What Are Bylaws and Why Are They Important?

• Basic governance structure and rules of procedure for board
• Set ground rules for procedural disputes
• IRS and funding sources review them
• CSBG Organizational Standards address them
• Failure to follow bylaws can cause problems
What Are Bylaws and Why Are They Important?

- The organization’s bylaws have been reviewed by an attorney within the past 5 years.

Organizational Standard 5.3, Private
What Are Bylaws and Why Are They Important?

Organizational Standard 5.3, Public

- Not applicable: Review of bylaws by an attorney is outside of the purview of the department and the tripartite board/advisory body, therefore this standard does not apply to public entities.
What Are Bylaws and Why Are They Important?

Organizational Standard 5.4, Private

- The organization documents that each governing board member has received a copy of the bylaws within the past 2 years.
What Are Bylaws and Why Are They Important?

- The department documents that each tripartite board/advisory body member has received a copy of the governing documents, within the past 2 years.
Which Takes Precedence?

Federal Law

State Law

Articles of Incorporation

Bylaws

Board Resolutions

Board Policies

Parliamentary Procedures
Articles of Incorporation

- Filing with secretary of state creates nonprofit corporation

- Statement of purpose(s):
  - Unless otherwise required, be fairly general as to charitable purpose

- However, 501(c)(3)s need to include specific purposes language
  - Charitable purposes and fact that purposes limited to those described in section 501(c)(3)
Articles of Incorporation

• Other required 501(c)(3) language:

  – No substantial part of activities is influencing legislation
  – No part of earnings inures to benefit of private shareholders or individuals
  – No participation in political campaign activity
  – Upon dissolution, distribution of assets only to 501(c)(3) or to federal, state or local gov’t, for public purpose

• Leave dissolution language out of bylaws
Bylaws

• Name, purposes
  – Don’t include in bylaws, simply refer to articles

• Board powers and duties
  – Nonprofit CAA boards have broad powers under PA state nonprofit corp. law (15 Pa.C.S. § 5502)
Board Powers and Duties

• Nonprofit bylaws usually just include a general statement of board’s authority
  
  – For example: “The governing body of the corporation shall be the board of directors, which shall have supervision, control and direction over the affairs of the corporation.”
Board Powers and Duties

Organizational Standard 5.8, Private

• Governing board members have been provided with training on their duties and responsibilities within the past 2 years.
Board Powers and Duties

Organizational Standard 5.8, Public

• Tripartite board/advisory body members have been provided with training on their duties and responsibilities within the past 2 years.
Board Size

Federal Law

• Does not address

State Law

• PA nonprofit corporation law: at least 1; 3 if none stated in bylaws or articles (15 Pa.C.S. § 5723)
• State CSBG is silent

Strategy

• Maintain flexibility
• Keep it manageable
• Must be divisible by 3
Tripartite Boards – Governing Law

- Federal CSBG Act (42 U.S.C. § 9910) and state CSBG statute (62 P.S. § 2992.4) outline tripartite board requirements
  - If state CSBG law or policy is inconsistent with federal CSBG Act, federal CSBG Act governs
- OCS Information Memorandum (IM) 82
  - Guidance only, not binding
- CSBG Organizational Standards (IM 138)
Tripartite Boards – Composition and Selection

- At least 1/3: Low-Income sector
- 1/3: Public Officials
- Remainder: “Private” Sector
Tripartite Boards – Composition and Selection

Organizational Standard 5.1, Private

- The organization’s governing board is structured in compliance with the CSBG Act:
  - 1. At least one third democratically-selected representatives of the low-income community;
  - 2. One-third local elected officials (or their representatives); and
  - 3. The remaining membership from major groups and interests in the community.
Tripartite Boards – Composition and Selection

Organizational Standard 5.1, Public

• The department’s tripartite board/advisory body is structured in compliance with the CSBG Act, by either:
  • 1. Selecting the board members as follows:
    • At least one third are democratically-selected representatives of the low-income community;
    • One-third are local elected officials (or their representatives); and
    • The remaining members are from major groups and interests in the community; or
  • 2. Selecting the board through another mechanism specified by the State to assure decision-making and participation by low-income individuals in the development, planning, implementation, and evaluation of programs.
Tripartite Boards – Composition and Selection

• Board members are to be chosen by the board (for nonprofit CAAs) or governing officials (for public CAAs) once chosen through appropriate selection process

• Residency Requirements
  – For nonprofits: Any board member selected to represent a specific geographic area within a community must reside in the area represented
  – For public: low-income reps must live in CAA service area
Public Sector

“1/3 of the members of the board are elected public officials, holding office on the date of selection, or their representatives, except that if the number of such elected officials reasonably available and willing to serve on the board is less than 1/3 of the membership of the board, membership on the board of appointive public officials or their representatives may be counted in meeting such 1/3 requirement.”

Public Sector

“...one-third of the members of the board of directors are elected public officials currently holding offices or their representatives, except that, if the number of elected officials reasonably available and willing to serve is less than one-third of the board membership, membership on the board of appointive officials [but not their representatives] may be counted in meeting such one-third requirement

- 62 P.S. § 2992.4
Public Sector

Recommendation

• Don’t rely on public official’s office term, set terms in bylaws
Low-Income Sector – Nonprofit CAAs

“not fewer than 1/3 of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and ... each representative of low-income individuals and families selected to represent a specific neighborhood ... resides in the neighborhood represented by the member.”

— 42 U.S.C. § 9910
Low-Income Sector – Public CAAs

• Must be representative of low-income individuals and families in service area
• Must live in service area
• Must be able to participate actively in development, planning, implementation and evaluation of CSBG programs
Low-Income Sector – State Law

“at least one-third are persons chosen in accordance with departmentally approved democratic selection procedures adequate to assure that they are representative of the poor in the area served.”

- 62 P.S. § 2992.4
Low-Income Sector

• Should represent current low-income residents, but don’t need to be low-income themselves

Recommendation

• Have at least some, if not all, low-income board members who are low-income themselves
Low-Income Sector

Democratic selection options:

- *Community health center board*
- *Tenants association*
- *Faith-based group*
- *PTA*
- *Policy council*
- General election
- Public forum

*Micro-democratic election procedure:*
Group predominately made up of low-income individuals may elect someone from w/in the group to serve as the low-income rep.

— OCS IM 82
Low-Income Sector

Organizational Standard 5.2, Private

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

Organizational Standard 5.2, Public

- The department’s tripartite board/advisory body either has:
  - 1. Written procedures that document a democratic selection process for low-income board members adequate to assure that they are representative of the low-income community, or
  - 2. Another mechanism specified by the State to assure decision-making and participation by low-income individuals in the development, planning, implementation, and evaluation of programs.

- Please note under IM 82 for Public Entities the law also requires that a minimum of 1/3 of tripartite board membership be comprised of representatives of low-income individuals and families who reside in areas served.
Low-Income Sector

• Board member should **NOT** be chosen by:
  – Typical board selection process
  – Board nominating committee
  – E.D. of the CAA or another service provider
Democratic Selection

CSBG Org. Standard 5.2:

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

Recommendation

- Don’t put the written procedures for democratic selection process in your bylaws. Create a **separate document**, referred to in the bylaws and approved by the board.
Private Sector

Individuals or Groups

“Shall be officials or members of groups such as ...”

Business

Industry

Religious

Labor

Education

Housing

“...or other major groups and interests in community”
Head Start
Board Composition Rules

At least one member:
• With financial expertise
• A licensed attorney familiar with issues that come before the board
• With early childhood education expertise

If people with such expertise aren’t available to serve on board, non-board members with those qualifications may work with board instead.
Head Start Rules

• Other board members should:
  – Reflect community and include current or former Head Start parents
  – Be selected for their expertise in education, business administration, or community affairs

• **Exception** to board composition rules for members of a governing body when those members oversee a public entity and are selected to their positions with the public entity by public election or political appointment
Head Start Rules

- Conflicts of interest:
  - Compensation for board membership
  - Employed family member
  - Board members may not have financial conflict of interest with grantee or delegate agency
  - Board members must operate independently of grantee staff
Head Start Rules

• **Exception** to conflicts of interest rules for individual who holds position as a result of public election or political appointment, and that position carries with it a concurrent appointment to serve as a member of a Head Start agency governing body

  – But Head Start grantee must disclose conflict to HHS
Head Start Rules


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Alternates

State law may not allow board members to vote by alternates (or “proxy”)

Recommendation

• Do not allow board votes by “proxy” or “alternates”
Petitions for Board Representation

• Federal CSBG Act: CAAs must have procedures for certain individuals and groups to petition for representation

Recommendation

• Adopt written procedures and include them in your bylaws
Board Selection Procedure

1. Use board committee
2. Recruit smartly & strategically
3. Require applications
4. Follow selection procedures
Board Selection Procedure

• Be sure board bylaws reflect CSBG Act tripartite req. and, if applicable, Head Start req.

• “at least one-third are persons chosen in accordance with departmentally approved democratic selection procedures adequate to assure that they are representative of the poor in the area served.” - 62 P.S. § 2992.4
Board Members’ Terms

• Federal CSBG Act is silent

• State law: if no term is specified in bylaws, the term defaults to 1 year (15 Pa.C.S. § 5724)

Recommendation

• Include board member terms in bylaws
  • 3 years is common
  • If not specified in bylaws, state’s nonprofit law may set term

• CAAs may Provide for staggered terms
Term Limits

Federal law is silent on term limits

Options

• Set term limits
• Different limits for board sectors
• Permit to re-join after break
  • Enforce consistently
Removal of Board Members

Recommendation

- Include removal provisions in bylaws and use them if necessary

- Include in Removal of Directors provision:
  - With or without cause
  - Vote needed
  - Procedures (e.g., notice, opportunity to be heard)

- Check state law for removal requirements
Board Vacancies

Federal CSBG Act does not address board vacancies

CSBG Org. Standard 5.5:

• Fill board vacancies as set out in bylaws.
Board Vacancies

Recommendations:

Fill vacancies ASAP
- Have a plan in place before vacancies arise

Specify in bylaws:
- How vacancies in each sector will be filled
- Term length of replacement director
- How partial term counts towards term limits, if any

Have full board:
- Elect replacement board members once chosen through appropriate process
Board Meetings

• Specify minimum frequency

• Specify procedures for annual, regular, special meetings

• Notice to board members
  – Specify form of notice and time periods
  – Permit board members to waive notice (including by attending the meeting)

• Meeting minutes
Board Meetings

• PA non-profit corporations act allows corps to conduct meetings through “by means of conference telephone or other electronic technology by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at the meeting.” 15 Pa.C.S. § 5708
Board Meetings

Organizational Standard 5.5, Private

• The organization’s governing board meets in accordance with the frequency and quorum requirements and fills board vacancies as set out in its bylaws.
Board Meetings

Organizational Standard 5.5, Public

• The department’s tripartite board/advisory body meets in accordance with the frequency and quorum requirements and fills board vacancies as set out in its governing documents.
Board Meetings

Organizational Standard 5.9, Private

• The organization’s governing board receives programmatic reports at each regular board meeting.
Board Meetings

Organizational Standard 5.9, Public

• The department’s tripartite board/advisory body receives programmatic reports at each regular board/advisory meeting.
Quorum Requirements

• Most nonprofits use majority of board members in office as quorum

• If not in bylaws, default: majority of directors in office (15 Pa.C.S. § 5727)
Voting Requirements

• Best practice for nonprofits even if state law permits:
  – No voting by alternates
  – No voting by designated representative
  – No proxy voting
  – No votes by email
  – No votes by phone or email polling
Committees – Authority

Ensure bylaws speak to:

• What authority **DO** committees have?
• What authority do committees **NOT** have
• Who has authority to create committees and appoint members?
  – How are committees created?
• Who can be on committees?
• What are the standing committees?
  – Executive, governance, audit, personnel, etc.
Officers

• Bylaws should specify officers and their duties
  – PA nonprofit corporation law requires all nonprofits to have a president, a secretary, and a treasurer
  – State whether one person can hold more than one office
    • PA nonprofit corporation law allows the same person to hold more than one office (15 Pa.C.S. § 5732)

• Require officers to be board members?
Officer

• No requirement re: how often to be elected
• Include removal and resignation procedures
• Specify how vacancies filled
• Permit officers to delegate duties to employees or agents in certain cases
• Specify whether officers required to be bonded
• Board can also appoint other agents, employees and define their duties
# Board-Executive Director Roles

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<th>Executive Director</th>
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<tr>
<td>Supervision of Employees</td>
<td>Supervises Executive Director only</td>
<td>Supervises org. staff generally</td>
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Compensation

• Bylaws should state that board members will not be compensated for services as board members

• Bylaws should state that board members may be reimbursed for reasonable and documented expenses incurred in course of performing services as board members
Conflict of Interest Policy

• Bylaws should require board to adopt and implement separate conflict of interest policy

• Review and update periodically
Conflict of Interest Policy

Organizational Standard 5.6, Private

• Each governing board member has signed a conflict of interest policy within the past 2 years.
Conflict of Interest Policy

Organizational Standard 5.6, Public

- Each tripartite board/advisory body member has signed a conflict of interest policy, or comparable local government document, within the past 2 years.
Signing Checks and Contracts

• Bylaws should include language on who can sign contracts and checks etc.
  – Bylaws can authorize certain officers to sign and let board authorize, by resolution, other officers, employees and agents to sign, or
  – Can leave it general and let board authorize on a case-by-case basis
Indemnification

• Definition – one party agrees to pay obligations of another party under certain circumstances
  – 15 Pa.C.S. § 5741 - 5750
  – Specify in articles or bylaws who, when and how organization will indemnify
  – Encourages individuals to serve on board
  – Clarifies when CAA will and will not indemnify

• Keep indemnification provision up-to-date with current state law

• Cover indemnification with insurance
Bylaws Amendments

• Bylaws more easily amended than articles
  – Don’t need to file bylaws amendments with state, but need to notify IRS on Form 990
  – Could require supermajority to amend bylaws
Bylaws Amendments

• Amendments take time
  – Board appoints committee to review and recommend changes
  – Committee works with attorney to ensure proposed changes are legal and consistent with articles of incorporation and policies
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