Agenda

- Legal Requirements Governing Tripartite Boards
- A Few Brief Points About How a Board of Directors Operates
- Role of the Tripartite Board
- Key Responsibilities of the Tripartite Board
Legal Requirements Governing Tripartite Boards

Legal Requirements

- Federal CSBG Act, block grant regulation, guidance
- Other Federal/state funding requirements
- CSBG grant agreement/contract with state
- State CSBG statute, regs, policies
- Federal CSBG Act, block grant regulation, guidance
- Nonprofit CAA’s Articles of Incorporation & Bylaws
- State Nonprofit Corporation Act
- Other Federal/state funding requirements

CAA Boards
State Nonprofit Corporation Act

- Generally, sets minimum standards of compliance and “default rules.” True or False
  - For example, may establish vote requirements for certain actions; removal provisions; committee composition requirements, etc.

- Articles filed and bylaws created pursuant to the Act
  - If provisions of articles or bylaws are not consistent with the Act then have no legal effect

Articles and Bylaws

- Articles should contain as much, if not more, information as the bylaws. True or False
  - If provisions in the bylaws and articles conflict, the articles will control so review together if amending them

- Bylaws establish the ways in which the CAA will operate

- Reflect funding source governance requirements
  - Ex., CSBG tripartite board composition and responsibilities; Head Start board composition, responsibilities and conflicts of interest requirements
Federal CSBG Act

- The tripartite board composition is a suggested practice and not required by the federal CSBG Act. True or False

- Requires tripartite board to be fully engaged in the development, planning, implementation and evaluation. 42 U.S.C. § 9910

Tripartite Composition Resources

www.caplaw.org
HHS Block Grant Regulations

- HHS block grant regulations establish that the federal government will generally defer to a state’s interpretation of the federal CSBG Act. True or False

- Apply to all block grants issued by the U.S. Department of Health and Human Services (HHS)

- 45 C.F.R. Part 96
  - Subpart I specifically applies to CSBG funding

OCS Guidance

- Guidance issued by the federal Office of Community Services (OCS) in the form of Information Memoranda (IMs) may create new legal requirements that are automatically binding on CAAs. True or False

- OCS IM 82 provides guidance to tripartite boards regarding
  - Composition requirements
  - Role and responsibilities
State CSBG Act and Regulations

- CAAs must maintain compliance with state CSBG statutes and regulations, if they exist. True or False
- May contain board requirements
  - Ex., terms and/or term limits, residency
- CSBG Organizational Standards
  - Standards from OCS IM #138
  - Some standards specifically address board composition and responsibilities

CSBG Organizational Standards Resources

www.communityactionpartnership.com and www.caplaw.org
CSBG Grant Agreement/Contract

- CSBG grant agreements/contracts are usually non-negotiable. True or False

- Contract/agreement should include citations or references to the state and federal CSBG requirements that apply to the board
  - Ex., tripartite composition requirement as set forth in the federal and, if exist, state CSBG laws

Other Funding Source Requirements

- Federal CSBG Act governance requirements will override other federal funding source governance conference if the two conflict. True or False

- Examples of other funding sources with governance requirements:
  - Head Start board composition, conflicts of interest and specific responsibilities
  - Community Housing Development Organization (CHDO) board composition
A Few Brief Points About How a Board of Directors Operates

Scenario One

Even though CAA board member Shelia is really proud of all the amazing work the CAA does in the community, she recently became concerned about employee wages at the CAA. After reading an article in the local newspaper about nonprofit employees facing the same financial challenges as the clients they serve, Shelia contacted the CAA’s Human Resources Coordinator and asked to see the salaries for all CAA employees.

Do you agree with Shelia’s approach? Why or Why not?
The board acts only as a body
  - Opportunity for group discussion and deliberation is important

Sole employee of the board is the executive director

Individual board members only act on behalf of the board:
  - When authorized by the full board to do so AND
    - Officers, committees
  - Typically, via the executive director
    - Caveat: a few exceptions exist
Board Member/ Staff Contact

**EXAMPLES**

**Direct Contact**

1. Coordinate board meeting logistics with staff admin

2. Staff liaison assists with board committee business

3. Seek staff input on ED evaluation

4. Reports of fraud, misuse of resources, discrimination or harassment involving the ED

**Via the ED**

1. Coordinate board meeting logistics with staff admin

2. Staff liaison assists with board committee business

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**Scenario Two**

Tony has been on the board for two years and loves it! His fellow board members are very personable and friendly but Tony is continually confused about the vote that is required to take actions as well as the number of meetings board members are required to attend.

**What should Tony do?**
Board Operational Guide

- Bylaws serve as an organization's operational guide
- See bylaws for information about:
  - Board member composition
  - Meeting frequency, notice
  - Officers
  - Committees
  - Votes, quorum
  - And more.

Bylaws

Article I
Thou shalt read the bylaws.

Board Committees: True or False

A. An executive committee may have authority to act on behalf of the full board. T or F
B. Most board decisions may be made in the executive committee and reported to full board. T or F
C. Boards may use both standing and ad hoc committees. T or F
D. Committees that solely make recommendations do not need to take minutes or record meetings. T or F
E. Board approval is not required to seat either board members or non-members on committees. T or F
Board Committees

- Committee work is essential to smooth and efficient operation of board and CAA
- Most state laws permit board members to rely on information provided by committees
  - But board members must have a reasonable basis for believing that committee is competent source of information
- Regular review of committee structure is recommended

Role of Tripartite Board
Nonprofit Board Members’ Fiduciary Duties

- Duty of Care – Be Diligent
  - Acting with the care of a prudent person in similar circumstances
  - Asking hard questions
  - Reading materials
  - Deliberating the decision

See page 9 of the Toolkit for more on fiduciary duties

Scenario Three

The board is considering whether to begin an afterschool college prep program. Its board chair asks board members, Larry, Marsha, and Devon to review the staff’s preliminary research and make a recommendation to the full board on the program’s potential impact and financial viability.

As a committee, they examine proposed budgets, a needs assessment, staffing and training requirements, and survey data from CAAs with similar programs. They question staff and then prepare a 10-page report for the full board, recommending the program. At its next meeting, following a 90-minute discussion, the board unanimously votes to fund the program.

Unfortunately, after a year, the program is much more expensive than the initial projections and youth participation lower than expected. The board has no choice; it must end the program.
Duty of Care

- Did the board fulfill its duty of care? If yes or no why?
  - Board committee tasks
    - Review mission
    - Review needs assessment
    - Examine proposed budgets
    - Assess staffing and training requirements
    - Collect data from others with similar programs
    - Question staff
    - Prepare report for the full board, with a recommendation
  - Full board:
    - Engages in discussion prior to vote

Nonprofit Board Members’ Fiduciary Duties

- Duty of Loyalty – Be Faithful to CAA
  - Act in good faith and in the best interests of CAA
  - Disclose and avoid conflicts of interest
  - Not engage in self-dealing

See page 9 of the Toolkit for more on fiduciary duties
Scenario Four

- Do any of the following examples present a duty of loyalty dilemma? If yes or no, why?
  
  A. An elected public official board member votes only for programs that support the constituents he represents which make-up 1/3 of the CAA’s service area
  
  B. A private sector board member’s neighbor is a real estate agent and has offered to help the CAA find a new facility for a reduced fee
  
  C. A low-income representative sits on the board of another social service provider that sometimes competes for the same grants the CAA is seeking

Duty of Loyalty

- Conflict of interest policy
  - Protects CAA

- Applicable requirements
  - Funding source requirements
    - Examples: CSBG Organizational Standard 5.6, Head Start Act prohibited financial conflict of interest, Office of Management and Budget (OMB) Uniform Guidance
  - Form 990
Who Does What Around Here?

**Fill in the Action**

<table>
<thead>
<tr>
<th>Responsibility</th>
<th>Board of Directors</th>
<th>Executive Director</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Policy</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Action:</strong> establish, execute</td>
<td>Establishes</td>
<td>Executes</td>
</tr>
<tr>
<td><strong>Org. Mission</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Action:</strong> set, accomplish, review, update</td>
<td>Sets, Reviews, Updates</td>
<td>Accomplishes</td>
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<tr>
<td><strong>Performance Targets</strong></td>
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<tr>
<td><strong>Action:</strong> set, review, guide, work, update</td>
<td>Sets, Reviews, Updates</td>
<td>Guides work to achieve targets</td>
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<tr>
<td><strong>Org. Performance</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Action:</strong> execute, accountable for, evaluate</td>
<td>Evaluates, Accountable for</td>
<td>Executes, Evaluates, Accountable for</td>
</tr>
<tr>
<td><strong>Employees</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Action:</strong> supervise executive director, supervise staff</td>
<td>Supervises executive director only</td>
<td>Supervises staff</td>
</tr>
</tbody>
</table>

**Common Board Missteps**

- Too much grand policy
- Too ceremonial
- Too much deference to the executive director
- Micromanagement

What board actions counter these missteps?
Key Responsibilities of the Tripartite Board

Key Board Responsibilities

- Mission
- Planning
- Engagement
- Revenue
- Performance
- Accountability
Key Board Responsibility

Mission

Know Your Mission Exercise

1. Write down your organization's mission
   - If you don’t know it exactly, write down the gist

2. Briefly describe 3 ways in which your board works with your organization’s mission
   - For example, we discuss it in relation to new proposals or recite it at every meeting

3. Think about 1 way in which your board could better incorporate the CAA’s mission in its board meetings and activities
Why Mission Matters!

- Why do you think mission matters?

- Why mission matters:
  - Provide clarity of purpose to stakeholders
  - Guide major decisions
  - Prevent “mission creep”
Review Mission

- A good mission statement:
  - Is focused
  - Solves unmet needs
  - Leverages unique skills
  - Inspires key stakeholders / is memorable

Update Mission

- Producing an effective mission statement often involves:
  - Commitment from the top
  - Participation by a wide range of stakeholders
  - A well defined revision process
  - Determination of key components
  - Careful crafting – active, concise, specific

Mission Revision Exercise

Your organization has died and at the memorial service for the organization with all of its stakeholders present, a spiritual leader states:

Here lies [fill in the organization’s name]. It is an organization that was loved and will be missed. It will be remembered forever for:______________.

- Dr. Lisa McNary, NCSU

Use Mission

- Ways boards highlight and use the mission:
  - Recite at board meetings
  - Reference in meeting agenda
  - Include on business cards
  - Discuss in relation to all board actions
CSBG Mission Requirements

CSBG Org. Standard 4.1:
- Governing board has reviewed the organization’s mission statement within the past 5 years and assured that: (1) The mission addresses poverty; and (2) The CAA’s programs and services are in alignment with the mission.

CSBG Org. Standard 3.1:
- Organization has conducted a community assessment and issued a report within the past 3 years.

CSBG Org. Standard 3.5:
- Governing board formally accepts the completed community assessment.

Key Board Responsibility

Planning
Engage in Planning

Regular Strategic and Programmatic Reviews

| 5-Year Review (Strategic) | 3-Year Review (Strategic / Community Needs Assessment) | Annual Review (Milestone / Programmatic) | Review at Every Board Meeting (Milestone / Programmatic) |

A Dual Bottom Line: Mission Impact and Financial Return

- High Mission Impact, Low Profitability: Keep it but contain costs
- High Mission Impact, High Profitability: Invest & Grow
- Low Mission Impact, Low Profitability: Close or Give Away
- Low Mission Impact, High Profitability: Water, Harvest, & Increase Impact

Source: Nonprofit Sustainability: Making Strategic Decisions for Financial Viability
CSBG Planning Requirements

**CSBG Org. Standard 6.1:**
- Organization has an agency-wide strategic plan in place that has been approved and accepted by the governing board within the past 5 years.

**CSBG Org. Standard 6.5:**
- Governing board has received update(s) on progress meeting the goals of the strategic plan within the past 12 months.

**CSBG Org. Standard 5.9:**
- Organization’s governing board receives programmatic reports at each regular board meeting.

Key Board Responsibility

Engagement
Engage the Community

- Are we fully engaging and empowering the low-income community?
- Are we effective advocates for the organization and its mission?
- Do we collect and provide input on community needs?
- Are we developing and sustaining strategic partnerships and collaborations?

CSBG Community Engagement Requirements

**Standard 1.1: Nonprofit/Public**
- Org./dept. demonstrates low-income individuals’ participation in its activities.

**Standard 2.1: Nonprofit/Public**
- Org./dept. has documented or demonstrated partnerships across the community, for specifically identified purposes; partnerships include other anti-poverty orgs in the area.

**Standard 2.3: Nonprofit/Public**
- Org/dept. communicates its activities and its results to the community.
Key Board Responsibility

Revenue

Develop Revenue Strategies that Align with Mission

• Ensuring Financial Viability:
  – Work with staff to develop a plan for:
    • Diversifying funding sources
    • Ensuring financial sustainability
  – Oversee implementation of the plan
  – Develop community relationships:
    • Funders
    • Partner organizations
    • Donors
Key Board Responsibility

Performance

Measure and Manage Performance

- Performance measurement: How will we know if we are meeting the community needs we’ve prioritized?
  - What metrics matter?
  - What data will we need to capture?

- Performance management: How can we improve our program outcomes, quality, and cost effectiveness?
CSBG Performance Measurement and Management Requirements

**Standard 1.3: Nonprofit/Public**
- Org./dept. has a systematic approach for collecting, analyzing, and reporting customer satisfaction data to the governing/advisory board.

**Standard 4.4: Nonprofit/Public**
- Governing/advisory board receives an annual update on the success of specific strategies included in the Community Action plan.

**Standard 9.3: Nonprofit/Public**
- Org./dept. has presented to the governing/advisory board for review or action, at least within the past 12 months, an analysis of the agency's outcomes and any operational or strategic program adjustments and improvements identified as necessary.

Key Board Responsibility

Accountability
Ensure Accountability

- Hire, oversee and evaluate CEO
- Cultivate a culture of compliance and ethics
  - Code of ethics, conflict of interest policies
- Policies and procedures to ensure compliance with laws and funding source requirements
- Internal controls
- Policies and procedures for reporting and addressing grievances / misconduct and protecting whistleblowers

Ensure Accountability

- Personnel Policies
- Organization-Wide Risk Assessment
- Organization-wide budget
- Financial Reports
- Audit
- Financial Policies
- Procurement Policy
- Insurance
- Annual filings and public disclosures
EVALUATIONS
The Partnership Wants Your Feedback!

Please be sure to complete the evaluation for this session online, via the CAPCON18 Event App.

Thanks in Advance for your Cooperation!