CAPLAW
Community Action Program Legal Services, Inc.

CAA Governance: Now More Than Ever

By Anita Lichtblau, Esq., CAPLAW

Everyone is talking about board governance. Whether it's the IRS's Good Governance Practices guidelines, congressional bills on governance of Head Start programs, recommendations of nonprofit industry groups, or legislative enactments and proposals at both the state and federal levels for nonprofit reform, calls for increased accountability and transparency of nonprofit boards are everywhere. Is there a way to cut through the multiple and sometimes conflicting guidance and mandates and get to the core principles? It's a tough task, but let's try to identify some key emerging principles and action items for your Community Action Agency (CAA) board. Don't forget, though, that this list does not cover every topic and that state law, as well as specific program rules, may have additional governance requirements. Check with your local attorney and review your program rules.

- More active, independent, and informed board members. A rubber-stamp, passive board, or one made up of too many members with financial ties to the nonprofit, is no longer acceptable, if it ever was. The board should include at least some members with financial expertise (this may be required in the future for Head Start grantees), be provided accurate and current information concerning significant aspects of the nonprofit's operations as well as basic CAA documents such as bylaws and articles of incorporation, ask questions, and receive training on a regular basis. The CAA board should do more than just receive reports and other information; it should take an active part in setting policy and ensuring accountability. Board members are expected to ask questions and to seek additional relevant information where necessary. One of the key duties of a board is to ensure that adverse monitoring reports from funding sources are addressed and corrected in a timely fashion. Even though many CAAs' board members, and sometimes all, are selected by other groups or individuals, the CAA can look to its "private sector" members, or ask its designated "private sector" organizations, for individuals with specialized expertise.

- Greater financial oversight. This is a key component of reform proposals and best practices. Effective oversight requires regular review by the board and/or financial committee of current and understandable financial statements, including income and expense statements (compared to budget), balance sheets, and cash flow statements. Board members need to be trained on financial issues, including how to read financial statements and identify financial problems. As recipients of federal funds that are already required to conduct audits, CAAs are ahead of the curve on recommendations for audits of nonprofits. The board should have either a separate audit committee or another committee, such as the finance committee, that performs the typical audit committee functions, including retaining the auditor, reviewing the audit plan, reviewing and addressing the audit report and any reportable conditions, and acting on proposals for auditors performing non-audit services. The auditor should be directly responsible to the board or board committee, and should meet at least once with them without CAA staff present. The board or an appropriate committee should also ensure that effective and current financial policies are in place, including fraud prevention measures, and procedures to ensure that withholding taxes are promptly paid to the IRS. The Board should review and approve major transactions.

Finally, best practices suggest, and some states require, that the board review the Form 990 filed with the IRS and annual financial reports submitted to the state.

- Establishment and implementation of conflict of interest policy and code of ethics. Many of the nonprofit scandals that have erupted over the last few years have involved "sweetheart deals" for insiders. In order to avoid this, all nonprofits should adopt and implement a written conflict of interest policy that requires, at a minimum: (1) disclosure of financial (and sometimes other) interests by board members and senior management between such individuals (and family members and entities they control) and the nonprofit; (2) a determination by financially-independent board members, using comparables if appropriate, as to whether those transactions are reasonable and in the nonprofit's best interest; and (3) contemporaneous recording of steps one and two in the board minutes. A code of ethics, which addresses such issues as confidentiality and bans preferential treatment of board members or CAA staff in the provision of CAA services and the receipt of gifts from vendors, contractors, and clients, is also recommended.

- Creation and implementation of a whistleblower policy. Although the Sarbanes-Oxley Act of 2002 does not generally apply to nonprofits, one provision that does makes it a federal crime to for anyone to, knowingly and with the intent to retaliate, take harmful action against any person for providing a law enforcement officer with truthful information relating the commission of a federal offense. Some states have enacted, or are considering, broader provisions. Since some studies have shown that information from insiders is often the most effective way to identify fraud, establishment at the board level of a procedure to review good faith complaints of financial irregularities, as well as a policy prohibiting retaliation for reporting such information, is another recommended best practice.

- Enhanced board role in planning and evaluation. Again, CAAs may be ahead of the curve here. The Community Services Block Grant (CSBG) Act requires CAAs to administer the CSBG program through a tripartite board "that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities." 42 U.S.C. § 9910(a)(1). The board should be engaged in both short-term planning, such as reviewing budgets and grant proposals, and long-range strategic planning. The board should also set specific goals for the organization, which are then compared with actual results in the evaluation process. The board should also have at least a general understanding of the various performance measurement systems used by the CAA, such as ROMA (Results-Oriented Management and Accountability), and how the CAA has fared. The board must take seriously its responsibility to evaluate and set the compensation of the CAA executive director, as well as its own performance.

- More resources. An abundance of materials on board roles and responsibilities is available, much of it online. A few worth mentioning are: Office of Community Services Information Memorandum No. 82 (Guidance on Tripartite Boards), available at www.acf.hhs.gov/programs/ocs/csbg/documents; and resources available at www.boardsource.org; www.independentsector.org; and www.compasspoint.org. An excellent book on the subject is Guidebook for Directors of Nonprofit Corporations, available at www.abanet.org.