Sample Conflict of Interest Policy for
Senior Staff of CAA without Head Start
September 2012

This sample policy has not been approved by any outside authority, such as the Department of Health and Human Services. You should review this sample 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 least1% 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. <u>What Types of Conflicts of Interest Are Prohibited by this Policy</u>?

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 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. <u>What Information Must Be Disclosed under this Policy and How Should It Be Disclosed</u>?

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. <u>How Are Conflicts of Interest to Be Addressed under this Policy</u>?

1. **Decision-Maker**

   a. <u>Situations Involving Officers</u>. 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. <u>Situations Involving Other Senior Staff Members</u>. 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 <u>not</u> 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. <u>What Are the Consequences of Violating this Policy</u>?

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]*