

# Becoming an Organizational Standard-Bearer

Board Compliance During and After Times of Crisis (Part 1)





**Jonathan Cohen, Esq.**  
jonathan.cohen@caplaw.org



**Caroline F. Kelley, Esq.**  
caroline.kelley@caplaw.org

# Agenda

---

- **Fiduciary duties**
  - Procedures and practices
  - Leadership during crisis
- **Financial viability**
  - Planning
- **Succession**
- **Risk management**

# Poll Question #1

---

Who is here today?

- a) CAA board member (0-3 years)
- b) CAA board member (4+ years)
- c) CAA executive director
- d) CAA staff/leadership
- e) Others

# Poll Question #2

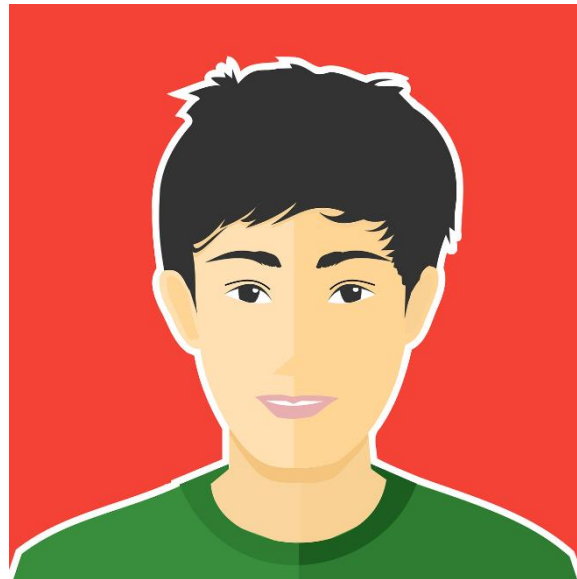
---

During the COVID-19 pandemic, what has your board spent the most time dealing with?

- a) Meetings/logistics
- b) Compliance with bylaws
- c) Membership/recruitment
- d) Program oversight/planning
- e) Financial viability/oversight

# Zoomed Out Zach

Zach has served on CAA's board for 5 years. He had a full plate even before COVID-19 hit, serving on the boards of 2 other nonprofit organizations while teaching middle school. Since CAA's board started conducting virtual meetings, Zach has become significantly less talkative during the meetings. He often appears distracted on the screen. For two meetings in a row now, he has joined more than 15 minutes late.



# Poll Question #3

---

How should CAA's board chair respond to Zach?

- a) Ignore him, it's a difficult time
- b) Initiate board member removal procedures
- c) Communicate with Zach about expectations and duties, even during a pandemic
- d) Consider new ways to conduct board meetings and engage members

# Fiduciary Duties

## Standard 5.5

**Private:** The organization's governing board meets in accordance with the frequency and quorum requirements and fills board vacancies as set out in its bylaws.

**Public:** The department's tripartite board/advisory body meets in accordance with the frequency and quorum requirements and fills board vacancies as set out in its governing documents.

## Standard 5.9

**Private:** The organization's governing board receives programmatic reports at each regular board meeting.

**Public:** The department's tripartite board/advisory body receives programmatic reports at each regular board/advisory meeting.



# Fiduciary Duties

## Duty of Care and Duty of Loyalty

- **Duty of care**

- Acting in a reasonable and informed manner under the given circumstances
- Reasonable person standard
- How have these changed during COVID-19?
  - Board's role vs. management's role
  - Identifying and managing risks

- **Duty of loyalty**

- Putting the CAA's interests above board members' personal interests
- During COVID-19:
  - Continue to enforce conflicts of interest disclosures and procedures
  - Are internal controls sufficient to protect CAA's assets?

# Fiduciary Duties

## Procedures and Practices

### *Ensure Flexibility and Accountability*

- Check bylaws provisions
- Review and update approvals needed for policy changes
- Implement temporary adjustments
- Open all lines of communications
  - Institute more frequent executive director/board chair check-ins
  - Consider other regular updates and check-ins

# Fiduciary Duties

## Procedures and Practices

### *Virtual Board Meetings*

- Do state Open Meeting Laws apply?
  - If so, check emergency procedures for conducting meetings during pandemic, if any
- Do bylaws permit remote meetings via phone or videoconference?
- Do board members have adequate technology to participate in a virtual meeting?

# Fiduciary Duties

## Procedures and Practices

### *Virtual Board Meetings*

- Ensure board continues to meet regularly
  - Consider using dashboard, templates, sending out materials in advance by mail/email
- Challenges to filling vacancies
  - Recruitment
  - Democratic selection procedures
- Open all lines of communications
  - Institute more frequent executive director/board chair check-ins

# Fiduciary Duties

Procedures and Practices

## *Engagement at Virtual Meetings*

- Set tone/culture
- Emphasize pre-meeting work
- Shorten agenda + spread out meetings
- Check-ins to facilitate relationships
- Ask for input throughout
- Invite guests
- Ensure accessible technology + training

# Leadership During Crisis Case Studies




## Leadership During Crisis: Lessons from the COVID-19 Pandemic

### PRO ACTION OF STEUBEN AND YATES, INC. OVERVIEW

<b>Service Area</b>	Steuben and Yates, two rural counties in upstate New York
<b>Main Office Locations</b>	Bath and Penn Yan, New York
<b>Leadership</b>	Laura Rossman, Chief Executive Officer Debbi Deats, Board President
<b>Staff Size</b>	324
<b>Annual Budget</b>	\$16.2 million
<b>Clients Served</b>	13,986 in 2019
<b>Board Size</b>	15
<b>Major Program Areas</b>	<p><b>Resilient Children and Families</b></p> <ul style="list-style-type: none"> <li>Early Childhood Learning and Development</li> <li>Early Head Start</li> <li>Head Start</li> <li>Women, Infants and Children (WIC)</li> <li>Family Literacy and Education</li> <li>Home-Based Services</li> </ul> <p><b>Thriving Seniors</b></p> <ul style="list-style-type: none"> <li>Early Childhood Learning and Development</li> <li>Early Head Start</li> <li>Head Start</li> <li>Women, Infants and Children (WIC)</li> <li>Family Literacy and Education</li> <li>Home-Based Services</li> </ul> <p><b>Prosperous Futures</b></p> <ul style="list-style-type: none"> <li>Adult Literacy Services</li> <li>Youth Empowerment Program</li> <li>American Job Center Network / Workforce NY</li> <li>Senior Community Service &amp; Employment</li> <li>Wheels for Work</li> <li>Child Care</li> </ul> <p><b>Basic Needs Support</b></p> <ul style="list-style-type: none"> <li>LIHEAP</li> <li>WAP</li> <li>Community Action Angels (formerly CHAMP)</li> <li>WIC</li> <li>Food Pantry</li> <li>SNAP Application Assistance</li> <li>Nutrition Classes</li> </ul>





CAPLAW | SEPTEMBER 2020      LEADERSHIP DURING CRISIS: PRO ACTION OF STEUBEN AND YATES, INC. 1

# Leadership During Crisis Case Studies

---

## Pro Action of Steuben and Yates (NY)

- **Open Meetings Law**
  - New York OML does not apply to CAAs
- **Bylaws**
  - Allow for virtual meetings
- **Reports**
- **Engagement**
  - Time-saving adaptations
  - Short videos

# Leadership During Crisis Case Studies

## Northern Kentucky Community Action Commission (KY)

- **Bylaws and Board Meetings**
  - Regular and Special
- **Kentucky Open Meetings Law**
  - 2018 changes and SB 150 in response to COVID
  - Virtual meetings allowed
  - Notifications on website
- **Culture of communication and transparency**
- **Use of technology**
  - Identifying necessary changes
  - Establishing virtual capabilities
  - Electronic board packets and minutes



# Financial Viability

## Planning

### **Standard 4.2**

**Private:** The organization's Community Action plan is outcome-based, anti-poverty focused, and ties directly to the community assessment.

**Public:** The department's Community Action plan is outcome-based, anti-poverty focused, and ties directly to the community assessment.

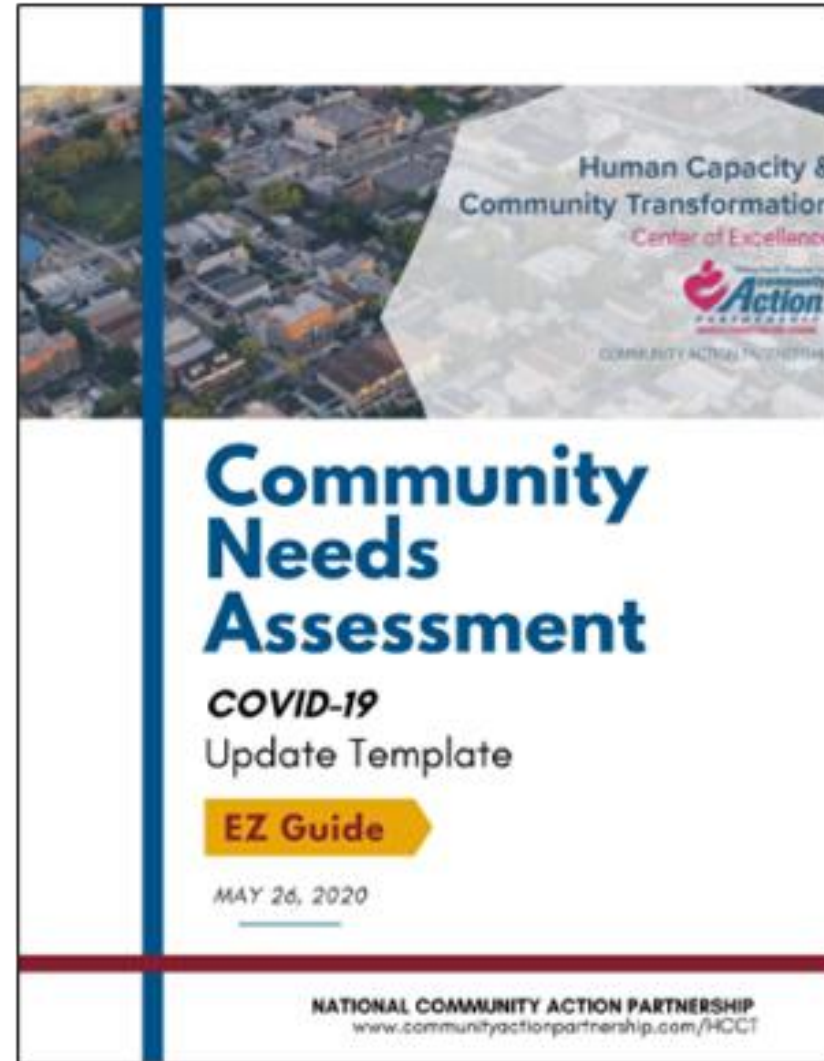
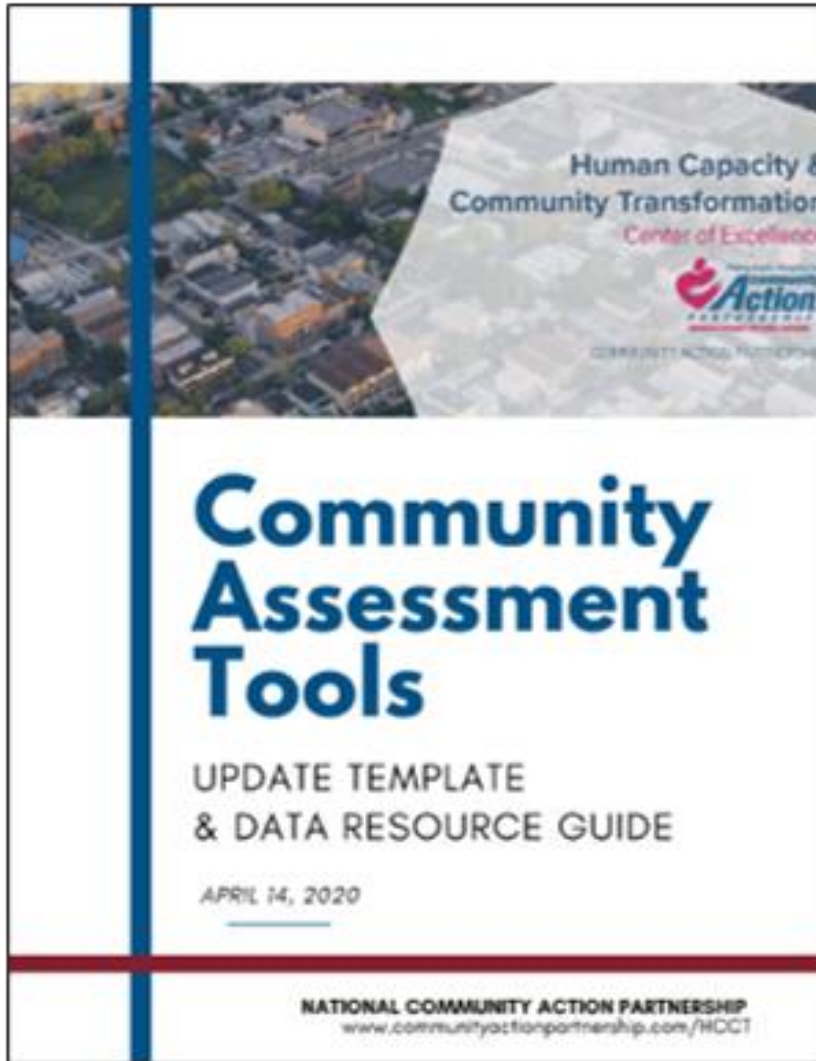
### **Standard 4.4**

**Private:** The governing board receives an annual update on the success of specific strategies included in the Community Action plan.

**Public:** The tripartite board/advisory body receives an annual update on the success of specific strategies included in the Community Action plan.

# Financial Viability

## Planning



# Financial Viability

---

## Planning

- Why is the Community Action Plan important?
  - Impacts cost allowability
  - Ties day-to-day decisions to mission and needs
  - Engages stakeholders
  - Invitation to be creative and innovative

# Financial Viability

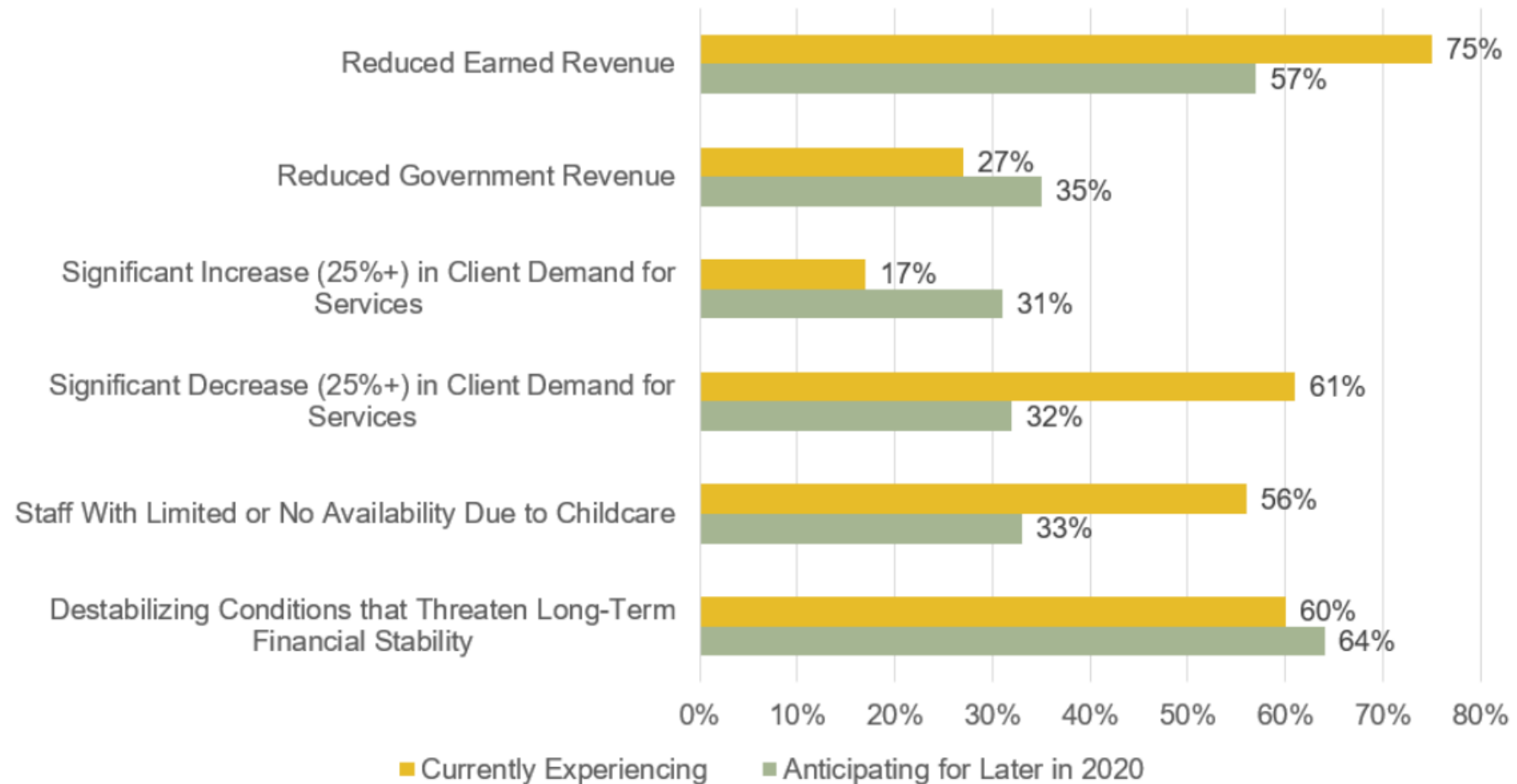
## Planning

- Assess organization's current financial situation
  - Changes in expected revenue
  - Expenses
  - Cash management (routine + emergency)
  - Financial monitoring processes
- Plan for various financial scenarios
  - Best, worst, and expected cases
  - Use data + prior experience
  - Focus on things that your CAA can control

# Financial Viability

## Planning

### Nonprofit Finance Fund – COVID-19 Survey Results



# Financial Viability

## Planning

ORGANIZATION NAME		BUDGET SCENARIO TOOL							Priority To-Do's
		Budget Approved	Actuals As of DATE	Reforecast Base Case	Budget/Reforecast Assumption	Scenario A	Budget Assumption Ex: Best Case	Scenario B	
Budget SCENARIO Year: 2020									
<b>OPERATING BUDGET</b>									
<b>EARNED REVENUE</b>									
Example: Program fees		-	-	-	-	-	-	-	
Earned income		-	-	-	-	-	-	-	
Earned income		-	-	-	-	-	-	-	
Earned income		-	-	-	-	-	-	-	
<b>Total earned income</b>		-	-	-	-	-	-	-	
<b>CONTRIBUTED REVENUE</b>									
Example: Foundation revenue		-	-	-	-	-	-	-	
Contributed revenue		-	-	-	-	-	-	-	
Contributed revenue		-	-	-	-	-	-	-	
Contributed revenue		-	-	-	-	-	-	-	
Contributed revenue		-	-	-	-	-	-	-	
Contributed revenue		-	-	-	-	-	-	-	
<b>Total contributed revenue</b>		-	-	-	-	-	-	-	
<b>TOTAL OPERATING REVENUE</b>		-	-	-	-	-	-	-	
<b>EXPENSES</b>									
Staff salary & benefit		-	-	-	-	-	-	-	
Staff salary & benefit		-	-	-	-	-	-	-	
Staff salary & benefit		-	-	-	-	-	-	-	
Staff salary & benefit		-	-	-	-	-	-	-	
Staff salary & benefit		-	-	-	-	-	-	-	
Staff salary & benefit		-	-	-	-	-	-	-	
<b>Total salary &amp; benefits</b>		-	-	-	-	-	-	-	

**Nonprofit Finance Fund – Budget Scenario Planning Template**  
<https://nff.org/file/1031/download?token=6l67-K9c>  
 (Video tutorial: <https://vimeo.com/404998677/ebdc480326>)



# Succession

## Standard 4.5

**Private:** The organization has a written succession plan in place for the CEO/ED, approved by the governing board, which contains procedures for covering an emergency/unplanned, short-term absence of 3 months or less, as well as outlines the process for filling a permanent vacancy.

**Public:** The department adheres to its local government's policies and procedures around interim appointments and processes for filling a permanent vacancy.

- Senior staff may be granted significant discretion in emergency
- Need to be able to pivot and make decisions quickly

# Risk Management

## Standard 4.6

**Private:** An organization-wide, comprehensive risk assessment has been completed within the past 2 years and reported to the governing board.

**Public:** The department complies with its local government's risk assessment policies and procedures.

### Internal Risks

- Attrition
- Demoralization
- Reduced personnel capacity
- Funding source requirements
- Employment laws
- Tax-exempt rules

### External Risks

- Funding environment
- Community perception
- Changing needs
- Liability
  - Employment
  - Personal injury
  - Contract
  - Privacy



**Questions?**