



Board Fiduciary Duties: Care, Loyalty, and Obedience in Action


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Convention
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AGENDA

- ✓ _____
- ✓ _____
- ✓ _____
- ✓ _____

- Board Responsibilities
- Duty of Obedience
- Duty of Care
- Duty of Loyalty

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**BOARD
RESPONSIBILITIES**

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Board Responsibilities

CSBG Org. Standard 5.8

Private

Tripartite board/advisory body members have been provided with training on their duties and responsibilities within the past 2 years.

Public

Governing board members have been provided with training on their duties and responsibilities within the past 2 years.



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Board Responsibilities

Key Roles

Mission

Planning

Engagement

Generating
Funds

Performance

Accountability



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Board Responsibilities

Legal Duties

- Obligation created by law or contract that requires **conformity** of one's actions (or inaction) to a particular standard
 - Professional responsibility of lawyers
 - Duty to warn
 - Implied covenant of good faith and fair dealing
 - Duty to rescue ?



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Board Responsibilities

Fiduciaries

- Person or entity that has a legal or ethical **relationship of trust** with a third party
- Duties can arise from:
 - State nonprofit corporation act (private CAAs)
 - Local/state law, delegation of authority agreement, or internal policies/governing documents (public CAAs)



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Board Responsibilities


Fiduciary Duties

The diagram consists of three light blue circles of varying sizes. The largest circle on the left contains the text "Duty of Care". The largest circle on the right contains the text "Duty of Loyalty". A smaller circle positioned between and below the other two contains the text "Duty of Obedience".

Duty of Care

Duty of Loyalty

Duty of Obedience



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Board Responsibilities

42 U.S.C. § 9910

The flowchart shows four rounded rectangular boxes arranged in a cycle, connected by grey arrows. The boxes are: "Development" (top, blue), "Planning" (right, cyan), "Implementation" (bottom, green), and "Evaluation" (left, lime green). Arrows indicate a clockwise flow from Development to Planning, Planning to Implementation, Implementation to Evaluation, and Evaluation back to Development.

Development

Planning

Implementation

Evaluation



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Board Responsibilities

Director Liability

- Failure to meet fiduciary duty standards can result in **personal liability** for CAA directors
- Protections include:
 - Federal Volunteer Protection Act (42 U.S.C. § 14501)
 - State charitable immunity statutes
 - **Indemnification** provisions in governing documents
 - Director & officer liability insurance

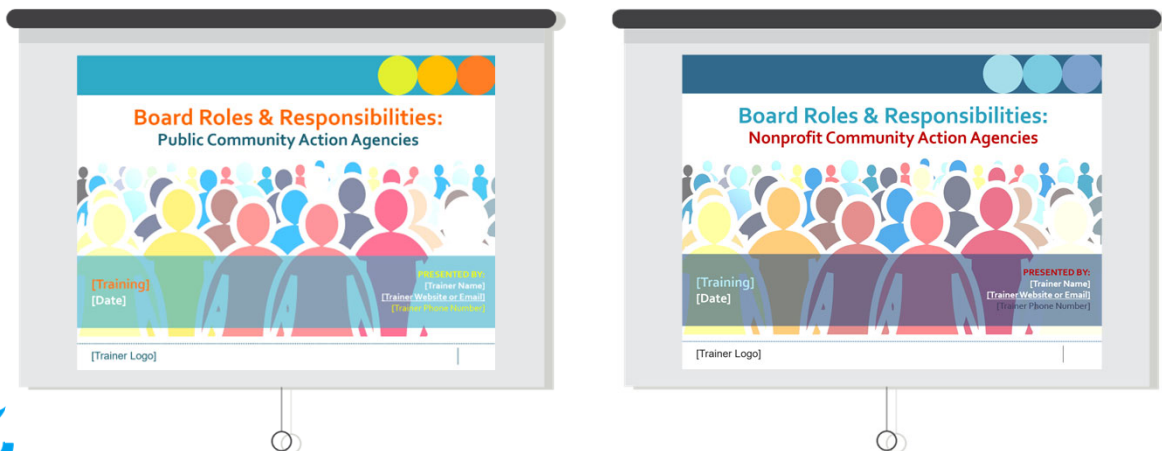


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CAPLAW Resources

Board Training & Orientation Tools



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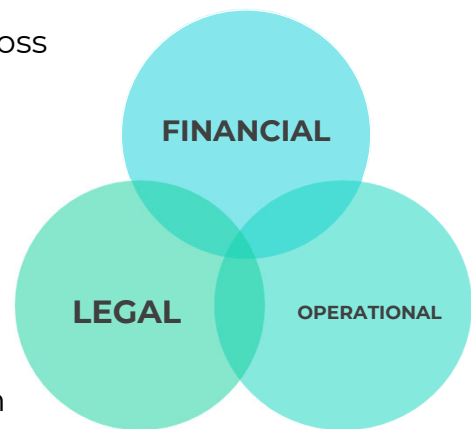
DUTY OF OBEDIENCE

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Duty of Obedience

The Basics

- Duty of **accountability** and compliance across all sectors
- Ensure that CAA:
 - Obeys applicable laws
 - Follows its own bylaws
 - Adheres to its stated purposes & mission



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Duty of Obedience

CSBG Org. Standard 4.1

Private

The 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 organization's programs and services are in alignment with the mission.



Public

The tripartite board/advisory body has reviewed the department's mission statement within the past 5 years and assured that: (1) The mission addresses poverty; and (2) The CSBG programs and services are in alignment with the mission.

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Duty of Obedience

Operational Framework

Board of Directors

Executive Director

Staff

Staff



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Duty of Obedience

Governance Framework

Federal CSBG Act
42 U.S.C. § 9901 et seq.

Funding source laws
and regulations
(e.g., Head Start)

State CSBG laws and
regulations

State nonprofit
corporation law or
local gov't agency law

Bylaws adopted
by tripartite board

Grant agreement
terms and conditions

CSBG Organizational
Standards

OCS Information
Memoranda

Contractual
agreements



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Duty of Obedience

CSBG Org. Standard 5.4

Private

The organization documents that each governing board member has received a copy of the bylaws within the past 2 years.

Public

The department documents that each tripartite board/advisory body member has received a copy of the governing documents, within the past 2 years.



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Knowledge Check

A CAA's board may choose whether to follow the director selection provisions of its bylaws.

True

False



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CAPLAW Resource

Do the Right Thing



How CAAs Can Cultivate
a Culture of Compliance
and High Ethical Standards

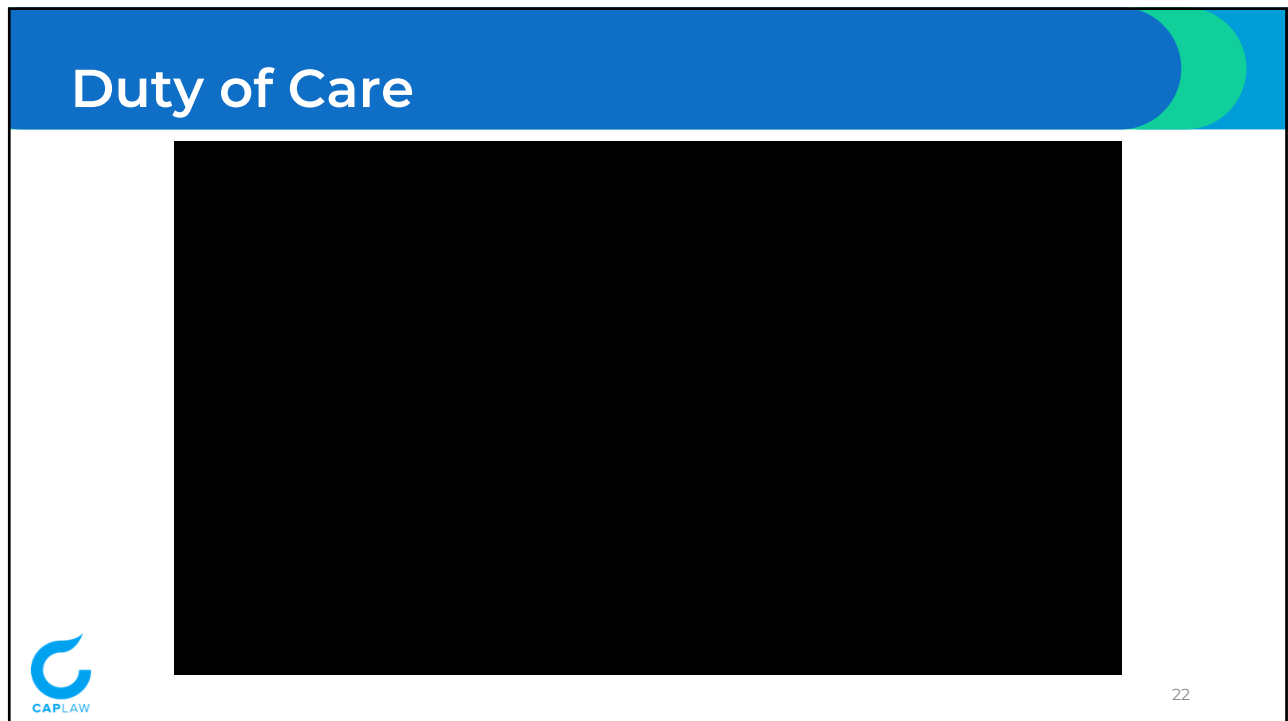


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CAPLAW Resource

All a-Board! Series

BOARD All a-Board!
The Purpose, People, and Process of CAA Boards

7. Purpose: Duty of Care
Discussion Guide

Length: 6:08
[Stream](#) | [Download](#)

Video Summary
This video investigates the fiduciary duty of care that CAA board members owe to the organization they serve. It identifies the source of the obligation for public and private CAAs and provides examples of how board members can fulfill that obligation. It also highlights the importance of written minutes and discusses how board committees can help the board meet its duty of care in an efficient, effective way.

Learning Objectives
After watching this video, participants will be able to:

- Define the fiduciary duty of care
- Describe how the duty of care protects board members from personal liability
- List some of the ways a board member may fulfill their duty of care
- Understand how board committees can help a board fulfill its duty of care

Using the Video Effectively
Suggestions for how to use this video include:

- Ask board members to watch the video on their own, and at a board meeting, facilitate a discussion of individual members' reflections or responses to the questions below.
- Show the video during a board meeting and facilitate a discussion of the questions below.
- Show the video as part of a larger board orientation or training process and facilitate a discussion of the questions below.

Suggested Discussion Questions

1. How do you personally fulfill your duty of care as a board member?
2. Consider a recent decision the board made regarding an important issue. How did the board engage in the deliberative process prior to reaching that decision? How did the board assess the facts, and weighing various options?
3. How do the board's acts, and weighing various options?

Board Training
Video Series, Vol. 3
CAPLAW
2021

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Duty of Care

The Basics

- Duty to be **diligent** and act with the care of a **reasonably prudent person** in similar circumstances
 - Attend meetings
 - Read materials in advance
 - Ask questions
 - Engage in discussion
 - Vote on matters presented



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Duty of Care

CSBG Org. 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.



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Duty of Care

Good Faith Reliance

- Can rely **in good faith** on information, opinions, reports of:
 - Officers or employees
 - Counsel, public accountants, experts
 - Committees of the board
- Some states may hold directors with **special expertise** to a higher standard (e.g., attorneys)



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Duty of Care

CSBG Org. 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.



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Knowledge Check

Regularly attending board meetings is part of fulfilling a director's duty of care.

True



False



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Duty of Care

CSBG Org. Standard 8.2

Private

All findings from the prior year's annual audit have been assessed by the organization and addressed where the governing board has deemed it appropriate.

Public

The department follows local government procedures in addressing any audit findings related to CSBG funding.

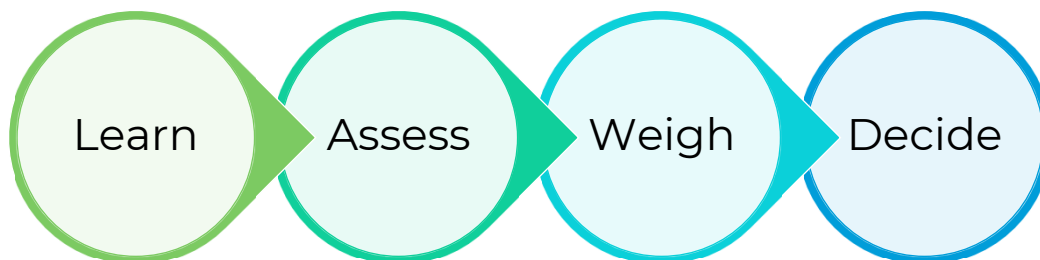


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Duty of Care

Deliberative Process



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Duty of Care

Scenario

The board is considering whether to begin an afterschool college prep program. The board decides to form an ad hoc committee to review the staff's preliminary research and make a recommendation to the full board on the program's potential impact and financial viability. Three board members with relevant experience are chosen for the committee.

The committee examines 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 is lower than expected. The board has no choice; it must end the program.



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Duty of Care

Discussion

Did the board fulfill its duty of care?

- Board committee
- Review mission
- Review needs assessment
- Examine proposed budgets
- Collect data from others with similar programs
- Question staff
- Prepare report for the full board with recommendation
- Full board convened
- Engage in deliberative discussion prior to vote



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CAPLAW Resource Template Meeting Minutes



CAA Board Meetings: Template Meeting Minutes and Index of Form Resolutions

Introduction

Community action agency (CAA) boards perform vital governance and oversight functions for their organizations. Nowhere is this more evident than at board meetings, when board members hear reports, deliberate, and make decisions that guide organizational efforts. Meetings are the main venue where board members fulfill their fiduciary duties of care, loyalty to the organization. The duty of care is a legal obligation to act diligently in the best interests of the organization, and to actively participate in discussions and decision-making. The duty of loyalty requires that when engaged in board business, members place the interests of the organization above their own personal interests.

Board meeting minutes. The written record of what happens at a board meeting, serves critical evidence of board members' exercise of their fiduciary duties, since they discuss key items presented and discussed by directors at the board meeting. They also help to show that the board completed the best interests of the organization and observed its conflict of interest policy. The decisions made and official actions taken at a board meeting are reflected in written **board resolutions**, which are typically incorporated into the minutes and, in some cases, also kept separately for reference purposes. Meeting minutes and resolutions are important evidence to the general public, funding sources, and state and state regulators that a CAA has maintained compliance with applicable laws and regulations. This includes the CSBG Organizational Standards, which require CAAs to take certain actions in their organizational operations and governance functions. The minutes and resolutions are also an important resource for the CAA board staff - a continuous, contemporaneous record of where the board has been, where it is, and where it is going.

Given the importance of these documents, CAPLAW has created this resource to help board members and the staff who work with them create effective meeting minutes and resolutions. As discussed below, minutes and resolutions vary greatly in their degree of formality and detail. We encourage you to customize the templates we have provided to reflect the way your CAA operates. Based on the format of each document, format it in the way that best reflects your CAA's operations. Remember that meeting minutes and resolutions are just two tools in your toolbox for documenting compliance with the CSBG Organizational Standards and other applicable laws. Formal board action is not necessary for compliance with most of the Organizational Standards, but where it is, we hope this resource will be helpful.

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Part 1: Template Board Meeting Minutes

Practice Pointers
While using the following Template Board Meeting Minutes, CAAs should keep considerations:

- **Style:** CAAs have great flexibility with regard to the style/form that the minutes take. Some may opt for more detailed meeting minutes to build institutional memory, more complete record of the proceeding that may be used in the future. Other more concise methods can better communicate the essential issues resolved. CAAs boards are not required to, and should not, record every detail of a state board meeting. However, it is important that minutes contain enough information, as a reference, including serving as evidence of the board's fulfillment of its fiduciary duty. When deciding on style, a board must balance its need for a record of information compliance with making minutes usable. It should also consider its audience, reading the meeting minutes in the future. This should include current as well as members, funding sources, attorneys, legislators, and even members of the public subject to state open meetings laws. CAAs board secretaries should ensure that it determine the level of detail to include, and the style chosen should remain consistent.

- **Content:** CAAs boards should recognize that the content and substance of minutes vary from meeting to meeting, depending on the type of meeting, when it is ongoing. While content will vary, meeting minutes will usually include details:
 - o Meeting date, time, location
 - o Meeting type (e.g., regular, special, emergency)
 - o Name of each attendee (board members as well as other attendees, if applicable)
 - o Funding source representatives, and members of the public
 - o Departures and/or arrivals of attendees, as applicable
 - o Presence of a quorum
 - o Discussions on board matters
 - o Actions taken by the board

- **Consent Agenda:** A consent agenda is a tool that CAAs boards may use to streamline the amount of time spent approving motions that do not require full-board discussion. A consent agenda is a list of routine, procedural, informational, and non-controversial items that are presented to the board for approval. A consent agenda often includes prior board meeting minutes, a report without further discussion. Any board member may request that an item be taken out and moved to the meeting agenda for further discussion. If a CAA board adopts a consent agenda, it should provide information:

¹ For a detailed discussion of considerations related to the style and contents of board meeting minutes, see CAPLAW's [Board Meeting Minutes and Resolutions](#) document.

² For a detailed discussion of considerations related to the style and contents of board meeting resolutions, see CAPLAW's [Board Meeting Minutes and Resolutions](#) document.

Part 2: Index of Form Resolutions

Practice Pointers

Written resolutions record the decisions made and actions taken by a board of directors at or outside of a meeting. This resource focuses on written resolutions adopted at a meeting, whether it takes place in person or virtually via electronic means (such as by phone or video conference). While some state laws permit boards of directors to take formal action without conducting a meeting (for example, via written consent), the requirements for doing so vary widely, depending on state law and the organization's own internal documents.

The written resolutions in this resource can be copied and pasted into a board meeting agenda or packet so that board members have a chance to review the language before the meeting. They should also be included in the board's meeting minutes or set off in a separate document listing actions taken at the meeting, which may be preferable if the minutes are particularly long or the resolutions are one that will need to be regularly referenced. If a board chooses to distribute copies of proposed resolutions to board members before a meeting, remember to update the resolutions included in the board meeting minutes to accurately reflect the language that was voted upon during the meeting.

Style and Format of Board Resolutions

The written resolutions of a CAA board of directors can take many different forms. The style that CAPLAW has chosen to use in this resource is not a requirement and does not indicate which form is best for your organization. However, boards should consistently use the same resolution form to make their records easy to read and reference.

Some boards prefer to use a formal structure for their written resolutions, such as the one shown in **Example 1** below. Formal resolutions may include "whereas" clauses preceding the resolution that stipulate the facts upon which the board's decision is based. The phrase "be it resolved" typically introduces the resolution in this formulation. The use of capital letters helps to set the resolution off from the rest of the minutes.

Example 1

WHEREAS, the CAP's Partner, Early Head Start, Inc., has requested more funds due to a 20% increase in its enrollment; and

WHEREAS, the board has reviewed the Request for Funds and deems it appropriate and in the best interest of the CAA to approve such request and authorize the payment of such funds to Early Head Start, Inc.;

NOW, THEREFORE, BE IT:

RESOLVED, that the board hereby approves the Request for Funds and authorizes the payment of such funds to Early Head Start, Inc.

Other organizations adopt a less formal approach. Rather than use "whereas" clauses to provide the context for the resolution, they rely on the text of the minutes to support the action or taken. This

DUTY OF LOYALTY

Duty of Loyalty

The Basics

- Duty to act in good faith and **in the best interests** of the CAA
 - No self-dealing
 - **Candor**
 - Avoid & disclose conflicts of interest (real and perceived)
- “Wear the right hat”



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Knowledge Check

An elected public official director who votes only for programs that support the constituents he represents, which make up 1/3 of the CAA's service area, is fulfilling his duty of loyalty.

True

False



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Duty of Loyalty

Conflict of Interest

- A conflict occurs when
 - a covered person (or one of their family members)
 - has a personal or financial interest
 - that compromises or could compromise the covered person's **independence of judgment** in exercising their responsibilities



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Duty of Loyalty

CSBG Org. Standard 5.6

Private

Each governing board member has signed a conflict of interest policy within the past 2 years.

Public

Each tripartite board/advisory body member has signed a conflict of interest policy, or comparable local government document, within the past 2 years.



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CAPLAW Resources

Sample Conflict of Interest Policies

CAPLAW
Sample Conflict of Interest Policy for
Board of Directors of CAA with Head Start
September 2017

This sample policy has not been approved by any outside authority, such as the U.S. Department of Health and Human Services. You should review this sample policy thoughtfully and modify it as necessary to meet the individual needs of your organization and to comply with any laws and regulations that apply to your organization's particular situation as well as the terms and conditions of the funding agreements your organization has with its particular government funding sources. CAPLAW strongly recommends that when working with this policy, you consult with an attorney in your state who is well versed in the laws affecting Community Action Agencies (CAAs) and/or nonprofit organizations.

Bracketed text in italics is intended to help you better understand the policy and how to adapt it to the needs of your organization. You should delete this text when finalizing your policy.

A. What is the Purpose of this Policy?

Conflicts of interest raise governance, tax, and regulatory issues for [insert name of CAA] (CAA). They also raise concerns in the mind of the public and members of the media, potentially undermining the organization's reputation and good standing.

Generally speaking, a conflict of interest is a situation in which a CAA Board Member or one of his or her family members has a personal or financial interest that compromises or could compromise the Board Member's independence of judgment in exercising his or her responsibilities to CAA.

CAA Board Members are expected to minimize conflicts of interest, disclose ethical, legal, financial, and other conflicts, and remove themselves from decision-making if they would otherwise be called on to act on a conflict involving themselves, their family members or entities with which they or their family members are closely associated.

CAPLAW
Sample Conflict of Interest Policy for
Senior Staff of CAA with Head Start
September 2017

This sample policy has not been approved by the Department of Health and Human Services, and modify it as necessary to meet the individual needs of your organization and to comply with any laws and regulations that apply to your government funding sources. CAPLAW strongly policy, you consult with an attorney in your state who is well versed in the laws affecting Community Action Agencies (CAAs) and/or nonprofit organizations.

Bracketed text in italics is intended to help you better understand the policy and how to adapt it to the needs of your organization. You should delete this text when finalizing your policy.

A. What is the Purpose of this Policy?

Conflicts of interest raise governance, tax, and regulatory issues for [insert name of CAA] (CAA). They also raise concerns in the mind of the public and members of the media, potentially undermining the organization's reputation and good standing.

Generally speaking, a conflict of interest is a situation in which a CAA Senior Staff Member or one of his or her family members has a personal or financial interest that compromises or could compromise the Senior Staff Member's independence of judgment in exercising his or her responsibilities to CAA.

CAA Senior Staff Members are expected to minimize conflicts of interest, disclose ethical, legal, financial, and other conflicts, and remove themselves from decision-making if they would otherwise be called on to act on a conflict involving themselves, their family members or entities with which they or their family members are closely associated.

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Duty of Loyalty

Addressing Conflicts

Is this a conflict?

- Covered person?
- Financial or personal interest?
- Impact on independent judgment?

Can we still do it?

- "Good" - permitted
- "Bad" - prohibited
- "Ugly" - cleansable

How do we handle it?

- Procedures & policies
- Disclosures (i.e., annual statement)
- Documentation & reporting

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Duty of Loyalty

Examples: The Good

- Provision of services to covered person or family member
 - Must meet all eligibility criteria
 - No preferential treatment
- **Expense reimbursements**
 - Must be reasonable, necessary, & documented
 - Paid pursuant to an approved plan



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Knowledge Check

Your CAA can pay its low-income sector directors back for reasonable expenses for attending a required off-site board training.

True



False



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Duty of Loyalty

Examples: The Bad

- Organizational conflicts of interest
- Loans
- Gifts
- Federal employees acting as agent or attorney
- **Diversion** of CAA resources
- Actual financial conflict of interest*
- Compensation and employment* (*but check state law*)



*Head Start only 43

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Duty of Loyalty

Examples: The Ugly

- Situation with characteristics of a conflict of interest that may not be a *prohibited* conflict of interest
- Follow CAA's **internal policies & process** to “cleanse” the conflict
- Example:
 - Board member or immediate family has existing or potential compensation arrangement with entity that transacts with CAA
 - **BUT** transaction does not affect the compensation arrangement or the individual's prospect of employment or promotion



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Knowledge Check

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.

Good

Bad

Ugly



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Duty of Loyalty

Scenario

Amy serves as a private sector representative on Local CAA's tripartite board. When Local CAA's Executive Director, Edgar, announces he will be retiring next month, Amy wonders whether she should throw her hat in the ring.

She looks at Local CAA's conflict of interest policy but can't find anything in it requiring board members to wait before applying for jobs at the agency. However, since her niece works as a teacher in the Head Start program, she decides it would be best to ask her Board Chair what to do.



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QUESTIONS?



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