

CAPLAW FAQ

A series of common legal questions and answers for the CAA network



Should a CAA executive director also serve as a voting member of a CAA board?

March 2014 If the Community Action Agency (CAA) runs a Head Start program, the answer is no; the Head Start Act prohibits board members serving as paid staff of the organization. Even for CAAs without Head Start, however, CAPLAW does not recommend making the executive director a voting board member.

How does the Head Start Act prohibit a CAA executive director from serving on the board?

The Head Start Act generally prohibits payment of compensation to members of the governing body, either for serving on the governing body or for providing services to the CAA. 42 U.S.C. § 9837 §642(c)(1)(C)(ii). Thus, if a CAA runs a Head Start program, it would be prohibited from paying the executive director for her services as executive director if she were to serve as a voting member of the board.

What other reasons are there why a CAA executive director should not serve as a voting board member?

The CSBG Tripartite Board Requirement

The federal Community Services Block Grant (CSBG) Act does not address the seating of an executive director on a CAA's board. However, in CAPLAW's view, it is not a good idea to include the CAA executive director as a voting member of the tripartite board.

The CSBG Act requires CAA boards to be composed of three sectors: one-third of the board must be elected public officials or their representatives (the public sector); at least

one-third must be chosen in accordance with democratic selection procedures to ensure that they are representative of low-income people in the community served (the low-income sector); and the remainder are to be officials or members of business, industry, labor religious, law enforcement, education, or other major groups or interests in the community (the private sector). 42 U.S.C. § 9910. The purpose of the tripartite board structure is to obtain input from, ensure communication with and mobilize resources of key segments of the community.

As a voting member of the tripartite board the executive director would need to be seated in one of the three sectors: public, private or low-income. Most likely, the executive director would serve in the private sector, since it would be more difficult for her to be selected from either of the other two sectors. (To serve in the public sector, the executive director would need to be appointed as the representative of a public official, because most CAA executive directors are not elected public officials themselves. To serve in the low-income sector, the executive director would need to be democratically selected to represent the low-income community.) Many CAAs rely on private sector board members to bring added expertise

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in areas such as finance, law, fundraising and public relations, as well as financial and other resources, to the board table. By seating the executive director in the private sector – or, indeed, in any of the three sectors – the CAA would lose a valuable opportunity to obtain needed community input, expertise and resources.

Imbalance of Power and Conflicts of Interest

Particularly for nonprofit CAAs, including the executive director as a voting member of the tripartite board can disrupt the balance of power between the executive director and the board, which is expected to operate objectively and independently from management. The board's job is to establish the organization's mission and strategic direction and to oversee the management of the organization. This includes hiring, firing, supervising and evaluating the executive director. The executive director's job is to manage the organization on a day-to-day basis and to ensure that the goals set by the board are being met. As part of that job, she helps craft board meeting agendas and manages the flow of information to the board about the CAA's operations and finances, ensuring significant input into and influence on board discussions and decision-making.

By serving as a voting member of the board, the executive director would have two conflicting roles: managing the organization's daily operations on the one hand, and on the other hand, participating with other board members in overseeing her own management. Even if the executive director recuses herself from board discussions and votes about issues in which she has a direct conflict of interest (such as her evaluation and compensation), she will still have indirect conflicts of interest in most of the other decisions that the board makes.

What is an alternative to the executive director's serving on the board?

The executive director's participation in board meetings is a critical part of her role in managing the CAA. However, rather than seating the executive director as a voting member of the board, a CAA should consider specifying in its bylaws that the executive director has the right to attend, participate in board meetings and make recommendations to the board (except where the board convenes in executive session to meet with the auditor or to discuss issues – such as the executive director's performance and compensation – in which she has a direct conflict of interest). The executive director would thus have input into but not a vote on the board's decisions. This approach preserves the distinction between the management role of the executive director and the oversight role of the board, while promoting a close working partnership between the executive director and the board.

What about state and local law?

If, after reading this FAQ, your CAA is still considering having its executive director serve as a voting board member, be sure to check whether doing so is permitted under your state's nonprofit corporation law (for a nonprofit CAA) or state and local laws on local government (for a public CAA).

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