

Legal Hot Topics

Region VIII Community Action Association



Wednesday, July 13, 2022

Allison Ma'luf, Esq. and Veronica Zhang, Esq.

1



Allison Ma'luf
allison.maluf@caplaw.org



Veronica Zhang
veronica.zhang@caplaw.org

CAPLAW | www.caplaw.org | (617) 357-6915

2

Hot Topics

- Spending CSBG CARES Funding
- Staff Recruitment + Retention
- Governance Challenges

3

Spending CSBG CARES Funding

- Funds may be used “to prevent, prepare for, and respond to coronavirus”
- **Flexible, innovative approaches**
 - Impacts of inflation (food, gas, diapers)
 - Barriers to employment (vehicle repairs, childcare)
 - Housing assistance (water/utility; eviction protection)
 - Technology upgrades
 - Employee health + well-being
 - Leadership development

4

Spending CSBG CARES Funding

- **Income eligibility**
 - If state CSBG office permits, 200% FPL applies to **ALL**:
 - FY22 Regular CSBG funds
 - CARES CSBG funds
 - Consider adding flexibilities to income eligibility determination process
 - What counts as income?
 - What time period to use?
 - How often to redetermine eligibility?

5

Determining Eligibility

- **Who is responsible?**
 - Depends on subrecipient or contractor
- **Individual eligibility may not be required:**
 - **Group-level services** + circumstances indicate that those benefiting are likely to meet CSBG income eligibility
 - **Individual-level services** + circumstances make it difficult to get documentation, likely to meet CSBG income eligibility
 - **Facilitate linkages and coordination** of services
 - **Increase community awareness** of poverty issues

6

Guide to CSBG Eligibility



7

Subawarding Federal Funds

- **Determine whether other entity is a contractor or subrecipient** (2 CFR §§ 200.330– 332)
 - Subrecipient (subaward agreement)
 - Contractor (contract)

- The recipient is always solely responsible to the federal government for the execution of the award

8

Subrecipient vs. Contractor

Subrecipient (<i>Subaward</i>)	Contractor (<i>Procurement contract</i>)
CAA's purpose: carry out a portion of the federal award	CAA's purpose: obtain goods and services for CAA's own use
Determines eligibility for assistance (e.g., partner identifies participants in mentoring program)	Provides goods and services within normal business operations
Performance measured according to federal program objectives (e.g., CAA relies on partner's data to submit its own performance data to federal or pass-through entity).	Provides similar goods and services to many different purchasers
Responsible for program decision-making (partner will use its own judgment, discretion, and expertise in implementing program)	Normally operates in a competitive environment
Must comply with federal program requirements	Is not subject to compliance requirements of the federal program as a result of the agreement
Funds used to carry out the federal program, rather than providing goods or services	Provides goods or services that are ancillary to the operation of the federal program

9

Subrecipient vs. Contractor

- **Substance of the relationship is more important than the form of the agreement**
 - Not all characteristics will be present in every relationship
- **Tips**
 - Pass-through entity should use judgment
 - Document analysis and keep in subaward/procurement file

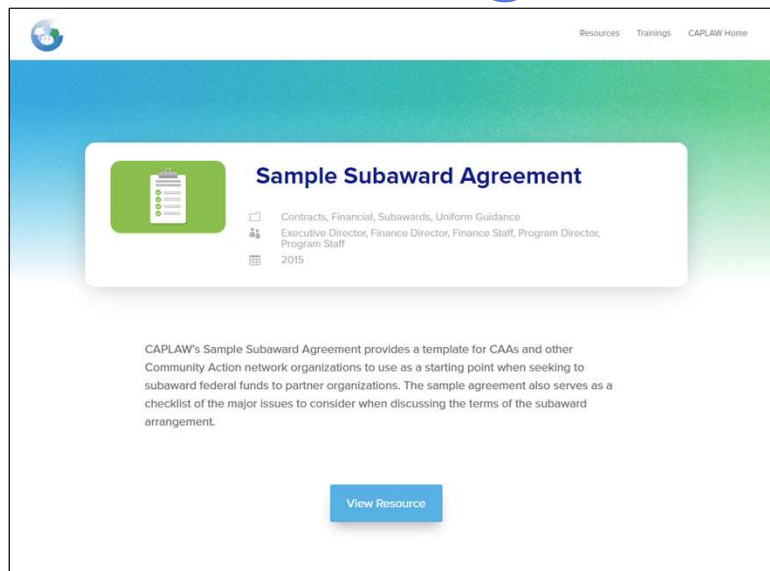
10

Managing Subawards

- **Identify and select partners**
- **Understand the rules applicable to subawards**
- **Evaluate costs and review budget**
 - Discuss cost allocation and indirect cost treatment
- **Draft subaward agreement**

11

Sample Subaward Agreement



The screenshot shows a webpage with a blue and green header. In the top right corner, there are links for 'Resources', 'Trainings', and 'CAPLAW Home'. The main content area features a white card with a green icon of a document with a checklist. The card is titled 'Sample Subaward Agreement' and includes the following text: 'Contracts, Financial, Subawards, Uniform Guidance', 'Executive Director, Finance Director, Finance Staff, Program Director, Program Staff', and '2015'. Below the card, there is a paragraph of text: 'CAPLAW's Sample Subaward Agreement provides a template for CAAs and other Community Action network organizations to use as a starting point when seeking to subaward federal funds to partner organizations. The sample agreement also serves as a checklist of the major issues to consider when discussing the terms of the subaward arrangement.' At the bottom of the card, there is a blue button labeled 'View Resource'.

12

Managing Subawards

- **Administer and manage award**
 - Provide appropriate financial and technical assistance
 - Pre-award risk assessment
 - Manage payments
- **Monitor award**
- **Meet reporting requirements**
- **Plan for closeout of subaward**

13

Sample Pre-Award Risk Assessment

The screenshot shows a webpage with a blue and green gradient header. In the top right corner, there are links for 'Resources', 'Trainings', and 'CAPLAW Home'. A central white card features a magnifying glass icon and the title 'Sample Subrecipient Pre-Award Risk Assessment Tool'. Below the title, it lists the target audience: 'Financial, Subawards, Uniform Guidance', 'Executive Director, Finance Director, Finance Staff, Program Director, Program Staff', and the year '2017'. Below the card, a paragraph of text describes the tool's purpose: 'CAPLAW's Sample Pre-Award Risk Assessment Tool helps a CAA conduct the required pre-award risk assessment prior to subawarding federal funds. The tool also describes the differences between a subcontractor and subrecipient relationship under the Uniform Guidance.' At the bottom of the card, there is a blue button labeled 'View Resource'.

14

Staff Recruitment + Retention

- **Compensation:**
 - Salaries + Incentive Pay + Hazard Pay + Benefits
 - CAPLAW's Compensation Explainer
- **Remote working + flexible schedules**
- **Health + wellness programs**
- **See Office of Head Start's Information Memorandum (IM)**
 - ACF-IM-HS-21-05: Supporting Staff Wellness
 - ACF-IM-HS-22-04: Competitive Bonuses for Head Start Workforce

15

Staff Recruitment + Retention

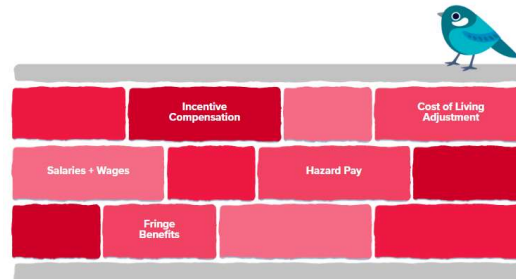
CAPLAW Online Guide

<https://resources.capl原因.org/resources/building-blocks-of-employee-compensation/>



Community Action Agencies (CAAs), like many employers across the United States, are experiencing challenges retaining their existing staff and recruiting new employees in the wake of the COVID-19 pandemic. To help CAAs strategize for employee recruitment and retention in a post-pandemic world, CAPLAW has created this guide identifying some types of compensation they can offer, and the laws and regulations governing their salaries and benefits. When making any changes to their salary and benefits packages, CAAs should carefully review applicable laws and guidance in consultation with an employment attorney in their state, since state and local wage and hour laws will also apply. The rules and compensation types discussed here are not exhaustive, but we hope they will help you lay the foundation for a more engaged and experienced workforce.

Click on each brick below to learn more about each compensation type. For a printer-friendly chart version of this guide, [click here](#).



16

Incentive Pay

2 C.F.R. § 200.430(f)

- **What is incentive pay?**
 - A temporary, discretionary increase in pay
- **Uniform Guidance:** “Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable” if:
 - Total compensation is reasonable
 - Paid pursuant to written agreement in place before the services were rendered

17

Incentive Pay

2 C.F.R. § 200.430(f)

Purpose: Make a connection to Uniform Guidance purpose

Allowed	Disallowed
Above-average job performance	Make up for historically low salaries
Successful cost-cutting efforts	Recognize job seniority or length of service
	Unexpended grant funds at end of year

18

Incentive Pay

Written Policy

- **Reasonable compensation**
 - Total compensation must be reasonable
 - Consider incentives paid to comparable workers in similarly situated organizations
- **Safeguards**
 - Apply incentive criteria consistently
 - Set a cap on total incentive compensation for each employee
- **Board oversight**
 - Board has sole discretion to cancel or reduce awards

19

Incentive Pay

Written Policy

- **Incentive criteria**
 - Objective, realistic, and linked to CAA's accomplishment of exempt purpose
 - Apply criteria to individual employees (safest)
 - If applying to a group of employees, must show that each recipient met the incentive criteria

20

Incentive Pay

Recommendations

- **Get board approval**
- **Charge to the proper grant period**
 - Grant period in which incentive criteria were met
- **Apply plan consistently**
 - Don't make it too complicated
 - Must follow incentive criteria
- **Document, document, document**
- **Report properly on Form 990**

21

Hazard Pay

- **Not explicitly addressed in Uniform Guidance or CSBG Act**
- **Evaluate under general compensation considerations** (2 C.F.R. § 200.430(a))
 - Total compensation must be reasonable
 - Paid under an established written policy (before services are rendered)
 - Supported by sufficient documentation
- **OCS IM #157:**
 - Protecting the health + well-being of staff
 - Supporting continuity of operations

22

Governance Challenges

- Filling board seats
- Fostering a balanced board chair + executive director relationship
- Facilitating board meetings
- Helping boards understand their responsibilities



Democratic Selection Case Studies

Preserving the Low-Income Voice

Snapshots of Democratic Selection Procedures in a Pandemic

INTRODUCTION

The COVID-19 pandemic has created a multitude of unprecedented challenges for Community Action Agencies (CAAs). From scaling up and adapting existing programs, to navigating new laws and administrative dilemmas, CAAs have stepped up to meet those challenges and develop new procedures enabling them to better serve their clients.

One of the challenges that has spurred CAAs to innovate is the need to recruit and elect representatives of the low-income community to serve on the tripartite board. Under the Community Services Block Grant (CSBG) Act, for a nonprofit or public CAA to receive CSBG funding, at least one-third of its board must be chosen in accordance with democratic selection procedures adequate to ensure that they are representative of the low-income individuals and families in the neighborhood served by the CAA (42 U.S.C. § 9910(a), (b)). This requirement is unique to Community Action and serves as a hallmark of the program's commitment to providing low-income people with a voice in the development, planning, implementation, and evaluation of anti-poverty programs.

While it imposes the tripartite requirement, the federal CSBG Act does not offer any guidance on how to conduct a democratic selection procedure; for that, CAAs can look to CSBG Information Memorandum (IM) 82 from the Office of Community Services. IM 82 states:

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.

CAPLAW has termed the latter method a "micro election", and many CAAs have used this type of procedure by asking another group that is representative or comprised primarily of low-income individuals to elect someone from their group to sit on the CAA's tripartite board. It is not enough for the electing entity to serve the low-income population; it should itself be primarily made up of low-income individuals. This reflects the purpose of having a tripartite board in the first place: to establish a mechanism for gathering and empowering the feedback of the community served, along with the public and private sectors.

Raising the Low-Income Voice

Case Studies in Democratic Selection Procedures

INTRODUCTION

Updated April 2021

Since the inception of the Economic Opportunity Act, a fundamental goal of Community Action has been to provide low-income individuals with a voice in the administration of its poverty-alleviating programs. With the Community Services Block Grant (CSBG) Act's call to achieve "maximum participation" of the low-income community in the development, planning, implementation, and evaluation of CSBG-funded programs, a critical venue for the low-income community's participation is their representation on the tripartite board.

Despite the importance placed on maximum participation of the low-income community, there is relatively little federal law that explains what this means in the context of governance practices and procedures. The federal CSBG Act requires that "(1) not fewer than 1/3 of the members [of the board] are 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; and (1) each representative of low-income individuals and families selected to represent a specific neighborhood within a community ... resides in the neighborhood represented by the member." 42 U.S.C. §9910 (a)(2)(B).

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."

IM 82 advises CAAs to ensure democratic selection procedures "directly through election [or] public form," but if that is not possible, it lists a number of alternatives. The case studies in Raising the Low-Income Voice are focused on the "direct" democratic procedures. If a CAA determines that direct democratic procedures are not possible, it will likely be able to comply with the law by creating what may be called "micro" democratic selection procedures, whereby the CAA asks another group that is representative or comprised primarily of low-income individuals (e.g., a tenants' association from a local low-income housing development) to select someone from their group to sit on the CAA's board. Some of the snapshots in CAPLAW's Preserving the Low-Income Voice resource discuss this type of "micro" democratic selection process.

While it is clear that CAAs must establish some kind of democratic selection procedure, it is not clear what that procedure should, or can, look like. This is, it may come as no surprise,

Guides



Working with an Elected Public Official's Representative on the Tripartite Board

By Allison Ma'luf, Esq.
September 2018

Elected public officials serve a crucial role on a Community Action Agency's (CAA) tripartite board. Not only do they raise awareness of poverty in the community and at various levels of government, they are also integral in fostering close coordination between local public agencies and Community Action efforts. Recognizing the often overwhelming demands elected public officials regularly face, the federal Community Services Block Grant (CSBG) Act gives a public official invited to serve on the tripartite board the option to have a representative serve in his or her place. This FAQ addresses a variety of questions received by CAPLAW about the selection and management of representatives serving in place of elected public officials on tripartite boards. The answers to these questions often depend on the requirements in a CAA's bylaws. While this FAQ discusses the federal CSBG Act's requirements and offers recommended practices, CAAs should note that they must continue to follow their bylaws as currently written until they are amended pursuant to the applicable bylaws provisions and/or state or local laws.

1. What legal requirements apply to how representatives of elected public officials are selected and managed?
2. Can a representative serve as an alternate or proxy rather than in place of the elected public official?
3. What if an elected public official delays in appointing a representative to serve in his or her place?
4. If an elected public official is no longer in office, can the representative continue to serve on the board?



A Guide to Enhancing the Board & Executive Director Partnership



Templates



Resources Trainings CAPLAW Home

Template Meeting Minutes and Index of Form Resolutions

- Governance, Meetings, Minutes
- Board of Directors
- 2021

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

CAPLAW created this resource to help CAA board members and the staff who work with them create effective board meeting minutes and board resolutions. CAAs are encouraged to download and customize the template and applicable resolutions included in the Index to reflect the ways they operate and decisions their boards make.

[View Introduction](#) [View Template](#) [View Index](#)

Board Training Videos

• **Purpose:**

- *Why Are You Here?*
- *In Boards We Trust*
- *Duty of Care*

• **People:**

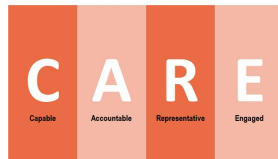
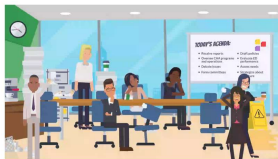
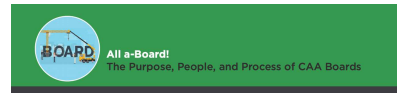
- *How Do You Get the Right People on the Board?*
- *Staying a-Board: 5 Ways to Engage and Retain CAA Board Members*
- *Board Chair Role + Responsibilities*

• **Process:**

- *Who Says What Goes?*
- *The CAA Board Meeting Ecosystem*
- *Board Member Terms + Term Limits*



Board Training Videos + Guides



6. Process: The CAA Board Meeting Ecosystem - Consent Agendas and the Conservation of Time
Discussion Guide

Length: 7:56

[Stream](#) [Download](#)

Video Summary

Like a complex ecosystem, a board of directors of a CAA has a highly-developed set of structures and processes that help it navigate survival in its world of compliance and governance responsibilities. This video, which is narrated in a manner similar to a nature documentary film, follows a board of directors as it uses a consent agenda to save time and resources at a board meeting. It provides an overview of a consent agenda, what it includes, and how it can be used effectively to allow for in-depth analysis and discussion of important issues, such as strategic planning or development priorities.

Learning Objectives

- After watching this video, participants will be able to:
- Understand what a consent agenda is and how a board can use it to help streamline board meetings and improve board efficiency.
 - Understand the process required for a board to adopt and implement a consent agenda.
 - Highlight the types of items that a board may and may not include on a consent agenda.
 - Consider the benefits and drawbacks of a consent agenda and discuss whether it is right for your board.

Using the Video Effectively

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

Suggested Discussion Questions

1. If showing this video to a group, consider pausing the video for discussion at certain key points. Doing so may help to engage viewers more fully. At the following key points, the group could be asked:
 - a. (5:05) What would your organization include on a consent agenda?
 - b. (5:12) Should Allen speak up? Why or why not?
 - c. (5:24) Now that the board has approved the consent agenda, what are some examples of issues that could now receive additional attention and discussion at the board meeting?

