



**NEW JERSEY DEPARTMENT OF AGRICULTURE  
DIVISION OF FOOD AND NUTRITION  
CHILD AND ADULT CARE FOOD PROGRAM**

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**CACFP POLICY REQUIREMENTS - INDEPENDENT BOARD OF DIRECTORS**

CACFP sponsoring organizations are required to have an “independent governing board of directors.” 7 CFR 226.6(b)(1)(xviii)(C)(1) and 226.6(b)(2)(vii)(C)(1):

**Governing board of directors.** Has adequate oversight of the Program by an independent governing board of directors as defined at § 226.2.

**Independent governing board of directors** means, in the case of a nonprofit organization, or in the case of a for-profit institution required to have a board of directors, a governing board which meets regularly and has the authority to hire and fire the institution’s executive director (i.e. the board must be independent of the executive director’s control).

In 2011, the United States Department of Agriculture (USDA) issued OIG Audit Report No. 2760-0012-SF, Review of Management Controls. In that Report, the USDA provided guidance on the requirements for an **independent** board. The USDA stated that sponsoring organizations’ boards must “be composed of a majority of members of the community who are not personally financially interested in its activities, or related to its personnel or to each other.” The USDA further stated that “to adhere to less-than-arms-length requirements, board members must recuse themselves from votes on decisions relating to their own compensation and that of immediate family members and financially related parties.” The USDA also requires sponsors to sign an annual disclosure of potential conflicts of interest, including the specific identification of any dealing with “less-than-arms-length” entities and any relationships between officers, board members and employees.

Based on program regulations and guidance from the USDA, boards should not include the CACFP director, other sponsor officials, and/or members of their families. One of the critical hallmarks of a board’s independence – the board’s ability to hire and fire the organization’s executive director – is limited when sponsor officials or their families serve on the board. State agencies are required to ensure that institutions have such boards in place, and that this requirement is met in full.

A governing board of directors of a nonprofit organization does not meet the program requirement for an independent board when **officials** of the sponsoring organization, or **members of an official’s family**, serve as members of the board. The director, and other sponsor officials, as needed, are expected to attend and participate in board meetings as requested by the board.

**Sponsor Officials:** All employees of a sponsoring organization are considered to be sponsor officials for this purpose. Employees may not be voting members on the organization’s board of directors.

*Family Members:* Family members of sponsor officials who may not be considered as voting members of the organization's board of directors include the sponsor official's spouse, parent, child, spouse of a child, brother, sister, or spouse of a brother or sister. This list does not mean that other relatives of sponsor officials are presumed to have the required independence. The relationship of any board member must be disclosed to the CACFP and updated as needed. As a general rule, relatives of sponsor officials should rarely serve in a voting capacity on a sponsoring organization's board of directors.

In a nonprofit organization the board of directors, as a single body, has a fiduciary responsibility for the assets of that organization. Nonprofit boards must make decisions on a regular basis that directly affect the rights and wellbeing of the organization's key stakeholders, including donors, partner's program participants/beneficiaries and the public.

The board of directors must ensure that the institution complies with CACFP Performance Standard (3) - Program Accountability; institutions must have internal controls and other management systems in place to guarantee fiscal accountability and other CACFP requirements. All institutions must demonstrate they have internal controls in place and document they meet the required performance standards. **For-profit institutions are not required to have a board, so the owner's ability to meet Performance Standard (3) must be documented.**

The attached handout briefly summarizes fiduciary duties that obligate all board members to serve the best interests of the institution.

## **Child and Adult Care Food Program (CACFP) Institutions Boards of Directors**

Under the principles of corporation law, a board member must meet certain standards of conduct in carrying out his/her responsibilities to the organization. These standards are known as Fiduciary Duties and are usually described as the duty of care, the duty of loyalty, and the duty of obedience. These duties apply to board members through State corporation statutes for both profit-making and nonprofit corporations. A breach of these duties may lead to personal liability for the board member, the withdrawal of the corporation's charter by the State, or a change in status, including the loss of tax-exempt status for nonprofit corporations.

**Duty of Care:** The duty of care describes the level of competence that is expected of the board member.

**Duty of Loyalty:** The duty of loyalty is a standard of faithfulness; a board member must give undivided allegiance when making decisions affecting the organization. This means that a board must act in the best interests of the organization and avoid conflicts of interest.

**Duty of Obedience:** The duty of obedience requires board members to be faithful to the organization's mission.<sup>1</sup>

The lists that follow describe the basic responsibilities of the nonprofit corporation Boards of Directors and individual board members.

### **The ten basic responsibilities of the Boards of Directors**

1. Determine the mission and purpose of the organization and keep them clearly in focus.
2. Select the executive.
3. Support the executive and review his/her performance.
4. Ensure effective organizational planning.
5. Ensure adequate resources for the organization to fulfill its mission.
6. Manage resources effectively.
7. Determine and monitor the organization's programs and services.
8. Enhance the organization's public image to garner support from the community.
9. Serve as a court of appeal in personnel matters.

*(Over)*

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<sup>1</sup> From *The Legal Obligations of Nonprofit Boards: A Guidebook for Board Members*. Washington, DC: National Center for Nonprofit Boards, 1997

10. Assess its own performance by recognizing its achievements and evaluating its needs for improvement.<sup>2</sup>

### **Responsibilities of an Individual Board Member**

- Attend all board and committee meetings and functions.
- Be informed about the organization's mission, services, policies, and programs.
- Review agenda and supporting materials prior to board and committee meetings.
- Serve on committees and offer to take on special assignments.
- Inform other about the organization.
- Suggest possible nominees to the board who can make significant contributions to the work of the board and the organization.
- Keep up-to-date on developments in the organization's field.
- Follow conflict of interest and confidentiality policies.
- Refrain from making special requests of the staff.
- Assist the board in carrying out its fiduciary responsibilities, such as reviewing the organization's annual financial statements.<sup>3</sup>

### **Additional Information:**

National Center for Nonprofit Boards  
2000 L Street, N.W., Suite 510  
Washington, DC 20036-4907  
(202) 452-6262.  
Web address: [www.ncnb.org](http://www.ncnb.org)

National Council of Nonprofit Associations  
1900 L Street, Suite 650  
Washington, DC 20036  
(202) 467-6261  
Web address: [www.ncna.org](http://www.ncna.org)

In most States, the Secretary of State's office can provide information on State corporation statutes. Additionally, many States have statutes available through the State web page.

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<sup>2</sup> From *Ten Basic Responsibilities of Nonprofit Boards*. Washington, DC: National Center for Nonprofit Boards, Revised 1996.

<sup>3</sup> From *Six Keys to Recruiting, Orienting, and Involving Nonprofit Board Members*. Washington, DC: National Center for Nonprofit Boards, 1995.