

## **Information Memorandum 82 – Tripartite Boards**

**BACKGROUND:** Since 1968, local community action agencies have been required to have tripartite governing boards to gain and retain designation as eligible entities and to receive CSBG funding. Effective tripartite boards reflect and promote the unique anti-poverty leadership, action, and mobilization responsibilities assigned by law to community action agencies. Boards are responsible for assuring that agencies continue to assess and respond to the causes and conditions of poverty in their community, achieve anticipated family and community outcomes, and remain administratively and fiscally sound.

The nature of poverty and our nation's response to it continues to evolve. Many community action agencies are in the process of passing the baton to a new generation of leaders. This Information Memorandum restates and amplifies how tripartite boards help preserve community action focus, effectiveness, and accountability in these changing times.

### **Questions and Responses**

The following questions and Office of Community Services (OCS) responses convey important information about the roles and responsibilities of tripartite boards as required by statute and suggestions on how State CSBG authorities, State community action associations, and local agency officials can help assure that boards function effectively.

#### ***Question 1 - What does the law require?***

##### *Roles and Responsibilities of Tripartite Boards*

Sections 676B of the Community Services Block Grant Reauthorization Act of 1998 requires that, as a condition of designation, private nonprofit entities and public organizations administer their CSBG program through tripartite boards that "fully participate in the development, planning, implementation, and evaluation of the program to serve low-income communities."

##### *Board Composition*

- **Low-Income Individuals and Families**

For private nonprofit entities, a minimum of one-third of tripartite board membership must be democratically selected representatives of low-income individuals and families who reside in the geographic area being served by the agency.

For public organizations, such as city, county, or town governments, the law also requires that a minimum of one-third of tripartite board membership be comprised of representatives of low income individuals and families who reside in areas served. The statute allows public

organizations to utilize State-specified mechanisms other than tripartite boards that "assure decision-making and participation by low-income individuals in the development, planning, implementation, and evaluation of programs..."

OCS does not recommend including in this community representation category for either public or private agency boards individuals who provide services or supports to low-income residents but who are neither low-income or residents of the agency's service area. Such individuals may qualify for board membership as representatives of another board category -- "major groups or interests in the community."

- Elected Officials or Their Representatives

One-third must be elected officials, holding office at their time of selection, or their representatives. If a sufficient number of elected officials or their representatives are not available to serve, appointive public officials or their representatives may take the place of elected officials.

- Major Groups and Interests in the Community Served

The remaining board members must be chosen from "business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served."

***Question 2 - Who appoints members to a tripartite board?***

The law states that members of tripartite boards "shall be selected by the entity" in accord with the conditions described above. States must assure that local agencies comply with Federal statute and any applicable State statutes, and that the bylaws of tripartite boards reflect and advance statutory requirements.

***Question 3 - Are term limits permissible?***

The CSBG statute is silent on term limits. However, many CAAs find term limits helpful to keep boards revitalized and current. Community action agencies may impose such limits through their own bylaws if they wish.

To achieve the purposes intended by statute for each of the three components of agency boards, State and local agencies are encouraged to consider the following term limit considerations:

*Representatives of Low-Income Individuals and Families*

The statute requires that representatives of low-income individuals and families be "chosen in accordance with democratic selection procedures." The implicit intent of this requirement is to insure that those who *currently* live in areas served by the agency are represented so that they

have a strong voice in agency governance and direction and are able to convey to those they represent the presence and significance of community action in their lives. And, because some programs within community action agencies, especially Head Start, also require governance involving families being served, overall agency coordination and communications across programs are further enhanced when a few (one or two) members of Head Start Policy Councils serve on agency tripartite boards. The Head Start regulations require that the Policy Council and the Board cannot have identical membership, so this must be observed.

Every effort should be made by eligible entities to assure that board members representing low-income individuals and families:

- Have been selected on the basis of some form of democratic procedure either directly through election, public forum, or, if not possible, through a similar democratic process such as election to a position of responsibility in another significant service or community organization such as a school PTA, a faith-based organization leadership group; or an advisory board/governing council to another low-income service provider;
- Are truly representative of *current* residents of the geographic area to be served, including racial and ethnic composition, as determined by periodic selection or reselection by the community. Being *current* should be based on the recent or annual demographics changes as documented in the needs/ community assessment. This does not preclude extended service of low-income community representatives on boards, but does suggest that continued board participation of longer term members be revalidated from and kept current through some form of democratic process and the assessment of community changes. Ultimately, it is the responsibility of the State to assure that agencies uphold both the letter and intent of the law governing appointment of low-income community representatives to tripartite boards. Particular attention should be paid to the two conditions described above.

#### *Elected Public Officials or their Representatives*

The overarching purposes for having elected officials serve on tripartite boards are to encourage awareness of poverty needs within the community and action by local governments, and to foster close coordination and partnership between public agencies and the eligible entities. State CSBG lead agencies, State community action associations, and local agency officials should ensure that the nature and number of public officials serving on each agency board supports and promotes these goals. The statute requires that elected public officials must be "holding office on the date of selection" to a tripartite board. The statute does not identify which public officials ought to serve on the tripartite board. The statute allows public officials (elected, or if necessary, appointed) to name someone to represent them on the board. Again, while the statute does not set term limits for this category of board membership, the spirit of the law, that local governments participate in agency oversight and governance, suggests that:

- Elected officials serve on boards in this capacity only while they are in office.

Similarly, individuals designed by elected or appointed officials to represent them on boards serve only while their principals are in office or are re-designated by those in office. Agencies are responsible for making sure that this category of board membership remains current through such procedures as prompt notification of newly elected or currently elected public officials of the opportunity for board service or representation, and timely replacement of board members (or their representatives) who no longer hold public office.

Local agencies that wish to extend the board service of either formerly elected officials or their representatives may choose to appoint them as representatives of "major groups and interests in the community."

#### Representatives of Major Groups and Interests in the Community

While the statute does not set term limits for these board members, their role is to reflect and involve key interests and resources within the community to guide agency actions and outcomes. For this category, agencies should strive to assure that:

- Groups and interests with current influence or resources deemed critical to the success of the agency are represented.
- Members are empowered by their organizations to participate in board activities and play a role in agency outcomes.

#### **Question 4 - What does "fully participate in the development, planning, implementation, and evaluation of the program" mean?**

Tripartite boards are responsible for oversight and governance of community action agencies:

#### **Development**

As the designated anti-poverty-agencies within their community, both public and private eligible entities are required to conduct periodic needs assessments of the causes and conditions of poverty within their service area and to decide what role, or mission, the agency will assume relative to other community organizations and resources, in addressing those needs.

Tripartite boards are key players in the developmental processes described above:

- Needs Assessment -- Board members, especially those that live in communities to be served and that represent low-income people, ought to be a primary source of information and insight concerning the conditions in their neighborhoods. Representatives of low-income families can

help fashion agency outreach and communication strategies, on an ongoing basis, to assure that agency staff and programs are responsive to changing community needs and conditions. Board members that represent elected officials, and other community groups and interests, all bring critical information and perspective to the needs assessment process. Elected officials or their representatives can commission or make available government-sponsored studies of local economic, social, educational, and key conditions that affect poverty. Business, labor, religious, and other community group representatives offer similar information from the private sector and access to short-term and longer-range service and resource assessments and/or development plans that may impact the nature or extent of poverty in the community.

- **Clarifying Agency Mission** -- The way each community action agency perceives its role, or mission, is central to what they do and how they assess their effectiveness. Tripartite boards, if correctly constituted, provide an agency with a broadly-based, in-house, panel of "experts" on most aspects of community need, resources, and opportunities. Their expertise should help inform agency leadership and staff concerning the role(s) community action should and could play to reduce poverty vis-a.-vis other public and private programs and initiatives. Creating or reviewing mission statements can provide a focus for collaborative strategic planning among board members and agency leadership and staff, and a foundation for meaningful board oversight of agency operations and effectiveness.

## **Planning**

Tripartite boards are important participants in agency annual and longer-range planning activities. Specifically, individual members of the board, and the board as a whole, ought to contribute to, and benefit from, various aspects of program planning:

- **Long-range Strategic Planning**- For those CSBG entities that are 501(c)(3) non-profit agencies, tripartite boards are ultimately responsible for the overall direction, conduct, and effectiveness of agency programs and activities. Public agency boards are "advisory" and are intended to guide public officials that manage their agencies, both elected and appointed, with information and advice on how to reduce poverty within the geographic area being served. As such, participation of boards is essential in strategic planning discussions of how the mission of the agency is to be accomplished through its programs and activities, and how the agency will determine what constitutes its "success." Tripartite boards should be encouraged to help the agency: a) identify broad goals and results it hopes to achieve through its work among low-income individuals and families, and within the community being served; b) mobilize and array programs and activities, both within and outside the agency, to achieve those goals and results; and c) establish and maintain procedures for gathering and presenting information on goals and results for agency and board use.

- **Annual Planning** - Tripartite boards of both public and private entities should participate in the identification of what the agency hopes to accomplish each year and to help the agency

establish specific performance expectations, in terms of both the nature and number of improvements to be achieved among low-income people and within the community, to guide agency programs and activities. Milestones, or intermediate steps toward achieving the ultimate results, ought to be identified by agency staff so that board members will be able to track progress throughout the year. In addition, boards are encouraged to identify possible ways to strengthen agency operations, including needed staff or facility enhancements, and to identify specific results it expects to be achieved. Boards may choose to utilize annual agency performance expectations, or anticipated program results, as important components of annual performance plans and compensation agreements they negotiate with the agency's executive director and other key staff.

### **Implementation**

Because members of tripartite boards have "fiduciary" responsibility for the overall operation of private, non-profit community action agencies and statutorily described "advisory" responsibilities in public agencies, members are expected to carry out their duties as any "reasonably prudent person" would do. At a minimum, CAPLAW suggests that this would require:

1. Regular attendance at board and committee meetings;
2. Thorough familiarity with core agency information, such as the agency's bylaws, articles of incorporation, sources of funding, agency goals and programs, Federal and State CSBG statutes;
3. Careful review of materials provided to board members;
4. Decision-making based on sufficient information;
5. Ensuring that proper fiscal systems and controls, as well as a legal compliance system, are in place; and
6. Knowledge of all major actions taken by the agency.

Two aspects of the requirements described by CAPLAW above warrant further discussion – board oversight of agency programs and board oversight of fiscal controls:

- Agency Program Implementation - Boards are encouraged to stay informed of agency programs and activities throughout the year, and to receive periodic reports from agency staff that focus on progress toward achieving milestones and ultimate results among clients and communities being served. Timely board awareness of program implementation progress allows for possible reassessment of performance expectations or program realignments should the need arise.

Board members are also encouraged to help the agency establish and maintain working relationships, or partnerships, with other public and private agencies and programs in the community that can help achieve community action results. For example:

1. Members that are either elected officials or that represent elected officials may identify public resources and programs that could contribute to client or community outcomes and facilitate communication and coordination between the community action agency and the public program;
2. Members that represent critical community interests, such as commercial or financial institutions, may help identify possible sources of support for the agency's low-income clients, including employment opportunities, asset formation assistance, or access to other financial services;
3. All members of the tripartite board may be enlisted in an agency's advocacy efforts to increase or preserve needed services and programs in the community that support greater self-sufficiency among low-income families.

- Fiscal Controls - Because tripartite boards of private, non-profit agencies are ultimately

responsible for assuring that agency funds are spent and accounted for in accord with all applicable Federal, State, and local statutes and regulations, boards must make sure that fiscal controls and procedures are put in place and maintained by the agency that provide for:

1. Trained and qualified staff to manage fiscal accounts and records of the agency on a day-to-day basis;
2. Commonly accepted financial procedures for transactions, recordkeeping, and reporting such as those required by the CSBG Act, Part 74 of the Code of Federal Regulations, and OMB Circular 133;
3. Frequent reports to the board by agency fiscal staff on overall agency fiscal status, procedures, practices, and transactions;
4. Required board review and prior approval of all "substantial" agency fiscal transactions or commitments, as defined by statute or agency bylaws; and
5. Audits and audit reports to the board by a CPA firm independent of board member or agency staff association.

## **Evaluation**

As indicated, tripartite boards of both public and private agencies are encouraged to focus their attention on results in all phases of agency program activity, including program development, planning, implementation, and especially evaluation. Boards should request, and be provided with, information concerning actual changes or improvements that have occurred among clients and community as a result of agency assistance. To determine the relative "success" of the agency, its staff and programs, boards may compare the nature and level of these outcomes with performance expectations, or targets, which were developed during the agency's planning cycle.

Outcome or performance-focused information from one year can inform and strengthen program planning by the agency and its board in subsequent years.

### **Question 5 - What kind of training should board members receive?**

Board members need to be trained to carry out both the legal, or fiduciary, aspects of their service and their leadership responsibilities to help guide the agency toward "success."

At a minimum, it is recommended that board training cover the following topics:

#### **• Fiduciary Responsibilities**

1. Orientation to statutory and regulatory requirements (CSBG Act, other Federal, State or local statutes and regulations, including non-profit board requirements;
2. Agency articles of incorporation, bylaws, etc.
3. Overview of Board functioning - appointment, representation, meetings, committees, conflict of interest policy, relationship to executive director and staff, etc.
4. Role and Responsibilities of the Executive Director
5. Role and Responsibilities of the Board regarding the employment, retention, and compensation of the Executive Director and key agency staff
6. Overview of agency administration and financial management policies and procedures - oversight role and responsibilities of the board
7. Orientation to, and how to oversee, agency mission, long-range and annual plans
8. Orientation to, and how to oversee, agency programs and services
9. Orientation to, and how to oversee, agency evaluation and reporting policies and procedures - role of the board in program and personnel performance evaluation.

#### **• Agency Leadership - Board Roles and Responsibilities**

##### Results Oriented Management

1. Agency Development -
  - o Needs Assessment-
  - o Agency Mission determination -
2. Agency Planning
  - o Strategic Long-Range Planning
  - o Annual Planning - performance expectations and targets
  - o Forming Partnerships with other resources in the community
3. Program Implementation -
  - o Tracking of Milestones, interim performance results and reports
  - o Making mid-course corrections to improve performance

## Results Oriented Accountability

### 4. Evaluation - (Results Oriented Accountability)

- o Result-Focused Evaluation - clients and community
- o Results-Focused Evaluation - agency and staff
- o Using Information for Planning
- o Using Information for Additional Funding and Advocacy

Note: In rural areas or where transportation is challenging, teleconference calls and other technological devices have assisted board communication.

Question 6 - What constitutes "conflicts of loyalty or interest" among board members and how best should they be avoided.

Individuals serve on tripartite boards first and foremost to advance the interests of the agency, its clients, and the community. They do not serve to advance their own interests and have a "duty of loyalty" to the agency. But, the very nature of the tripartite board, which calls for the representation of, and expected outreach to, various sectors of the community, creates possible situations in which distinctions of "loyalty" or "interest" need to be kept very clear and unambiguous.

To safeguard against situations in which the loyalty, interest, or intent, of board member action may be questionable, the following minimum conflict of interest practices are recommended:

- **Have a clear, written policy**

Each agency should have a clear, written policy concerning conflicts of loyalty or interest among board members and agency staff that describes in detail:

1. Full disclosure of financial interest requirements for all board members and staff;
2. Conditions and procedural requirements for board member and/or staff withdrawal from any action for which a real or potential conflict of interest might exist;
3. "Transparency" and full record keeping of all board or agency financial decisions or actions and the parties involved in the decisions or actions;
4. Policies and procedures for selective (i.e. meet a certain threshold of expenditure or financial commitment) "independent" prior review of actions or decisions that may pose potential conflict of interest issues.

- **Avoid situations that advantage board member interests or the appearance of advantage**

As indicated, the very nature of tripartite representation on boards creates potential conflict of loyalty or interest situations in which board members help the agency establish linkages with public and private community resources and services. Often, this outreach may result in

financial arrangements or contracts involving expenditure of agency funds. In addition, board members have "inside" knowledge of agency activities and operations, including current and future employment opportunities within the agency. To avoid situations in which a conflict of interest or loyalty would occur, or the appearance of such a conflict, the following is recommended:

1. Competitive bidding procedures should be used for large financial transaction situations in which a board member or agency staff member has an interest in, or relationship to, one or more providers of the needed goods or services. If such a potential is unclear, the agency and its board should refer the issue to a pre-identified "independent" conflict of interest consultant or group for a determination. For smaller transactions that may involve board or staff member interests, a process involving collection of comparable quotes, prices, or salaries may suffice.

2. If, after a competitive process, a provider with ties to a board member(s) or staff is selected to enter into a financial arrangement with the agency, the affected board member(s) and staff must disassociate themselves from participating in any decisions regarding the conduct of the financial relationship. Neither board member(s) nor staff may benefit personally, in any way, from the financial relationship between the agency and the provider with which they have a connection.

3. Board membership should not be used as a "stepping stone" to agency employment. Board members should not seek or receive employment from the agency in any part- time or full time capacity during their service on the board. Board members wishing to be considered for employment ought to resign their position and wait a reasonable period of time before applying for a paid position within the agency. This waiting period is recommended to avoid both the actuality and appearance of undue advantage board membership affords in the hiring of agency management and staff.

4. Board members and their families should not enjoy any financial gain from their position, including receipt of salary, goods or special services for their board participation. Board members may be reimbursed for expenses associated with board service, such as incidental costs of supplies, or mileage, per diem, and lodging expenses incurred while attending out of town conferences or training approved by the entire board.

5. Agencies and boards should err on the side of caution in all matters that might create or appear to be a conflict of interest. They should use the proverbial "smell test" in all potentially questionable conflict of interest situations and call upon independent, outside counsel, both legal and ethical, to screen plans before action.

It should be noted that board members, especially those that represent low-income individuals or families, are not excluded from being clients of the agency and receiving program services

for which they are eligible. These board members should not receive preferential treatment in the nature or timing of such services.

Question 7- What is the best relationship between a tripartite board and the agency executive director?

The best relationship between a tripartite board and the agency executive director is one that advances the work of the agency in achieving results, or improvements, in the lives of low-income people and the community in which they live.

That said, there are organizational and functional issues that have prompted this question from a number of locations around the country over the past few years. While situations vary from agency to agency, and community to community, the following general principles are offered to promote strong, focused, and effective working relationships between tripartite boards and agency executive directors:

- **Boards Establish Policy, Executive Directors Execute Policy**

Tripartite boards are responsible for establishing and approving policies that govern all aspects of agency operations, including agency and board bylaws, administrative and fiscal control policies, and personnel policies. Executive directors are responsible to assuring that the board established policies are carried out by the agency, and for providing information to the board on the execution of its policies as requested by the board. In many agencies, boards work with the executive director and agency staff collaboratively to develop agency policies and procedures, but the ultimate responsibility for promulgating such policies remains with the board.

- **Boards Set Agency Mission, Executive Directors Accomplish Agency Mission**

Boards are responsible for determining the overall mission, or direction, of the agency taking into account the needs of the community and the relative anti-poverty role played by the agency vis-à-vis other programs and resources in the community. Executive directors are responsible for providing the necessary information and assistance to the board that will help them determine the overall mission or direction of the agency, and for organizing the agency's programs and services in such a way that will best accomplish the mission. Again, in many communities, boards and executive directors (and agency staff) work collaboratively to both set the agency's mission and organize programs and services toward that end.

- **Boards Set Performance Targets, Executive Directors Guide Work to Achieve Targets**

Ideally, tripartite boards will officially approve annual performance targets, or outcomes they expect the agency to achieve among low-income families and the community. In most cases, these performance targets will be in the form of recommendations from the agency's executive

director developed ideally in concert with the board, agency staff, and key community partners. How the agency organizes and operates services and programs to achieve these board-approved performance targets is the responsibility of the executive director and the staff of the agency. Boards, therefore, should not routinely be involved in the day-to-day manner in which services are provided, but should pay particular attention to following the consequences, or results of agency programs as they unfold and are reported throughout the year.

- **Boards and Executive Directors Evaluate Agency Performance, Both are Accountable**

Based on reports of results generated by the agency, boards are ultimately responsible for deciding whether or not the agency and the executive director have been "successful" in accomplishing the mission of the agency. Boards are encouraged to focus on client and community results as a major factor in evaluating the work of the agency, its executive director, and staff. Indeed, such results may point to institutional needs, such as staff enhancement and training or program revisions, which may improve performance in subsequent years.

- **Boards Supervise Directly Only One Employee - the Executive Director**

One of the most important concepts conveyed by agencies that have well-functioning relationships between their tripartite board and executive director is, "Boards supervise directly only one employee - the Executive Director."

This concept embodies the notion that board and agency staff functions are indeed separate, but they are joined through the relationship between the board and the one person they must hold accountable for the work of everyone else -- the executive director. This clearly means the boards must hold the executive director responsible for the activities of the agency. The board should appraise the executive director's performance on an ongoing basis, but at a minimum, the board should have a complete appraisal annually. Adopting this concept of "one employee" enables boards to refrain from bypassing their agency's executive director to provide day-to-day instructions to agency staff (what many call "micromanaging"). But, it must be clear that the concept should not protect an executive director from gaining too much authority over all aspects of agency policy and operations by assuming roles and functions that clearly reside with the tripartite board.

The concept is not intended to diminish or distort the fiduciary responsibility of tripartite boards of private, non-profit agencies to oversee the overall functioning of their agency and the cumulative work of agency staff.

When a tripartite board is faced with the responsibility of recruiting and hiring a new executive director for their agency, members may set whatever criteria they deem appropriate. Boards are encouraged to seek out and employ a leader capable of:

1. Working cooperatively with the board to assure there is on-going consensus concerning the agency's antipoverty purpose, or mission, among board members, agency staff, and the broader community;
2. Mobilizing and coordinating programs and services both within and outside the agency toward accomplishing this mission;
3. Serving as a key community leader and advocate for the preservation and expansion of opportunities to assist low-income individuals and neighborhoods move out of poverty;
4. Achieving strong administration and fiscal control over agency resources; and
5. Employing performance-based management concepts embodied in Results Oriented Management and Accountability (ROMA) as the framework for relating to the board, and for all aspects of agency operations including program planning, resource allocation, service provision, program and staff evaluations.

**Question 8 - How can State CSBG agencies and State Community Action Associations advance the effectiveness of tripartite boards?**

At a minimum, OCS recommends that State CSBG agencies and State community action associations work together to assure that:

- **All board members receive timely and continuous training.**

OCS has funded the development of a number of board training curricula that are now available upon request and that contain many of the elements of effective training described in this Information Memorandum. For information on these training materials, please contact: