



COE DEVELOPED CSBG
ORGANIZATIONAL STANDARDS

Category 5 Board Governance

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This publication was created by National Association of Community Action Agencies – Community Action Partnership in the performance of the U.S. Department of Human Services, Administration for Children and Families, Office of Community Services Grant Numbers 90ET0434 and 90ET0445. Any opinion, findings, and conclusions, or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of the U.S. Department of Health and Human Services, Administration for Children and Families.

Introduction to Category Five: Board Governance

The purpose of this Technical Assistance Guide is to help a Community Action Agency (CAA) assess its compliance with Category Five of the CSBG Organizational Standards (5.1-5.9) that pertain to organizational governance.

Section 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.” This board mandate imposes a critical oversight role on these individuals and places legal and ethical obligations on their efforts.

The Board’s Fiduciary Duty

For board members of nonprofit organizations, board governance is often referred to as a fiduciary responsibility. As a fiduciary, a board member acts for someone else’s benefit. A board member must put the interests of the corporation ahead of their own make and decisions based on what is best for the organization. This is a legal fiduciary duty and board members are bound to uphold it. Given the tripartite nature of the CAA board where members may come from a particular neighborhood, be elected officials from a specific community, or represent a particular constituency, this responsibility can have unique challenges. However, CAA boards are called upon to uphold it and the CAA’s Executive Director/CEO is the primary staff member to support the board members’ efforts.

The Board’s role as a fiduciary includes three critical duties under which each of the Organizational Standards in Category Five apply: the Duties of Care, Loyalty, and Obedience.

The ***Duty of Care*** calls on board members to act as an ordinarily prudent person would in a like position under similar circumstances. The reasonable person standard calls on board members to have the information necessary to make good decisions. Board members do not have to be all-knowing individuals, but the Duty of Care calls on board members to pay attention, ask questions, probe for more information if needed, and to understand the issues upon which they have to make decisions. To be able to fulfill this duty, it is critical that board members be oriented to the board when they are seated, have the information necessary about their job, receive regular training to understand both their responsibility and the issues that come before them, and be empowered and encouraged to ask questions. While all of the Organizational Standards in Section 5 could fall here, several specifically address the Duty of Care including:

- Standard 5.4 - The organization documents that each governing board member has received a copy of the bylaws within the past 2 years.
- Standard 5.7 - The organization has a process to provide a structured orientation for governing board members within 6 months of being seated.
- Standard 5.8 - Governing board members have been provided with training on their duties and responsibilities within the past 2 years.

- Standard 5.9 - The organization’s governing board receives programmatic reports at each regular board meeting.

The ***Duty of Loyalty*** requires that board members be loyal to the CAA, including to the mission and purposes of the organization, and act in the organization’s best interest at all times. CAA board members are passionate about the work of the organization and are the best ambassadors for the agency’s work in the community. Under the Duty of Loyalty, CAA board members must avoid acting when they have a real or perceived conflict of interest. In small and rural communities, there may be a limited number of vendors for services and in more populated communities, board members may have access to vendors who may be willing to provide services at a lower cost given existing relationships. Regardless of the reason, any real, potential or even perceived conflicts of interests need to be identified, addressed, managed, and avoided where possible (or required). The Standard related to the Duty of Loyalty is:

- Standard 5.6 - Each governing board member has signed a conflict of interest policy within the past 2 years.

The ***Duty of Obedience*** calls on board members to obey the law, organizational bylaws/articles of incorporation, and board decisions. For CAA boards, it is important to remember that the law includes the CSBG Act. The CSBG Act is the federal legislation authorizing the Community Services Block Grant and for agencies that receive CSBG, they must comply with it. For many CAAs, CSBG is a small percentage of its overall budget. Even so, the rules set out in the CSBG Act for board structure are required for all CAAs regardless of the amount of CSBG funds received. The tripartite structure is defined in the CSBG Act and is included in the Organizational Standards. In addition, for board members there are other legal issues (e.g. human resources and taxes) that often come into play. These topics are reflected elsewhere in the Standards. The Organizational Standards related to the Duty of Obedience included in Section Five are:

- Standard 5.1 - The organization’s governing board is structured in compliance with the CSBG Act: 1. At least one third democratically-selected representatives of the low-income community; 2. One-third local elected officials (or their representatives); and 3. The remaining membership from major groups and interests in the community.
- Standard 5.2 - The organization’s governing board has written procedures that document a democratic selection process for low-income board members adequate to assure that they are representative of the low-income community.
- Standard 5.3 - The organization’s bylaws have been reviewed by an attorney within the past 5 years.
- Standard 5.5 - The organization’s governing board meets in accordance with the frequency and quorum requirements and fills board vacancies as set out in its bylaws.

The Role of Board Minutes

Board meeting and committee minutes serve as the written record of board business. The Organizational Standards place an additional spotlight on the board minutes as they will likely be used by CAAs and State CSBG Offices to document how the CAA meets various Organizational Standards. The minutes will document the issues that come before the board, as well as if, and how, they were disposed of to comply with the Organizational Standards. They will often be the tool used to demonstrate that the relevant Standards are met. In addition, many state statutes require that minutes are kept and thus it can be a legal requirement to keep minutes. Functionally, it is important that minutes are clear and concise and capture board motions, votes (including who voted yea/nay), and who was in attendance. More information on board minutes and good minute taking practices can be found in Section 1 of the *Tools for Top-Notch CAAs*. At a minimum, this CAPLAW toolkit recommends the following content areas for board minutes:

- Date, Time, and Location
- Regular or Special Meeting
- Attendees
- Quorum
- Guests
- Action on Minutes
- Major Proposals and the Actions Taken
- Treasurer's Report
- Major Discussions
- Committee Reports
- Compensation Decisions
- New Business
- Appointments and Resignations
- Next Meeting

The Role of a Governance, Board Development, or Nominations Committee

The oversight of board performance is best left to the board itself and as with many board activities, this work is often done through committee. Historically, oversight, nominations, orientation, and training of board members has fallen under the purview of a Nominations Committee. In recent years, CAA boards have been moving to a broader type of committee such as a Governance or Board Development Committee. Under the Organizations Standards, this type of committee can be delegated with certain tasks as well as ensuring that the board is meeting its governance responsibilities. CAPLAW's Bylaws Toolkit provides the following example of a Governance Committee:

“The governance committee shall be composed of [specify number and composition of governance committee members]. The governance committee shall: (1) oversee board member recruitment (including administering the low-income board member democratic selection process, recommending candidates for Public and Private Sector board seats, and ensuring that the board fills vacancies promptly), orientation, and training; (2) coordinate the board’s periodic evaluation process of itself and the corporation’s governance structure, policies and procedures; (3) coordinate periodic review of the corporation’s articles of incorporation and bylaws; and (4) have such other powers and perform such other duties as the board may specify from time to time.”

Information Memorandum 82 (IM 82)

Information Memorandum 82 addresses a number of policy questions concerning the composition, role, and responsibilities of local CAA tripartite boards. It is the only guidance provided by the federal Office of Community Services (OCS) to describe board service in relation to the CSBG Act. It is important to note that IM 82 is only guidance, and not binding; however, its content is relevant and useful for boards to review. In addition, IM 82 describes steps that may be taken by State CSBG Lead Agencies and State Community Action Associations to promote the continued viability and effectiveness of eligible entities through appropriately constituted and well-functioning tripartite boards. It is recommended that CAA board members and executive staff leadership periodically review IM 82.

The Role of the Executive Director/CEO in Meeting the Governance Standards

Ensuring the CAA meets the Organizational Standards is the function and responsibility of staff. Given that the Board has one key staff member, the Executive Director/CEO, the board will hold the ED/CEO accountable for agency performance against the Organizational Standards and should work together with the ED/CEO to ensure that board agendas, minutes, calendars, training, orientation, and committees are structured in a way to meet the Standards. This may lead to some changes of how the board operates, but the roles and responsibilities of the board do not change under the Organizational Standards. Keeping the board informed on the Organizational Standards may become part of the ED/CEO report to the board and it is appropriate for the board to inquire about Standards compliance.

Setting the Tone at the Top

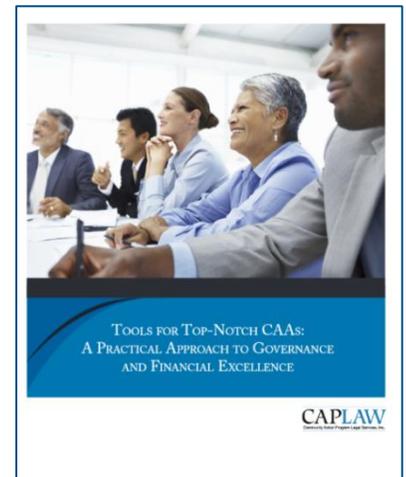
Compliance and ethical practices start with the board. Many of the Organizational Standards in this, and other sections, emphasize the board’s role in setting the tone of compliance and ethics from the very top of the organization. CAPLAW’s Exemplary Legal Practices & Policies Guidebook is especially good reading to inform best practices on setting that tone at the board level. The following graphic outlines the action steps described in the Guidebook and often reflected in the Organizational Standards



Practical and Relevant Community Action Governance Resources

While each section of the Guide will identify board tools and resources related to each Organizational Standard, there are several items that are recommended for CAA Board Members to read and refer to often specific to governance. These include:

- Office of Community Services Information Memorandum 82
- CSBG Act
- CAPLAW’s *Tools for Top-Notch CAAs: A Practical Approach to Governance and Financial Excellence*
- CAPLAW’s *Bylaws Toolkit: The Rules CAAs Live By*
- CAPLAW’s *Exemplary Legal Practices & Policies Guidebook*
- CAPLAW’s *CSBG Training Tools for Board Members*



There are numerous websites and resources for board members, though unless they are Community-Action specific, they will not address the tripartite structure or other requirements of the CSBG Act. There are valuable resources from Bridgespan and BoardSource at the national level, and a state’s Attorney General’s office or Charity Bureau may have additional print and video resources.

Limits of the Toolkit

This toolkit is meant to be a helpful and concise document providing guidance and clarity to the Organizational Standards as written. However, board service and each of the Organizational Standards areas included have many aspects, nuances, and rules that cannot be addressed in their entirety here and often go beyond the Standards themselves. In addition, other funding streams or program such as Head Start, HUD, and Medicaid/Medicare may have their own requirements and issues board members need to address. This toolkit does not address these other areas and board members and CAA staff are encouraged to access the tools noted above as well as other resources related to their CAA's unique program set for additional guidance.

This Technical Assistance Guide helps an agency answer two questions: (1) are we in compliance with the requirements of the Organizational Standards, and (2) how well do we practice maximum feasible participation of low-income individuals in our work? It is important to note that agencies are only required to comply with the Organizational Standards through IM 138 and that guidance and materials provided in this toolkit designed to assist in assessing performance are intended as a capacity-building resource.

In addition, this review is meant as an internal resource for CAAs and is not intended to be utilized for monitoring purposes. The benchmarking and evaluating performance section of this guide provides an opportunity for CAAs to review how they can go beyond compliance and improve their practices. The ideas mentioned in this section of the guide and in the subsequent scales are again, specifically for internal CAA use and should not be a factor in monitoring for compliance with the CSBG Organizational Standards. That being said, the Organizational Standards, as part of the performance management system are meant to build capacity, and thus going through the complete review process can aid in building a CAA's capacity.

This toolkit contains general information and is not intended as legal advice. If you need legal advice on your organization's articles of incorporation and/or bylaws, consult a lawyer who is licensed in your state and is familiar with your state's nonprofit corporation law.

Considerations for the Review Process

This section of the Technical Assistance Guide provides questions to help CAAs think through the planning of the review process. Questions to consider before beginning include:

- **How is the review process for Category Five connected to the processes for reviewing compliance with the other categories of Organizational Standards?** Staff involved in reviewing the Standards related to board governance should ensure their efforts are consistent with the overall process for Standards review in regards to interpreting the Standards, recording findings, managing and storing documents, and conducting any necessary follow-up activities to achieve compliance.
- **Are there opportunities to incorporate the review process into related activities?** While there is value to conducting the review as a “stand alone” process, CAAs can look for opportunities to increase efficiency by including it in already planned activities. For example, developing a good board calendar each year will provide the opportunity preemptively to “fold in” the Category Five activities into related processes.
- **What is the appropriate level of effort for the review process?** CAAs should consider the costs and benefits of expending different levels of effort in evaluating Category Five. Several of the Category Five Standards are elements of the existing CSBG Act and ongoing mandated practice, while others are elements that many boards are doing in the current course of business. Keeping the process straightforward to assess each of the Standards is critical, and bylaws and board minutes will provide much of the needed documentation.
- **Who should participate in the evaluation process?** It is possible for one staff person to complete the review alone. However, the CAA may consider assembling a small team that includes board members to conduct a more in-depth analysis of the governance practices used.

When the staff selected to conduct the evaluation process are ready to begin, there are several additional questions they should consider. These include:

- **How will the staff determine whether the standards are met?** Staff should always begin the review process by reviewing all guidance from the State CSBG Lead Agency on the interpretation of the Organizational Standards and the documentation required to show they are met. Even if the CAA decides not to conduct the review evaluation process suggested in this Guide, it is suggested that the staff use the five-point evaluation scale included at the end of each section to rate the organization’s performance. This exercise helps ensure that there is consensus about whether the standard is met and provides a benchmark against which the agency can rate future performance.
- **How will the staff document compliance with the standards?** Staff should determine how they will record the results of the review and organize related files and materials to document compliance. The *Evaluation Worksheet Template* included at the end of this Guide offers one option. Staff should begin by determining whether the CAA meets each of the Organizational Standards in Category Five using guidance from the State CSBG Lead Agency and, if conducting a full evaluation, rate performance using the review questions and scale included in this Guide. Brief summaries of the findings should be recorded to document the process for state monitors and provide a record for future evaluations. Staff should then list the supporting materials that

document compliance (e.g. reports, web pages, board minutes) and determine how to file the materials in a way that is easily accessible to state monitors.

- **How will staff manage recommendations from the review process?** Standards that are evaluated as unmet or that staff believe are potentially questionable should be addressed immediately with an action plan that concisely explains the problem and the specific steps that must be taken to achieve compliance.

- **How will staff archive results from the review process?** When the review of the standards is complete, staff should archive the results with those of the other categories. A good archive will include notes on how the evaluation was conducted, who participated, any issues or lessons learned that are helpful to note for future evaluations, and clear instructions for how to find all documents and materials referenced in the findings. Again, even if the review process has a more limited focus on compliance, it is recommended that staff include their rating of each standard on the five point evaluation scale along with brief notes explaining the rationale for the finding to help benchmark performance for future evaluations.

Category 5 Standards

- Standard 5.1** The organization’s governing board is structured in compliance with the CSBG Act:
1. At least one third democratically-selected representatives of the low-income community;
 2. One-third local elected officials (or their representatives) and;
 3. The remaining membership from major groups and interests in the community.
- Standard 5.2** The organization’s governing board has written procedures that document a democratic selection process for low-income board members adequate to assure that they are representative of the low-income community.
- Standard 5.3** The Organization’s bylaws have been reviewed by an attorney within the past 5 years.
- Standard 5.4** The organization documents that each governing board member has received a copy of the bylaws within the past 2 years.
- Standard 5.5** The organization’s governing board meets in accordance with the frequency and quorum requirements and fills board vacancies as set out in its bylaws.
- Standard 5.6** Each governing board member has signed a conflict of interest policy within the past 2 years.
- Standard 5.7** The organization has a process to provide a structured orientation for governing board members within 6 months of being seated.
- Standard 5.8** Governing board members have been provided with training on their duties and responsibilities within the past 2 years.
- Standard 5.9** The organization’s governing board receives programmatic reports at each regular board meeting.

It is important to note that Section 5 of the Organizational Standards is not the only section that relates to board members and their governance role, there are Standards in several other sections that relate directly to board governance responsibilities. These include Community Assessment, Leadership, Strategic Planning, Human Resources, Financial Management, and Data and Analysis. Board members should review the Technical Assistance Guides for each of these areas for more information on how those Standards that relate. These Standards include:

- Standard 3.5** The governing board formally accepts the completed Community Assessment.
- Standard 4.1** The governing board has reviewed the Organization’s mission statement within the past 5 years and assured that:
- The mission addresses poverty; and
 - The Organization’s programs and services are in alignment with the mission.
- Standard 4.4** The governing board receives an annual update on the success of specific strategies included in the Community Action plan.
- Standard 4.5** 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.
- Standard 4.6** An organization-wide, comprehensive risk assessment has been completed within the past 2 years and reported to the governing board.
- Standard 6.1** The organization has an agency-wide strategic plan in place that has been approved by the governing board within the past 5 years.
- Standard 6.5** The governing board has received an update(s) on progress meeting the goals of the strategic plan within the past 12 months.
- Standard 7.1** The Organization has written personnel policies that have been reviewed by an attorney and approved by the governing board within the past 5 years.
- Standard 7.4** The governing board conducts a performance appraisal of the CEO/executive director within each calendar year.
- Standard 7.5** The governing board reviews and approves CEO/executive director compensation within every calendar year.
- Standard 7.7** The organization has a whistleblower policy that has been approved by the governing board.
- Standard 8.1** The Organization’s annual audit (or audited financial statements) is completed by a Certified Public Accountant on time in accordance with Title 2 of the Code of Federal Regulations, Uniform Administration Requirements, Cost Principles, and Audit Requirement (if applicable) and/or State audit threshold requirements.
- Standard 8.2** 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.

- Standard 8.3** The organization’s auditor presents the audit to the governing board.
- Standard 8.4** The governing board formally receives and accepts the audit.
- Standard 8.6-** The IRS Form 990 is completed annually and made available to the governing board for review.
- Standard 8.7** The governing board receives financial reports at each regular meeting that include the following:
- Organization-wide report on revenue and expenditures that compares budget to actual, categorized by program; and
 - Balance sheet/statement of financial position.
- Standard 8.8** All required filings and payments related to payroll withholdings are completed on time.
- Standard 8.9** The governing board annually approves an organization-wide budget.
- Standard 8.13** A written procurement policy is in place and has been reviewed by the governing board within the past 5 years.
- Standard 9.3** The organization has presented to the governing 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.

Standard 5.1- The organization's governing board is structured in compliance with the CSBG Act:

- 1. At least one third democratically-selected representatives of the low-income community;**
- 2. One-third local elected officials (or their representatives); and**
- 3. The remaining membership from major groups and interests in the community.**

A. Guidance on the Definition and Intent of the Standard

Standard 5.1 is not a new requirement for CAAs, but flows directly from the CSBG Act. It reflects a foundational element to the work of Community Action. Maximum participation of low-income people is a core tenet of CSBG and this tripartite structure ensures that all segments of the community have a part in the fight against poverty and real decision making authority. The tripartite structure was included in the Standards to demonstrate the unique role CAAs and their boards play in local communities bringing together all segments of the community to address poverty. This Standard applies to private and public CAAs, ensuring that all parts of the community have a voice in the work of the CAA.

All members of the board have equal weight in voting, responsibility in understanding the material presented to them, and need to put the interests of the CAA ahead of their own, regardless of the sector they represent. They each have the same fiduciary responsibility and have equal votes on decisions.

The tripartite structure starts with the requirement that at least one-third of the board be democratically selected representatives from the low-income community. See Standard 5.2 below for additional information. It is important to note that if someone is representing a particular community or neighborhood, they must vote and make decisions based on what is best for the overall agency.

One-third of the board needs to be made up of elected officials, or their representatives. As these officials are elected by the citizens of the community served, it provides another venue for community participation in decision-making about how resources are spent and how poverty is addressed. Unlike the other two board segments, elected officials do have the ability to select a representative to sit in their place if they cannot serve themselves. As with the low-income representation on the board, it is important to note that elected officials sitting on the board need to vote and make decisions based on what is best for the overall agency.

The final third can come from other interest groups or be members of the community that fill specific skill sets such as legal, financial, program expertise, or other type of skill the board desires to have as part of the board. CAAs may need to use this portion of the board to meet other obligations given funding or programmatic requirements.

B. Guidance on Compliance and Documentation

A CAA may document it meets Organizational Standard 5.1 in several ways including, but not limited to:

- Bylaws
- Board Membership List
- Board Minutes

While CAA boards typically maintain a board size that is divisible by three, it is important to note that the actual number of board members at any one time may fluctuate given resignations, removals, or other life events that impact a board member's ability to serve. Maintaining rigid adherence to the number of board members listed in the bylaws at all times can be challenging; caution is urged that when vacancies open that the requirements to maintain a tripartite structure do not overtake good board management. Electing a good board member is important work and finding qualified individuals is critical; finding a warm body to fill a seat does not help the CAA and may lead to a new vacancy rather quickly if they are not prepared to sit in the board seat. CAAs may want to consider having potential board members engaged in committees or other work so that if called up to serve, they can be ready to assume the role of board member. However, for most organizations, there will often be times between when board members leave and new board members are appointed that one of the sectors may be unbalanced for a short period of time. When assessing for compliance with the Organizational Standards, reasonableness should be considered.

C. Beyond Compliance: Benchmarking Organizational Performance

IM 82 is the only federal guidance on the tripartite board composition. While it is not binding guidance, it provides CAAs and State CSBG Offices direction for meeting this Standard. IM 82 reads in part:

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.
 - 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."

CAPLAW's Bylaws Toolkit provides additional guidance on this standard including sample language to consider using when addressed in this structure and in CAAs bylaws

“Tripartite Board Structure.

One-third of the directors shall be elected public officials, holding office on the date of selection, or their representatives, except that if the number of such elected officials reasonably available and willing to serve on the board is less than one-third of the membership of the board, appointive public officials or their representatives may be counted in meeting such one-third requirement (Public Sector Directors); At least one-third of the directors shall be persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served (Low-Income Sector Directors); and The remainder of the directors shall be officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served (Private Sector Directors).”

D. Resources

Information Memorandum (IM) 82. *Tripartite Boards*. Issued March 23, 2005
<http://www.acf.hhs.gov/programs/ocs/resource/im-no-82-tripartite-boards>

CAPLAW. *Bylaws Toolkit, Updated 2009*.
<http://caplaw.myshopify.com/products/caplaw-bylaws-toolkit-electronic-copy>

CSBG Act, Section 9910 on Tripartite Boards
<http://codes.lp.findlaw.com/uscode/42/106>

Standard 5.2 The organization’s governing board has written procedures that document a democratic selection process for low-income board members adequate to assure that they are representative of the low-income community.

A. Guidance on the Definition and Intent of the Standard

The CSBG Act states that CAA boards must have the tripartite structure noted above, including at least one-third of its membership being democratically selected representatives of the low-income community. Standard 5.2 states that CAAs need to have written procedures for how this is done in their local organization. It is important to note that the Act states democratically *selected*, not elected. Once a potential board member is selected, that individual will still need to be elected and seated to the board following the CAA’s bylaws and board policies.

According to IM 82 “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.” All CAA board members have an equal voice and vote in agency governance.

IM 82 continues, “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.

B. Guidance on Compliance and Documentation

Documentation may include the written policy itself, board policy or procedure manual, bylaws, minutes, etc.

CAAs are encouraged to keep this process straightforward and not to incorporate something too complex. Examples of democratic selection procedures for low-income sector directors include:

- Election by ballots cast by the CAA’s clients and/or by other low-income people in the CAA’s service area (ballots could be cast, for example, at designated polling place(s) in the service area, at the CAA’s offices, or via the Internet);
- Vote at a community meeting of low-income people (the meeting could serve not simply to select low-income sector directors but also to address a topic of interest to low income people);
- Petition signed by a certain number of residents in a low-income community; and
- Designation of community organizations composed predominantly of and representing low-income people in the service area (for example, a Head Start policy council, low-income housing tenant association, or the board of a community health center) to elect members to the CAA’s board or whose boards will choose someone from among their elected officers/board members to serve on the CAA’s board.

Low-income sector board members should not simply be chosen by the CAA’s executive director or the tripartite board, nor should they be staff of another low-income service provider chosen by the Executive Director/CEO or board of that other organization (unless low-income people make up a majority of that board).

(Adapted in part from CAPLAW’s Bylaws Toolkit)

C. Beyond Compliance: Benchmarking Organizational Performance

Having true representation from the low-income community is an important element of a CAA governance structure. Working to ensure that all board committees (beyond committees that have decision making authority which are already required to maintain the structure) have a tripartite structure can help a CAA move beyond compliance toward excellence. In addition, incorporating advisory committees that engage low-income residents can also bring additional voice to the table.

D. Resources

As with the first standard in this category, this requirement is not new. Such procedures may be written in the agency’s bylaws (and under some states’ CSBG laws or regulations, may be required to insert it into the CAA’s bylaws), procedure manuals, or other document to meet this Standards.

CAPLAW. *Tools for Top-Notch CAAs: A Practical Approach to Governance and Financial Excellence*. (2011). <http://caplaw.org/resources/PublicationDocuments/TopNotchToolkit.html>

Information Memorandum (IM) 82. *Tripartite Boards*. Issued March 23, 2005
<http://www.acf.hhs.gov/programs/ocs/resource/im-no-82-tripartite-boards>

Standard 5.3 The Organization's bylaws have been reviewed by an attorney within the past 5 years.

A. Guidance on the Definition and Intent Of The Standard

Bylaws are a critical governance document. Bylaws outline board membership, rules, policies, and procedures and need to both fit agency culture and process while being in compliance with state law. Having a legal review completed by an attorney familiar with nonprofit law in your state can work to manage the risk to a board of directors, ensuring proper clauses and indemnification language is present. Many CAAs have lawyers serving on the board; this is good practice. Others have attorneys on staff. Use of a board or staff member with legal expertise to do the majority of the review would be appropriate. There are also tools from CAPLAW that may be of assistance. However, it is recommended the final sign off on the review will likely need to be done by an attorney who is not on the board of the CAA.

Under Organizational Standard 5.3, the CAA's bylaws need to be reviewed by an attorney every five years. Under the Organizational Standard, there is no defined type of attorney that needs to be used. However, this attorney will ideally be knowledgeable of the state nonprofit corporation law.

Board members are not expected to be experts on state nonprofit law. With bylaws being the legal "rules of the road" for board and CAAs, it is critical that they comply with state law, the CSBG Act, and other relevant rules and regulations. As stated in the *Tools for Top-Notch CAAs*, "Many state laws affect the operation of nonprofits and their boards. Board members are not expected to be experts on these laws' specific provisions, but they should consult with local attorneys to understand the impact of state law on board procedures. Any provision of the nonprofit's articles of incorporation (or similar documents) or bylaws that is inconsistent with the state law is void and has no legal effect." Having an attorney conduct a review every five years will provide an opportunity for updating and keeping this important document up to date with current statute.

B. Guidance on Compliance and Documentation

Many CAAs have asked if the review must be done by a specific type of attorney. The Organizational Standard does not specify that the work needs to be done by an attorney with specific expertise; however, it is recommended the attorney have experience with nonprofits and board governance. The Organizational Standard does not specify what type of attorney so that each CAA can develop a process that is meaningful to them and functional given local challenges. There is also no requirement the attorney must be paid, a pro bono review would be appropriate.

Several questions are consistently raised:

1. *Can we use an attorney who sits on our board to conduct the review?* There is nothing in the Organizational Standard to prohibit this; however, an attorney who sits on the board may not be willing to sign off on a formal review. However they can:
 - o Conduct the initial review and prepare the bylaws for a more expedited review by an outside attorney;

- Chair a committee tasked with their review;
 - Provide connections to other attorneys who may be willing to conduct the review; and
 - Offer to review the bylaws of a neighboring CAA that may have an attorney on their board willing to reciprocate.
2. *Can we use an attorney on staff?* Again, there is no prohibition in the Organizational Standard and this would be allowed. They could also:
- Conduct the initial review and prepare the bylaws for a more expedited review by an outside attorney;
 - Work with the ED to staff a committee tasked with their review;
 - Provide connections to other attorneys who may be willing to conduct the review; and
 - Offer to review the bylaws of a neighboring CAA that may have an attorney on their staff willing to reciprocate.
3. *We are located in a rural community, making attorneys hard to find. Any thoughts?* Consider working with your Community Action State Association to leverage an attorney for several CAAs in your state/region. Technology may make it easier than in years past to contract with attorney outside of your community, and having several CAAs joining together may assist with cost. There is no requirement that the CAA needs to meet in person with the attorney and the work can be done by phone and email.
4. *Is there a tool to help us get started?* Yes, CAPLAW’s Bylaws Toolkit is a great resource for CAAs with clause descriptions and considerations.

Documenting the review could include, but not be limited to:

- A copy of the invoice for review services;
- A letter from the attorney stating a review was completed;
- A copy of the review from the attorney. The review itself is the CAA’s purview and is a private document. The review itself should not have to be shared with the State CSBG Office in order to meet the Standard, though a CAA may choose to do so; or
- Board minutes documenting the board’s discussion of the review.

C. Beyond Compliance: Benchmarking Organizational Performance

This Organizational Standard requires a review by an attorney. It is also good practice for the board to also review the bylaws more frequently. This can be done through a board committee such as the Nominations/Governance Committee or Executive Committee. Usually the committee overseeing the board nomination process is the most familiar with the bylaws as they need to refer to them to help guide board nomination, election, and seating processes. Reflecting on the corporations “rules” keeps the information fresh and can assist the CAA’s board members in meeting their Fiduciary Duties including the Duty of Care.

In addition to the bylaws, for nonprofit CAAs the Articles of Incorporation are another critical legal document. The CAPLAW Bylaws Toolkit recommends that “each CAA board of directors review the organization’s articles of incorporation and bylaws at least every three years to check that they

comply with state nonprofit corporation law, the federal CSBG Act and state CSBG requirements, as well as other federal and state funding source requirements, and to ensure that the two governing documents are consistent with one another and with the CAA’s current mission and operations.”

Corporate governance documents are tools in a CAA’s toolbox that need attention and they fall under the board’s purview to see they are complete. As most board members are not legal experts, securing the services of an attorney familiar with nonprofit law and governance can provide a board the services of a licensed professional they can legally rely upon.

CAPLAW’s Exemplary Legal Practices & Policies Guidebook
Addresses the Importance of Having an Attorney to Assist a CAA

An attorney plays a key role in helping a CAA maintain accountability and avoid liability. By proactively working with an attorney to ensure that its organizational infrastructure – its vendor contracts, grant agreements, personnel policies, etc. – are legally compliant and enforceable, a CAA may avoid costly litigation and the negative press and low employee morale that goes along with it.

Attorneys are trained to not only explain the legal implications of a matter but also to think objectively and analytically. An attorney typically has the expertise needed to present a client with options for addressing a matter and to thoroughly discuss the level of risk associated with each option. Situations when a CAA should consider consulting an attorney include, but are not limited to:

- Revising personnel policies,
- Purchasing a building,
- Negotiating leases and contracts,
- Reviewing loan documents,
- Revising governance documents such as articles of incorporation and bylaws,
- Terminating an employee,
- Responding to a subpoena for documents or testimony,
- Responding to a lawsuit filed against the CAA,
- Contesting a state CSBG office’s decision to terminate or reduce funding and/or
- Addressing a complaint filed by an employee against the CAA.

Attorneys are also, often, well-connected within a community so when a CAA’s needs expand beyond legal advice into more business or programmatic related matters, a seasoned attorney may be well-positioned to refer the CAA to other professionals and businesses that may further assist the CAA.

D. Resources

CAPLAW. *Bylaws Toolkit*, Updated 2009.

<http://caplaw.myshopify.com/products/caplaw-bylaws-toolkit-electronic-copy>

CAPLAW. *Tools for Top-Notch CAAs: A Practical Approach to Governance and Financial Excellence*. (2011).

<http://caplaw.org/resources/PublicationDocuments/TopNotchToolkit.html>

CAPLAW. *Exemplary Legal Practices & Policies Guidebook: Part II-Working with Attorneys*. (2012).

<http://caplaw.org/resources/PublicationDocuments/ExemplaryPracticesGuidebook.html>

Standard 5.4 The Organization documents that each governing board member has received a copy of the bylaws within the past two years.

A. Guidance on the Definition and Intent of the Standard

As noted above, bylaws are the “rules of the road” for CAAs and their boards. Board actions that take place that are not in line with the bylaws are not valid and can be called into question both in practice, and legally. It is important that CAAs both establish bylaws that meet the needs of the organization and ensure that board members and staff are knowledgeable of the processes laid out in the bylaws.

B. Guidance on Compliance and Documentation

In order to meet Organizational Standard 5.4, board members need to receive a copy of the CAA’s bylaws at least every two years. This copy can be in hard copy format or distributed electronically.

Acknowledgement of receipt can be done in several ways including but not limited to:

- Sign in list completed when Bylaws are distributed at a board meeting
- Email confirmation of receipt
- Board minutes documenting their distribution and noting those in attendance

C. Beyond Compliance: Benchmarking Organizational Performance

While the Standard does not address board members’ knowledge or understanding of the bylaws, it is good practice for boards to review the content of the bylaws periodically so they are aware of the processes they need to follow. CAPLAW’s Bylaws Toolkit recommends board members review every three years. As part of this review, a board discussion on the bylaws would be beneficial.

D. Resources

CAPLAW. *Tools for Top-Notch CAAs: A Practical Approach to Governance and Financial Excellence*. (2011). <http://caplaw.org/resources/PublicationDocuments/TopNotchToolkit.html>

CAPLAW. *Bylaws Toolkit, Updated 2009*.
<http://caplaw.mysbopify.com/products/caplaw-bylaws-toolkit-electronic-copy>

Standard 5.5 The Organization’s governing board meets in accordance with the frequency and quorum requirements and fills board vacancies as set out in its bylaws.

A. Guidance on the Definition and Intent of the Standard

Compliance with the organization’s bylaws are critical. Your CCA’s bylaws are your “rules of the road” for the board. They will define board size, quorum, meeting frequency, committees, election processes, board member removal, filling board vacancies, etc. It is important for board members to be familiar with the bylaws, especially with quorum and meeting frequency requirements as well as how to fill vacancies.

Bylaws provide practical guidance but also legal definitions. They will define the Annual Meeting, Regular Meetings, and the process for Special Meetings. The number of meetings a board will have will be noted in the bylaws, with no fewer than four being recommended. CAA boards may meet more frequently than spelled out in their bylaws, but not less.

Bylaws also define the quorum needed to be reached to conduct board business and in cases where a CAA fails to reach a quorum, board business cannot be conducted. A quorum is the minimal portion/percentage of board members currently seated who need to be present in order to conduct business. As described in CAPLAW’s Bylaws Toolkit, one-third is the lowest advisable quorum to ensure that a small percentage of board members cannot take action binding the CAA. It is more typically set at a majority of board members in office.

As described in CAPLAW’s Bylaws Toolkit, “Most state nonprofit corporation acts provide that unless the bylaws state otherwise, a quorum of the directors is a majority of the voting directors in office. A quorum should be measured against the total number of voting directors in office, rather than a specific number stated in the bylaws, such as ‘seven directors shall constitute a quorum,’ or a vague requirement, such as ‘those members attending constitute a quorum’. To avoid any misunderstanding among the directors and to clarify the issue for the organization, it is important to specifically state the quorum requirement in the bylaws.”

B. Guidance on Compliance and Documentation

It is important to note that filling board vacancies can take time, even for a thriving organization. Bylaws may specify the time period a board has to fill vacancies, or the board may have a procedure manual outlining the time allowed. All CAAs need time to fill vacancies, and it should not be expected that vacancies will be filled prior to the meeting following a board member’s departure. The time to fill vacancies needs to be reasonable but not be so long that it causes board disruption.

Documentation may include board minutes, board rosters, and board bylaws.

C. Beyond Compliance: Benchmarking Organizational Performance

It is important to note that in some states, CAAs are required to comply with the State's Open Meeting laws. As stated in the CAPLAW Bylaws Toolkit, "CAAs that are required to comply with state open meetings laws must ensure that the public is given notice of the meetings and that the notice meets the requirements of the legal authority that requires open meetings (e.g. the state's open meetings law or CSBG statute or regulations). Bylaws for these CAAs should include a provision stating that meetings of the board (and, if required under the open meetings law, committees of the board) will comply with the applicable open meetings law."

There are times when a CAA board may consider decreasing the number of meetings thinking it may increase attendance. Caution is warranted as going too long between meetings can impact the engagement of board members and when a board member misses a meeting (it happens to all board members at some point), they may find themselves less informed of the business of the organization, and find it more challenging to do their due diligence given the length of time that may pass between infrequent board meetings.

The CAPLAW Bylaws Toolkit Addresses Board Vacancies:

Board vacancies present a number of issues for CAAs. Due to the tripartite structure of the board, provisions must be included in the bylaws to allow for each sector of the board to fill vacancies in a different manner. In general, it is best to fill aboard vacancy using the process that was used to select the director who originally held the seat. For example, if the board itself chooses public and private sector directors originally, it should choose replacements to fill vacancies in those sectors.

On the other hand, public and/or private sector directors may need to be replaced through a replacement appointment made by the public official or private sector organization that appointed the original director. Vacancies in the low-income positions should be filled using the selection process that was originally used to fill the seat, or by filling the vacancy with an alternate (for example, a runner-up in an election), if one was selected originally.

Also, bylaws need to include an Amendment clause allowing the board to modify the bylaws to meet the needs of the CAA. Depending on needs and circumstances, CAA boards may need to grow or contract, change processes or committees, or add/subtract/modify various clauses. An Amendment clause is critical to providing the CAA the flexibility it needs to conduct its business over time.

D. Resources

CAPLAW. *Bylaws Toolkit, Updated 2009*. <http://caplaw.myshopify.com/products/caplaw-bylaws-toolkit-electronic-copy>

Information Memorandum (IM) 82. *Tripartite Boards*. Issued March 23, 2005
<http://www.acf.hhs.gov/programs/ocs/resource/im-no-82-tripartite-boards>

CAPLAW. *Tools for Top-Notch CAAs: A Practical Approach to Governance and Financial Excellence*. (2011).
<http://caplaw.org/resources/PublicationDocuments/TopNotchToolkit.html>

Standard 5.6 Each governing board member has signed a conflict of interest policy within the past 2 years.

A. Guidance on the Definition and Intent of the Standard

The Board's Duty of Loyalty calls on board members to act in the best interests of the CAA and put the interests of the CAA ahead of their own. At times, this may mean a board member must take action that goes against what may be best for themselves personally, but is in the best interest of the CAA. It may also lead to board members recusing them from board votes and discussions to avoid any real or perceived conflict of interest. To help board members fulfill this important duty, Organizational Standard 5.6 requires that all board members sign a *Conflict of Interest Policy* every two years.

As CAPLAW's Bylaws Toolkit states, "Consistent with your state law, your organization should have a policy that establishes procedures for identifying potential conflicts of interest and determining if a particular transaction that could involve a conflict is in the organization's best interest. It is best to deal with the details of these issues in a separate conflict of interest policy rather than in the bylaws. However, the bylaws should require the board to develop and implement a conflict of interest policy. In addition, the bylaws should address several conflict of interest requirements that impact board member selection and composition."

B. Guidance on Compliance and Documentation

To meet Organizational Standard 5.6, each board member will need to sign a document and this document should remain on file at the CAA.

There is no requirement in Organizational Standard 5.6 to use a *specific* conflict of interest policy, only that the organization utilizes one that meets its needs. It is recommended that the policy have space for board members to list real or potential known conflicts as well as a signature and date line.

The signed conflict of interest policies should be collected, reviewed, and stored by the CAA.

2 CFR Part 200 (Uniform Guidance/Super Circular) is in effect for any grant periods after December 26, 2014 and has additional information on conflict of interest policies and specific disclosures.

C. Beyond Compliance: Benchmarking Organizational Performance

No board is entirely without potential conflicts. Boards and CAAs do business in local communities, they employ in some cases thousands of staff, a CAA board is made up of elected officials and representatives selected from communities. At times, these relationships may pose conflicts. What is critical for boards is to acknowledge conflicts when they arise, address them, and manage them in the course of doing business. Board members who have an acknowledged conflict

of interest on an issue should recuse themselves from a board vote and in addition not attempt to influence board decisions during the discussion portion of the meeting. It may be appropriate for a board member to leave the room during board discussions to eliminate the appearance of influence.

Under the Duty of Loyalty, it is important for board members who may not have conflict personally but become aware of an unacknowledged conflict of a colleague board member bring it to the person's attention, or to the attention of the full board, if the individual does not raise it. Note that funding source rules (e.g. Head Start and HUD) may simply prohibit certain conflicts and in those cases, recusal will not be sufficient.

When conflicts arise during the course of board business, the meeting minutes should reflect when conflicts arise, how they were acknowledged and by whom, how they were addressed, if/when board members with the conflict left the room or removed themselves from the conversation, and note the vote on any motion including abstentions.

Boards will choose to pursue the path that is in the best interest of the CAA. Real and perceived conflicts both must be managed. This may mean that while a conflict could be managed appropriately, a board may still decline potential purchases or business arrangements to avoid perception issues.

It is best practice that board members sign a conflict of interest statement annually.

Given the questions on the IRS Form 990, including this sign off annually would be appropriate (but is not mandated by the Standard). The questions included on the IRS Form 990 that relate to the Organization's Conflict of Interest Policy include:

- 1) Did the organizational have a written conflict of interest policy?
- 2) Were officers, directors and key employees required to disclose annually interest that could give rise to conflicts?
- 3) Did the organization regularly and consistently monitor and enforce compliance with the policy?

CAPLAW's *Tools for Top-Notch CAAs*, Section 5, Addresses Conflicts of Interest
At minimum it recommends the following key provisions:

- **Purpose.** An introductory statement identifying the policy's purposes and objectives, reflecting a philosophy that guides the board and others subject to it when the policy does not explicitly address a particular situation.
- **Covered Individuals.** At a minimum, persons covered by a conflict of interest policy should include board members, officers, key employees and others involved in the procurement process, and Head Start Policy Council members.
 - Family Members
 - Related Entities
- **Conflicts Covered by the Policy.** This is best done with a general statement, accompanied by examples. At a minimum, the policy should address purchases and sales of goods, services, and property; loans; leases and use of property and resources; investments and joint ventures; and employment of family members.
 - Enumerated Conflicts
 - General Statement
 - Exclusions of Certain Benefits
- **Notification.** The policy should require those who are covered by it to notify the appropriate persons when they become aware of a potential conflict involving themselves, with whom they have family or business relationships and entities in which they have an ownership interest.
- **Validation Process.** Organizations should review applicable state laws to ensure that efforts to validate the conflict comply with statutory provisions, but six basic principles should guide the process:
 - Obtain All Facts
 - Act in Good Faith
 - Demonstrate Fairness
 - Exclude Interested Parties from the Deliberations
 - Review and Approval by Independent Board Members
 - Satisfy Tax Law Requirements
- **Sanctions.** The policy should define the consequences if someone violates it; people are more likely to take the policy seriously if violations carry consequences.
 - Sanctions and Employees
 - Sanctions and Board Members
- **Disclosure.** The policy should require each covered person to disclose actual and potential conflicts in a timely manner. An annual conflicts of interest disclosure questionnaire, which serves as a reminder to covered persons that the CAA has a conflict of interest policy and that compliance with it is both important and expected, is recommended.



Source: CAPLAW's Tools for Top-Notch CAAs

IM 82 also addresses Conflicts of Interest and calls on board members to avoid situations that advantage board member interests or the appearance of advantage. It states:

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.

D. Resources

CAPLAW. *Tools for Top-Notch CAAs: A Practical Approach to Governance and Financial Excellence*. (2011).

Section 5 – Dealing with Conflicts of Interest

<http://caplaw.org/resources/PublicationDocuments/TopNotchToolkit.html>

IRS Form 990 <http://www.irs.gov/uac/Current-Form-990-Series-Forms-and-Instructions>

Information Memorandum (IM) 82. *Tripartite Boards*. Issued March 23, 2005

<http://www.acf.hhs.gov/programs/ocs/resource/im-no-82-tripartite-boards>

CAPLAW. *Conflict of Interest Model Policies*. <http://caplaw.org/resources/modelpolicies.html>

Standard 5.7 The Organization has a process to provide a structured orientation for governing board members within 6 months of being seated.

A. Guidance on the Definition and Intent of the Standard

Organizational Standard 5.7 requires the CAA to have a process for a structured board member orientation. This process needs to call for board members to receive this orientation within 6 months of being seated.

Board orientation is a critical element of bringing a new CAA board member up to speed. Community Action board service is challenging as most CAAs have numerous funding streams, complex financial statements, and intensive reporting requirements when compared to other nonprofits in local communities. Even very experienced nonprofit board members can find CAA board service to have a significant learning curve.

The tripartite structure of CAA boards as defined in the CSBG Act is a foundational element of Community Action, and brings a unique set of skills and experiences to the board table. A new board member orientation can provide an introduction to these elements, offer tools and resources to learn more, and provide the opportunity to pose questions on material received.

Many CAA board members agree that it can take time to be fully comfortable in the role as board member. An orientation gets board members off on the right footing.

B. Guidance on Compliance and Documentation

Organizational Standard 5.7 requires that the CAA has a process to provide orientation. There is no specific curricula requirement, or training methodology required for new board member orientation nor is there a requirement that the orientation process be implemented for every board member. It is challenging to mandate activities for volunteers and while most CAAs board members will participate in board orientation, it is not appropriate for a CAA to be considered out of compliance with the Standard if a board member chooses not to participate in the orientation within six months of being seated.

The CAA must have documentation of its process to meet the Standard. This documentation could be included in a board policy and procedure manual (note this would not be included in the bylaws). A copy of the curriculum/tools used may also be a method of documentation. In addition, a signed board member statement that such orientation was offered or a sign in sheet from the orientation are other examples of documentation.

C. Beyond Compliance: Benchmarking Organizational Performance

There is no specific orientation agenda to be covered and the Standard allows each CAA to develop a process that is meaningful to its individual circumstance. It is recommended that board orientation have many organization-specific elements such as bylaws, overview of programs, CSBG Act, IM 82, and review of fiscal reports. It may be done prior to a board meeting or hosted via a special session meeting; it can be done in person or through electronic media; or through another modality as determined by the organization. It may include other staff and/or board members but will likely include the Executive Director/CEO and a board officer or nominations committee representative.

The following provides an outline of an orientation process and Board Handbook that may be used as part of a structured orientation.

- In-person orientation session (or virtual through web meetings, videos, etc.)
 - Tour of CAA Facility
 - Review of Board Handbook of Materials
 - Meet with Board Chair and ED/CEO to review:
 - Critical info and background on CAA
 - Tripartite Board Structure and Purpose
 - Expectations for board members and officers
 - Bylaws
 - Committees
 - Financial situation, structure, funding streams
- Board Handbook of Materials
 - Critical info and background on CAA
 - Written Job descriptions/expectations for board members and officers
 - Articles of Incorporation and bylaws
 - List of Board Members
 - Committee List, including committee chairs and members
 - Meeting dates
 - Annual report, organizational chart/list of agency programs and main funding sources
 - Audited financial statements, IRS Form 990, current financial statements
 - CSBG Act, IM 82, State CAA Act and regulations
 - Past Board Meeting Minutes (past two years)
- Mentoring by experienced board members. Having a colleague to connect with can assist with onboarding a new Board Member. CAAs can be complex entities and the guidance of an experienced colleague may allow the new member to become active and engaged quickly, and more informed on agency culture, history, and programs.

In addition, CAPLAW's *Tools for Top-Notch CAAs* encourages the use of Board Minutes as an orientation tool. It states, "CAAs can use meeting minutes to orient new board members. A new board member can gain insight and context for future decisions by reading two or three years of meeting minutes. Prospective board members may ask to review meeting minutes to help them decide whether they want to join the board. Unless the CAA is subject to an open records requirement, there is nothing that requires a CAA to make those minutes available to an outsider, but doing so may help in recruiting new board members."

D. Resources

CAPLAW. *Tools for Top-Notch CAAs: A Practical Approach to Governance and Financial Excellence*. (2011). <http://caplaw.org/resources/PublicationDocuments/TopNotchToolkit.html>

Information Memorandum (IM) 82. *Tripartite Boards*. Issued March 23, 2005
<http://www.acf.hhs.gov/programs/ocs/resource/im-no-82-tripartite-boards>

Standard 5.8 Governing board members have been provided with training on their duties and responsibilities within the past two years.

A. Guidance on the Definition And Intent Of The Standard

Ongoing training is vital for any job and serving as a CAA Board member is important work. In addition, IM 82 addresses Board training and orientation and recommends that “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.”

Organizational Standard 5.8 requires that board members are provided training, at a minimum every two years.

Organizational Standard 5.8 states the training needs to be focused on board members’ duties and responsibilities. By keeping it broad, the Standard’s intent is to give each CAA flexibility to provide training that its board needs. This need may vary during the course of the year, be specific due to a current need such as the auditor visit, or be focused on preparing the board for future expansion. There is not one required curriculum for board members to be trained on under this Standard.

B. Guidance on Compliance and Documentation

In order to meet Organizational Standard 5.8, there is no specific curricula requirement, or training methodology required. Training may be delivered at board meetings, special sessions, conferences, through electronic means, or other modalities as determined by the board. Training can be a stand-alone event, or part of other activities. Training can be broad in scope or focus on specific issues.

The organization needs to have documentation that the training occurred (including content) as well as documentation that each board member has been provided with training opportunities. Options would include but not be limited to: sign in sheet and copy of the curriculum used for training, board minutes documenting that training occurred with the names of those attending, registration and training materials from a conference that board members attended, links to recorded webinars the board viewed with an email from a board member stating they viewed the presentation.

As with orientation, volunteer board members may choose to not participate in these opportunities but attempts by the board and staff to ensure everyone had the opportunity to participate is critical.

C. Beyond Compliance: Benchmarking Organizational Performance

While no specific curriculum is required under the standard, there are topics that many boards find helpful to receive training on during their board service. Board members may find they learn different things from similar curriculum depending on when in their tenure the training is conducted. Experience matters and board training and the takeaways from it will vary by board member. Long time board members often bring a sense of reality to the training and can provide their board colleagues context for concepts shared during training.

The Board's Governance/Board Development/Nominating Committee may be the place for planning and design of general board training. Finance and audit committees may choose to prepare board members to meet with auditors by ensuring training on the audit process or how to read/interpret an audit is provided. A strategic planning committee chair may host training on planning, prior to the start of a strategic planning process to ensure board members are familiar with the components and other concepts behind the process. A program committee may request training be provided on ROMA concepts for boards that highlight the ROMA cycle and outcome focus and the board's role in it. There is not one board training curriculum. There is not one trainer, conference, or modality that will work for all CAAs in all circumstances. What is critical is that board members are provided training over the life of their board service, that it is seen by the CAA as a critical part of the board's health as a well-functioning body, and that the training is accessible and usable in their board work.

There are online trainings developed by CAPLAW that make board training accessible and low cost. There are in-person conferences hosted by CAPLAW, Community Action Partnership, State and Regional Community Action Associations, and others that address the tripartite nature of CAA boards. There is board training provided by many consultants, trainers, community groups, funders and others that address the duties and responsibilities of the board. The universe of board training has grown significantly over the past 15 years and the various modalities provide CAAs wide access.

As noted above, IM 82 addresses board orientation and recommends that "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
 - Orientation to statutory and regulatory requirements (CSBG Act, other Federal, State or local statutes and regulations, including non-profit board requirements;
 - Agency articles of incorporation, bylaws, etc.
 - Overview of Board functioning - appointment, representation, meetings, committees, conflict of interest policy, relationship to executive director and staff, etc.
 - Role and Responsibilities of the Executive Director

- Role and Responsibilities of the Board regarding the employment, retention, and compensation of the Executive Director and key agency staff
- Overview of agency administration and financial management policies and procedures - oversight role and responsibilities of the board
- Orientation to, and how to oversee, agency mission, long-range and annual plans
- Orientation to, and how to oversee, agency programs and services
- 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 and Results Oriented Management and Accountability (ROMA)
 - Agency Development –
 - Needs Assessment
 - Agency Mission determination
 - Agency Planning -
 - Strategic Long-Range Planning
 - Annual Planning - performance expectations and targets
 - Forming Partnerships with other resources in the community
 - Program Implementation –
 - Tracking of Milestones, interim performance results and reports
 - Making mid-course corrections to improve performance
 - Evaluation - (Results Oriented Accountability)
 - Result-Focused Evaluation - clients and community
 - Results-Focused Evaluation - agency and staff
 - Using Information for Planning
 - Using Information for Additional Funding and Advocacy

D. Resources

Information Memorandum (IM) 82. *Tripartite Boards*. Issued March 23, 2005
<http://www.acf.hhs.gov/programs/ocs/resource/im-no-82-tripartite-boards>

CAPLAW. *CSBG Training Tools for Nonprofit Boards*.
<http://caplaw.org/resources/PublicationDocuments/csbgtrainingtoolsforprofitboards.html>

Standard 5.9 The Organization's governing board receives programmatic reports at each regular board meeting.

A. Guidance on the Definition and Intent of the Standard

As noted above, the CSBG Act requires that 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." Yet, boards of directors are meant to be governing bodies while delegating operations and programs to staff. In CAAs, balancing the ability to govern and "fully participate" is critical.

Organizational Standard 5.9 provides board members with a way of demonstrating adherence with the CSBG Act. Good board processes include programmatic reports that allow board members to stay abreast of program development, planning, implementation and evaluation activities and to provide input into the process. Board members are encouraged to review IM 82 for additional elements of good board functioning to comply with this portion of the CSBG Act.

To meet Organizational Standard 5.9, programmatic reports may be summarized at the full board meeting while presented more in depth at the committee level. Many CAAs have a board committee assigned to be engaged in this work which will receive more detail on program activities. The minutes from this committee should be shared with the full board to ensure the entire board has access to this information. At full board meetings, a programmatic report is critical and may be in writing or presented verbally.

B. Guidance on Compliance and Documentation

Organizational Standard 5.9 does not require a report on each program at every board meeting; however it does call for some level of programmatic reporting at every board meeting.

Organizations determine their own process to report programs to the board. For example, some organizations may cycle through their programs semi-annually, others may do so on a quarterly basis, and yet others may do a brief summary at every board meeting.

Board minutes that reflect that programmatic reports have been provided and received by the full board would suffice as documentation. Programmatic reporting may be in writing (reports, dashboards) and/or be presented verbally.

C. Beyond Compliance: Benchmarking Organizational Performance

As noted above, many CAAs have one or more committees charged with program oversight. If your CAA does not have such a committee, it is recommended that it be considered.

The CAPLAW Bylaws Toolkits outlines the following description of such a committee, here entitled the Program Planning and Evaluation Committee:

“Subject to the direction and control of the full board, the program planning and evaluation committee shall: (1) oversee implementation of the corporation’s community needs assessment and strategic planning processes approved by the board and conduct periodic reviews to determine to what degree the corporation is addressing the needs and goals identified through these processes; (2) track the progress of the corporation’s programs in meeting identified goals and objectives; (3) oversee the corporation’s processes for outcome reporting for its programs; (4) review monitoring reports, evaluations, and other feedback on the corporation’s programs provided by funding sources and other interested parties; (5) work with the corporation’s staff and full board to ensure that monitoring findings are addressed in a timely way; (6) oversee the regular evaluation of the corporation’s programs by the corporation’s board and staff; and (7) regularly report to the full board on these matters. In addition, the program planning and evaluation committee shall have such other powers and perform such other duties as the board may specify from time to time.”

IM 82 provides more detail on how board members can meet their duty under the CSBG Act. Regarding programs it states:

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.

D. Resources

Information Memorandum (IM) 82. *Tripartite Boards*. Issued March 23, 2005
<http://www.acf.hhs.gov/programs/ocs/resource/im-no-82-tripartite-boards>

CAPLAW. *Bylaws Toolkit, Updated 2009*.
<http://caplaw.myshopify.com/products/caplaw-bylaws-toolkit-electronic-copy>

	Documentation Used	Unacceptable	Unsatisfactory	Satisfactory	Advancing	Outstanding	Action to be Taken	Individual(s) Responsible	Target Date(s)
<p>Standard 5.1 The organization's governing board is structured in compliance with the CSBG Act:</p> <ol style="list-style-type: none"> 1. At least one third democratically-selected representatives of the low-income community; 2. One-third local elected officials (or their representatives) and; 3. The remaining membership from major groups and interests in the community. 	•								
<p>Standard 5.2 The organization's governing board has written procedures that document a democratic selection process for low-income board members adequate to assure that they are representative of the low-income community.</p>	•								
<p>Standard 5.3 The organization's bylaws have been reviewed by an attorney within the past 5 years.</p>	•								

	Unacceptable	Unsatisfactory	SATISFACTORY	Advancing	Outstanding
Standard 5.1	Our bylaws do not reference the tripartite structure.	Our bylaws reference the tri-partite structure but the board does not reflect this.	The organization's governing board is structured in compliance with the CSBG Act: 1. At least one third democratically-selected representatives of the low-income community; 2. One-third local elected officials (or their representatives) and; 3. The remaining membership from major groups and interests in the community.	Our low income board seats are filled with people living in low-income communities, standing committees that have the power to act on behalf of the board (such as the executive committee) have a tripartite structure.	Our board and each standing committee reflect the tripartite nature of the board structure.
Standard 5.2	We do not have a written democratic selection process and the board does not have 1/3 of its membership coming from the low income community	We do not have a written democratic selection process but the board is seated with 1/3 being representatives of the low income community.	The organization's governing board has written procedures that document a democratic selection process for low-income board members adequate to assure that they are representative of the low-income community.	Our written procedure for selection is followed and reviewed by the board (or appropriate committee) every five years to assess its success and modified as needed.	Our written procedures are reviewed prior to each board election cycle to ensure that the process is inclusive and is reaching the intended low-income community.
Standard 5.3	It has been more than 10 years since our bylaws were reviewed by an attorney, or never reviewed by an attorney.	Our bylaws have been reviewed by an attorney in between 5-10 years ago.	The organization's bylaws have been reviewed by an attorney within the past 5 years.	Our bylaws have been reviewed by an outside attorney familiar with the state's nonprofit law within the past 5 years.	Our bylaws have been reviewed by an outside attorney familiar with the state's nonprofit law within the past 3 years.

	Documentation Used	Unacceptable	Unsatisfactory	Satisfactory	Advancing	Outstanding	Action to be Taken	Individual(s) Responsible	Target Date(s)
Standard 5.4 The organization documents that each governing board member has received a copy of the bylaws within the past 2 years.	•								
Standard 5.5 The organization's governing board meets in accordance with the frequency and quorum requirements and fills board vacancies as set out in its bylaws.	•								
Standard 5.6 Each governing board member has signed a conflict of interest policy within the past 2 years.	•								

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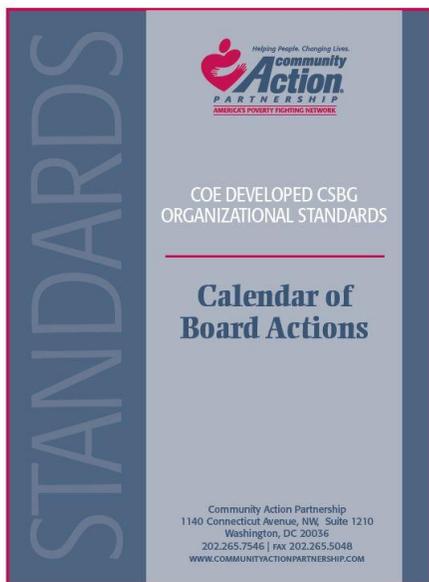
	Unacceptable	Unsatisfactory	SATISFACTORY	Advancing	Outstanding
Standard 5.4	Our board members never received a copy of the bylaws.	Our board members received a copy at the start of their board services but have not received a copy in the past 2 years.	The organization documents that each governing board member has received a copy of the bylaws within the past 2 years.	All board members received a copy of our bylaws within the past two years and a board committee has reviewed them.	All board members received a copy of our bylaws within the past two years and the full board reviewed them at a board meeting.
Standard 5.5	Over the past year, our board met fewer times than required by the bylaws and made few if any attempts to fill board vacancies.	Our board met fewer times than required in the bylaws and/or our board filled vacancies, but outside of the length of time needed to fill them as outlined in our bylaws.	The organization's governing board meets in accordance with the frequency and quorum requirements and fills board vacancies as set out in its bylaws.	Our board's standing committees met periodically throughout the year. Our board filled vacancies in a timely manner.	Our board holds meetings for planning and training in addition to the meetings required by the bylaws. Our board uses its committees as a training ground for new board members and/or has cultivated a list of potential board members to fill seats as needed.
Standard 5.6	There is no record of our board members signing a conflict of interest policy.	Our board members have signed a conflict of interest policy but not in the past 2 years	Each governing board member has signed a conflict of interest policy within the past 2 years.	Our board members sign a conflict of interest policy annually and engage in board discussion on real and perceived conflicts.	Our board members and senior staff sign a conflict of interest policy every year and engage in board discussion on real and perceived conflicts at least annually, and as issues arise.

	Documentation Used	Unacceptable	Unsatisfactory	Satisfactory	Advancing	Outstanding	Action to be Taken	Individual(s) Responsible	Target Date(s)
Standard 5.7 The organization has a process to provide a structured orientation for governing board members within 6 months of being seated.	•								
Standard 5.8 Governing board members have been provided with training on their duties and responsibilities within the past 2 years.	•								
Standard 5.9 The organization's governing board receives programmatic reports at each regular board meeting.	•								

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	Unacceptable	Unsatisfactory	SATISFACTORY	Advancing	Outstanding
Standard 5.7	Our CAA does not have a process for a new board member orientation	Our CAA has a process for new board orientation but there is no time period specified or it is longer than 6 months of being seated	The organization has a process to provide a structured orientation for governing board members within 6 months of being seated.	Our CAA has implemented the board orientation process as described for all new board members.	Our CAA implements a board orientation within 30 days of being seated.
Standard 5.8	There is no record of board training being provided in more than 10 years	Training has been provided to our board but not in the past two years.	Governing board members have been provided with training on their duties and responsibilities within the past 2 years.	Training has been provided in the past year. Our board members are given an opportunity to access additional training annually.	Structured training has been provided to all board members within the past year and our board provided an opportunity to attend Community Action related training events and conferences
Standard 5.9	Our board has not received a programmatic report in the past year.	Our board received programmatic reports periodically but not at each board meeting.	The organization's governing board receives programmatic reports at each regular board meeting.	Our board has received programmatic reports, addressing outcomes achieved, that have been thoroughly discussed in a program committee (or equivalent) meeting.	Our board received programmatic reports, addressing outcomes achieved, and can demonstrate continuous program improvement.

More great resources for governing boards on Organizational Standards



Calendar of Required Actions – a checklist that lists the Organizational Standards that relate to the governing board by time frame to help you plan your meeting agendas and board materials

- Maintained
- More Frequent than Annual/As Needed
- Annually
- Every 2 Years
- Every 3 Years
- Every 5 Years
- Related Standards

**For these and other resources from the
Organizational Standards Center of Excellence
(OSCOE) please visit
http://bit.ly/OSCOEresources_GovernanceGuide**

Check out our series of *short videos* for governing boards introducing the Organizational Standards and how they relate to the actions of the board.

Community Action Partnership has a youtube channel with tons of archived video materials and a playlist specifically for boards at
http://bit.ly/OSCOE_Board_Playlist





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