

# MAXIMIZING SUCCESS: CAA Personnel Policies and Practices



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CAPLAW



# Agenda

- Current status of the FLSA overtime rule
- Travel time policies under the FLSA
- HR directives in CSBG Organizational Standards
- Role of CAA Board in overseeing personnel policies and employee grievances

# FLSA Overview



# Fair Labor Standards Act – Overview

- **Must pay minimum wage & overtime for covered employees, unless exempt**
  - Includes public and private sector employees
- **“White collar” exemptions (29 C.F.R. Part 541)**
  - Cover certain executive, administrative, professional (EAP), outside sales, and computer employees
  - Three tests to determine if employee is exempt:
    - Salary basis test, salary level test, duties test
- **A CAA may treat an employee who meets all 3 tests as non-exempt (and pay overtime for work > 40 hours)**
  - *Cannot* agree to waive OT pay if the employee is non-exempt



# New Overtime Rule

## Increased Standard Salary Level Test

CURRENT Overtime Rule	NEW Overtime Rule
<p>Currently, salaried employees who meet one of the duties tests must earn at least</p> <p><b>\$455/week</b> <b>(\$23,660/year)</b></p> <p>in order to be classified as exempt from the FLSA's minimum wage and overtime protections</p>	<p>Originally effective 12/1/2016, salaried employees who met the duties tests had to earn at least</p> <p><b>\$913/week</b> <b>(\$47,476/year)</b></p> <p>in order to remain exempt from the FLSA's minimum wage and overtime protections</p>

29 C.F.R. § 541.607

# New Overtime Rule

## Increased Highly Compensated Employee Compensation Level

CURRENT Overtime Rule	NEW Overtime Rule
<p>Currently, HCEs who meet a minimal duties test must earn at least</p> <p><b>\$100,000/year <u>and</u> at least \$455/week</b></p> <p>in order to be classified as exempt from the FLSA's minimum wage and overtime protections</p>	<p>Originally effective 12/1/2016, HCEs who met a minimal duties test had to earn at least</p> <p><b>\$134,004/year <u>and</u> at least \$913/week</b></p> <p>in order to be classified as exempt from the FLSA's minimum wage and overtime protections</p>

29 C.F.R. § 541.607



# New Overtime Rule

## Other Provisions

- No change to standard duties tests
- Includes automatic updates to standard salary level and HCE compensation level every 3 years
  - DOL to publish updated salary levels at least 150 days prior to effective date in Federal Register
- DOL info/guidance on the new rule:
  - <https://www.dol.gov/whd/overtime/final2016/>
- 81 Federal Register 32391 (May 23, 2016); codified at 29 C.F.R. § 541.607

# Current Status of the Overtime Rule



# New Overtime Rule **BLOCKED**

- On Nov. 22, 2016, a federal district court judge issued a nationwide preliminary injunction preventing the rule from taking effect on Dec. 1, 2016
- DOJ appealing the preliminary injunction on behalf of DOL, but has asked for extensions to file reply brief (by June 30, 2017) to give new administration time to review the case
- Rule's future under the Trump administration is unclear:
  - DOJ must decide whether to defend the rule (5<sup>th</sup> Circuit and potentially U.S. Supreme Court)
  - Trump administration must decide whether to rescind the new OT rule or propose a revised rule (potentially with a reduced salary threshold)
  - On May 2, 2017, the House passed a bill that allows private-sector employees to choose either time-and-a-half OT pay or 1.5 hours of comp time off (to be used at a later date), and White House publicly backed bill



# Court Reasoning

- DOL actions inconsistent with FLSA and congressional intent
- Congress defined EAP exemption with regard to duties and did not include a minimum salary level
- DOL exceeded its authority by increasing the salary level so significantly to create a “de facto salary-only test”



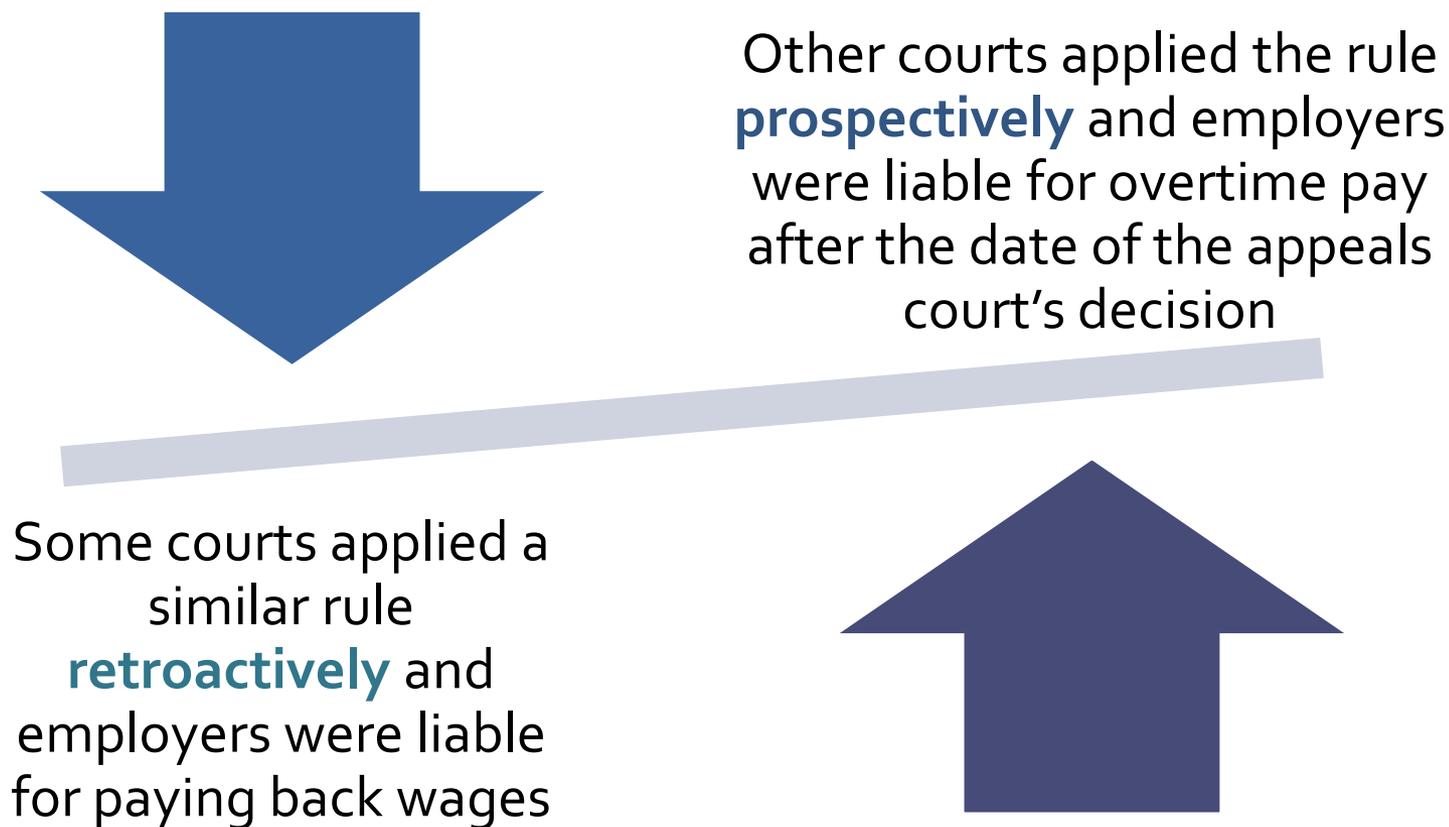
# Could the Rule Return?

- The overtime rule could go into effect as currently written if:
  - Appeals court overturns the injunction or
  - Congress clarifies that the DOL has authority to increase the minimum salary level test for the EAP exemption
- DOL could issue a revised rule by initiating a new notice-and-comment rulemaking process
- States could implement the new rule as written or in a revised form



# If Rule Returns, will it be Retroactive?

## Maybe



# Question #1: Implementation of Overtime Rule

- To what extent has your CAA implemented the overtime rule?
  - a. Neither communicated changes to employees nor made any changes to implement the rule
  - b. **STARTED implementing** the rule, but have not finished making changes (e.g., communicated the changes to employees, but did not change classifications using the new salary level test)
  - c. **FULLY implemented** the rule (i.e., reclassified employees as exempt or non-exempt using the new salary level test)
  - d. **OTHER**



# Option A:

## No Communication nor Changes Made

- **Wait and see?**
  - Continue to have employees track their time
  - Consider limiting overtime work by employees subject to reclassification as non-exempt in case rule goes into effect and applied retroactively



# Option B:

## Begun Implementing BUT Not Finished

- **If announced changes but not implemented them, may “wait and see” (Option A)**
  - Consider employee expectations
  - May be subject to advance notice requirements under state laws
- **Continue reclassifying employees based on job duties pursuant to broader audits**
- **Communicate with employees about preliminary injunction and potential future changes**



# Option C:

## Already Implemented

If CAA decides to reverse salary increases and reclassifications

Consider employee morale

Communicate reversal in advance

Check local laws, they may require advance notice to make certain changes

Comply with collective bargaining agreement, if applicable

See Option A

Consult with local counsel

# Travel Time Policies Under the FLSA



# On the Road Again

Willie is a nonexempt employee who works for Smalltown CAP. His normal work hours are from 9 a.m. to 5 p.m. His boss tells him to attend a two-day training session in Bigtown beginning on Monday morning. Willie leaves to fly to Bigtown on Sunday at 3 p.m. and does no work en route. He checks into his hotel at 8:00 p.m., has dinner on his own until 9:15 p.m., and then returns to his room, watches TV, and goes to bed at 10:30 p.m. How much of this is FLSA work time?

- (a) The two-hour period between 3 p.m. and 5 p.m.
- (b) Everything from 3 p.m. until Willie goes to bed.
- (c) None of it
- (d) All of the time until he returns to Smalltown



# On the Road Again, Take Two

. . . . Willie drives to Bigtown on Sunday at 3 p.m., arrives at his hotel at 8:00 p.m., has dinner on his own until 9:15 p.m., and then returns to his room, watches TV, and goes to bed at 10:30 p.m. How much of this is FLSA work time?

- (a) The two-hour period between 3 p.m. and 5 p.m.
- (b) The five-hour period between 3 p.m. and 8 p.m.
- (c) Everything from 3 p.m. until Willie goes to bed.
- (d) None of it



# On the Road Again, Take Three

. . . . CAP decides that Willie's colleague, Waylon, should also attend the training. Willie needs to respond to some work emails and read a report so he asks Waylon to drive. They leave Bigtown on Sunday at 3 p.m. and arrive at the hotel at 8:00 p.m. During the drive, Willie repeatedly asks Waylon to stop humming tunes because Willie needs to concentrate on his work. Willie wrapped up his work exactly at 8 p.m. Willie and Waylon then had dinner until 9:15 p.m., returned to their rooms, watched TV, and both went to bed at 10:30 p.m. How much of this is FLSA work time for Willie?

- (a) The two-hour period between 3 p.m. and 5 p.m.
- (b) The five-hour period between 3 p.m. and 8 p.m.
- (c) Everything from 3 p.m. until Willie goes to bed.
- (d) None of it



# On the Road Again, Take Four

. . . CAP offers to pay for a ticket for Willie on the new fast train to Bigtown on Sunday. If he took the train, he would leave for the station at 3 p.m., take the 3:30 p.m. train, arrive in Bigtown at 4:15 p.m., and be at the hotel by 4:30 p.m. However, Willie, who never travels without his guitar and amp, prefers driving, and CAP permits him to do so. He drives to Bigtown on Sunday at 3 p.m., arrives at his hotel at 8:00 p.m., has dinner on his own until 9:15 p.m., and then returns to his room, watches TV, and goes to bed at 10:30 p.m. How much of this is FLSA work time?

- (a) The two-hour period between 3 p.m. and 5 p.m.
- (b) The five-hour period between 3 p.m. and 8 p.m.
- (c) Everything from 3 p.m. until Willie goes to bed.
- (d) The one and ½ hour period between 3 p.m. and 4:30 p.m.

# Hours Worked: Travel Time

- If travel longer distance to attend conferences or other out-of-town events, such travel is NOT compensable if:
  - Employee is a passenger,
  - Travel is outside of normal work hours, and
  - No work is performed during the travel time
- *See* 29 C.F.R. §§ 785.37, 785.38, 785.39

# Hours Worked: Travel Time

- Ordinary commuting travel is not hours worked
- Travel between job sites during the normal work day is hours worked
- Special rules apply to travel away from the employee's home community
- *See* 29 C.F.R. §§ 785.37, 785.38, 785.39

# HR Directives in CSBG Organizational Standards



# Category Seven:

## Human Resources Management

TECHNICAL ASSISTANCE GUIDE



COE DEVELOPED CSBG ORGANIZATIONAL STANDARDS

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### Category 7

## Human Resource Management



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## Technical Assistance Guides for each Category of Standards

### Technical Assistance Guide Category Seven: Human Resource Management



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Community Action Program Legal Services, Inc.

Legal and Financial Resources  
for Community Action

HOME

ABOUT CAPLAW

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RESOURCES

CAPLAW TRAININGS

CAPLAW NETWORKS

CONTACT US

## CSBG Organizational Standards

1 CONSUMER INPUT AND INVOLVEMENT

2 COMMUNITY ENGAGEMENT

3 COMMUNITY ASSESSMENT

4 ORGANIZATIONAL LEADERSHIP

5 BOARD GOVERNANCE

6 STRATEGIC PLANNING

7 HUMAN RESOURCE MANAGEMENT

8 FINANCIAL OPERATIONS AND OVERSIGHT

9 DATA AND ANALYSIS

### Welcome!

This webpage links resources developed by CAPLAW to specific Community Services Block Grant (CSBG) Organizational Standards to help Community Action Agencies (CAAs) in their compliance efforts. For some Standards that we regularly receive inquiries about, we also include links to resources developed by the national Community Action Partnership. All of the resources developed by the national Community Action Partnership on the Standards are available on its [website](#). Note: CAPLAW is in the process of revising some of its resources pursuant to updates in the law; however, the concepts in these resources generally remain applicable.

Click on the Category and Standard number to view the Standard and available resources.

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### CAPLAW Events



Did you miss a webinar in the Essential Governance Policies series? View all three webinars on-demand in the webinar archives!

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### CAPLAW Tools and Resources

- [CAPLAW Model Policies](#)
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- [CAPLAW Training Modules](#)
- [Resources by Topic](#)



# Category Seven: Human Resources Management



# Category 7: HR Management

## Three Types of Standards

HR POLICIES & PROCEDURES	EFFECTIVE HR GOVERNANCE	EFFECTIVE HR MANAGEMENT
7.1 Personnel policies reviewed by attorney & approved by board <b>w/in past 5 years</b>	7.4 Board conducts ED performance appraisal <b>every calendar year</b>	7.3 Written job descriptions updated <b>w/in past 5 years</b>
7.2 Policies/handbook available to all staff who are notified of changes	7.5 Board reviews & approves ED comp. <b>every calendar year</b>	7.6 Policy for regular written employee evaluations
7.7 Whistleblower policy approved by board		7.8 New employee orientation <b>w/in 60 days of hire</b>
		7.9 Conduct/make available staff development/training on <b>ongoing basis</b>

# HR Policies & Procedures

## Standard 7.1

### CSBG Org. Standard 7.1 (Nonprofit):

- The organization has written personnel policies that have been reviewed by an attorney and approved by the governing board within the past 5 years.

### CSBG Org. Standard 7.2 (Public):

- Not applicable: Local governmental personnel policies are outside of the purview of the department and the tripartite board/advisory body, therefore this standard does not apply to public entities.

# 7.1 Guidance on Compliance

- **Laws to cover:**
  - Fair Labor Standards Act (FLSA)
  - State wage and hour laws
  - Leave policies (FLSA, FMLA, short-term disability, sick leave and state family/medical leave)
  - Equal employment opportunity laws (e.g., ADA, Age Discrimination in Employment Act, Titles VII and IX of the Civil Rights Act)
  - OSHA/workplace safety and security
  - Data privacy and security
  - National Labor Relations Act (social media, standards of conduct)
  - Disciplinary policies
  - Whistleblower policies and protection against retaliation
- **Attorney Review**
  - 7.1 does not stipulate a specific kind of attorney to conduct review
  - Best practice for reviewing attorney to have expertise in state employment law issues and to be familiar with the CAA



# 7.1 Documentation Options

- Physical or electronic copy of the Personnel Policies
  - *No specific list of policies required*
- **Documentation may include:**
  - Written communication from attorney
  - A statement or invoice from the reviewing attorney with a specific billing entry for policy review
  - Board minutes showing:
    - Discussion of personnel policies review
    - Board resolutions approving personnel policies
  - Pre-meeting materials or packets including personnel policies

# HR Policies & Procedures

## Standard 7.2

### CSBG Org. Standard 7.2 (Nonprofit):

- The organization makes available the employee handbook (or personnel policies in cases without a handbook) to all staff and notifies staff of any changes.

### CSBG Org. Standard 7.2 (Public):

- The department follows local governmental policies in making available the employee handbook (or personnel policies in cases without a handbook) to all staff and in notifying staff of any changes.

# 7.2 Guidance on Compliance

- **What qualifies as “makes available”?**
  - Posted online or provided directly
  - Ask for employees to sign acknowledgement of receipt
- **What qualifies as “notifies staff”?**
  - Notify staff when making changes to personnel policies
  - Communicating specific changes via e-mail and make a fully updated copy available on intranet
  - To avoid implied contract claims, issue only general statements of policy and include prominent disclaimers clearly stating that employment is “at will”
  - Include explicit statement reserving the right to alter, amend, or change handbook policies at any time and for any reason



## 7.2 Documentation Options

- **Nonprofit CAAs:**

- Physical or electronic copy of employee handbook
- Process or procedure document for staff communication (e.g., listed on checklist for new hire orientation)
- Samples of CAA communication of policy change notification to staff

- **Public CAAs:**

- Follow local government policies
- If no local government policies exist:
  - Provide a copy of HR's response to the state
  - Notify state of lack of information on personnel policies communication

# HR Policies & Procedures

## Standard 7.7

### CSBG Org. Standard 7.7 (Nonprofit):

- The organization has a whistleblower policy that has been approved by the governing board.

### CSBG Org. Standard 7.7 (Public):

- The department provides a copy of any existing local government whistleblower policy to members of the tripartite board/advisory body at the time of orientation.



# 7.7 Guidance on Compliance

## ■ Purpose

- Encourages individuals to come forward with credible information on illegal practices or violations of adopted policies

## ■ Include in the policy:

- To whom does the policy apply?
- Specify the matters covered (e.g., financial fraud, workplace safety, employment practices)
- Describe the reporting process (e.g., to supervisor/ED, or to the Board if ED/officers are involved)
- Process of investigating complaints and resolving issues
- Protect against retaliation
- Consider identifying and/or purchasing an external hotline service for reporting (private company or through the state)



## 7.7 Documentation Options

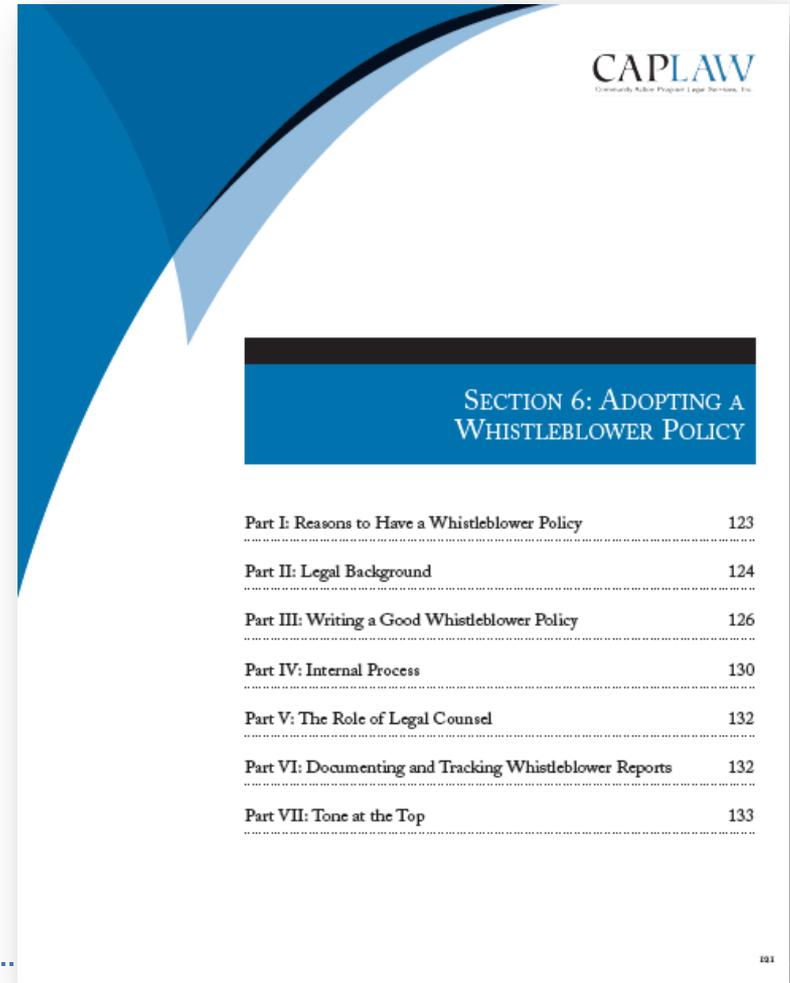
- **Documentation may include:**
  - Copy of whistleblower policy
  - Board minutes approving whistleblower policy
  - Board pre-meeting materials/packet containing copy of whistleblower policy approved by the board

# HR Policies and Procedures

## Standard 7.7 (Nonprofit CAAs)

Information about  
whistleblower policies  
including samples in  
CAPLAW's *Tools for Top-  
Notch CAAs*,

<http://www.capl原因.org/resources/PublicationDocuments/TopNotchToolkit.html>



CAPLAW  
Community Action Program Legal Services, Inc.

SECTION 6: ADOPTING A  
WHISTLEBLOWER POLICY

Part I: Reasons to Have a Whistleblower Policy	123
Part II: Legal Background	124
Part III: Writing a Good Whistleblower Policy	126
Part IV: Internal Process	130
Part V: The Role of Legal Counsel	132
Part VI: Documenting and Tracking Whistleblower Reports	132
Part VII: Tone at the Top	133

121

# Effective HR Governance

## Standard 7.4

### CSBG Org. Standard 7.4 (Nonprofit):

- The governing board conducts a performance appraisal of the CEO/executive director within each calendar year.

### CSBG Org. Standard 7.4 (Public):

- The department follows local government procedures for performance appraisal of the department head.



## 7.4 Guidance on Compliance

### ■ Purpose

- Clarifies expectation of board to oversee its sole employee (CEO/ED)
- Encourages accountability to public and funding sources

### ■ Options for Evaluating ED

- Start with a board committee
- Decide on valuation tool and criteria for review
- Gather input from a variety of sources
- Set-up face-to-face evaluation meeting
- Create a written review and summary



## 7.4 Documentation Options

- **Documentation may include:**
  - Board minutes discussing ED performance review
  - Board resolutions approving/acknowledging performance review
  - Board policies or procedures for executive performance review
  - Official board communication to the ED or to the CAA
  - Blank ED self-assessment forms

# Effective HR Governance

## Standard 7.5

### CSBG Org. Standard 7.5 (Nonprofit):

- The governing board reviews and approves CEO/executive director compensation within every calendar year.

### CSBG Org. Standard 7.5 (Public):

- The compensation of the department head is made available according to local government procedure.

# 7.5 Guidance on Compliance

## ■ Purpose

- Clarifies expectation of board to oversee its sole employee (CEO/ED)
- Foster culture of accountability to federal grants and other funding sources that pay salaries and benefits
- Enhances CAA's ability to recruit and retain quality nonprofit executive talent



# 7.5 Guidance on Compliance

- **Considerations when compensating ED**
  - Understand IRS requirements, such as intermediate sanctions
  - Establish presumption that ED's compensation reasonable by:
    - Use board committee
    - Assure board independence
    - Link pay to performance
    - Rely on meaningful comparables
    - Documenting the process
  - Recognize funding source requirements



# 7.5 Documentation Options

- **Nonprofit CAAs:**

- Board minutes discussing compensation review
- Board resolutions approving ED compensation
- Board policies or procedures for compensation review
- Wage comparability study
- Raw market data for compensation comparison
- Official board communication to the ED
- ED employment contract (if applicable)

- **Public CAAs:**

- Policy/procedures pertaining to performance appraisals
- Performance appraisal sign-off
- Blank appraisal forms
- Salary information postings

# Effective HR Management

Standards 7.3, 7.6, 7.8, 7.9  
(Nonprofit and Public CAAs)

- Up-to-date job descriptions
- Standard approach for staff performance evaluations
- Employee orientation for all staff
- Staff development & training aligned to results & accountability





# Effective HR Management

## Standard 7.3

### CSBG Org. Standard 7.3 (Nonprofit):

- The organization has written job descriptions for all positions, which have been updated within the past 5 years.

### CSBG Org. Standard 7.3 (Public):

- The department has written job descriptions for all positions. Updates may be outside of the purview of the department.



## 7.3 Guidance on Compliance

- **Job descriptions are important because they:**
  - Set expectations for applicants
  - Establish various defenses such as for ADA disability discrimination cases
  - Determine the exempt status of employees
  - Manage expectations of the job for the employee
  - Establish grounds for termination
  - Among other things . . .



# 7.3 Job Description Tips

- **Title**
- **Department**
- **Supervision/reporting structure**
  - Management
  - Immediate supervisor
  - Subordinates
- **Classification?**
  - Exempt or nonexempt status
  - Strategic decision to include (or not)
- **Overview/summary of position**



## 7.3 Job Description Tips

- **Essential functions**

- Those performed day-to-day, irregular but recurring and essential
- Use active words/verbs
- Describe frequency w/which function performed
- Include “catch-all”

- **Physical requirements**

- Sedentary & non-sedentary
- Physical activity

- **Knowledge, skill & experience**

- Minimum education
- Minimum experience
- Specialized skills?



## 7.3 Job Description Tips

- **Disclaimers – add language to the description to:**
  - Permit the employer to add to, change and interpret the position
    - *The employer may, in its discretion, modify or adjust the position to meet the company's changing needs*
  - Clarify that the description is not a contract
    - *This job is not a contract and may be adjusted as deemed appropriate in the employer's sole discretion*

## 7.3 Documentation Options

- **Documentation may include:**
  - Organizational chart/staff list
  - Job descriptions
  - Date of last review/update on job descriptions
  - Board or committee minutes noting documents have been reviewed or updated
  - Policy and procedures for updating job descriptions

# Effective HR Management

## Standard 7.6

### CSBG Org. Standard 7.6 (Nonprofit):

- The organization has a policy in place for regular written evaluation of employees by their supervisors.

### CSBG Org. Standard 7.6 (Public):

- The department follows local governmental policies for regular written evaluation of employees by their supervisors.

# 7.6 Guidance on Compliance

- **Include in Evaluation:**

- Reason for conducting employee evaluations
- Timing for regular evaluations
- What employees should expect from supervisors in terms of evaluation criteria and ratings
- How evaluation will be used to determine any compensation, promotion, or performance improvement decisions



# 7.6 Guidance on Compliance

- **Requires a policy be in place**
  - Policy should be included in personnel policies/employee handbook
  - But does NOT imply that all employees must have an annual review

## Tips:

- Make appraisals specific
- Include examples
- Avoid discriminatory stereotypes



# 7.6 Performance Evaluation Delivery and Follow-Up Tips

Bad	Good
Does not get along with coworkers.	He has gotten into arguments with coworkers on four occasions without provocation; he does not volunteer to assist when co-workers are busy; and co-workers have complained regarding his rudeness.
Bad	Good
She is the best assistant I have ever had.	She gets along well with clients; she anticipates needs before asked; she is accurate in document preparation; and she delegates work well when I am unavailable.



# 7.6 Documentation Options

- **Documentation may include:**
  - Physical or electronic copy of evaluation policy/process/procedure, likely found in personnel policies
  - Blank evaluation assessment forms
  - Signed employee evaluations

# Effective HR Management

## Standard 7.8

### CSBG Org. Standard 7.8 (Nonprofit):

- All staff participate in a new employee orientation within 60 days of hire.

### CSBG Org. Standard 7.8 (Public):

- The department follows local governmental policies for new employee orientation.



# 7.8 Guidance on Compliance

- **Purpose**

- **Orientation:** Providing info about pay and benefits, company rules and policies
- **Onboarding:** Introducing employee to work he/she will be doing, office culture and organizational operations
- **Socialization:** Helping new hires adapt, form work relationships, and find their place in the organization

# 7.8 Guidance on Compliance

- **Existing employee orientation process in place**
  - Can comply with Standard 7.8 by having group orientations every month for all new hires from prior month
  - Ensure HR Department updates the process and orientation calendar to meet Standard 7.8

# 7.8 Documentation Options

- **Documentation may include:**
  - Personnel policies or employee handbook
  - Orientation checklist(s)
  - Orientation presentation or materials
  - Onboarding presentation or materials
  - Sampling of HR/personnel files for documentation of attendance

# Effective HR Management

## Standard 7.9

### CSBG Org. Standard 7.9 (Nonprofit):

- The organization conducts or makes available staff development/training (including ROMA) on an ongoing basis.

### CSBG Org. Standard 7.9 (Public):

- The department conducts or makes available staff development/training (including ROMA training) on an ongoing basis.



# 7.9 Guidance on Compliance

## ■ Purpose

- Promotes ongoing training to support employees after orientation
- Supports a learning and development culture across the Community Action Network
- Increase agency capacity without adding payroll expense

## ■ Evaluate

- Does staff have access to training communication and registration opportunities? (include web-based trainings)
- Is there a ROMA trainer available to staff in your state?

# 7.9 Documentation Options

- **Documentation may include:**
  - Training plan(s)
  - Documentation of trainings
    - Presentations, evaluations, attendee lists
  - Documentation of attendance at offsite training/events/conferences

# **Role of CAA Board in Overseeing Personnel Policies and Employee Grievances**



# Role of Board in Personnel Matters

## CSBG Organizational Standards

- **Pursuant to the Standards, a nonprofit board:**
  - Ensures that CAA has compliant, effective policies in place:
    - Oversees review of personnel policies by attorney every 5 years
    - Reviews and approves personnel policies every 5 years
  - Evaluates and compensates the CEO
- **The Standards require a public CAA board to follow local government policies**

# Managing Employee Grievances

- **Board member involvement not recommended:**
  - Lead to micromanaging
  - Employment laws complex and ever-changing
- **Employees should follow personnel policies**
  - Board oversees policy development
  - Executive director implements policy

# Examples of Board Member/Staff Direct Contact Scenarios

- Board meeting logistics coordinated by administrative staff
- Committee business involves staff liaisons
- Executive director evaluation seeks staff input
- Reports of fraud, misuse of resources, discrimination or harassment involving the executive director in accordance with whistleblower policy



**Let's explore.**

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**2017 CAPLAW National Training Conference**

Denver Marriott City Center | Denver, Colorado | June 7 - 9, 2017

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