

CAPLAW

Community Action Program Legal Services, Inc.

Roadmap for Resolving CAA Conflicts of Interest

Essential Governance Policies Webinar Series

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Agenda

- Why conflicts matter
- Tips on drafting and implementing conflict of interest policies
- Case studies
 - Board
 - Senior Staff
- Rules on conflicts of interest
- Additional resources

Why Conflicts Matter

- Funder rules
- IRS “excess benefit” rules (a.k.a. “intermediate sanctions”)
- IRS Form 990
- State law
- Governance best practices
- Public perception—public, press, donors

Drafting a Conflict of Interest Policy

- Avoid cut and paste
- Identify rules that apply and topics to cover
- Include examples
- Review by lawyer familiar with
 - State law – nonprofit law, state ethics rules
 - IRS requirements
 - Funder requirements
- CAPLAW is available to answer your questions and those of your attorney

Components of a Conflict of Interest Policy

- Purpose
- Who is covered
- What conflicts are covered
- Disclosure of actual and potential conflicts
- Process for addressing conflicts
- Consequences of violation

Implementing a Conflict of Interest Policy

- Establish tone at the top
- Disseminate, communicate and review policy with people it covers
- Require completion of disclosure form annually and when conflicts arise
- Designate someone to collect and review forms

Implementing a Conflict of Interest Policy

- Designate someone to make decisions about situations involving conflicts of interest
- Take steps to remove people with conflicts from involvement in decisions about and oversight of situations in which they have conflicts
- Enforce policy consistently and fairly
- Review and update policy periodically

Board Case Studies: Questions to Ask to Address Conflicts

1. Is this situation a conflict?
 - Financial interest?
 - Persons covered?
2. Does this mean we cannot do it?
 - Prohibited conflicts
 - Permissible conflicts
3. If we can do it, what do we do to handle the conflict?
 - Procedures

Busting at the Seams

Inaction, Inc. currently receives only CSBG and Weatherization Assistance Program funding and is planning to apply for additional grants to expand its services. However, there is absolutely no room in the current administrative offices to house more staff – the Executive Director and Fiscal Director currently share an office the size of a broom closet!

A small building next door to Inaction, Inc. just came on the market and Inaction has enough money in its rainy day fund for a down payment. Also, it just so happens that the building is listed with one of Inaction's board members, Danny Dealmaker. Danny is an independent real estate broker and a very active board member. Danny is excited about this turn of events and wants to do all that he can to help Inaction, Inc.

(Case study continued on next slide)

Busting at the Seams

- **Variation #1:** Danny Dealmaker is not the agent for the building next door but owns the real estate firm that is selling the property.
- **Variation #2:** Danny Dealmaker is not the agent for the building next door but works as a real estate agent for the firm that is selling the property.

Still Busting at the Seams

- **Variation #3:** Inaction, Inc. also receives Head Start funding.
- **Variation #4:** Danny Dealmaker was just elected secretary of the board.

Show Me the Money

There is no way that Inaction, Inc. can expand its funding beyond its current CSBG and WAP grants until it puts its finances in order. The Fiscal Director recently saw a TV commercial for great banking deals offered by Bandit Bank and Trust Company. It just so happens that the most recent addition to Inaction's board is Richard Goldbar, the Executive Vice President of Bandit Bank.

The Finance Director thinks that Inaction should open an account at Bandit Bank and obtain a line of credit. Also, major renovations will be needed to convert the new building into a useable office space and Bandit Bank is currently offering a very competitive rates on construction loans.

(Case study continued on next slide)

Show Me the Money

- **Variation #1:** Richard Goldbar proposes a loan at 2% below prevailing market rate. Inaction's board thinks this is a great deal. The loan will help Bandit Bank satisfy certain community lending requirements imposed by law.
- **Variation #2:** Inaction is financially sound when it obtains a loan from Bandit Bank. However, several years after obtaining the loan, Inaction's creditworthiness significantly deteriorates. Inaction's outside counsel and fiscal director advise the board that bankruptcy is Inaction's only option.

Show Me the Money

- **Variation #3:** Richard Goldbar is not an Inaction, Inc. board member, but his older sister Renee is. Renee does not work for Bandit Bank.
- **Variation #4:** Richard Goldbar is an Inaction, Inc. board member but he is not the Executive Vice President of Bandit Bank. Rather Richard supervises the tellers at Bandit Bank.
- **Variation #5:** Inaction, Inc. also receives Head Start funding.

Senior Staff Case Studies

- Differences between board and senior staff conflicts
 - Board rules are broader
 - Staff rules focus on specific situations
 - Officers—on board (board policy) and off board (senior staff policy)
 - Questions are different

Senior Staff Case Studies: Questions to Ask to Address Conflicts

- What Are Senior Staff Prohibited from Doing?
- What Must Senior Staff Disclose?
 - Related Party Disclosures
 - Continuing Disclosure Requirement
- Disclosure and Acknowledgment Statement

A Little Thank You

Inaction, Inc. has been using the same temporary agency, Hire Us, for years. Every year, Hire Us, sends Inaction, Inc.'s HR Director a fruit basket at Thanksgiving.

(Case study continued on next slide)

A Little Thank You

- **Variation #1:** To commemorate 10 wonderful years of working together, Hire Us decides to give the HR Director two tickets to a Boston Red Sox game (each worth \$45).
- **Variation #2:** The following year a new temporary agency opens. Inaction's Hire Us rep starts taking the HR Director out to lunch once a month.

IRS and OMB Rules

- IRS "excess benefit" transaction rules
 - 26 USC § 4958
 - 26 CFR § 53.458-0 through 53.4958-8
- IRS Form 990 (www.irs.gov/charities)
- Office of Management and Budget
 - OMB Circular A-110, 2 CFR § 215.42 (codified by federal departments in their own regulations)
 - OMB Circular A-122, 2 CFR Part 230, Appendix B, ¶37

Head Start Rules and Guidance

- 42 USC § 9837(c)(1)(C)
- 42 USC § 9837(c)(2)(C)
- 42 USC § 9837(c)(1)(E)(iv)(X)(aa)
- 42 USC § 9839(a)(3)(C)
- 45 CFR § 1304.52(i)(2)
- Head Start Policy Clarification, HHS-PC-E-029 available on <http://eclkc.ohs.acf.hhs.gov/hslc>

Some HUD Rules

- Community Development Block Grant
 - 24 CFR § 570.611
- Home Investment Partnership Program
 - 24 CFR § 92.356
- Emergency Shelter Grant
 - 24 CFR § 576.57(d)
- Other HUD programs (such as Shelter + Care and Supportive Housing Program) have similar rules

Additional Resources

- CAPLAW Tools for Top-Notch CAAs, see Section 5 - Dealing with Conflicts of Interest
http://www.caplaw.org/resources/PublicationDocuments/CAPLAW_TopNotchToolkit_october2011.pdf
- IRS Publication 557, Tax-Exempt Status for Your Organization, see section on Excess Benefit transactions, pp. 64-68
<http://www.irs.gov/pub/irs-pdf/p557.pdf>



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

For discussion in “Roadmap to Resolving Conflicts of Interest” webinar on August 1, 2012.

[IMPORTANT NOTE: This is a sample policy. You should review this policy thoughtfully and modify it as necessary to meet the individual needs of your organization and to comply with any laws and regulations that apply to your organization’s particular situation as well as the terms and conditions of the funding agreements your organization may have with its particular government funding sources. CAPLAW strongly recommends that when working with this policy, you consult with an attorney in your state who is well versed in the laws affecting Community Action Agencies (CAAs) and/or nonprofit organizations.]

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

A. What Is the Purpose of this Policy?

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

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

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

Under this policy, Board Members are required to disclose actual or potential conflicts of interest, as well as certain relationships and transactions, to enable CAA to report required information on its IRS Form 990 and to enable the CAA Board to take steps it considers necessary or advisable to address conflicts of interest. Depending on the circumstances, a relationship or and transaction disclosed under this policy may not be a conflict of interest, may be a conflict that is permitted provided that certain procedures are followed, or may be a conflict that is prohibited altogether.

B. Who Is Covered by this Policy?

This policy covers the members of CAA's Board of Directors.

C. Who Is Responsible for Implementing this Policy?

CAA's Board of Directors has primary responsibility for implementing this policy. The policy will be disseminated to Board Members upon joining the Board and annually thereafter. The Board may delegate the responsibility for disseminating this policy and collecting signed disclosure statements to a Board committee or the Board Chair, who shall oversee the process, but may be assisted by CAA staff. The Board shall designate a Board committee to review the policy with Board Members on an annual basis, to review disclosure statements and make recommendations to the Board as to whether Board action on information disclosed is required or advisable, and to monitor implementation of the policy.

[The IRS Form 990, Part VI, inquires about whether the organization has a written conflict of interest policy, whether officers, directors and key employees have to make annual disclosures about conflicts and whether the organization consistently monitors the policy. Adopting and following this policy, along with another policy or policies covering executive compensation and other transactions with non-Board officers and key employees, including this section on implementation and monitoring, allows you to answer all these questions "Yes."]

D. What Is the Meaning of Terms Defined in this Policy?

1. **Board of Directors (Board)** means the CAA board of directors.
2. **Board Member** means an individual currently serving as a member of the Board.
3. **Closely Associated** means that an individual:
 - a. Has a Compensation Arrangement with an entity;
 - b. Has an Ownership Interest in an entity; or
 - c. Is negotiating, applying for or considering acquiring a Compensation Arrangement with or ownership interest in an entity.

An Ownership Interest means that an individual owns at least 5% of the ownership interests (for example, shares of stock or partnership or limited liability company interests) or assets of an entity or, in the case of a publicly held corporation, at least 1% of the corporation's outstanding capital stock.

Examples:

Has a Compensation Arrangement with an entity:

- A Board Member is the executive director of a homeless shelter.
- A Board Member receives directors' fees for serving as a board member of a bank.

- A Board Member's son-in-law receives commissions from a technology vendor for sales of software.

Has an Ownership Interest in an entity:

- A Board Member's wife is one of 10 partners in a law firm.
- A Board Member's brother is the sole proprietor of an IT consulting business.
- A Board Member owns 15% of the stock of an office supply company.
- A Board Member's domestic partner is one of 3 members of a construction business organized as a limited liability company (LLC).

Has a potential Compensation Arrangement with or Ownership Interest in an entity:

- A Board Member's step-son is applying for a job at an insurance brokerage.
- A Board Member's husband is negotiating the purchase of 40% of the stock of a car dealership.

4. Community Action Agency (CAA) means *[insert name of CAA]* and any existing or yet to be formed entities controlled by or under common control with *[insert name of CAA]*, including but not limited to *[name related entities (for example, subsidiaries) here]*.

5. Compensation Arrangement an arrangement involving direct or indirect compensation for services.

6. Conflicts of Interest

a. Actual Financial Conflict of Interest

- Generally. An Actual Financial Conflict of Interest is a type of Conflict of Interest in which a Board Member or a Board Member's Related Party engages in a Transaction with CAA or any of its Head Start delegate agencies and the Board Member knows, or by the exercise of reasonable care and diligence should have known, of the Transaction.

Examples:

- A Board Member's husband is the president and employee of a bank from which a CAA obtains a line of credit.
- A Board Member is a residential landlord to whom CAA makes rental payments on behalf of its clients.
- CAA hires a Board Member's son to provide IT consulting services.
- A Board Member owns a 30% interest in a construction company hired by CAA renovate its headquarters building.
- A Board Member is the executive director of a homeless shelter to which CAA makes a grant; 7% of the grant is used to cover indirect costs, including a portion of the executive director's salary.

- ii. Donations Excluded. An Actual Financial Conflict of Interest does not include a donation from a Board Member or a Board Member's Related Party to CAA or any of its Head Start delegate agencies.
- iii. Certain Transactions Excluded. An Actual Financial Conflict of Interest does not include a situation where: (i) a Board Member or his/her Immediate Family Member has an existing or potential Compensation Arrangement with an entity that enters into a Transaction with CAA or any of CAA's Head Start delegate agencies, and (ii) the Transaction does not affect the Compensation Arrangement or the individual's prospect of employment or promotion. In these situations, the Interested Board Members should disclose the Conflicts of Interest and recuse themselves from Board discussions and votes on the Transactions at issue.

Examples:

- A Board Member is the director of a city planning department responsible for overseeing a grant for which CAA is applying.
- A Board Member is a cashier at the local Staples, from which CAA purchases office supplies. CAA's purchases do not affect the Board Member's salary, performance evaluations, or prospect of promotion.
- A Board Member's daughter is applying for a job as a secretary at the insurance brokerage through which CAA purchases insurance. The daughter is married and has a different last name from the Board Member and no one at the insurance brokerage is aware that she is related to the Board Member.
- The Board Member's daughter is hired as a secretary at the insurance brokerage. CAA's purchase of insurance does not affect her salary, performance evaluations or prospects of promotion.

- b. **Conflict of Interest** means a situation in which a Board Member or his or her Immediate Family Member has, directly him- or herself or indirectly through another individual or entity, a personal or financial interest that compromises or could compromise the Board Member's independence of judgment in exercising his/her responsibilities to CAA. Conflicts of Interest include, but are not limited to, Actual Financial Conflicts of Interest.

Examples:

- A Board Member's wife is a board member of a nonprofit to which CAA is considering making a grant.
- The CAA Board is deciding whether CAA should take an active role in supporting a bill in the state legislature that would prohibit certain predatory lending practices involving car loans. A Board Member owns a car dealership that engages in practices the bill would prohibit.

7. Immediate Family Member means a Board Member's:

- a. Spouse or partner in a civil union recognized by state law;
- b. Domestic partner or partner in a committed, personal relationship;

- c. Parent;
- d. Child;
- e. Sibling;
- f. Father-in-law, Mother-in-law;
- g. Brother-in-law, Sister-in-law;
- h. Son-in-law, Daughter-in-law;
- i. Grandparent; or
- j. Grandchild.

The term includes individuals related by blood, adoption, or marriage (i.e., step family members).

[See federal Office of Head Start (OHS) Policy Clarification OHS – PC – E – 029, which defines the term “Immediate Family” for purposes of the Head Start Act’s prohibition against Head Start grantees employing immediate family members of board members. Although OHS Policy Clarifications do not have the force of law and can be changed at any time, they provide insight into how OHS (and its monitors) are likely to interpret certain requirements.]

- 8. Interested Board Member** means a Board Member with a Conflict of Interest.
- 9. Transaction** means any financial agreement or relationship, including but not limited to those involving:
 - a. The sale, lease, purchase, transfer, or provision of goods, services, equipment, facilities, or rights of any kind;
 - b. The provision or receipt of a loan or grant;
 - c. A joint venture, partnership or collaboration; or
 - d. An investment.
- 10. Related Party** means an Immediate Family Member or an entity with which a Board Member or his/her Immediate Family Member is Closely Associated.

E. What Types of Conflicts of Interest Are Prohibited by this Policy?

- 1. Actual Financial Conflicts of Interest.** No CAA Board Member may have an Actual Financial Conflict of Interest.

[The federal Head Start Act prohibits board members of Head Start grantees from having financial conflicts of interest with the Head Start grantee or any of its delegate agencies. See 42 U.S.C. § 9837(c)(1)(C)(i). Check whether your organization’s government funding sources have conflict of interest rules that define prohibited conflicts of interest to include non-financial benefits as well as financial ones. If they do, work with an attorney to modify this policy as necessary to incorporate those rules.]

- 2. Compensation and Employment.** A Board Member may not be compensated for his or her service on the CAA Board or for providing services to CAA. No Board Member or Immediate Family Member shall be an employee of CAA or any of its Head Start

delegate agencies. A former Board Member may be hired as an employee of CAA, provided that at least 180 days have passed since he or she left the CAA Board.

[The first two sentences above are based on the federal Head Start Act's prohibition on: (a) employment of board members and members of their immediate families by a Head Start grantee and any of its delegate agencies; and (b) payment of compensation to board members for serving on the board or for providing services to the grantee or any of its delegate agencies. See 42 U.S.C. § 9837(c)(1)(C)(ii)-(iii). The Head Start Act contains a narrow exception for situations where an individual holds a position as a result of public election or political appointment, the position carries with it a concurrent appointment to serve as a member of the governing board of a Head Start grantee, and the individual has a conflict of interest because either: (a) he or she is compensated for serving on the board or for providing services to the Head Start grantee; or (b) he or she or a member of his or her immediate family is employed by the grantee or one of its delegate agencies. See 42 U.S.C. § 9837(c)(1)(D). However, CAPLAW views this exception as applying primarily to situations where the grantee is a public school district and the governing body is the school board that oversees the district. Because we view this exception narrowly and because we think it best to apply the same rules to all board members, we have not included the exception in this policy.]

Federal Office of Community Services (OCS) Information Memorandum 81, which is non-binding guidance on CAA tripartite boards, recommends a waiting period after a board member leaves the board before s/he may be hired by the CAA. Some state CSBG or conflict of interest rules may require such a waiting period. The third sentence above is language that a CAA seeking to implement a waiting period could use; unless limited by state law, a CAA can choose whatever waiting period it wants.]

Examples:

- A Board Member may not receive a stipend for serving on the Board.
- A Board Member who is a fundraising consultant may not be paid for providing her consulting services to CAA.
- A Board Member's sister-in-law may not be employed as a supervisor in CAA's Weatherization program.

3. Participation in Contracts. Board Members shall not participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the Board Member, any of his or her Immediate Family Members, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, is or has a financial or other interest in the individual or firm selected for the award.

[This provision is based on the requirements of OMB Circular A-110, 2 CFR § 215.42, which federal agencies (including the U.S. Department of Health and Human Services (HHS)) have adopted through regulations. HHS regulations addressing this issue may be found at 45 CFR § 74.42. Although these requirements do not specifically apply to board

members who are not officers, employees or agents of CAA, CAPLAW recommends applying this provision to all board members in order to set the “tone at the top.”]

- 4. Gifts.** Board Members are prohibited from soliciting or accepting gifts, gratuities, favors, or anything of monetary value, other than unsolicited items of nominal value, from:
- Persons receiving benefits or services under any CAA program;
 - Persons or organizations performing services for or providing goods or space to CAA; or
 - Persons who are otherwise in a position to benefit from the actions of a CAA employee, officer, or Board Member.

Nominal value means \$50 or less per gift and \$75 or less for all gifts received from a particular individual or entity per calendar year. Acceptance of gifts of nominal value must be disclosed according to the procedures set forth in this policy. However, the prohibition on soliciting or accepting gifts does not include acceptance of token gifts of low-cost promotional items, such as pens, note pads, caps, calendars, and coffee mugs, and such gifts do not need to be disclosed.

[This provision is based on the requirements of OMB Circular A-110, 2 CFR § 215.42, which federal agencies (including the U.S. Department of Health and Human Services (HHS)) have adopted through regulations. HHS regulations addressing this issue may be found at 45 CFR § 74.42. Although these requirements do not specifically apply to board members who are not officers, employees or agents of CAA, CAPLAW recommends applying this provision to all board members in order to set the “tone at the top.” Your organization can choose the value of the gift to designate as nominal; \$75-\$100 is a typical limit. Delete this definition if your organization chooses to prohibit all gifts regardless of value.]

Example: If CAA’s insurance broker offers a Board Member a week’s free use of a beach house, the Board Member may not accept it.

- 5. Federal Employees.** Board Members who are federal employees are prohibited from serving in any capacity that would require them to act as an agent of or attorney for CAA in its dealings with any federal government departments or agencies (for example, as chair of CAA’s Board).

[See 5 United States Code (U.S.C.) § 205]

- 6. Diversion of CAA Resources.** Board Members and Board Members’ Related Parties are prohibited from using CAA equipment, facilities, assets, or staff time for non-CAA purposes.

Example: CAA’s housing program has a construction crew on staff. A Board Member may not have the CAA construction crew renovate her kitchen during hours they are, or should be, working for CAA or using CAA equipment.

[IMPORTANT NOTE: Work with an attorney to determine whether any other rules on prohibited conflict of interest should be incorporated into your policy. For example, U.S. Department of Housing and Urban Development (HUD) programs often have stringent conflict of interest rules prohibiting certain financial conflicts of interest and, in some cases, non-financial conflicts as well. In addition, state and local government entities may have conflict of interest rules that may prohibit board members who are also officials, employees or agents of state or local government entities from taking certain acts affecting or receiving certain benefits from your organization. Consult with an attorney to identify whether any such rules apply to people connected with your CAA and, if so, how to incorporate those rules into your conflict of interest policies.]

F. Are There Exceptions to What Is Considered a Conflict of Interest under this Policy?

The situations listed below are **not** considered to be either Conflicts of Interest or Actual Financial Conflicts of Interest under this policy.

- 1. Provision of Services/Benefits.** Provision of services/benefits by CAA or one of its Head Start delegate agencies to a Board Member or an Immediate Family Member solely because the individual is a member of a charitable class that CAA or its Head Start delegate agency intends to benefit as part of the accomplishment of its charitable purposes, provided that:
 - a. The individual meets all applicable eligibility criteria for the services/benefits, including funding source rules on the provision of services/benefits to individuals with a close connection to the organization;
 - b. The individual does not receive preferential treatment in receiving the services/benefits due to his or her connection with CAA as a Board Member or as an Immediate Family Member;
 - c. The services/benefits are provided on terms similar to services/benefits provided to individuals who are neither Board Members nor Immediate Family Members; and
 - d. The Board Member is not involved in the decision about whether to provide services/benefits to the individual.

[The IRS recognizes that these transactions between insiders and the organization are not conflicts as long as the insider is being treated like a member of the public. See 26 CFR § 53.4958-4(4)(v). To ensure compliance with funder rules and withstand public scrutiny, it is important that low-income board members (and members of their families) applying for services/benefits from the CAA not be treated more favorably than other applicants simply because they are board members (or family members of board members). For example, a low-income sector board member who is eligible for the Low Income Home Energy Assistance Program (LIHEAP) may receive LIHEAP benefits from the organization, provided that s/he is not treated more favorably than other applicants (e.g., her application is not given special priority, she does not receive a larger benefit amount, and her eligibility is checked in the same manner as other applicants). Be sure to check the funding source rules that apply to the programs your CAA operates to see if there are other requirements that should be incorporated into this section.]

2. **Expense Reimbursements.** Expense reimbursements made by CAA to a Board Member or Immediate Family Member for reasonable, necessary and documented expenses incurred by the Board Member or Immediate Family Member in the course of performing authorized services as a Board Member or volunteer for the organization, provided that the reimbursements are made pursuant to CAA's Board-approved expense reimbursement plan and are permitted by any applicable funding source rules. Unless required by the Board in a particular circumstance, receipt of reimbursements meeting these criteria need not be disclosed under this policy.

[The IRS recognizes that expense reimbursements by the organization to insiders are not conflicts as long as the reimbursements are made under an expense reimbursement plan that requires that expenses be related to the organization's operations and adequately accounted for with receipts and similar records and that any excess reimbursements be returned to the organization within a reasonable period of time. See 26 CFR §§ 53.4958-4(4)(ii) and § 1.62-2(c). In addition, OHS Policy Clarification OHS – PC – E – 030 notes that “Head Start and delegate agencies may establish policies and procedures for reimbursement of governing body members for reasonable costs actually incurred by members, such as transportation and child care, associated with their participation in board and committee meetings. Reimbursement may be limited to low-income members at the discretion of the agency.” Check funding source rules for other programs your organization may operate regarding expense reimbursements to board members and incorporate them into this policy as necessary.]

G. What Information Must Be Disclosed under this Policy and How Should It Be Disclosed?

1. **Disclosures by Candidates for Board Seats.** The Board shall require each individual applying for a position on CAA's Board to disclose on his or her application Conflicts of Interest (including Actual Financial Conflicts of Interest) involving him- or herself or any of his/her Related Parties.
2. **Disclosures by Board Members**
 - a. **Obligation to Disclose.** Each Board Member has a continuing obligation to disclose promptly and fully any actual or potential Conflicts of Interest of which he or she is aware.
 - b. **Form and Frequency of Disclosure.** Each Board Member shall complete and sign on an annual basis and at such times as Conflicts of Interest arise, a Conflict of Interest disclosure statement, in the form attached to this policy, fully and completely disclosing the material facts about any actual or potential Conflicts of Interest of which he or she is aware.

H. How Are Conflicts of Interest to Be Addressed under this Policy?

- 1. Board Review.** The Board shall review and determine, with the assistance of legal counsel if necessary, how to address situations involving Conflicts of Interest. In determining whether a Conflict of Interest exists, the fact that the situation could subject CAA to criticism, embarrassment, litigation or administrative proceedings shall be considered.
- 2. Exclusion of Interested Board Members.** An Interested Board Member shall not participate in any way in, or be present during, the deliberations and decision making with respect to an actual or potential Conflict of Interest in which s/he is involved. In addition, when the Board is considering a proposed Transaction between CAA and a Board Member or a Related Party, no Interested Board Member with respect to any proposed or existing Transaction with CAA may participate in any way in, or be present during, the deliberations and decision making. Interested Board Members excluded from deliberation and decision making may, however, be available upon request to answer questions or provide material factual information about the situation under consideration.

Examples:

- The Board is considering whether to approve a grant to another nonprofit. A CAA Board Member serves as a board member of that nonprofit. The Interested Board Member must disclose that Conflict of Interest and recuse herself from deliberations and decision making on the proposed grant. If the Interested Board Member does not voluntarily recuse herself, the Board must exclude her from deliberations and decision making on the grant.
- 3. Voting and Quorum.** The Board shall act on actual or potential Conflict of Interest situations by affirmative vote of a majority of Board Members at a meeting at which a quorum is present, provided that Interested Board Members with respect to the matter (and, in the case of a proposed Transaction between CAA and a Board Member or Related Party, with respect to any proposed or existing Transaction with CAA) shall not be counted for purposes of determining whether a quorum is present, nor for purposes of determining what constitutes a majority vote of Board Members in attendance.

[Review voting and quorum requirements for conformity with your organization's bylaws and in your state's nonprofit corporation law.]

- 4. Board Determination.** The Board (excluding any of the Interested Board Members required to be excluded by Subsections H.2. and H.3. above) shall decide whether there is: no Conflict of Interest; a Conflict of Interest that is not prohibited under this policy or other applicable laws, regulations or rules; or a Conflict of Interest that is prohibited.
 - a. No Conflict of Interest. If the Board determines that no Conflict of Interest exists, it shall inform any Board Members involved in the situation of its determination and take any other actions it deems prudent.

b. Conflict of Interest Not Prohibited.

- i. Generally. If the Board concludes that a Conflict of Interest exists and it is not prohibited by this policy, the Board shall inform any Board Members involved in the situation of its determination and take any other actions its deems prudent to address the Conflict of Interest, including excluding Interested Board Members from deliberations and decision making as described in Sections H.2. and H.3. above.
- ii. Proposed Transaction. Where a Conflict of Interest is not prohibited and involves a proposed Transaction between CAA and a Board Member or Related Party, the Board shall gather and review appropriate data, including appropriate data as to comparability, to determine whether the terms of the Transaction are fair and reasonable to and in the best interests of CAA.

Examples of appropriate data as to comparability include:

- In the case of compensation, compensation levels paid by similarly situated organizations for functionally comparable positions, the availability of similar services in CAA's geographic area, and current compensation surveys compiled by independent firms; and
- In the case of property, independent appraisals and offers received as part of an open and competitive bidding process.

In the event that the proposed Transaction involves procurement, CAA's standard procurement rules, including any rules that may require competitive bidding, shall be followed.

If, after consideration of the comparability data and any other relevant factors (including, where appropriate, information on alternatives to the Transaction), the Board determines that, all factors being considered, the Transaction is fair and reasonable and in the best interests of CAA, it may approve the Transaction.

Example: A CAA Board Member is one of 150 partners at a law firm. CAA is considering engaging the law firm to represent it in defending an employment discrimination claim. The Board Member will not work on the matter. Before engaging hiring the law firm, the Board must determine whether the Board Member's compensation or her prospects of promotion will be affected by the services the firm will be providing to CAA. The Board must also gather data (such as cost estimates from other law firms and the expertise of their attorneys) to determine whether the terms of the engagement are fair and in CAA's best interests. The Board Member must recuse herself from all deliberation and decision-making on the matter. In addition, CAA's standard procurement rules must be followed.

- c. Prohibited Conflict of Interest. If the Board determines that a prohibited Conflict of Interest exists or that a proposed Transaction would result in a prohibited Conflict of

Interest, the Board shall decide either: (i) to decline to enter into the proposed Transaction, if applicable; or (ii) to request the resignation of Interested Board Member(s) and, if the Interested Board Member(s) do(es) not resign, follow appropriate legal procedures to remove the Interested Board Member(s).

[Under the Head Start Act, the prohibition on directors having financial conflicts of interest appears to apply only while an individual is serving as a board member. Therefore, it may be possible for a board member to resign from the board and for the board to then consider a proposed transaction using the procedures described above for Conflicts of Interest that are not prohibited. However, other rules (such as HUD conflict of interest rules) may still prohibit the transaction even if the board member resigns. We recommend consulting with an attorney if the board is considering requesting a board member's resignation or removing a board member so that it can enter into a transaction with that person.]

- 5. Delegation to Committee.** The Board may establish or designate a committee of the Board to review any conflicts of interest questions raised by this policy, to determine whether a particular situation involves a Conflict of Interest, and to make recommendations to the Board about how to address Conflicts of Interest.

I. How Should the Board's Decisions about Conflicts of Interest Be Documented?

The Board or committee shall document its decisions about a Conflict of Interest in its meeting minutes (and attachments to the minutes, if applicable). The minutes shall include: material facts regarding the Conflict of Interest; the basis for the Board's decision; the names of Board Members present and of those who voted on the matter; and any actions taken with respect to Interested Board Members with respect to the matter (for example, whether they were excluded from discussion and voting on the matter). The minutes must be prepared before the latter of the next Board or committee meeting or 60 days after the final action is taken on the matter. Once prepared, the minutes must be reviewed and approved by the Board or committee (whichever is applicable) within a reasonable time.

J. What Are the Consequences of Violating this Policy?

If the CAA Board has reason to believe that a Board Member has failed to disclose a Conflict of Interest or otherwise violated this policy, it shall inform the Board Member of the basis for this belief and afford him or her an opportunity to explain the alleged failure or violation.

If, after hearing the response of the interested party and making such further investigation as may be warranted in the circumstances, the Board determines that the Board Member has in fact failed to disclose an actual or possible Conflict of Interest or otherwise violated this policy, it shall take appropriate disciplinary and corrective action, which may include removal from the Board.

Your Name:

Date:

Annual or Other Disclosure (circle one)

Conflict of Interest Disclosure Statement for CAA Board Members

Reason for Policy. Conflicts of Interest raise governance, tax and regulatory issues for CAA. They also raise concerns in the mind of the public and members of the media, potentially undermining CAA's reputation and good standing. For these reasons, CAA's Board Members should avoid Conflicts of Interest, disclose ethical, legal, financial and other such conflicts, and remove themselves from deliberations and decision-making on matters in which they have a Conflict of Interest.

Reason for this Statement. CAA's Board of Directors is committed to the highest ethical standards in how CAA conducts its business and operations. Completing this statement helps CAA Board and management identify and evaluate situations and relationships that could be problematic for CAA, including ones that could jeopardize its tax-exempt status or ability to obtain grants or other funding. It also assists CAA in reporting information required on its IRS Form 990.

Completing this Statement. Each Board Member is required to complete and sign this statement annually and at such times as they become aware of actual or potential Conflicts of Interest. This statement should take no more than 10 to 15 minutes for most Board Members to complete. It asks intentionally broad questions, with the hope of identifying all relevant actual or potential Conflicts of Interest.

Defined Terms Used in this Statement. Capitalized terms used in this statement are defined in the Conflict of Interest Policy for CAA Board Members.

Identifying a Conflict or Relationship Does Not Necessarily Mean There Is a Problem. In some instances, you may need to reveal a conflict or relationship when responding to a question. This does not necessarily mean that you have done something improper or violated the Conflict of Interest Policy for CAA Board Members. By identifying conflicts and relationships, you permit CAA's Board and management to make an informed judgment, further permitting them to address issues through appropriate action or safeguards. Being forthright now is the best approach.

If You Have Questions about the Policy or this Statement. If you have questions about CAA's Conflict of Interest Policy for Board Members or this Statement, ask the Board Chair or a member of the *[insert name of committee]*, which has been designated by the Board to implement the policy.

[Continued on next page]

Your Name:

Date:

Annual or Other Disclosure (circle one)

Please base your answers to the questions below on facts that exist now or that have arisen since you last completed this form.

Do any of your Immediate Family Members serve as a CAA Board Member or CAA officer?

Yes ___ No ___

If yes, please identify the Immediate Family Member, his or her position and your relationship to him or her:

Do you or any of your Immediate Family Members serve as an employee of CAA or any of its Head Start delegate agencies?

Yes ___ No ___

If yes, please identify the individual, your relationship to him/her, and his/her employer and position there.

To the best of your knowledge, are you or any of your Related Parties engaged in any Transactions with a CAA Board Member, with a CAA officer, or with an employee of CAA or of any of its Head Start delegate agencies? For this purpose, a Transaction does not include a transaction between an attorney and client, or a medical professional (including psychologist) and patient.

Yes ___ No ___

If yes, please identify the individuals or entities involved and the Transactions in which they are involved:

Your Name:

Date:

Annual or Other Disclosure (circle one)

Are you or, to the best of your knowledge, are any other Board Members compensated for providing services to CAA or any of its Head Start delegate agencies?

Yes ___ No ___

If yes, please identify the Board Member and describe the services and compensation:

To the best of your knowledge, are you, any other Board Members, or any Immediate Family Members of Board Members (including your own Immediate Family Members) engaged in or considering engaging in a Transaction with CAA or any of its Head Start delegate agencies?

Yes ___ No ___

If yes, please identify the Board Member and/or Immediate Family Member and describe the Transaction:

To the best of your knowledge, are you, any other Board Members, or any Immediate Family Members of Board Members (including your own Immediate Family Members) Closely Associated with any entity that is engaged in or considering engaging in a Transaction with CAA or any of its Head Start delegate agencies?

Yes ___ No ___

If yes, please identify the Board Member and/or Immediate Family Member, the entity and the Compensation Arrangement or Ownership Interest, and describe the Transaction:

Your Name:

Date:

Annual or Other Disclosure (circle one)

To the best of your knowledge, have you or any other Board Members solicited or accepted gifts, gratuities, favors, or anything of monetary value (other than token gifts of low-cost promotional items, such as pens, note pads, caps, calendars, and coffee mugs) from: (a) persons receiving benefits or services under any CAA program; (b) persons or organizations performing services for or providing goods or space to CAA; or (c) persons who are otherwise in a position to benefit from the actions of a CAA employee, officer, or Board Member?

Yes ___ No ___

If yes, please identify the Board Member, the item that was solicited or accepted, and the person or entity from whom the item was solicited or accepted:

To the best of your knowledge, have you or any other Board Members participated in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest was involved? Such a conflict would arise when the Board Member, any of his or her Immediate Family Members, his or her partner, or an organization which employs or is about to employ any of these parties, is or has a financial or other interest in the individual or firm selected for the award.

Yes ___ No ___

If yes, please identify the Board Member, the contract and the conflict of interest.

To the best of your knowledge, have you, any other Board Members or Board Members' Related Parties (including your own Related Parties) used CAA equipment, facilities, assets, or staff time for non-CAA purposes?

Yes ___ No ___

If yes, please identify the Board Member or Related Party, the CAA equipment, facilities, assets or staff used, and the purpose for which it was used:

Your Name:

Date:

Annual or Other Disclosure (circle one)

To the best of your knowledge, are you aware of any other Conflicts of Interest not already disclosed above? A Conflict of Interest is a situation in which a Board Member or his or her Immediate Family Member has, directly him- or herself or indirectly through another individual or entity, a personal or financial interest that compromises or could compromise the Board Member's independence of judgment in exercising his/her responsibilities to CAA.

Yes ___ No ___

If yes, please identify the Board Members and any other parties involved and describe the situation:

By signing this form, I certify that:

I have received a copy of the Conflict of Interest Policy for CAA Board Members, that I have read and understand it; and I agree to abide by it; and.

To the best of my knowledge, my responses on this statement are accurate, true and complete.

Signature: _____

Print Name: _____

Date: _____

Please return this form to [insert name of person designated to collect disclosure forms]



Sample Conflict of Interest Policy for Board of Directors of CAA without Head Start

For discussion in “Roadmap to Resolving Conflicts of Interest” webinar on August 1, 2012.

[IMPORTANT NOTE: This is a sample policy. You should review this policy thoughtfully and modify it as necessary to meet the individual needs of your organization and to comply with any laws and regulations that apply to your organization’s particular situation as well as the terms and conditions of the funding agreements your organization may have with its particular government funding sources. CAPLAW strongly recommends that when working with this policy, you consult with an attorney in your state who is well versed in the laws affecting Community Action Agencies (CAAs) and/or nonprofit organizations.

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

A. What Is the Purpose of this Policy?

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

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

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

Under this policy, Board Members are required to disclose actual or potential conflicts of interest, as well as certain relationships and transactions, to enable CAA to report required information on its IRS Form 990 and to enable the CAA Board to take steps it considers necessary or advisable to address conflicts of interest. Depending on the circumstances, a relationship or and transaction disclosed under this policy may not be a conflict of interest, may be a conflict that is permitted provided that certain procedures are followed, or may be a conflict that is prohibited altogether.

B. Who Is Covered by this Policy?

This policy covers the members of CAA's Board of Directors.

C. Who Is Responsible for Implementing this Policy?

CAA's Board of Directors has primary responsibility for implementing this policy. The policy will be disseminated to Board Members upon joining the Board and annually thereafter. The Board may delegate the responsibility for disseminating this policy and collecting signed disclosure statements to a Board committee or the Board Chair, who shall oversee the process, but may be assisted by CAA staff. The Board shall designate a Board committee to review the policy with Board Members on an annual basis, to review disclosure statements and make recommendations to the Board as to whether Board action on information disclosed is required or advisable, and to monitor implementation of the policy.

[The IRS Form 990, Part VI, inquires about whether the organization has a written conflict of interest policy, whether officers, directors and key employees have to make annual disclosures about conflicts and whether the organization consistently monitors the policy. Adopting and following this policy, along with another policy or policies covering executive compensation and other transactions with non-Board officers and key employees, including this section on implementation and monitoring, allows you to answer all these questions "Yes."]

D. What Is the Meaning of Terms Defined in this Policy?

1. **Board of Directors (Board)** means the CAA board of directors.
2. **Board Member** means an individual currently serving as a member of the Board.
3. **Closely Associated** means that an individual:
 - a. Has a Compensation Arrangement with an entity;
 - b. Has an Ownership Interest in an entity; or
 - c. Is negotiating, applying for or considering acquiring a Compensation Arrangement with or ownership interest in an entity.

A Compensation Arrangement an arrangement involving direct or indirect compensation for services.

An Ownership Interest means that an individual owns at least 5% of the ownership interests (for example, shares of stock or partnership or limited liability company interests) or assets of an entity or, in the case of a publicly held corporation, at least 1% of the corporation's outstanding capital stock.

Examples:

Has a Compensation Arrangement with an entity:

- A Board Member is the executive director of a homeless shelter.

- A Board Member receives directors' fees for serving as a board member of a bank.
- A Board Member's son-in-law receives commissions from a technology vendor for sales of software.

Has an Ownership Interest in an entity:

- A Board Member's wife is one of 10 partners in a law firm.
- A Board Member's brother is the sole proprietor of an IT consulting business.
- A Board Member owns 15% of the stock of an office supply company.
- A Board Member's domestic partner is one of 3 members of a construction business organized as a limited liability company (LLC).

Has a potential Compensation Arrangement with or Ownership Interest in an entity:

- A Board Member's step-son is applying for a job at an insurance brokerage.
- A Board Member's husband is negotiating the purchase of 40% of the stock of a car dealership.

- 4. Community Action Agency (CAA)** means *[insert name of CAA]* and any existing or yet to be formed entities controlled by or under common control with *[insert name of CAA]*, including but not limited to *[name related entities (for example, subsidiaries) here]*.
- 5. Conflict of Interest** means a situation in which a Board Member or his or her Immediate Family Member has, directly him- or herself or indirectly through another individual or entity, a personal or financial interest that compromises or could compromise the Board Member's independence of judgment in exercising his/her responsibilities to CAA.

Examples:

- A Board Member's wife is a board member of a nonprofit to which CAA is considering making a grant.
- The CAA Board is deciding whether CAA should take an active role in supporting a bill in the state legislature that would prohibit certain predatory lending practices involving car loans. A Board Member owns a car dealership that engages in practices the bill would prohibit.
- A Board Member is the director of a city planning department responsible for overseeing a grant for which CAA is applying.
- A Board Member's daughter is applying for a job as a secretary at the insurance brokerage through which CAA purchases insurance.

- 6. Immediate Family Member** means a Board Member's:

- a. Spouse or partner in a civil union recognized by state law;
- b. Domestic partner or partner in a committed, personal relationship;
- c. Parent;
- d. Child;
- e. Sibling;
- f. Father-in-law, Mother-in-law;

- g. Brother-in-law, Sister-in-law;
- h. Son-in-law, Daughter-in-law;
- i. Grandparent; or
- j. Grandchild.

The term includes individuals related by blood, adoption, or marriage (i.e., step family members).

- 7. **Interested Board Member** means a Board Member with a Conflict of Interest.
- 8. **Transaction** means any financial agreement or relationship, including but not limited to those involving:
 - a. The sale, lease, purchase, transfer, or provision of goods, services, equipment, facilities, or rights of any kind;
 - b. The provision or receipt of a loan or grant;
 - c. A joint venture, partnership or collaboration; or
 - d. An investment.
- 9. **Related Party** means an Immediate Family Member or an entity with which a Board Member or his/her Immediate Family Member is Closely Associated.

E. What Types of Conflicts of Interest Are Prohibited by this Policy?

- 1. **Compensation and Employment.** A Board Member may not be a CAA employee or be compensated for his or her service on the CAA Board. A former Board Member may be hired as an employee of CAA, provided that at least 180 days have passed since he or she left the CAA Board.

[Federal Office of Community Services (OCS) Information Memorandum 81, which is non-binding guidance on CAA tripartite boards, recommends a waiting period after a board member leaves the board before s/he may be hired by the CAA. Some state CSBG or conflict of interest rules may require such a waiting period. The third sentence above is language that a CAA seeking to implement a waiting period could use; unless limited by state law, a CAA can choose whatever waiting period it wants.]

- 2. **Provision of Professional Services.** Officers of CAA may not be paid, outside of their approved salary and benefits, for any professional or consulting services provided to CAA.

[OMB Circular A-122, 2 CFR Part 230, Appendix B, ¶37 prohibits the use of federal funds for this purpose.]

- 3. **Participation in Contracts.** Board Members shall not participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the Board Member, any of his or her Immediate Family Members, his or her partner, or an

organization which employs or is about to employ any of the parties indicated herein, is or has a financial or other interest in the individual or firm selected for the award.

[This provision is based on the requirements of OMB Circular A-110, 2 CFR § 215.42, which federal agencies have adopted through regulations. Although these requirements do not specifically apply to board members who are not officers, employees or agents of CAA, CAPLAW recommends applying this provision to all board members in order to set the “tone at the top.”]

- 4. Gifts.** Board Members are prohibited from soliciting or accepting gifts, gratuities, favors, or anything of monetary value, other than unsolicited items of nominal value, from:
 - a. Persons receiving benefits or services under any CAA program;
 - b. Persons or organizations performing services for or providing goods or space to CAA; or
 - c. Persons who are otherwise in a position to benefit from the actions of a CAA employee, officer, or Board Member.

Nominal value means \$50 or less per gift and \$75 or less for all gifts received from a particular individual or entity per calendar year. Acceptance of gifts of nominal value must be disclosed according to the procedures set forth in this policy. However, the prohibition on soliciting or accepting gifts does not include acceptance of token gifts of low-cost promotional items, such as pens, note pads, caps, calendars, and coffee mugs, and such gifts do not need to be disclosed.

[This provision is based on the requirements of OMB Circular A-110, 2 CFR § 215.42, which federal agencies have adopted through regulations. Although these requirements do not specifically apply to board members who are not officers, employees or agents of CAA, CAPLAW recommends applying this provision to all board members in order to set the “tone at the top.” Your organization can choose the value of the gift to designate as nominal; \$75-\$100 is a typical limit. Delete this definition if your organization chooses to prohibit all gifts regardless of value.]

Example: If CAA’s insurance broker offers a Board Member a week’s free use of a beach house, the Board Member may not accept it.

- 5. Loans.** CAA is prohibited from making a loan to or guaranteeing an obligation of any of its Board Members.

[Many states’ nonprofit corporation laws prohibit nonprofit corporations from making loans to or guaranteeing the obligations of their board members or officers. Check your state’s law on this point.]

- 6. Federal Employees.** Board Members who are federal employees are prohibited from serving in any capacity that would require them to act as an agent of or attorney for CAA in its dealings with any federal government departments or agencies (for example, as chair of CAA’s Board).

[See 5 United States Code (U.S.C.) § 205]

- 7. Diversion of CAA Resources.** Board Members and Board Members' Related Parties are prohibited from using CAA equipment, facilities, assets, or staff time for non-CAA purposes.

Example: CAA's housing program has a construction crew on staff. A Board Member may not have the CAA construction crew renovate her kitchen during hours they are, or should be, working for CAA or using CAA equipment.

[IMPORTANT NOTE: Work with an attorney to determine whether any other rules on prohibited conflict of interest should be incorporated into your policy. For example, U.S. Department of Housing and Urban Development (HUD) programs often have stringent conflict of interest rules prohibiting certain financial conflicts of interest and, in some cases, non-financial conflicts as well. In addition, state and local government entities may have conflict of interest rules that may prohibit board members who are also officials, employees or agents of state or local government entities from taking certain acts affecting or receiving certain benefits from your organization. Consult with an attorney to identify whether any such rules apply to people connected with your CAA and, if so, how to incorporate those rules into your conflict of interest policies.]

F. Are There Exceptions to What Is Considered a Conflict of Interest under this Policy?

The situations listed below are not considered to be Conflicts of Interest under this policy.

- 1. Provision of Services/Benefits.** Provision of services/benefits by CAA to a Board Member or an Immediate Family Member solely because the individual is a member of a charitable class that CAA intends to benefit as part of the accomplishment of its charitable purposes, provided that:
- a. The individual meets all applicable eligibility criteria for the services/benefits, including funding source rules on the provision of services/benefits to individuals with a close connection to the organization;
 - b. The individual does not receive preferential treatment in receiving the services/benefits due to his or her connection with CAA as a Board Member or as an Immediate Family Member;
 - c. The services/benefits are provided on terms similar to services/benefits provided to individuals who are neither Board Members nor Immediate Family Members; and
 - d. The Board Member is not involved in the decision about whether to provide services/benefits to the individual.

[The IRS recognizes that these transactions between insiders and the organization are not conflicts as long as the insider is being treated like a member of the public. See 26 CFR § 53.4958-4(4)(v). To ensure compliance with funder rules and withstand public scrutiny, it is important that low-income board members (and members of their families) applying for services/benefits from the CAA not be treated more favorably than other applicants simply because they are board members (or family members of board

members). For example, a low-income sector board member who is eligible for the Low Income Home Energy Assistance Program (LIHEAP) may receive LIHEAP benefits from the organization, provided that s/he is not treated more favorably than other applicants (e.g., her application is not given special priority, she does not receive a larger benefit amount, and her eligibility is checked in the same manner as other applicants). Be sure to check the funding source rules that apply to the programs your CAA operates to see if there are other requirements that should be incorporated into this section.]

2. **Expense Reimbursements.** Expense reimbursements made by CAA to a Board Member or Immediate Family Member for reasonable, necessary and documented expenses incurred by the Board Member or Immediate Family Member in the course of performing authorized services as a Board Member or volunteer for the organization, provided that the reimbursements are made pursuant to CAA's Board-approved expense reimbursement plan and are permitted by any applicable funding source rules. Unless required by the Board in a particular circumstance, receipt of reimbursements meeting these criteria need not be disclosed under this policy.

[The IRS recognizes that expense reimbursements by the organization to insiders are not conflicts as long as the reimbursements are made under an expense reimbursement plan that requires that expenses be related to the organization's operations and adequately accounted for with receipts and similar records and that any excess reimbursements be returned to the organization within a reasonable period of time. See 26 CFR §§ 53.4958-4(4)(ii) and § 1.62-2(c). Check funding source rules for programs your organization may operate regarding expense reimbursements to board members and incorporate them into this policy as necessary.]

G. What Information Must Be Disclosed under this Policy and How Should It Be Disclosed?

1. **Disclosures by Candidates for Board Seats.** The Board shall require each individual applying for a position on CAA's Board to disclose on his or her application Conflicts of Interest involving him- or herself or any of his/her Related Parties.
2. **Disclosures by Board Members**
 - a. **Obligation to Disclose.** Each Board Member has a continuing obligation to disclose promptly and fully any actual or potential Conflicts of Interest of which he or she is aware.
 - b. **Form and Frequency of Disclosure.** Each Board Member shall complete and sign on an annual basis and at such times as Conflicts of Interest arise, a Conflict of Interest disclosure statement, in the form attached to this policy, fully and completely disclosing the material facts about any actual or potential Conflicts of Interest of which he or she is aware.

H. How Are Conflicts of Interest to Be Addressed under this Policy?

- 1. Board Review.** The Board shall review and determine, with the assistance of legal counsel if necessary, how to address situations involving Conflicts of Interest. In determining whether a Conflict of Interest exists, the fact that the situation could subject CAA to criticism, embarrassment, litigation or administrative proceedings shall be considered.
- 2. Exclusion of Interested Board Members.** An Interested Board Member shall not participate in any way in, or be present during, the deliberations and decision making with respect to an actual or potential Conflict of Interest in which s/he is involved. In addition, when the Board is considering a proposed Transaction between CAA and a Board Member or a Related Party, no Interested Board Member with respect to any proposed or existing Transaction with CAA may participate in any way in, or be present during, the deliberations and decision making. Interested Board Members excluded from deliberation and decision making may, however, be available upon request to answer questions or provide material factual information about the situation under consideration.

Examples:

- The Board is considering whether to approve a grant to another nonprofit. A CAA Board Member serves as a board member of that nonprofit. The Interested Board Member must disclose that Conflict of Interest and recuse herself from deliberations and decision making on the proposed grant. If the Interested Board Member does not voluntarily recuse herself, the Board must exclude her from deliberations and decision making on the grant.
 - The Board is considering whether CAA should purchase a building from Board Member A. Board Member B's wife is a paid fundraising consultant to CAA. Both Board Members A and B must recuse themselves from deliberations and decision-making on whether CAA should purchase the building from Board Member A.
- 3. Voting and Quorum.** The Board shall act on actual or potential Conflict of Interest situations by affirmative vote of a majority of Board Members at a meeting at which a quorum is present, provided that Interested Board Members with respect to the matter (and, in the case of a proposed Transaction between CAA and a Board Member or Related Party, with respect to any proposed or existing Transaction with CAA) shall not be counted for purposes of determining whether a quorum is present, nor for purposes of determining what constitutes a majority vote of Board Members in attendance.

Example: In the situation above regarding CAA's proposed purchase of a building from Board Member A, neither Board Member A nor Board Member B cannot be counted for purposes of determining whether a quorum is present or for determining what constitutes a majority of Board Members in attendance.

[Review voting and quorum requirements for conformity with your organization's bylaws and in your state's nonprofit corporation law.]

4. Board Determination. The Board (excluding any of the Interested Board Members required to be excluded by Subsections H.2. and H.3. above) shall decide whether there is: no Conflict of Interest; a Conflict of Interest that is not prohibited under this policy or other applicable laws, regulations or rules; or a Conflict of Interest that is prohibited.

a. No Conflict of Interest. If the Board determines that no Conflict of Interest exists, it shall inform any Board Members involved in the situation of its determination and take any other actions it deems prudent.

b. Conflict of Interest Not Prohibited.

i. Generally. If the Board concludes that a Conflict of Interest exists and it is not prohibited by this policy, the Board shall inform any Board Members involved in the situation of its determination and take any other actions its deems prudent to address the Conflict of Interest, including excluding Interested Board Members from deliberations and decision making as described in Sections H.2. and H.3. above.

ii. Proposed Transaction. Where a Conflict of Interest is not prohibited and involves a proposed Transaction between CAA and a Board Member or Related Party, the Board shall gather and review appropriate data, including appropriate data as to comparability, to determine whether the terms of the Transaction are fair and reasonable to and in the best interests of CAA.

Examples of appropriate data as to comparability include:

- In the case of compensation, compensation levels paid by similarly situated organizations for functionally comparable positions, the availability of similar services in CAA's geographic area, and current compensation surveys compiled by independent firms; and
- In the case of property, independent appraisals and offers received as part of an open and competitive bidding process.

In the event that the proposed Transaction involves procurement, CAA's standard procurement rules, including any rules that may require competitive bidding, shall be followed.

If, after consideration of the comparability data and any other relevant factors (including, where appropriate, information on alternatives to the Transaction), the Board determines that, all factors being considered, the Transaction is fair and reasonable and in the best interests of CAA, it may approve the Transaction.

Example: A CAA Board Member is one of 150 partners at a law firm. CAA is considering engaging the law firm to represent it in defending an employment discrimination claim. The Board Member will not work on the matter. Before engaging hiring the law firm, the Board must determine

whether the Board Member's compensation or her prospects of promotion will be affected by the services the firm will be providing to CAA. The Board must also gather data (such as cost estimates from other law firms and the expertise of their attorneys) to determine whether the terms of the engagement are fair and in CAA's best interests. The Board Member must recuse herself from all deliberation and decision-making on the matter. In addition, CAA's standard procurement rules must be followed.

- c. Prohibited Conflict of Interest. If the Board determines that a prohibited Conflict of Interest exists or that a proposed Transaction would result in a prohibited Conflict of Interest, the Board shall decide either: (i) to decline to enter into the proposed Transaction, if applicable; or (ii) to request the resignation of Interested Board Member(s) and, if the Interested Board Member(s) do(es) not resign, follow appropriate legal procedures to remove the Interested Board Member(s).

5. **Delegation to Committee.** The Board may establish or designate a committee of the Board to review any conflicts of interest questions raised by this policy, to determine whether a particular situation involves a Conflict of Interest, and to make recommendations to the Board about how to address Conflicts of Interest.

I. How Should the Board's Decisions about Conflicts of Interest Be Documented?

The Board or committee shall document its decisions about a Conflict of Interest in its meeting minutes (and attachments to the minutes, if applicable). The minutes shall include: material facts regarding the Conflict of Interest; the basis for the Board's decision; the names of Board Members present and of those who voted on the matter; and any actions taken with respect to Interested Board Members with respect to the matter (for example, whether they were excluded from discussion and voting on the matter). The minutes must be prepared before the latter of the next Board or committee meeting or 60 days after the final action is taken on the matter. Once prepared, the minutes must be reviewed and approved by the Board or committee (whichever is applicable) within a reasonable time.

J. What Are the Consequences of Violating this Policy?

If the CAA Board has reason to believe that a Board Member has failed to disclose a Conflict of Interest or otherwise violated this policy, it shall inform the Board Member of the basis for this belief and afford him or her an opportunity to explain the alleged failure or violation.

If, after hearing the response of the interested party and making such further investigation as may be warranted in the circumstances, the Board determines that the Board Member has in fact failed to disclose an actual or possible Conflict of Interest or otherwise violated this policy, it shall take appropriate disciplinary and corrective action, which may include removal from the Board.

Your Name:

Date:

Annual or Other Disclosure (circle one)

Conflict of Interest Disclosure Statement for CAA Board Members

Reason for Policy. Conflicts of Interest raise governance, tax and regulatory issues for CAA. They also raise concerns in the mind of the public and members of the media, potentially undermining CAA's reputation and good standing. For these reasons, CAA's Board Members should avoid Conflicts of Interest, disclose ethical, legal, financial and other such conflicts, and remove themselves from deliberations and decision-making on matters in which they have a Conflict of Interest.

Reason for this Statement. CAA's Board of Directors is committed to the highest ethical standards in how CAA conducts its business and operations. Completing this statement helps CAA Board and management identify and evaluate situations and relationships that could be problematic for CAA, including ones that could jeopardize its tax-exempt status or ability to obtain grants or other funding. It also assists CAA in reporting information required on its IRS Form 990.

Completing this Statement. Each Board Member is required to complete and sign this statement annually and at such times as they become aware of actual or potential Conflicts of Interest. This statement should take no more than 10 to 15 minutes for most Board Members to complete. It asks intentionally broad questions, with the hope of identifying all relevant actual or potential Conflicts of Interest.

Defined Terms Used in this Statement. Capitalized terms used in this statement are defined in the Conflict of Interest Policy for CAA Board Members.

Identifying a Conflict or Relationship Does Not Necessarily Mean There Is a Problem. In some instances, you may need to reveal a conflict or relationship when responding to a question. This does not necessarily mean that you have done something improper or violated the Conflict of Interest Policy for CAA Board Members. By identifying conflicts and relationships, you permit CAA's Board and management to make an informed judgment, further permitting them to address issues through appropriate action or safeguards. Being forthright now is the best approach.

If You Have Questions about the Policy or this Statement. If you have questions about CAA's Conflict of Interest Policy for Board Members or this Statement, ask the Board Chair or a member of the [insert name of committee], which has been designated by the Board to implement the policy.

[Continued on next page]

Your Name:

Date:

Annual or Other Disclosure (circle one)

Please base your answers to the questions below on facts that exist now or that have arisen since you last completed this form.

Do any of your Immediate Family Members serve as a CAA Board Member, officer, or employee?

Yes ___ No ___

If yes, please identify the individual, his or her position and your relationship to him or her:

To the best of your knowledge, are you or any of your Related Parties engaged in any Transactions with a CAA Board Member, officer, or employee? For this purpose, a Transaction does not include a transaction between an attorney and client, or a medical professional (including psychologist) and patient.

Yes ___ No ___

If yes, please identify the individuals or entities involved and the Transactions in which they are involved:

To the best of your knowledge, are you, any other Board Members, or any Immediate Family Members of Board Members (including your own Immediate Family Members) engaged in or considering engaging in a Transaction with CAA (including providing professional or consulting services to CAA)?

Yes ___ No ___

If yes, please identify the Board Member and/or Immediate Family Member and describe the Transaction:

Your Name:

Date:

Annual or Other Disclosure (circle one)

To the best of your knowledge, are you, any other Board Members, or any Immediate Family Members of Board Members (including your own Immediate Family Members) Closely Associated with any entity that is engaged in or considering engaging in a Transaction with CAA?

Yes ___ No ___

If yes, please identify the Board Member and/or Immediate Family Member, the entity and the Compensation Arrangement or Ownership Interest, and describe the Transaction:

To the best of your knowledge, have you or any other Board Members solicited or accepted gifts, gratuities, favors, or anything of monetary value (other than token gifts of low-cost promotional items, such as pens, note pads, caps, calendars, and coffee mugs) from: (a) persons receiving benefits or services under any CAA program; (b) persons or organizations performing services for or providing goods or space to CAA; or (c) persons who are otherwise in a position to benefit from the actions of a CAA employee, officer, or Board Member?

Yes ___ No ___

If yes, please identify the Board Member, the item that was solicited or accepted, and the person or entity from whom the item was solicited or accepted:

To the best of your knowledge, have you or any other Board Members participated in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest was involved? Such a conflict would arise when the Board Member, any of his or her Immediate Family Members, his or her partner, or an organization which employs or is about to employ any of these parties, is or has a financial or other interest in the individual or firm selected for the award.

Yes ___ No ___

If yes, please identify the Board Member, the contract and the conflict of interest.

Your Name:

Date:

Annual or Other Disclosure (circle one)

To the best of your knowledge, have you, any other Board Members or Board Members' Related Parties (including your own Related Parties) used CAA equipment, facilities, assets, or staff time for non-CAA purposes?

Yes ___ No ___

If yes, please identify the Board Member or Related Party, the CAA equipment, facilities, assets or staff used, and the purpose for which it was used:

To the best of your knowledge, are you aware of any other Conflicts of Interest not already disclosed above? A Conflict of Interest is a situation in which a Board Member or his or her Immediate Family Member has, directly him- or herself or indirectly through another individual or entity, a personal or financial interest that compromises or could compromise the Board Member's independence of judgment in exercising his/her responsibilities to CAA.

Yes ___ No ___

If yes, please identify the Board Members and any other parties involved and describe the situation:

By signing this form, I certify that:

I have received a copy of the Conflict of Interest Policy for CAA Board Members, that I have read and understand it; and I agree to abide by it; and.

To the best of my knowledge, my responses on this statement are accurate, true and complete.

Signature: _____

Print Name: _____

Date: _____

Please return this form to [insert name of person designated to collect disclosure forms]



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

For discussion in “Roadmap to Resolving Conflicts of Interest” webinar on August 1, 2012.

[IMPORTANT NOTE: This is a sample policy. You should review this policy thoughtfully and modify it as necessary to meet the individual needs of your organization and to comply with any laws and regulations that apply to your organization’s particular situation as well as the terms and conditions of the funding agreements your organization may have with its particular government funding sources. CAPLAW strongly recommends that when working with this policy, you consult with an attorney in your state who is well versed in the laws affecting Community Action Agencies (CAAs) and/or nonprofit organizations.]

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

A. What Is the Purpose of this Policy?

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

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

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

Under this policy, Senior Staff Members are required to disclose actual or potential conflicts of interest, as well as certain relationships and transactions, to enable CAA to report required information on its IRS Form 990 and to enable the CAA Board and management to take steps it considers necessary or advisable to address conflicts of interest. Depending on the circumstances, a relationship or and transaction disclosed under this policy may not be a conflict of interest, may be a conflict that is permitted provided that certain procedures are followed, or may be a conflict that is prohibited altogether.

B. Who Is Covered by this Policy?

This policy covers CAA Senior Staff Members, as defined in Section E.8. below.

[Be sure to include Sections E.2-5. in CAA's personnel policies so that they apply to all CAA employees and not only Senior Staff Members.]

C. Who Is Responsible for Implementing this Policy?

CAA's Chief Executive Officer has primary responsibility for implementing this policy. The policy will be disseminated to Senior Staff Members when they are hired or appointed by CAA and annually thereafter. The Chief Executive Officer may designate another individual or department to disseminate this policy and collect signed disclosure statements. The Chief Executive Officer or his/her designee shall: review the policy with Senior Staff Members upon their hire or appointment and on an annual basis thereafter; review completed disclosure statements; and monitor implementation of this policy.

[The IRS Form 990, Part VI, inquires about whether the organization has a written conflict of interest policy, whether officers, directors and key employees have to make annual disclosures about conflicts and whether the organization consistently monitors the policy. Adopting and following this policy, along with a conflict of interest policy for board members and a policy covering executive compensation, including this section on implementation and monitoring, allows you to answer all these questions "Yes."]

D. What Is the Meaning of Terms Defined in this Policy?

- 1. Board of Directors (Board)** means the CAA board of directors.
- 2. Board Member** means an individual currently serving as a member of the Board.
- 3. Closely Associated** means that an individual:
 - a. Has a Compensation Arrangement with an entity;
 - b. Has an Ownership Interest in an entity; or
 - c. Is negotiating, applying for or considering acquiring a Compensation Arrangement with or ownership interest in an entity.

Compensation Arrangement means an arrangement involving direct or indirect compensation for services.

An Ownership Interest means that an individual owns at least 5% of the ownership interests (for example, shares of stock or partnership or limited liability company interests) or assets of an entity or, in the case of a publicly held corporation, at least 1% of the corporation's outstanding capital stock.

4. **Community Action Agency (CAA)** means *[insert name of CAA]* and any existing or yet to be formed entities controlled by or under common control with *[insert name of CAA]*, including but not limited to *[name related entities (for example, subsidiaries) here]*.
5. **Conflict of Interest** means a situation in which a Senior Staff Member or his or her Immediate Family Member has, directly him- or herself or indirectly through another individual or entity, a personal or financial interest that compromises or could compromise the Senior Staff Member's independence of judgment in exercising his/her responsibilities to CAA.

Examples:

- The wife of CAA's Housing Director is a residential landlord to whom CAA makes rental payments on behalf of its clients.
- CAA is considering hiring its Chief Executive Officer's son to provide IT consulting services.
- The brother of CAA's Head Start Director owns a 30% interest in a construction company CAA is considering hiring to renovate its headquarters building.

6. **Immediate Family Member** means a Senior Staff Member's:
 - a. Spouse or partner in a civil union recognized by state law;
 - b. Domestic partner or partner in a committed, personal relationship;
 - c. Parent;
 - d. Child;
 - e. Sibling;
 - f. Father-in-law, Mother-in-law;
 - g. Brother-in-law, Sister-in-law;
 - h. Son-in-law, Daughter-in-law;
 - i. Grandparent; or
 - j. Grandchild.

The term includes individuals related by blood, adoption, or marriage (i.e., step family members).

[See federal Office of Head Start (OHS) Policy Clarification OHS – PC – E – 029, which defines the term “Immediate Family” for purposes of the Head Start Act’s prohibition against Head Start grantees employing immediate family members of board members. Although OHS Policy Clarifications do not have the force of law and can be changed at any time, they provide insight into how OHS (and its monitors) are likely to interpret certain requirements.]

7. **Interested Senior Staff Member** means a Senior Staff Member with a Conflict of Interest.
8. **Senior Staff Member** means CAA officers who are not members of the CAA Board of Directors, *[list or describe positions that comprise CAA's senior management staff]*, and

any other employees or agents of CAA designated by CAA's Chief Executive Officer, including but not limited to employees and agents involved in procurement decisions.

- 9. Transaction** means any financial agreement or relationship, including but not limited to those involving:
- a. The sale, lease, purchase, transfer, or provision of goods, services, equipment, facilities, or rights of any kind;
 - b. The provision or receipt of a loan or grant;
 - c. A joint venture, partnership or collaboration; or
 - d. An investment.
- 10. Related Party** means an Immediate Family Member or an entity with which a Senior Staff Member or his/her Immediate Family Member is Closely Associated.

E. What Types of Conflicts of Interest Are Prohibited by this Policy?

- 1. Loans.** CAA is prohibited from making a loan to or guaranteeing an obligation of any of its officers.

[Many states' nonprofit corporation laws prohibit nonprofit corporations from making loans to our guaranteeing the obligations of their officers. Check your state's law on this point.]

- 2. Board Membership.** No employee of CAA or any of its Head Start delegate agencies may be a CAA Board Member or the Immediate Family Member of a Board Member. A former Board Member may be hired as an employee of CAA, provided that at least 180 days have passed since he or she left the CAA Board.

[The first sentence above is based on the federal Head Start Act's prohibition on employment of board members and members of their immediate families by a Head Start grantee or any of its delegate agencies. See 42 U.S.C. § 9837(c)(1)(C)(ii)-(iii). The Head Start Act contains a narrow exception for situations where an individual holds a position as a result of public election or political appointment, the position carries with it a concurrent appointment to serve as a member of the governing board of a Head Start grantee, and the individual has a conflict of interest because either: (a) he or she is compensated for serving on the board or for providing services to the Head Start grantee; or (b) he or she or a member of his or her immediate family is employed by the grantee or one of its delegate agencies. See 42 U.S.C. § 9837(c)(1)(D). However, CAPLAW views this exception as applying primarily to situations where the grantee is a public school district and the governing body is the school board that oversees the district. Because we view this exception narrowly and because we think it best to apply the same rules to all board members, we have not included the exception in this policy.]

Federal Office of Community Services (OCS) Information Memorandum 81, which is non-binding guidance on CAA tripartite boards, recommends a waiting period after a board member leaves the board before s/he may be hired by the CAA. Some state CSBG

or conflict of interest rules may require such a waiting period. The second sentence above is language that a CAA seeking to implement a waiting period could use; unless limited by state law, a CAA can choose whatever waiting period it wants.]

- 3. Participation in Contracts.** Senior Staff Members shall not participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when a Senior Staff Member, any of his or her Immediate Family Members, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, is or has a financial or other interest in the individual or firm selected for the award.

[This provision is based on the requirements of OMB Circular A-110, 2 CFR § 215.42, which federal agencies (including the U.S. Department of Health and Human Services (HHS)) have adopted through regulations. HHS regulations addressing this issue may be found at 45 CFR § 74.42.]

- 4. Gifts.** Senior Staff Members are prohibited from soliciting or accepting gifts, gratuities, favors, or anything of monetary value, other than unsolicited items of nominal value, from:
- a. Persons receiving benefits or services under any CAA program;
 - b. Persons or organizations performing services for or providing goods or space to CAA; or
 - c. Persons who are otherwise in a position to benefit from the actions of a CAA employee, officer, or Board Member.

Nominal value means \$50 or less per gift and \$75 or less for all gifts received from a particular individual or entity per calendar year. Acceptance of gifts of nominal value must be disclosed according to the procedures set forth in this policy. However, the prohibition on soliciting or accepting gifts does not include acceptance of token gifts of low-cost promotional items, such as pens, note pads, caps, calendars, and coffee mugs, and such gifts do not need to be disclosed.

[This provision is based on the requirements of OMB Circular A-110, 2 CFR § 215.42, which federal agencies (including the U.S. Department of Health and Human Services (HHS)) have adopted through regulations. HHS regulations addressing this issue may be found at 45 CFR § 74.42. Your organization can choose the value of the gift to designate as nominal; \$75-\$100 is a typical limit. Delete this definition if your organization chooses to prohibit all gifts regardless of value.]

Example: If CAA's insurance broker offers a CAA's Chief Financial Officer a week's free use of a beach house, the Chief Financial Officer may not accept it.

- 5. Diversion of CAA Resources.** Senior Staff Members and their Related Parties are prohibited from using CAA equipment, facilities, assets, or staff time for non-CAA purposes.

Example: CAA's housing program has a construction crew on staff. CAA's Chief Executive Officer may not have the CAA construction crew renovate her kitchen during hours they are, or should be, working for CAA or using CAA equipment.

[IMPORTANT NOTE: Work with an attorney to determine whether any other rules on prohibited conflict of interest should be incorporated into your policy. For example, U.S. Department of Housing and Urban Development (HUD) programs often have stringent conflict of interest rules prohibiting certain financial conflicts of interest and, in some cases, non-financial conflicts as well. In addition, state and local government entities may have conflict of interest rules that may prohibit board members who are also officials, employees or agents of state or local government entities from taking certain acts affecting or receiving certain benefits from your organization. Consult with an attorney to identify whether any such rules apply to people connected with your CAA and, if so, how to incorporate those rules into your conflict of interest policies.]

F. Are There Exceptions to What Is Considered a Conflict of Interest under this Policy?

The situations listed below are not considered to be Conflicts of Interest under this policy.

- 1. Provision of Services/Benefits.** Provision of services/benefits by CAA or one of its Head Start delegate agencies to the Immediate Family Member of a Senior Staff Member solely because the individual is a member of a charitable class that CAA or its Head Start delegate agency intends to benefit as part of the accomplishment of its charitable purposes, provided that:
 - a. The individual meets all applicable eligibility criteria for the services/benefits, including funding source rules on the provision of services/benefits to individuals with a close connection to the organization;
 - b. The individual does not receive preferential treatment in receiving the services/benefits due to his or her connection with CAA as an Immediate Family Member of a Senior Staff Member;
 - c. The services/benefits are provided on terms similar to services/benefits provided to individuals who are not Immediate Family Members of a Senior Staff Member; and
 - d. The Senior Staff Member is not involved in the decision about whether to provide or in the provision of services/benefits to the individual.

[The IRS recognizes that these transactions between insiders and the organization are not conflicts as long as the insider is being treated like a member of the public. See 26 CFR § 53.4958-4(4)(v). To ensure compliance with funder rules and withstand public scrutiny, it is important that Immediate Family Members of CAA Senior Staff Members applying for and receiving services/benefits from the CAA not be treated more favorably than other applicants simply because they are family members of Senior Staff Members). For example, CAA's HR director has a sister who is eligible for the Low Income Home Energy Assistance Program (LIHEAP) and applies for LIHEAP assistance from CAA. The sister may receive LIHEAP benefits from CAA, provided that she is not treated more favorably than other applicants (e.g., her application is not given special priority, she does not receive a larger benefit amount, her eligibility is checked in the same manner as

other applicants, and the HR director is not involved in providing the benefits to her sister). However, keep in mind that some funding source rules may prohibit the provision of services/benefits to family members of CAA staff. Be sure to check the funding source rules that apply to the programs your CAA operates to see if services/benefits may be provided to family members of Senior Staff Members and if there are other requirements that should be incorporated into this section.]

- 2. Expense Reimbursements.** Expense reimbursements made by CAA to a Senior Staff Member for reasonable, necessary and documented expenses incurred by the Senior Staff Member in the course of performing authorized services for the organization, provided that the reimbursements are made pursuant to CAA's Board-approved expense reimbursement plan and are permitted by any applicable funding source rules. Unless required by the CAA Board or Chief Executive Officer in a particular circumstance, receipt of reimbursements meeting these criteria need not be disclosed under this policy.

[The IRS recognizes that expense reimbursements by the organization to insiders are not conflicts as long as the reimbursements are made under an expense reimbursement plan that requires that expenses be related to the organization's operations and adequately accounted for with receipts and similar records and that any excess reimbursements be returned to the organization within a reasonable period of time. See 26 CFR §§ 53.4958-4(4)(ii) and § 1.62-2(c).]

G. What Information Must Be Disclosed under this Policy and How Should It Be Disclosed?

- 1. Obligation to Disclose.** Each Senior Staff Member has a continuing obligation to disclose promptly and fully any actual or potential Conflicts of Interest of which he or she is aware.
- 2. Form and Frequency of Disclosure.** Upon being hired or appointed by CAA and thereafter on an annual basis and at such times as Conflicts of Interest may arise, each Senior Staff Member shall complete and sign a Conflict of Interest disclosure statement, in the form attached to this policy, fully and completely disclosing the material facts about any actual or potential Conflicts of Interest of which he or she is aware.

H. How Are Conflicts of Interest to Be Addressed under this Policy?

1. Decision-Maker

- a. **Situations Involving Officers.** The Board, either itself or through its [*specify committee*], shall address all actual and potential Conflicts of Interest (including Transactions between CAA and a Senior Staff Member or a Related Party) involving CAA's Chief Executive Officer, Chief Financial Officer and any other CAA officers who are not Board Members.

b. Situations Involving Other Senior Staff Members. The Chief Executive Officer or his or her designee shall address all actual and potential Conflicts of Interest (including Transactions between CAA and a Senior Staff Member or a Related Party), involving other Senior Staff Members. Individuals who are involved in a Conflict of Interest situation shall be prohibited from participating in decision-making about that situation. In appropriate circumstances, the Chief Executive Officer or his or her designee shall refer a Conflict of Interest situation to the Board or its [*specify committee*] for consideration.

2. **Decision.** The appropriate decision-maker described above shall decide whether there is: no Conflict of Interest; a Conflict of Interest that is not prohibited; or a Conflict of Interest that is prohibited. In determining whether a Conflict of Interest exists, the fact that the situation could subject CAA to criticism, embarrassment, litigation or administrative proceedings shall be considered.

a. No Conflict of Interest. If the decision-maker determines that no Conflict of Interest exists, it shall inform any Senior Staff Members involved in the situation of its determination and take any other actions it deems prudent.

b. Conflict of Interest Not Prohibited

i. Generally. If the decision-maker concludes that a Conflict of Interest exists and it is not prohibited, the decision-maker shall inform any Senior Staff Members involved in the situation of the determination and take any other actions it deems prudent to address the Conflict of Interest, including excluding Senior Staff Members from decision making as described above.

ii. Proposed Transaction. Where a Conflict of Interest is not prohibited and involves a proposed Transaction between CAA and a Senior Staff Member or Related Party, the decision-maker shall gather and review appropriate data, including appropriate data as to comparability, to determine whether the terms of the Transaction are fair and reasonable to and in the best interests of CAA.

Examples of appropriate data as to comparability include:

- In the case of compensation, compensation levels paid by similarly situated organizations for functionally comparable positions, the availability of similar services in CAA's geographic area, and current compensation surveys compiled by independent firms; and
- In the case of property, independent appraisals and offers received as part of an open and competitive bidding process.

In the event that the proposed Transaction involves procurement, CAA's standard procurement rules, including any rules that may require competitive bidding, shall be followed.

If, after consideration of the comparability data and any other relevant factors (including, where appropriate, information on alternatives to the Transaction), the decision-maker determines that, all factors being considered, the Transaction is fair and reasonable and in the best interests of CAA, the Transaction may be approved.

- c. Prohibited Conflict of Interest. If the decision-maker determines that a prohibited Conflict of Interest exists or that a proposed Transaction would result in a prohibited Conflict of Interest, the decision-maker shall determine the appropriate course of action (if necessary, in consultation with an attorney), consistent with legal requirements and CAA's personnel and other policies, to eliminate the prohibited conflict or conduct.

I. What Are the Consequences of Violating this Policy?

If the CAA Board or Chief Executive Officer has reason to believe that a Senior Staff Member has failed to disclose a Conflict of Interest or otherwise violated this policy, it shall inform the Senior Staff Member of the basis for this belief and afford him or her an opportunity to explain the alleged failure or violation.

If, after hearing the response of the interested party and making such further investigation as may be warranted in the circumstances, the Board or Chief Executive Officer determines that the Senior Staff Member has in fact failed to disclose an actual or possible Conflict of Interest or otherwise violated this policy, appropriate disciplinary and corrective action, which may include termination of employment, shall be taken.

[Revise as necessary to ensure that this provision is consistent with CAA's other policies on discipline of employees.]

Your Name:

Date:

Annual or Other Disclosure (circle one)

Conflict of Interest Disclosure Statement for Senior Staff of CAA with Head Start

Reason for Policy. Conflicts of Interest raise governance, tax and regulatory issues for CAA. They also raise concerns in the mind of the public and members of the media, potentially undermining CAA's reputation and good standing. For these reasons, CAA's Senior Staff Members should avoid Conflicts of Interest, disclose ethical, legal, financial and other such conflicts, and remove themselves from deliberations and decision-making on matters in which they have a Conflict of Interest.

Reason for this Statement. CAA is committed to the highest ethical standards in how CAA conducts its business and operations. Completing this statement helps CAA Board and management identify and evaluate situations and relationships that could be problematic for CAA, including ones that could jeopardize its tax-exempt status or ability to obtain grants or other funding. It also assists CAA in reporting information required on its IRS Form 990.

Completing this Statement. Each Senior Staff Member is required to complete and sign this statement annually and at such times as they become aware of actual or potential Conflicts of Interest. This statement should take no more than 10 to 15 minutes for most Senior Staff Members to complete. It asks intentionally broad questions, with the hope of identifying all relevant actual or potential Conflicts of Interest.

Defined Terms Used in this Statement. Capitalized terms used in this statement are defined in the Conflict of Interest Policy for CAA Senior Staff.

Identifying a Conflict or Relationship Does Not Necessarily Mean There Is a Problem. In some instances, you may need to reveal a conflict or relationship when responding to a question. This does not necessarily mean that you have done something improper or violated the Conflict of Interest Policy for CAA Senior Staff. By identifying conflicts and relationships, you permit CAA's Board and management to make an informed judgment, further permitting them to address issues through appropriate action or safeguards. Being forthright now is the best approach.

If You Have Questions about the Policy or this Statement. If you have questions about CAA's Conflict of Interest Policy for Board Members or this Statement, ask the Board Chair or a member of the *[insert name of committee]*, which has been designated by the Board to implement the policy.

[Continued on next page]

Your Name:

Date:

Annual or Other Disclosure (circle one)

Do any of your Immediate Family Members serve as a CAA Board Member or CAA officer?

Yes ___ No ___

If yes, please identify the Immediate Family Member, his or her position and your relationship to him or her:

To the best of your knowledge, are you or any of your Related Parties engaged in any Transactions with a CAA Board Member, with a CAA officer, or with an employee of CAA or of any of its Head Start delegate agencies? For this purpose, a Transaction does not include a transaction between an attorney and client, or a medical professional (including psychologist) and patient.

Yes ___ No ___

If yes, please identify the individuals or entities involved and the Transactions in which they are involved:

To the best of your knowledge, are you, any other Senior Staff Members, or any Related Parties of Senior Staff Members (including your own Related Parties) engaged in or considering engaging in a Transaction with CAA or any of its Head Start delegate agencies?

Yes ___ No ___

If yes, please identify the Senior Staff Member and/or Immediate Family Member and describe the Transaction:

Your Name:

Date:

Annual or Other Disclosure (circle one)

Have you solicited or accepted gifts, gratuities, favors, or anything of monetary value (other than token gifts of low-cost promotional items, such as pens, note pads, caps, calendars, and coffee mugs) from: (a) persons receiving benefits or services under any CAA program; (b) persons or organizations performing services for or providing goods or space to CAA; or (c) persons who are otherwise in a position to benefit from the actions of a CAA employee, officer, or Board Member?

Yes ___ No ___

If yes, please identify the Senior Staff Member, the item that was solicited or accepted, and the person or entity from whom the item was solicited or accepted:

Have you participated in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest was involved? Such a conflict would arise when you, any of your Immediate Family Members, your partner, or an organization which employs or is about to employ you, any of your Immediate Family Members, or your partner, is or has a financial or other interest in the individual or firm selected for the award.

Yes ___ No ___

If yes, please identify the Senior Staff Member, the contract and the conflict of interest.

To the best of your knowledge, have you or any of your Related Parties used CAA equipment, facilities, assets, or staff time for non-CAA purposes?

Yes ___ No ___

If yes, please identify the individual or entity involved, the CAA equipment, facilities, assets or staff used, and the purpose for which it was used:

Your Name:

Date:

Annual or Other Disclosure (circle one)

To the best of your knowledge, are you aware of any other Conflicts of Interest not already disclosed above? A Conflict of Interest is a situation in which a Senior Staff Member or his or her Immediate Family Member has, directly him- or herself or indirectly through another individual or entity, a personal or financial interest that compromises or could compromise the Senior Staff Member's independence of judgment in exercising his/her responsibilities to CAA.

Yes ___ No ___

If yes, please identify the Senior Staff Member and any other parties involved and describe the situation:

By signing this form, I certify that:

I have received a copy of the Conflict of Interest Policy for CAA Senior Staff, that I have read and understand it; and I agree to abide by it; and.

To the best of my knowledge, my responses on this statement are accurate, true and complete.

Signature: _____

Print Name: _____

Date: _____

Please return this form to [insert name of person designated to collect disclosure forms]



Sample Conflict of Interest Policy for Senior Staff of CAA without Head Start

For discussion in “Roadmap to Resolving Conflicts of Interest” webinar on August 1, 2012.

[IMPORTANT NOTE: This is a sample policy. You should review this policy thoughtfully and modify it as necessary to meet the individual needs of your organization and to comply with any laws and regulations that apply to your organization’s particular situation as well as the terms and conditions of the funding agreements your organization may have with its particular government funding sources. CAPLAW strongly recommends that when working with this policy, you consult with an attorney in your state who is well versed in the laws affecting Community Action Agencies (CAAs) and/or nonprofit organizations.]

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

A. What Is the Purpose of this Policy?

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

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

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

Under this policy, Senior Staff Members are required to disclose actual or potential conflicts of interest, as well as certain relationships and transactions, to enable CAA to report required information on its IRS Form 990 and to enable the CAA Board and management to take steps it considers necessary or advisable to address conflicts of interest. Depending on the circumstances, a relationship or and transaction disclosed under this policy may not be a conflict of interest, may be a conflict that is permitted provided that certain procedures are followed, or may be a conflict that is prohibited altogether.

B. Who Is Covered by this Policy?

This policy covers CAA Senior Staff Members, as defined in Section E.8. below.

[Be sure to include Sections E.2-5. in CAA's personnel policies so that they apply to all CAA employees and not only Senior Staff Members.]

C. Who Is Responsible for Implementing this Policy?

CAA's Chief Executive Officer has primary responsibility for implementing this policy. The policy will be disseminated to Senior Staff Members when they are hired or appointed by CAA and annually thereafter. The Chief Executive Officer may designate another individual or department to disseminate this policy and collect signed disclosure statements. The Chief Executive Officer or his/her designee shall: review the policy with Senior Staff Members upon their hire or appointment and on an annual basis thereafter; review completed disclosure statements; and monitor implementation of this policy.

[The IRS Form 990, Part VI, inquires about whether the organization has a written conflict of interest policy, whether officers, directors and key employees have to make annual disclosures about conflicts and whether the organization consistently monitors the policy. Adopting and following this policy, along with a conflict of interest policy for board members and a policy covering executive compensation, including this section on implementation and monitoring, allows you to answer all these questions "Yes."]

D. What Is the Meaning of Terms Defined in this Policy?

- 1. Board of Directors (Board)** means the CAA board of directors.
- 2. Board Member** means an individual currently serving as a member of the Board.
- 3. Closely Associated** means that an individual:
 - a. Has a Compensation Arrangement with an entity;
 - b. Has an Ownership Interest in an entity; or
 - c. Is negotiating, applying for or considering acquiring a Compensation Arrangement with or ownership interest in an entity.

Compensation Arrangement means an arrangement involving direct or indirect compensation for services.

An Ownership Interest means that an individual owns at least 5% of the ownership interests (for example, shares of stock or partnership or limited liability company interests) or assets of an entity or, in the case of a publicly held corporation, at least 1% of the corporation's outstanding capital stock.

4. **Community Action Agency (CAA)** means *[insert name of CAA]* and any existing or yet to be formed entities controlled by or under common control with *[insert name of CAA]*, including but not limited to *[name related entities (for example, subsidiaries) here]*.
5. **Conflict of Interest** means a situation in which a Senior Staff Member or his or her Immediate Family Member has, directly him- or herself or indirectly through another individual or entity, a personal or financial interest that compromises or could compromise the Senior Staff Member's independence of judgment in exercising his/her responsibilities to CAA.

Examples:

- The wife of CAA's Housing Director is a residential landlord to whom CAA makes rental payments on behalf of its clients.
- CAA is considering hiring its Chief Executive Officer's son to provide IT consulting services.
- The brother of CAA's Weatherization Director owns a 30% interest in a construction company CAA is considering hiring to renovate its headquarters building.

6. **Immediate Family Member** means a Senior Staff Member's:
 - a. Spouse or partner in a civil union recognized by state law;
 - b. Domestic partner or partner in a committed, personal relationship;
 - c. Parent;
 - d. Child;
 - e. Sibling;
 - f. Father-in-law, Mother-in-law;
 - g. Brother-in-law, Sister-in-law;
 - h. Son-in-law, Daughter-in-law;
 - i. Grandparent; or
 - j. Grandchild.

The term includes individuals related by blood, adoption, or marriage (i.e., step family members).

7. **Interested Senior Staff Member** means a Senior Staff Member with a Conflict of Interest.
8. **Senior Staff Member** means CAA officers who are not members of the CAA Board of Directors, *[list or describe positions that comprise CAA's senior management staff]*, and any other employees or agents of CAA designated by CAA's Chief Executive Officer, including but not limited to employees and agents involved in procurement decisions.
9. **Transaction** means any financial agreement or relationship, including but not limited to those involving:
 - a. The sale, lease, purchase, transfer, or provision of goods, services, equipment, facilities, or rights of any kind;

- b. The provision or receipt of a loan or grant;
- c. A joint venture, partnership or collaboration; or
- d. An investment.

10. Related Party means an Immediate Family Member or an entity with which a Senior Staff Member or his/her Immediate Family Member is Closely Associated.

E. What Types of Conflicts of Interest Are Prohibited by this Policy?

- 1. Loans.** CAA is prohibited from making a loan to or guaranteeing an obligation of any of its officers.

[Many states' nonprofit corporation laws prohibit nonprofit corporations from making loans to or guaranteeing the obligations of their officers. Check your state's law on this point.]

- 2. Board Membership.** No employee of CAA may be a CAA Board Member or the Immediate Family Member of a Board Member. A former Board Member may be hired as an employee of CAA, provided that at least 180 days have passed since he or she left the CAA Board.

[Federal Office of Community Services (OCS) Information Memorandum 81, which is non-binding guidance on CAA tripartite boards, recommends a waiting period after a board member leaves the board before s/he may be hired by the CAA. Some state CSBG or conflict of interest rules may require such a waiting period. The second sentence above is language that a CAA seeking to implement a waiting period could use; unless limited by state law, a CAA can choose whatever waiting period it wants.]

- 3. Participation in Contracts.** Senior Staff Members shall not participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when a Senior Staff Member, any of his or her Immediate Family Members, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, is or has a financial or other interest in the individual or firm selected for the award.

[This provision is based on the requirements of OMB Circular A-110, 2 CFR § 215.42, which federal agencies have adopted through regulations.]

- 4. Gifts.** Senior Staff Members are prohibited from soliciting or accepting gifts, gratuities, favors, or anything of monetary value, other than unsolicited items of nominal value, from:
- a. Persons receiving benefits or services under any CAA program;
 - b. Persons or organizations performing services for or providing goods or space to CAA; or
 - c. Persons who are otherwise in a position to benefit from the actions of a CAA employee, officer, or Board Member.

Nominal value means \$50 or less per gift and \$75 or less for all gifts received from a particular individual or entity per calendar year. Acceptance of gifts of nominal value must be disclosed according to the procedures set forth in this policy. However, the prohibition on soliciting or accepting gifts does not include acceptance of token gifts of low-cost promotional items, such as pens, note pads, caps, calendars, and coffee mugs, and such gifts do not need to be disclosed.

[This provision is based on the requirements of OMB Circular A-110, 2 CFR § 215.42, which federal agencies have adopted through regulations. Your organization can choose the value of the gift to designate as nominal; \$75-\$100 is a typical limit. Delete this definition if your organization chooses to prohibit all gifts regardless of value.]

Example: If CAA's insurance broker offers a CAA's Chief Financial Officer a week's free use of a beach house, the Chief Financial Officer may not accept it.

- 5. Diversion of CAA Resources.** Senior Staff Members and their Related Parties are prohibited from using CAA equipment, facilities, assets, or staff time for non-CAA purposes.

Example: CAA's housing program has a construction crew on staff. CAA's Chief Executive Officer may not have the CAA construction crew renovate her kitchen during hours they are, or should be, working for CAA or using CAA equipment.

[IMPORTANT NOTE: Work with an attorney to determine whether any other rules on prohibited conflict of interest should be incorporated into your policy. For example, U.S. Department of Housing and Urban Development (HUD) programs often have stringent conflict of interest rules prohibiting certain financial conflicts of interest and, in some cases, non-financial conflicts as well. In addition, state and local government entities may have conflict of interest rules that may prohibit board members who are also officials, employees or agents of state or local government entities from taking certain acts affecting or receiving certain benefits from your organization. Consult with an attorney to identify whether any such rules apply to people connected with your CAA and, if so, how to incorporate those rules into your conflict of interest policies.]

F. Are There Exceptions to What Is Considered a Conflict of Interest under this Policy?

The situations listed below are not considered to be Conflicts of Interest under this policy.

- 1. Provision of Services/Benefits.** Provision of services/benefits by to the Immediate Family Member of a Senior Staff Member solely because the individual is a member of a charitable class that CAA intends to benefit as part of the accomplishment of its charitable purposes, provided that:
 - a. The individual meets all applicable eligibility criteria for the services/benefits, including funding source rules on the provision of services/benefits to individuals with a close connection to the organization;

- b. The individual does not receive preferential treatment in receiving the services/benefits due to his or her connection with CAA as an Immediate Family Member of a Senior Staff Member;
- c. The services/benefits are provided on terms similar to services/benefits provided to individuals who are not Immediate Family Members of a Senior Staff Member; and
- d. The Senior Staff Member is not involved in the decision about whether to provide or in the provision of services/benefits to the individual.

[The IRS recognizes that these transactions between insiders and the organization are not conflicts as long as the insider is being treated like a member of the public. See 26 CFR § 53.4958-4(4)(v). To ensure compliance with funder rules and withstand public scrutiny, it is important that Immediate Family Members of CAA Senior Staff Members applying for and receiving services/benefits from the CAA not be treated more favorably than other applicants simply because they are family members of Senior Staff Members). For example, CAA's HR director has a sister who is eligible for the Low Income Home Energy Assistance Program (LIHEAP) and applies for LIHEAP assistance from CAA. The sister may receive LIHEAP benefits from CAA, provided that she is not treated more favorably than other applicants (e.g., her application is not given special priority, she does not receive a larger benefit amount, her eligibility is checked in the same manner as other applicants, and the HR director is not involved in providing the benefits to her sister). However, keep in mind that some funding source rules may prohibit the provision of services/benefits to family members of CAA staff. Be sure to check the funding source rules that apply to the programs your CAA operates to see if services/benefits may be provided to family members of Senior Staff Members and if there are other requirements that should be incorporated into this section.]

- 2. Expense Reimbursements.** Expense reimbursements made by CAA to a Senior Staff Member for reasonable, necessary and documented expenses incurred by the Senior Staff Member in the course of performing authorized services for the organization, provided that the reimbursements are made pursuant to CAA's Board-approved expense reimbursement plan and are permitted by any applicable funding source rules. Unless required by the CAA Board or Chief Executive Officer in a particular circumstance, receipt of reimbursements meeting these criteria need not be disclosed under this policy.

[The IRS recognizes that expense reimbursements by the organization to insiders are not conflicts as long as the reimbursements are made under an expense reimbursement plan that requires that expenses be related to the organization's operations and adequately accounted for with receipts and similar records and that any excess reimbursements be returned to the organization within a reasonable period of time. See 26 CFR §§ 53.4958-4(4)(ii) and § 1.62-2(c).]

G. What Information Must Be Disclosed under this Policy and How Should It Be Disclosed?

- 1. Obligation to Disclose.** Each Senior Staff Member has a continuing obligation to disclose promptly and fully any actual or potential Conflicts of Interest of which he or she is aware.
- 2. Form and Frequency of Disclosure.** Upon being hired or appointed by CAA and thereafter on an annual basis and at such times as Conflicts of Interest may arise, each Senior Staff Member shall complete and sign a Conflict of Interest disclosure statement, in the form attached to this policy, fully and completely disclosing the material facts about any actual or potential Conflicts of Interest of which he or she is aware.

H. How Are Conflicts of Interest to Be Addressed under this Policy?

1. Decision-Maker

- a. Situations Involving Officers. The Board, either itself or through its [*specify committee*], shall address all actual and potential Conflicts of Interest (including Transactions between CAA and a Senior Staff Member or a Related Party) involving CAA's Chief Executive Officer, Chief Financial Officer and any other CAA officers who are not Board Members.
 - b. Situations Involving Other Senior Staff Members. The Chief Executive Officer or his or her designee shall address all actual and potential Conflicts of Interest (including Transactions between CAA and a Senior Staff Member or a Related Party), involving other Senior Staff Members. Individuals who are involved in a Conflict of Interest situation shall be prohibited from participating in decision-making about that situation. In appropriate circumstances, the Chief Executive Officer or his or her designee shall refer a Conflict of Interest situation to the Board or its [*specify committee*] for consideration.
- 2. Decision.** The appropriate decision-maker described above shall decide whether there is: no Conflict of Interest; a Conflict of Interest that is not prohibited; or a Conflict of Interest that is prohibited. In determining whether a Conflict of Interest exists, the fact that the situation could subject CAA to criticism, embarrassment, litigation or administrative proceedings shall be considered.
- a. No Conflict of Interest. If the decision-maker determines that no Conflict of Interest exists, it shall inform any Senior Staff Members involved in the situation of its determination and take any other actions it deems prudent.
 - b. Conflict of Interest Not Prohibited
 - i. Generally. If the decision-maker concludes that a Conflict of Interest exists and it is not prohibited, the decision-maker shall inform any Senior Staff Members

involved in the situation of the determination and take any other actions it deems prudent to address the Conflict of Interest, including excluding Senior Staff Members from decision making as described above.

- ii. Proposed Transaction. Where a Conflict of Interest is not prohibited and involves a proposed Transaction between CAA and a Senior Staff Member or Related Party, the decision-maker shall gather and review appropriate data, including appropriate data as to comparability, to determine whether the terms of the Transaction are fair and reasonable to and in the best interests of CAA.

Examples of appropriate data as to comparability include:

- In the case of compensation, compensation levels paid by similarly situated organizations for functionally comparable positions, the availability of similar services in CAA's geographic area, and current compensation surveys compiled by independent firms; and
- In the case of property, independent appraisals and offers received as part of an open and competitive bidding process.

In the event that the proposed Transaction involves procurement, CAA's standard procurement rules, including any rules that may require competitive bidding, shall be followed.

If, after consideration of the comparability data and any other relevant factors (including, where appropriate, information on alternatives to the Transaction), the decision-maker determines that, all factors being considered, the Transaction is fair and reasonable and in the best interests of CAA, the Transaction may be approved.

- c. Prohibited Conflict of Interest. If the decision-maker determines that a prohibited Conflict of Interest exists or that a proposed Transaction would result in a prohibited Conflict of Interest, the decision-maker shall determine the appropriate course of action (if necessary, in consultation with an attorney), consistent with legal requirements and CAA's personnel and other policies, to eliminate the prohibited conflict or conduct.

I. What Are the Consequences of Violating this Policy?

If the CAA Board or Chief Executive Officer has reason to believe that a Senior Staff Member has failed to disclose a Conflict of Interest or otherwise violated this policy, it shall inform the Senior Staff Member of the basis for this belief and afford him or her an opportunity to explain the alleged failure or violation.

If, after hearing the response of the interested party and making such further investigation as may be warranted in the circumstances, the Board or Chief Executive Officer determines that the Senior Staff Member has in fact failed to disclose an actual or possible Conflict of Interest or

otherwise violated this policy, appropriate disciplinary and corrective action, which may include termination of employment, shall be taken.

[Revise as necessary to ensure that this provision is consistent with CAA's other policies on discipline of employees.]

Your Name:

Date:

Annual or Other Disclosure (circle one)

Conflict of Interest Disclosure Statement for Senior Staff of CAA without Head Start

Reason for Policy. Conflicts of Interest raise governance, tax and regulatory issues for CAA. They also raise concerns in the mind of the public and members of the media, potentially undermining CAA's reputation and good standing. For these reasons, CAA's Senior Staff Members should avoid Conflicts of Interest, disclose ethical, legal, financial and other such conflicts, and remove themselves from deliberations and decision-making on matters in which they have a Conflict of Interest.

Reason for this Statement. CAA is committed to the highest ethical standards in how CAA conducts its business and operations. Completing this statement helps CAA Board and management identify and evaluate situations and relationships that could be problematic for CAA, including ones that could jeopardize its tax-exempt status or ability to obtain grants or other funding. It also assists CAA in reporting information required on its IRS Form 990.

Completing this Statement. Each Senior Staff Member is required to complete and sign this statement annually and at such times as they become aware of actual or potential Conflicts of Interest. This statement should take no more than 10 to 15 minutes for most Senior Staff Members to complete. It asks intentionally broad questions, with the hope of identifying all relevant actual or potential Conflicts of Interest.

Defined Terms Used in this Statement. Capitalized terms used in this statement are defined in the Conflict of Interest Policy for CAA Senior Staff.

Identifying a Conflict or Relationship Does Not Necessarily Mean There Is a Problem. In some instances, you may need to reveal a conflict or relationship when responding to a question. This does not necessarily mean that you have done something improper or violated the Conflict of Interest Policy for CAA Senior Staff. By identifying conflicts and relationships, you permit CAA's Board and management to make an informed judgment, further permitting them to address issues through appropriate action or safeguards. Being forthright now is the best approach.

If You Have Questions about the Policy or this Statement. If you have questions about CAA's Conflict of Interest Policy for Board Members or this Statement, ask the Board Chair or a member of the *[insert name of committee]*, which has been designated by the Board to implement the policy.

[Continued on next page]

Your Name:

Date:

Annual or Other Disclosure (circle one)

Please base your answers to the questions below on facts that exist now or that have arisen since you last completed this form.

Do any of your Immediate Family Members serve as a CAA Board Member or CAA officer?

Yes ___ No ___

If yes, please identify the Immediate Family Member, his or her position and your relationship to him or her:

To the best of your knowledge, are you or any of your Related Parties engaged in any Transactions with a CAA Board Member, with a CAA officer, or with an employee of CAA? For this purpose, a Transaction does not include a transaction between an attorney and client, or a medical professional (including psychologist) and patient.

Yes ___ No ___

If yes, please identify the individuals or entities involved and the Transactions in which they are involved:

To the best of your knowledge, are you, any other Senior Staff Members, or any Related Parties of Senior Staff Members (including your own Related Parties) engaged in or considering engaging in a Transaction with CAA?

Yes ___ No ___

If yes, please identify the Senior Staff Member and/or Immediate Family Member and describe the Transaction:

Your Name:

Date:

Annual or Other Disclosure (circle one)

Have you solicited or accepted gifts, gratuities, favors, or anything of monetary value (other than token gifts of low-cost promotional items, such as pens, note pads, caps, calendars, and coffee mugs) from: (a) persons receiving benefits or services under any CAA program; (b) persons or organizations performing services for or providing goods or space to CAA; or (c) persons who are otherwise in a position to benefit from the actions of a CAA employee, officer, or Board Member?

Yes ___ No ___

If yes, please identify the Senior Staff Member, the item that was solicited or accepted, and the person or entity from whom the item was solicited or accepted:

Have you participated in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest was involved? Such a conflict would arise when you, any of your Immediate Family Members, your partner, or an organization which employs or is about to employ you, any of your Immediate Family Members, or your partner, is or has a financial or other interest in the individual or firm selected for the award.

Yes ___ No ___

If yes, please identify the Senior Staff Member, the contract and the conflict of interest.

To the best of your knowledge, have you or any of your Related Parties used CAA equipment, facilities, assets, or staff time for non-CAA purposes?

Yes ___ No ___

If yes, please identify the individual or entity involved, the CAA equipment, facilities, assets or staff used, and the purpose for which it was used:

Your Name:

Date:

Annual or Other Disclosure (circle one)

To the best of your knowledge, are you aware of any other Conflicts of Interest not already disclosed above? A Conflict of Interest is a situation in which a Senior Staff Member or his or her Immediate Family Member has, directly him- or herself or indirectly through another individual or entity, a personal or financial interest that compromises or could compromise the Senior Staff Member's independence of judgment in exercising his/her responsibilities to CAA.

Yes ___ No ___

If yes, please identify the Senior Staff Member and any other parties involved and describe the situation:

By signing this form, I certify that:

I have received a copy of the Conflict of Interest Policy for CAA Senior Staff, that I have read and understand it; and I agree to abide by it; and.

To the best of my knowledge, my responses on this statement are accurate, true and complete.

Signature: _____

Print Name: _____

Date: _____

Please return this form to [insert name of person designated to collect disclosure forms]