



Summary of Legal Needs Survey Results and Recommendations

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In an effort to ensure that CAPLAW and the Community Action network address and meet the legal needs of Community Action Agencies (“CAAs”), CAPLAW conducted an online survey in August 2010 of all CAAs and met with several CAA representatives to gather additional information. This summary, which is based on 158 responses to the survey and those meetings, sets out the extent of existing legal resources, the types of legal issues addressed and litigated, amount of money spent on legal assistance, and the type of training on legal issues needed and received. It also makes preliminary recommendations on steps needed to address these findings.

The survey results and meetings showed that most CAAs do have access to some legal assistance, in varying forms, but that some do not feel their legal needs are being fully met. The most frequently cited legal issues facing CAAs are employment, contract, real estate, corporate and nonprofit issues, compliance with grant funding requirements. Most CAAs do take advantage of some type of training on legal issues or educate themselves in other ways. The respondents reported relatively small amounts paid for legal services and litigation in which they were involved was generally resolved in their favor or settled.

The overwhelming proportion of respondents were from nonprofit CAAs (as opposed to public CAAs), many from rural areas. The size of the staff ranged from under 50 to over 400, with the largest number from 100 to 400 and the largest number of responding CAAs had budgets of between 5 and 15 million dollars.

The survey provided a wealth of information on the uses of attorneys. A small proportion, less than 10%, had lawyers on their staff or, if a public CAA, had access to a lawyer employed by the government entity. But most, almost 70%, had used outside attorneys in the past two years. A little over half said they had an attorney serving as “general counsel,” i.e. available to the CAA on an ongoing basis to provide advice on a variety of subjects. We also learned that about 65% had insurance to cover legal fees to defend claims and lawsuits. About a third had been involved in some type of litigation in the past two years.

From the information provided, it appeared that a significant percentage of the respondents were receiving some type of legal advice, either in-house or through an outside attorney or nonprofit organization. But a gap still exists between the needs and the type of legal expertise required, and the existing resources available to the CAAs in their area. A little over half said their legal needs were being met in a satisfactory manner. But about 20% said that their legal needs were being only “somewhat” met and 5% said they were not being met (the balance did not respond).

The survey results showed that attorneys employed or retained by the CAAs advised on a wide variety of issues and in connection with a number of different tasks. These included:

- CSBG law interpretation
- Starting up new programs such as HUD homebuilding
- Human Resources/employment/labor
 - Worker’s Compensation
 - Personnel policy revisions
 - Employee termination claim
 - Advice prior to employee hiring and firing
 - Union activity and agreements
 - Pension – 403(b), ERISA administration
 - Wage and hour
 - dispute with Labor commission
 - Review of exempt categories
 - Davis-Bacon/prevaling wage
- Board of Directors
 - Attend board meetings
 - Ensure board operates in legally sound manner
 - By-laws review and drafting
 - Board training
 - Board fiduciary responsibilities
- Contract development and review
- Provide advice to CAA clients
- Government issues
- Real estate leases and purchase/sale agreements
 - Real estate closings
 - Parking lot dispute
 - Zoning
 - Filing federal interest notice/ title searches
 - Construction contracts
 - Government regulations relating to owning real estate
- Weatherization contracts/Davis-Bacon
- Branding/copyright
- Housing
 - Tax credits
 - Housing development

- Creation of LLC
- Consumer complaints
- Head Start
 - ACF Review
 - Interpretation of regulations
- Litigation
 - With State
 - Civil rights complaint
 - Employment discrimination
 - Lawsuit against insurance agency in connection with flooding of building
 - Suit over building code violations in building that CAA built
 - Suit related to building deficiencies
- Corporate matters
 - Amending certificate of incorporation
 - Forming an LLC subsidiary
 - Dissolving limited partnerships
 - New Markets Tax credit
 - Merger and acquisition
 - Lending documents
 - Reviewing Tax-exempt status
 - Review state nonprofit law
 - Corporate partnerships
- Trademark registration
- Software ownership/buyout negotiations
- Vendor and contractor conflicts
- Disputes with funders
 - Advocacy with state agency
- Open Meetings law
- General compliance with a wide variety of laws

The survey also revealed a number of interesting ways CAAs access legal services when needed. Several CAAs have legal services attorneys on their boards, thus satisfying the Head Start requirement. Others have used legal services organizations and other nonprofit legal organizations to create a nonprofit housing entity and obtain other legal advice. Legal clinics at local law schools were also mentioned as a resource. Several CAAs also mentioned using local or statewide employers associations to provide training and short consultations on personnel issues. CAAs used a variety of firm sizes, but mostly in the small firm or solo practitioner range, with some use of larger firms, that description varying depending on the part of the country and density of the population.

The amount of money spent on legal services on an annual basis was relatively small, ranging from zero to \$50,000 per year. For some CAAs, insurance covered most of their legal fees through their Directors and Officers policies, employment practices coverage, workers compensation, errors and omissions policies, general liability, and commercial property liability. CAAs received free legal advice from legal services

organizations, legal services attorneys on their boards, regional or statewide employment associations, CAPLAW, and pro bono assistance from private law firms, and the legal department of the county government. One issue that has been identified is reluctance of funding sources to approve legal costs in the CAA budget.

CAAs received training on legal issues from a variety of sources, including CAPLAW and other conferences, local law firms, CPAs, WIPfli, classes offered by insurance carriers, state nonprofit organizations, the chamber of commerce, webinars, individual attorney/trainers, peer-to-peer from member agencies., the Employment Law Letter, and staying informed through reading up on subjects. Some CAAs admitted that they do not receive training on legal issues because there are none offered close by and they cannot afford to have staff be away for too long, but recognized the need to address training.

In addition to the legal topics addressed above, some CAAs are concerned that additional issues will need to be addressed in the future, such as:

- rescinding of contracts or reductions in funds by the state;
- Head Start compliance;
- State regulation of CAAs
- the increasing complexity of employer/employee relations due to new technology, the impact of health care reform., and personal liability lawsuits resulting from weatherization, charitable giving, and permissible fundraising;
- classification of exempt employees for FLSA (wage and hour) compliance;
- advocacy issues;
- legal interpretations of OMB Circulars and other financial and grant requirements;
- property tax exemption;
- background checks;
- confidentiality requirements;
- contracts with software vendors;
- IRS treatment and taxation of unrelated business activity; and
- Operational internal controls that are broader than just financial, such as eligibility determinations, improper relationships with vendors, and quality control.

A need was also identified on training on how to select an attorney, negotiating attorneys' fees, and paying for legal fees.

CAAs were involved in a wide variety of litigation, but the most common claims by far were employment discrimination, with several claims for personal injury, as well as a smattering of other claims, such as housing related to Section 8 program, building code violations by a contractor, alleged sexual abuse at a center, and contract claims. Most litigation was resolved to the CAA's satisfaction, either through a court victory or settlement.

Although CAAs are often, but not always, satisfied with local attorneys on simple legal issues, such as evictions, leases, and contracts, there was a widespread feeling that local attorneys were often not familiar with general nonprofit issues and/or CAA-specific programs and requirements. Some CAAs spent the money to “educate” the lawyers on these issues, or were able to find the specific rules themselves and give them to the lawyer to save on time and expense. Many CAAs stated that they rely on CAPLAW to provide them legal advice about CAA-specific and general non-profit advice and training, working with their local attorneys. Some CAAs went out of their area for specialty topics, such as housing or economic development projects and tax credits.

Preliminary recommendations:

We make the following preliminary recommendations on addressing some of the issues revealed in the survey results and meetings.

1. **Allowability of Legal Fees.** There is a need for clearer understanding that legal services are generally allowable as professional services costs under federal grant principles for most legal needs, including both training and consultation, if the general requirements for costs, such as reasonableness, documentation, appropriate expertise, etc. are met. Myths and misinformation about this subject are common among state and local funding officials and CAAs. CAPLAW has written an article on the issue of allowability of legal costs, which has just recently been revised and is available on the CAPLAW website. We recommend that webinars and training sessions be conducted on this issue, particularly with OCS and state CSBG officials.
2. **Access to Free Legal Services.** There is also a need for more information about free legal services available to CAAs, such as from legal services organizations, legal clinics at law schools, pro bono assistance, etc. CAAs should also be made aware of other free services, such as 800 numbers and training offered through insurance policies, particularly on employment practices. Statewide nonprofit organizations and employer organizations are also good resources. CAPLAW could partner with state CAA associations to identify and publicize these resources.
3. **Core Legal Compliance.** More publicity on the Legal Liability Audit and CAPLAW resources, including the website, will educate CAAs and the funding sources about the myriad of legal topics with which CAA should be familiar and compliant. Suggested areas for review by local attorneys could be included in website materials.
4. **Attorney Database.** Develop a better database of attorneys familiar in different regions with CAA-specific issues as well as broader issues that may be of use to CAAs, such as nonprofit, tax-exempt status and affordable housing development. Include information on the attorneys’ and firms’ expertise and CAA clients (if CAA agrees).

5. **Enhance website to more clearly identify CAPLAW resources by subject areas.** Develop a more formal catalogue of subject areas in which CAPLAW and other sources will provide legal consultation, training, and updates. Reformat the website to be clearer on subject areas. Regularly update to reflect current issues.
6. **Regularly review and update training subjects.** Many of the issues mentioned in this survey are already part of the training curriculum and topics for CAPLAW newsletter, etc., but these will be updated to reflect the overwhelming need for legal advice on employment-related topics, as well as additional advice on contract negotiation and addressing issues with state and other funding sources. Partnerships with other nonprofit organizations providing legal training in more arcane subjects, such as housing law, tax credits, and LLCs, should be investigated.
7. **Enhance attorney network and attorney-specific resources.** Enhance and expand the attorney network to include more attorneys and to provide more training and resources directed to them to enhance the advice provided by them to CAAs. Consider presenting webinars geared to attorneys and quarterly conference calls