or personal reasons, and allows removal to be used only in extreme and justified circumstances. A public CAA board should check its local ordinances to determine what, if any, parameters may exist with regards to board member removal.

One issue to consider with removal provisions is whether to require removal to be “for cause” or to permit removal “without cause.” Allowing removal without cause can diminish internal discord regarding the removal and help avert possible claims of character defamation since no potentially negative allegations regarding the individual are necessary. On the other hand, a removal without cause provision could be used for political purposes or could result in those with dissenting views not voicing their opinions at board meetings, thereby reducing debate among board members. If the removal of a director is contemplated and it is anticipated that the person may challenge the removal, legal counsel should be consulted.

### Resignation of board members

Enabling a board member to resign, as opposed to being removed, is a less aggressive and more congenial way to manage difficult board member scenarios. A state’s nonprofit corporate laws may include parameters governing resignation provisions in a nonprofit CAA’s bylaws. Public CAA’s should, again, check local ordinances to determine if they include any such parameters.

For sample bylaws provisions specific to CAAs, consider ordering [CAPLAW’s Bylaws Toolkit](#).



### III. FLOW OF INFORMATION AND COMMUNICATIONS

An effective organization is one in which the executive director is providing the board with the information it needs to meet its responsibilities and proper channels of communications between the board, staff, stakeholders and general public have been established and are followed consistently.

#### A. Receiving Regular Reports

“The executive director should provide reports to the full board at its regular meetings and, as needed, between regular meetings...”

The executive director should provide reports to the full board at its regular meetings and, as needed, between regular meetings either to the full board or to one or more board committees. In general, the reports will allow the executive director to share current issues, potential problems, achievements and upcoming events. They also provide an opportunity for the executive director to focus the board’s attention on critical issues facing the organization, such as an anticipated cash flow issue due to delay in reimbursement from state funding sources, or an opportunity to initiate a new program or earned income venture, or to purchase

or renovate a building. **Standards 5.9 and 8.7** of the CSBG Organizational Standards for nonprofit and public CAAs require boards to receive programmatic and financial (revenue/expenditure with budget to actual comparisons, balance sheet) reports at each regular board meeting. The executive director will work with senior staff and board committees to help generate the reports and present them to the full board.

#### B. Requesting Information about Employees

It is not generally appropriate for individual board members to request or receive personal employment information about a specific employee such as the employee’s salary, fringe benefits, background check, evaluation results, or leave requests. Rather, the board oversees information and policies that apply to employees generally such as personnel policies, wage comparability studies and organization-wide salary scales. In some cases, the board may authorize a committee to consider and make a recommendation to the full board about such issues. In certain cases, the committee may need to have access to personal employee data, for example, if it is reviewing staff salaries to ensure that staff are being paid within the salary ranges for their positions. Board members should only be given access to such information as part of their authorized board duties and have a fiduciary duty to keep that information confidential. Such information should be shared with other board members only on a need to know basis in connection with official board business. Some types of sensitive employee information, such as health or financial information, may be protected by various confidentiality or privacy laws and would not generally be available to board members.

## C. Communicating with Staff

Since the executive director is the only employee who reports directly to the board and is authorized by the board to hire, fire and manage other staff, board members should generally communicate with other staff about organizational business through the executive director. When an individual board member circumvents the executive director by contacting a staff member directly rather than communicating through the executive director or other established channels of communication, such action often diminishes the executive director's authority and strains the executive director/board relationship.

“...board members should generally communicate with other staff about organizational business through the executive director.”

Implementing a board/staff communication policy is one way to educate all board members about the proper communication process and can serve as a point of reference if confusion arises. The policy should reinforce that the executive director is the one employee who reports directly to the board and that board members should speak directly with individual staff members only when authorized by the board or the executive director. The policy would outline the limited situations when it would be appropriate for board members to consult directly with staff. Examples of such situations would include: (1) board members communicating with an administrative staff person (sometimes referred to as a board liaison) who coordinates the logistics of board and committee meetings; (2) board committee members communicating with staff liaisons (for example, finance committee members communicating with the finance director) about committee business; or (3) personnel committee members communicating with staff to gather input for the executive director's evaluation if the board's evaluation process includes obtaining such input. Such a policy on board-staff communication is intended to prevent the board from micro-managing the staff and circumventing the executive director's role in supervising the organization's staff.

A complaint of suspected or potential fraud, misuse of resources or property, or discrimination or harassment involving the executive director would be reported to the board or a designated board committee in accordance with the organization's whistleblower policy. Procedures detailing the process for reporting such claims should be included in that policy. For more information about whistleblower policies see Section I.E. Managing Employee Grievances, Employment Actions and Whistleblower Claims of this Toolkit.

## D. Communicating with Stakeholders and the General Public

The board should work with the executive director to establish a communication policy or plan for disseminating information to stakeholders and the general public. The policy/plan would not only apply to publicizing successful programs and organizational achievements but would also address ways to respond to negative publicity and press requests. Generally, such policies and plans designate either the board chair or the executive director as the one who communicates on behalf of the organization with regard to organization-wide matters whereas a senior staff person is often designated to facilitate daily/routine communications such as blog updates or press releases about new programs. The Colorado Nonprofit Association offers multiple [resources and toolkits](#) for developing general, crisis and social media communication policies and plans. Also, the Nonprofit Risk Management Center offers a [Q&A](#) specifically addressing crisis communications.

## IV. EXECUTIVE DIRECTOR AND BOARD CHAIR RELATIONSHIP

The board chair and executive director work closely together to ensure that all board members and senior management are receiving the information they need to execute their respective responsibilities.

### A. Establishing the Roles and Responsibilities

The responsibilities of the board chair often include:

- Working with the executive director (and executive committee, if applicable) to establish the agenda for the board meetings;
- Acting as the liaison between the executive director and the full board;
- Serving as the spokesperson for the full board (if so authorized by the board);
- Convening and conducting regular board meetings and ensuring a quorum is established;
- Moderating and facilitating board discussions to encourage varying points of view; and
- Helping to organize and lead new member orientations (with the executive director and governance committee).

The specific positions, titles and duties of an organization's officers, including the board chair, should be set forth in the CAA's bylaws. For nonprofit CAAs, the majority of state nonprofit corporate laws require officers of a nonprofit board to include a president, secretary, and treasurer, in addition to any other position that the board may wish to designate. A board president is often referred to by a CAA as the board chair. If state nonprofit corporate laws require a president, but a CAA has a board chair, the CAA should specify in its bylaws that the board chair serves as the president for purposes of the state's corporate laws. The board chair, along with the other officers, is elected by the board. Officers typically serve for an annual term but the bylaws may specify a longer term. For public CAAs, a local ordinance, if one exists, that establishes the authority of the tripartite board and its bylaws will govern the designation and selection of officers of the board.

### B. Cultivating a Partnership

The chair may work with the executive director to help him/her navigate and achieve the goals and objectives established for the executive director by the full board or a board committee. The chair often serves as a sounding board for the concerns of the executive director. When the executive director is under stress or experiencing some difficulty in communicating with board members,

the chair can provide a unique perspective as a leader representing the whole organization. The chair often understands the motivations and styles of the board members and can provide suggestions for working with them. The executive director will ensure that the board chair has all the information he/she needs to enable board members to fulfill their responsibilities of making reasonable, informed decisions on behalf of the organization and acting in the best interest of the organization.

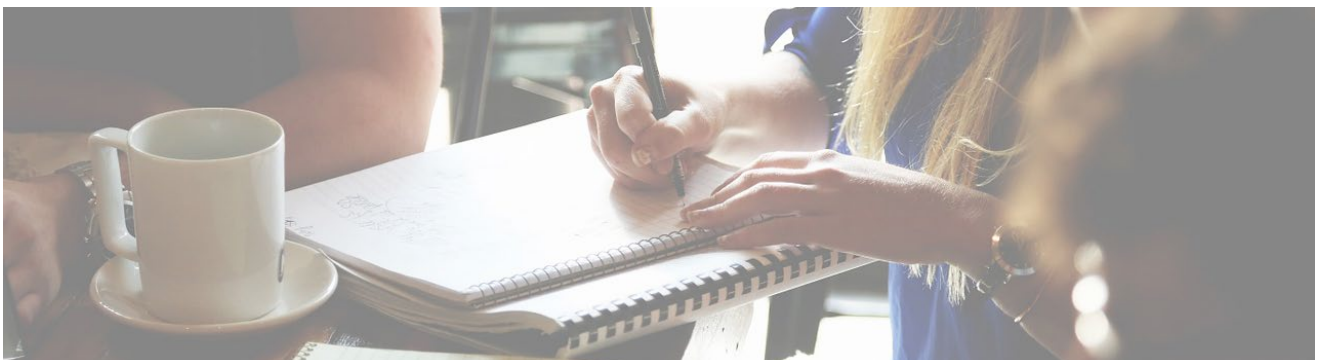
## C. Developing a Board Meeting Agenda

“Board meetings should give precedence to topics and discussions that relate to a board’s main responsibilities...”

Meeting agendas should be drafted with care by the board chair (or executive committee) in consultation with the executive director, with an eye to involving the board in decision-making on critical issues and providing information the board needs to make informed decisions. Board meetings should give precedence to topics and discussions that relate to a board’s main responsibilities which generally include: (1) mission and programs; (2) governance and organizational policies; (3) financial matters; (4) risk management; and (5) executive hiring, compensation and performance. While the board may not discuss each of these matters at every meeting, one or all of these topics will often appear on the agenda. Some items

– such as the date, time and location of the meeting; roll call/quorum determination; review and approval of the prior meeting’s minutes; and a report on the CAA’s financial condition – will generally be on every regular meeting agenda.

If the CAA is subject to its state’s open meeting law, it may be required to include certain items on its board meeting agendas. However, this does not mean that the agenda for every meeting must be the same. Instead, the agenda should emphasize issues facing the organization that are particularly essential for the board to be aware of or to decide – such as whether to purchase a new facility rather than lease, how to respond to monitoring findings, or what action to take in light of a proposal to cut certain federal funding. In each of these cases, staff may provide the board with short, concise memos with sufficient information to enable board members to ask questions, have an informed discussion, request additional information, and, where necessary, make a decision that will help the CAA fulfill its mission. In fact, some boards include the CAA’s mission statement on the agenda to help the board evaluate the impact of its decisions on the mission. For more information about ways to improve your meeting agendas see the following articles from the nonprofit magazine Blue Avocado: [And Now for a Different Type of Board Agenda](#) and [Three Instant Improvements for Board Agendas and Accountability](#).

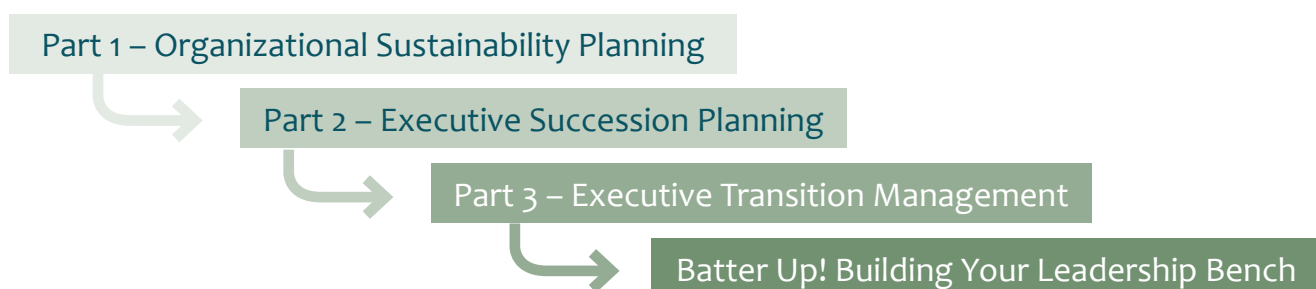


## V. EXECUTIVE TRANSITIONS

Managing an executive transition is one of the biggest responsibilities a board may be called on to fulfill. Because CAA board members are from diverse backgrounds with a mix of expertise and experiences, it is essential that the board invest in educating all of its members about the executive transition process including the legal implications of the employment actions that are involved. Even for public CAA boards which may not be authorized to hire or fire an executive director, the board will still be involved in the process via recommendations it makes to the local governing body regarding the performance of the executive director and the needs of the CSBG program.

### A. Ensuring a Succession Plan is in Place

Succession planning is key to the future sustainability of organizational leadership. **Standard 4.5** of the CSBG Organizational Standards specifically requires nonprofit CAAs to have in place a written succession plan, approved by the board, for the executive director position. The plan must contain procedures for covering an emergency/unplanned departure and a short-term absence of three months or less, as well as the process for filling a permanent vacancy. Even though a public CAA board must adhere to its local government's policies around interim appoints and filling of vacancies, the board should consider conveying to the local governing body the type of leader it believes is needed to effectively manage the CSBG funds and/or programs. The national Community Action Partnership has the following executive transition resources available on its [website](#), which include information about developing or updating a succession plan and managing a transition from one executive director to the next:



### B. Managing a Voluntary Departure

In many cases, a transition will be caused by the executive director's voluntary retirement or departure to take another position. However, there may be some cases where the board and executive director can no longer work productively together. Ideally, an executive director who is not working out will agree to leave of his or her own volition and without acrimony. This type of



voluntary departure is advantageous to both the executive director and the organization, allowing the executive to pursue new opportunities and both parties to avoid negative publicity. The board may wish to offer some form of severance pay to encourage the executive director to resign and to receive from him/her a release of future employment law claims against the organization.

Severance pay is generally defined as a payment in addition to regular salary and wages made to employees whose employment is being terminated. Under the Uniform Guidance, severance pay is an allowable cost (i.e., federal funds may be used to pay for it) if it is either required by: (1) law, (2) an employment agreement, (3) an established policy that constitutes, in effect, an implied agreement on the organization's part, or (4) the circumstances of the particular employment.<sup>4</sup> An employment agreement may specify the kind and amount of severance to be paid in the event of a termination. The agreement may also specify what the executive will do in exchange for that severance, such as agree to a release of future claims against the employer.

The Department of Health and Human Services (HHS) issued multiple administrative decisions prior to the enactment of the Uniform Guidance that offer some insight into how severance pay provisions have been interpreted/applied pursuant to the Office of Management and Budget circulars. The following are some main takeaways from those decisions:

- “Circumstances of the particular employment” criterion has been interpreted to apply only where a severance payment is made in exchange for some benefit to the grantee from the employee's departure;<sup>5</sup>
- Severance pay was allowed where the grantee might be harmed if an incompetent executive director were to remain in that position for a full term; and<sup>6</sup>
- Organizations that want to make severance payments to employees leaving voluntarily should plan ahead and adopt a policy that permits them to do so or enter into an agreement with the employee (preferably at the beginning of his/her employment) that spells out any severance payments to be made upon the employee's departure.<sup>7</sup>

It is important to note that the analysis that led to the administrative decisions is based somewhat on the facts and circumstance of the particular scenario at issue. Lastly, even if severance payments are not deemed an allowable cost, the board might still consider paying for them with unrestricted funds in exchange for a release of claims relating to the departure.



## C. Navigating an Involuntary Departure

If the board is considering terminating an executive director, the board should ensure it follows the organization's procedures and policies to mitigate potential liability in relation to the termination.

Steps a board may take in this regard include:

### Form a board committee to investigate

Consider forming a board committee or working with an outside party to assess or investigate the reasons triggering board concerns about the executive director's performance. The committee or outside party will typically meet with the executive director as soon as possible to inform him/her of the concerns or allegations raised, ask for the executive director's perspective on the allegations or concerns and explain the process for assessing or investigating the situation.

### Consider placing the executive director on leave

While conducting an investigation of allegations against the executive director, it may be necessary to place the executive director on short-term leave. If leave will be paid, care should be taken to avoid paying the executive director from any federal grant funds, since he/she will not be performing work benefiting any federal grants while on leave. If considering unpaid leave, it is advisable to consult with an employment law attorney familiar with the federal Fair Labor Standards Act and your state's employment laws to ensure that the unpaid time would not result in an impermissible deduction from the executive director's compensation.

### Seek advice from an employment law attorney

With any potential termination an organization must be careful to avoid violating any anti-discrimination laws or the terms of an employment agreement (if one exists). An attorney can help the organization navigate the legal requirements and identify the best possible resolution of issues while minimizing the risk of future claims by the departing executive director. The attorney's negotiation skills may also be useful in discussing a severance package with the departing executive director, if one will be offered.

### Communicate the decision with grace and care

Any public announcement of the executive director's departure should come only from a person or persons authorized to speak on the board's behalf. Staff, volunteers, the community, and stakeholders such as funding sources may require some reassurance that the board has a succession plan in place and is preparing for the next stage in the transition to a new executive.



## D. Protecting against Employment Claims

Before investigating any alleged misconduct or performance difficulty with an executive director, a board committee should determine if the organization has in place the following insurance policies and also be familiar with them:

### Directors & Officer (“D & O”) Policy

This policy protects board members and officers from actions resulting from actual or alleged erroneous decisions made in the course of their duties. The decisions are often referred to as wrongful acts and may involve a failure to provide services, a mismanagement of assets, and employment-related issues. Some policies include the cost of defending a claim but only up to a certain limit. Board members should be familiar with what types of claims are covered, particularly in the employment area and what constitutes a wrongful employment act under the policy.

### Employment Practices Liability Policy

This policy covers wrongful acts arising from employment actions that usually involve actual or alleged claims of a wrongful termination, discrimination, sexual harassment, and retaliation. The board should understand the limits of this policy as well as how it operates with respect to the D&O policy. The organization’s insurance broker should be able to explain what the policy covers, i.e., costs of legal defense, certain employment acts, etc.

## E. Considering an Interim Executive Director

Several reasons exist as to why an organization may consider hiring an interim executive director. Employing one enables the board to thoroughly plan and assess what kind of leader the organization needs and wants. If the current executive director leaves the organization prior to the completion of the hiring process, the interim can handle the day-to-day management of the organization. An interim position may be filled internally by an existing staff member or externally by an individual willing to step in as acting executive director until a permanent person can be hired. An external interim executive director may be effective if your organization is struggling with its current staff, finances or programs; if major board or other changes need to be made; or if there



is not general agreement about the type of leader the organization needs. For more information about using an interim executive director, see the resource, [Interim Executive Directors: The Power in the Middle](#) by CompassPoint and the article, [Interim Leadership: Looking Beyond the Executive Director](#) by The Bridgespan Group.

## F. Determining if an Employment Agreement is a Good Idea

In most states an employee is considered “at will” which means he/she can be terminated at any time by his/her employer with or without cause. An employment agreement will break that “at will” status. However, organizations sometimes prefer entering into agreements with new executive directors because doing so helps to attract talented candidates. Some additional pros and cons to consider with regards to using an employment agreement include:

Pros	Cons
Establishes commitment to hire the candidate	Terminating, even for cause, may be difficult and expensive
Provides continuity and stability	Enforceability is uncertain since a specific performance judgment (i.e., requiring the executive director to stay) is unlikely
Minimizes risk with respect to termination package and exit strategy	Flexibility is limited if needs of the organization change
Clearly ties compensation to specific performance goals	Making a change such as renegotiations may be time consuming
Protects assets and reputations	May create a perception problem if separation is due to unfavorable circumstances and executive director is receiving a beneficial termination package
Lays out expectations, compensation and benefits	Will incur legal fees to draft and potentially terminate agreement

Because employment agreements are legally binding contracts governed by state laws, a CAA should work with an attorney with both employment and tax law expertise who is licensed in its state to draft the terms of the agreement.

## VI. EXECUTIVE DIRECTOR COMPENSATION

Another important responsibility of a board is setting the compensation it pays to the executive director. For nonprofit CAAs, all of which are tax-exempt organizations, the Internal Revenue Services (IRS) oversees compensation paid to executive directors and enforces rules to ensure that the compensation is not excessive. Public CAAs must comply with the local laws and local government policies that govern compensation paid to the department employees who manage the CSBG program and, under **Standard 7.6**, public CAA boards should have access to information about the CSBG program head's compensation pursuant to the local government procedures. For both nonprofit and public CAAs, funding source requirements may dictate how federal grants funds may be used for salaries including compliance with salary caps.

### A. Understanding IRS Compensation Requirements

“The IRS rules impose taxes on transactions where an individual with substantial influence over an organization receives an excessive economic benefit from the organization.”

The Internal Revenue Service (IRS) requirements around executive director compensation are in place to prevent a tax-exempt organization, like a nonprofit CAA, from giving an executive director what may be viewed as excessive compensation. The IRS rules impose taxes on transactions where an individual with substantial influence over an organization receives an excessive economic benefit from the organization. All voting board members, and key officials such as the president, chief financial officer or fiscal director, chief operating officer, executive director or other persons with such responsibilities are considered to be individuals who exercise substantial influence over the organization under these IRS rules, which are referred to as “intermediate sanctions” or “excess benefit” rules.

The IRS rules require that compensation paid to officers and key executives of a tax-exempt organization be reasonable. If the compensation is not reasonable, the IRS will invoke “intermediate sanctions” requiring the individual who received excessive compensation to return the unreasonable portion to the organization and to pay a penalty tax to the IRS. In addition, board members who approved the compensation knowing that it was excessive may also owe penalty taxes. However, the tax law presumes that compensation is reasonable if:

- Before making its decision, the board obtained and relied on appropriate data regarding wage comparability in setting the compensation,
- The board approved the compensation in advance and those on the board who voted on the compensation were free of conflicts of interest related to the transaction, and

- The board adequately and timely documented the basis for its decision on the compensation package and decision process in writing at the time it makes its decision.

Once these factors are met, a presumption of reasonableness is established and the IRS has the burden to rebut it. Even if the process outlined above is not followed, the compensation will not automatically be considered unreasonable or an “excess benefit transaction,” but the burden shifts to the organization to prove the reasonableness of it if the IRS challenges it.

The following are some tips for establishing the presumption that the executive director’s compensation is reasonable:

### Use a Board Committee

A committee of the board (such as the executive committee or the personnel committee) usually undertakes the responsibility to ensure that the proper compensation analysis is conducted, such as researching comparables, to show that salary ranges and compensations are reasonable.

### Assure Board Independence

Any board members who have a conflict of interest with respect to the transaction should recuse themselves from discussions and voting on the matter.

### Link Pay to Performance

Compensation levels and any bonuses should be linked to performance. Establishing compensation goes hand in hand with evaluating performance and setting goals. While cost-of-living increases and possible incentive compensation under a written plan are permissible, boards should avoid increasing compensation levels based on non-performance related factors such as seniority. CAPLAW recommends caution when considering awarding bonuses and incentive compensation because IRS rules that apply to written plans for such compensation are complex and many organizations have had costs associated with such compensation disallowed under federal grant rules for either not having a plan or failing to follow their plan.



## Rely on Meaningful Comparables

The IRS expects to see that nonprofits use organizations for comparison that are similar to the organization relying on the comparables. To be considered comparable, an organization should conduct similar programs, be relatively equal in size, and have a similar workforce. Most likely a board committee will analyze all the data, note the differences and prepare a report for the full board explaining why those differences may or may not be relevant.

## Document the Process

In setting the executive director's compensation, the board should rely on a clearly-defined deliberative process that is documented. The board must adequately document the basis for its determination concurrently with making that determination. For a decision by the board to be documented adequately, the minutes must note:

- The terms of the compensation arrangement that was approved and the date it was approved,
- The board members who were present during deliberations about the compensation arrangement that was approved and those who voted on it,
- The comparability data obtained and relied upon by the board and how the data was obtained, and
- Any actions taken regarding the compensation arrangement by anyone who is a member of the board but who had a conflict of interest as to the transaction.

For further information about the IRS excess benefit rule that applies to executive compensation, see [Section 30. Taxes on Excess Benefit Transactions](#) of the IRS's Exempt Organizations Tax Manual.

The board will also need to consider IRS rules that prohibit highly compensated employees from receiving more generous fringe benefits than other employees as well as those governing incentive compensation when deciding if the organization will be able to provide an executive director with certain fringe benefits such as a deferred compensation plan or bonus. The board (possibly through a committee, such as the executive, finance or personnel committee) should work with an attorney or accountant to ensure compliance with IRS rules governing these and other possible fringe benefits.

Lastly, the IRS requires tax-exempt organizations to report compensation of certain employees on its Form 990. Typically the CAA's finance director will work with the executive director, outside tax preparer (if applicable), and the board finance committee to ensure that applicable sections of the Form 990 are properly completed. Visit the [IRS website for Charities and Non-Profits](#) to view the current year's Form 990 and Instructions, which address reporting of compensation to key employees. In addition, IRS [Publication 4221-PC](#) titled *A Compliance Guide for 501(c)(3) Public Charities* provides information about a tax-exempt organization's reporting requirements.

## B. Recognizing Funding Source Compensation Requirements

When setting the executive director's compensation, the board should be aware of the requirements that apply to the federal funds that may be used to pay the compensation. Some of the more notable requirements include:

**The applicable federal appropriations acts** which often imposes salary caps for an applicable year. For example, in 2015 the Consolidated and Further Continuing Appropriations Act specified that no funds appropriated by the Department of Health and Human Services shall be used to pay the salary of an individual in excess of Executive Level II (in 2015, that level was \$183,300).<sup>8</sup>

**The Uniform Guidance** which generally requires that total compensation paid to individual employees must be reasonable for the services rendered and conforms to the established written policies of the organization. Compensation is deemed reasonable to the extent it is either consistent with pay for similar work in the entity's other activities or comparable to that paid for similar work in the labor market of the entity.<sup>9</sup> Also, fringe benefits such as leave, retirement plans and incentive compensation are generally allowable under the Uniform Guidance as long as certain factors are in place.<sup>10</sup> The board (or board committee) should work with an attorney or accountant to ensure compliance with the Uniform Guidance rules when setting the executive director's compensation.

**CSBG Organizational Standards** of which **Standard 7.6** requires nonprofit CAA boards to review and approve the executive director's compensation within every calendar year and public CAA boards to have access to information about the department head's compensation pursuant to the local government procedures.

**The Head Start Act** and guidance which limits the compensation of Head Start staff whose salaries are paid principally with Head Start funds, i.e., paid at least 50% from Head Start funds. The Act precludes the use of any federal funds to pay any part of the compensation of a Head Start employee principally paid with Head Start funds if that employee's total compensation exceeds the rate payable for federal Executive Level II. Compensation includes "salaries, bonuses, periodic payments, severance pay, the value of any vacation time, the value of a compensatory or paid leave benefit not [explicitly] excluded, and the fair market value of any employee perquisite or benefit not [explicitly] excluded." Explicitly excluded is "any Head Start agency expenditure for a health, medical, life insurance, disability, retirement or any other employee welfare or pension benefit."<sup>11</sup> Moreover, the Head Start Act requires grantees to ensure that compensation paid under the program is comparable to what those performing similar services in the same area are paid or does not exceed what the individual was being paid for performing the same services at his/her most recent prior place of employment.<sup>12</sup> For more information about Head Start wage requirements see the [resources](#) available on the Head Start website.



## VII. EXECUTIVE DIRECTOR SUPERVISION AND EVALUATION

Boards of nonprofit CAAs are tasked with the ongoing responsibility of supervising and evaluating the executive director. Even though public CAA boards may not have the authority to be directly involved with the supervision and evaluation of the executive director, the board should provide the local governing body with recommendations regarding the impact, or lack thereof, that the department head overseeing the CSBG program has had on the success of the program.

### A. Setting Check-in Meetings with the Board Chair

“In a smoothly running organization, the executive director and the board chair are in regular communication...”

In a smoothly running organization, the executive director and the board chair are in regular communication and will often meet or schedule regular calls to discuss new or ongoing concerns. Meeting regularly establishes an opportunity for the board chair to let the executive director know what the executive director is doing well and provide appreciation for his or her daily efforts on behalf of the organization. At the same time, it is a way to spot problems between evaluations, before they become critical. Both parties will find check-ins most rewarding and helpful if comments and

questions are constructive and not defensive. The chair’s feedback would be informed not only by his or her own perspective but also by the thoughts or issues raised by conversations with other board members.

### B. Providing Assistance to the Executive Director

Being an executive director of any organization is a tremendously complex job with many pressures and expectations. If the executive director has been struggling with specific problems such as time management, lack of expertise, or feeling overwhelmed, the board should work with the executive director to help him/her obtain the needed assistance. For most boards, the board chair will be the one to discuss such issues with the executive director and then work with either the full board or a board committee to identify possible solutions such as training in specific subjects, finding an external mentor or considering executive coaching.

### C. Signing the Executive Director’s Timesheet

Federal grant rules do not require the executive director to have someone sign his or her time record. The Uniform Guidance no longer requires a specific type of documentation – such as a personnel activities report (PAR) – to track time spent on different funding sources. Rather, non-federal entities’ records must meet standards that are intended to ensure that each funding source is only bearing the appropriate cost for an employee’s compensation. However, a CAA may choose



to continue using PARs which appear to be an acceptable way to meet the standards set forth in the Uniform Guidance.<sup>13</sup>

Under the prior federal cost principles (i.e., OMB Circular A-122 for nonprofits and A-87 for state, local and tribal governments), either the employee or a supervisor with firsthand knowledge of how the employee spent his or her time would sign the employee's PAR to verify that it is an accurate reflection of that employee's time. Generally, in most CAAs, the executive director will be involved in multiple activities associated with a variety of funding sources and there will be no other employee or board member that will have first-hand knowledge of how he or she spends his or her time on a daily basis. Thus, if a CAA continues to use PARs, the executive director will be in the best position to sign his or her PAR and verify that it accurately reflects the way he or she spent time furthering the purposes of different federal grants.

Additionally, a board ensures that an executive director is spending his or her time furthering the purposes of federal grants in a number of ways including requesting organizational reports from the executive director at board meetings, asking the executive director about goals and programs and delving more deeply into how an executive director spends his or time if tasks are not being accomplished or completed. The board of directors may analyze an executive director's time further when the board conducts an annual review of the executive director's performance.

## D. Reviewing the Executive Director

The executive director is central to the success (or failure) of an organization. One of the board's most critical roles is to perform an annual, written evaluation of the executive director. This evaluation will document both achievements and shortcomings so that the executive director's performance can be improved to benefit the entire organization as well as his/her own personal growth. **Standard 7.4** of the CSBG Organizational Standards recommends for nonprofit CAAs that the board conduct a performance appraisal of the executive director within each calendar year and for public CAAs that the department follows local government procedures for performance appraisals of the department head.

The evaluation of the executive director actually begins when the board and the executive director agree upon goals and objectives for the coming year. Tying these goals to the strategic plan of the organization is a good way to structure a meaningful performance review for the executive director.



The evaluation process often helps align and clarify goals and expectations of the executive director and provides firm support for executive compensation decisions.

Below are some general guidelines for evaluating the executive director; however, it is important to note that the size and complexity of the board and the organization will dictate what procedures and tools are appropriate for the evaluation:

### **Start with a board committee**

The committee could be either a subgroup of the executive, governance or compensation committee (if applicable) or perhaps an ad hoc committee that will handle the logistics, research and written documentation.

### **Decide on an evaluation tool and the criteria for the review**

Many types of evaluation tools are available which range from a checklist of skills and abilities that enable others to “rate” the executive director to more open-ended tools that allow for individual comments. The executive director should also complete a self-assessment of achievements and address areas of concern. After the tool is selected, the executive director and the committee should meet to review the process and the tool.

### **Gather input from a variety of sources**

Include board and staff members, and key partners of the CAA (consider clients, volunteers, donors, community members, etc.) as part of the evaluation. Obtaining input from non-board members may be difficult without anonymity so a board may consider using online surveys that protect confidentiality.

### **Set up a face-to-face evaluation meeting**

When all of the data and comments have been collected and discussed by the evaluation committee, it may be best for either the board chair, or the chair and one other committee member, to meet with the executive director to discuss both the board’s evaluation and the executive director’s self-assessment. Such a meeting would typically cover the executive director’s achievements, the areas where he/she might need improvement, and the planned goals for the executive director to focus on in the coming year. It is also a good opportunity to discuss professional development goals for the executive director. If compensation is discussed, the committee should keep a record of that discussion.

### **Create a written review and summary**

Documentation is important because it serves as point of reference for the board and executive director with respect to those areas where the executive director has been successful as well as those where he/she can improve performance. Moreover, if done properly, documentation serves to protect the organization from future employment liability claims.

## VIII. CONCLUSION

The board and executive director relationship will always be a “work-in-progress” that is constantly evolving in hopefully healthy and sustainable ways. While this Guide addresses points about board and executive director relationships that are unique to CAAs, many applicable resources exist to help boards and executive directors nurture and grow their working relationships. A few other websites and resources that CAA boards and executive directors may find particularly helpful include:

- [BoardSource](#)
- [Bridgespan](#)
- [The Invisible Yellow Line: Clarifying Nonprofit Board and Staff Roles](#)  
by Jean Block

As always, we encourage CAA boards and executive directors to continue contacting CAPLAW and the national Community Action Partnership with governance questions and concerns. Both organizations serve as national training and technical service providers for CAAs with the goal of helping CAAs maintain compliance and develop in innovative and financially viable ways.

# ENDNOTES

<sup>1</sup> [45 C.F.R. § 75.327\(c\)](#).

<sup>2</sup> [45 C.F.R. § 75.327\(c\)](#); [2 C.F.R. § 200.318\(c\)](#).

<sup>3</sup> [45 C.F.R. § 75.501](#); [2 C.F.R. § 200.501](#).

<sup>4</sup> [45 C.F.R. § 75.431\(i\)](#); [2 C.F.R. § 200.431\(i\)](#).

<sup>5</sup> South Central Florida Health Systems Council, Inc., DAB No. 488 (1983); see also Alcoholism Center for Women, DAB No. 222 (1981) and Health Systems Agency of Western New York, DAB No. 221 (1981).

<sup>6</sup> Alcoholism Center for Women, DAB No. 222 (1981); South Central Florida Health Systems Council, Inc., DAB No. 488 (1983).

<sup>7</sup> Alcoholism Center for Women, DAB No. 222; South Central Florida Health Systems Council, DAB No. 488.

<sup>8</sup> Consolidated and Further Continuing Appropriations Act 2015, 113 P.L. 235; 113 H.R. 83, Division G, Title II, Sec. 203.

<sup>9</sup> [45 C.F.R. § 75.430\(b\)](#); [2 C.F.R. § 200.430\(b\)](#).

<sup>10</sup> [45 C.F.R. § 75.431](#); [2 C.F.R. § 200.431](#).

<sup>11</sup> 42 U.S.C. § 9848 (b); [ACF-PI-HS-06-01 Office of Head Start Policy clarifications on Hiring of key staff and Board approval of refunding proposals and Quality Improvement Plans \(QIPS\)](#).

<sup>12</sup> 42 U.S.C. § 9848(a).

<sup>13</sup> [45 C.F.R. § 75.430 \(i\)](#); [2 C.F.R. § 200.430\(i\)](#).