

COMMUNITY SERVICES BLOCK GRANT



Trainning
ools
for
**NONPROFIT
BOARDS**

GOVERNANCE

**Tripartite Board Composition
and Selection**

CAPLAW

Community Action Program Legal Services, Inc.

Introduction

This self-training tool offers nonprofit Community Action Agency (CAA) boards a way to educate themselves on specific Community Services Block Grant (CSBG) governance requirements. Because of the differences between nonprofit and public CAAs, a separate tool is available for public CAA boards. This tool is focused on the CSBG requirements relating to tripartite board composition and selection and is divided into the following four parts:

1. General tripartite board composition and selection information
2. Public official sector
3. Low-income representative sector
4. Private sector

The board chair is encouraged to designate a board member to facilitate each of the four parts as a training segment at a board meeting. Each Part has multiple sections and may be conducted by board members in approximately 20 minutes or less.

Each Part also offers specific directions for the facilitator regarding his or her role in guiding the full board through the different sections of the training tool. It is not necessary for the facilitator to possess specific knowledge about the Part he or she facilitates. Rather, the self-training tool is intended to educate the facilitator and other board members as they work through the different Parts of the tool together. Any preparation required of the board member facilitator is detailed in each Part.

A PowerPoint presentation, which mirrors this tool, has been created for each Part and may be used by the facilitator to help guide the discussions. We do **not** recommend distributing copies of the PowerPoint as they contain answers to the questions that the board will be asked to address throughout the training.

Materials needed for each Part are listed in the beginning of that Part. Some of the materials will be provided while others require the facilitator to work with the board members to obtain.

As the board works through each Part, it should assign one board member to write down questions that it is unable to answer with the information provided in the training tool. The board should then follow up with the CAA's executive director or his or her designee if it needs assistance in answering these questions.

Throughout the tool are tips, notes, and examples which are designated by the graphics below. These tips, notes, and examples are intended to address potential questions and offer recommendations. They may be read by the facilitator to the full board at the facilitator's discretion.

TIP The tip text will be here

EXAMPLE

NOTE:

Part I. General Tripartite Board Composition and Selection Information

Learning Objectives for Part I

- 1.1 Know brief history of CAA tripartite boards
- 1.2 Recognize laws and guidance relating to tripartite board selection and composition
- 1.3 Understand general concepts relating to tripartite board selection and composition

All Materials Needed for Part I

Below is a list of all of the materials needed for the three learning objectives in this Part.

- Name that Individual Exercise**
- CSBG History Q&A**
- Understanding the Relationship of CSBG Laws and Guidance Exercise**
- Federal CSBG Act section setting forth tripartite board composition and selection requirements, 42 U.S.C. § 9910*
- State CSBG statutes/regulations, if any exist
- General Tripartite Board Concepts Q&A**
- U.S. Department of Health and Human Services (HHS) Office of Community Services (OCS) Information Memorandum (IM) 82*
- CAPLAW Board Composition and Selection Matrix**
- Excerpt from the CSBG grant agreement with the state setting forth tripartite board composition and selection requirements, if applicable
- Excerpt from the CAA articles of incorporation (and/or articles of amendment) addressing board composition and selection, if such provisions exist
- Full CAA bylaws with section(s) addressing board composition and selection highlighted for easy reference

NOTE: REG VS. STATUTE

A *statute* is a law passed by a legislative body, while a *regulation* is a legal requirement issued by an executive branch agency.

* Included in handouts. All other materials listed must be obtained by the board.

PowerPoint for Part I

The facilitator may choose to use the PowerPoint that accompanies this Part to help guide the discussion. The PowerPoint mostly mirrors the text in the tool and copies of it should **not** be distributed to the board as it contains answers to questions that the board will be addressing throughout the training.

Facilitator Task

As a pre-cursor to the training, consider assigning the following tasks to different board members:

- Locate applicable state CSBG statutes/regulations, if any exist
- Identify section of the CAA's grant agreement with the state addressing tripartite board composition and selection requirements, if applicable.
- Obtain CAA's articles of incorporation (with all amendments) and determine if they include any provisions addressing tripartite board member composition and selection.
- Obtain CAA's bylaws and highlight the section addressing tripartite board member composition and selection.

If necessary, direct the board member(s) to the following sources to help find information: CAA executive director, State CAA association or CAPLAW, www.caplaw.org. Once the handouts have been located, ask the CAA executive director or staff liaison to the board to make copies for each board member and encourage all board members to read the handouts and be prepared to discuss them prior to each training.

TIP Encourage board members to listen to chapters one through three in CAPLAW's *Introduction to CSBG* training module, <http://www.caplaw.org/resources/TrainingModuleDocuments/IntoToCsbg.html>.

1.1 Know Brief History of CAA Tripartite Board

Facilitator Task

Pass around the **Name that Individual Exercise** and ask the group if they can identify each of the individuals and explain how they relate to community action.

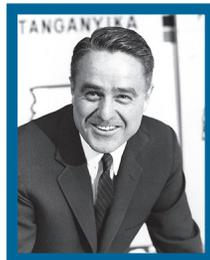
Answers to the Name that Individual Exercise

Below are the answers to the exercise. In addition to listing the name of the individual, the answer also includes a brief description of the person. More information is available about the individuals in the exercise following this one.



Lyndon B. Johnson

U.S. President who signed the Economic Opportunity Act in 1964, which established the War on Poverty



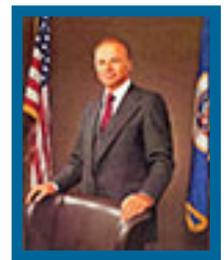
Sargent Shriver

First director of the federal Office of Economic Opportunity



Edith Green

Democrat from Oregon who was a member of the U.S. House of Representatives and instrumental in the creation of the tripartite board structure



Albert H. Quie

Republican from Minnesota who was a member of the U.S. House of Representatives and instrumental in the creation of the tripartite board structure

1.1 Know Brief History of CAA Tripartite Board

Facilitator Task

Ask the following questions from the **CSBG History Q&A** in the handsouts to see if some board members may be able to educate others about the history behind the CAA tripartite board composition requirement. If no one is able to answer the questions, then read the answers and ask if anyone would like to comment or add to the answer.

Answers to the CSBG History Q&A

Who is often considered the architect of the Community Action movement?

Sargent Shriver. Shriver was enlisted by the U.S. president at the time, Lyndon B. Johnson, to map out an approach to the War on Poverty. Shriver put together the Shriver Task Force which focused on changing the structure and policies of a larger social service system through community organizing and aggressive advocacy. Shriver helped create the Office of Economic Opportunity (OEO) which was the federal agency responsible for administering most of the War on Poverty programs. Shriver served as the first director of the OEO.

What is the name of the initial piece of federal legislation that created the Community Action Program and authorized federal funding for the program?

The Economic Opportunity Act.

When was this legislation enacted?

August 20, 1964.

Can anyone tell us about the mandate in the Economic Opportunity Act that initiated the concept of tripartite board composition for CAAs? Hint: "maximum . . ."

Written into the Economic Opportunity Act was the mandate that Community Action Programs at the local level be developed, conducted and administered with the "**maximum feasible participation** of residents of the areas served and members of the groups served."

What were the two early amendments to the Economic Opportunity Act that addressed the composition of CAA boards?

The Quie Amendment and the Green Amendment

1.1 Know Brief History of CAA Tripartite Board

Can anyone tell us about the Quie Amendment? What did it establish? Who was Quie?

In 1966, Congress passed the Quie Amendment, which required at least **one-third of CAA board members be representatives of the poor.**

The amendment helped solidify the mandate in the Economic Opportunity Act to ensure the “**maximum feasible participation**” of the low-income individuals served in developing and facilitating Community Action Programs.

Albert H. Quie was a Republican from Minnesota who proposed what is now known as the Quie Amendment to the Economic Opportunity Act.

Can anyone tell us about the Green Amendment? What did it establish? Who was Green?

In 1967, Congress passed the **Green Amendment**, which created a **three-part structure for CAA boards.** One-third of the board was to be composed of public officials or their representatives; at least one-third of the board was to be composed of democratically selected representatives of the poor in the area served; and the remainder was to be composed of officials of business, industry, labor, religious, welfare, education or other major groups and interests in the community.

This amendment provided greater control of CAAs by local elected officials. It directly addressed the concern that maximum feasible participation of the poor undermined the integrity of local government. This amendment also appealed big city mayors who wanted local government involvement in CAA planning groups.

Edith Green was a Democrat from Oregon who was a member of the U.S. House of Representatives. She proposed what is now known as the Green Amendment.

Is the Economic Opportunity Act still in force? If not, what replaced it and how is it different?

No. In 1981, Congress repealed the Economic Opportunity Act and passed legislation championed by the Reagan administration that combined 57 formerly discretionary grants into 9 block grants and reduced funding for those programs. The idea behind changing these grants from discretionary grants to block grants was to reduce federal spending, limit the federal government’s role in social programs, and transfer responsibility and authority for those programs to state and local governments. The Community Action Program was one of the discretionary grant programs repealed in 1981 and replaced with a block grant program – the Community Services Block Grant (CSBG) program.

NOTE: BLOCK VS. DISCRETIONARY

Generally, a **discretionary grant** is awarded on the basis of a competitive process and permits the federal government, according to specific legislation, to exercise judgment (discretion) in selecting the project or proposal to be supported. Conversely, with **block grants**, the federal government gives states, localities, or regional entities a fixed amount of funds that they, in turn, distribute to other entities for the purposes of performing program services. Block grants therefore have relatively minimal federal oversight and are designed to offer grantees (the state, locality or regional entity) flexibility in designing programs and administrative mechanisms to provide services to meet specific needs.

1.2 Recognize Laws and Guidance Relating to Tripartite Board Selection and Composition

Facilitator Task

Ensure that all board members have the **Understanding the Relationship of CSBG Laws and Guidance** Exercise. Give the board members about five minutes to complete the handout which asks them to rank the laws and guidance in order of which takes precedence.

After answering the questions, ask the group which one they ranked first, second and so forth. If someone did not mark one of the options correctly, explore why with that person and the group.

Consider asking for volunteers from the group to discuss what he or she thinks each law or guidance document says about tripartite boards. When discussing the laws or guidance, also consider reading from the text below which offers a brief explanation of the different laws and guidance presented in the exercise.

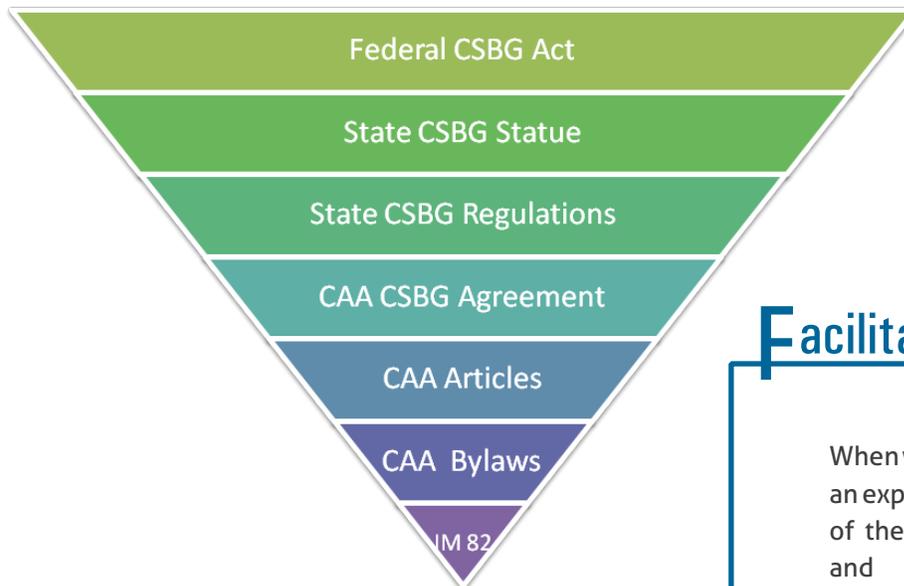
Alternatively, ask the board member(s) designated to help locate some of the different laws and guidance to speak about the ones found. Consider providing the designated board member(s) with the information from this section of the training materials that briefly discusses the laws and guidance in order of precedence.

Answers to the Understanding the Relationship of CSBG Laws and Guidance Exercise

- 7 Federal Office of Community Services Information Memorandum 82
- 2 State Community Service Block Grant (CSBG) statutes (if exist)
- 6 CAA bylaws
- 1 Federal CSBG Act
- 5 CAA Articles of Incorporation/Organization
- 3 State CSBG regulations (if exist)
- 4 CAA CSBG grant agreement with state

1.2 Recognize Laws and Guidance Relating to Tripartite Board Selection and Composition

Explanation of Above Laws and Guidance in Order of Precedence



Facilitator Task

When walking through an explanation of each of the following laws and guidance, ask what each says about tripartite boards.

1. Federal CSBG Act

The federal CSBG Act is the enabling legislation that authorizes the use of federal funds for CSBG programs. Like its predecessor, the Economic Opportunity Act, federal CSBG Act (42 United States Code (U.S.C.) Section 9910), which is one of your handouts, requires each CAA to have a tripartite board made up of three sectors: at least 1/3 representatives of the low-income people being served, 1/3 public officials or their designees, and the remainder from other major groups and interests in the community.

What is the purpose of the tripartite requirement?

The purpose of this requirement is to obtain input from each of the sectors on community needs, resources and program effectiveness.

2. State CSBG Statutes and Regulations (if exist)

Because it is block grant funding, CSBG funds are awarded to a state with some guidelines and parameters set forth in the federal CSBG Act that the state is required to follow. A state may pass its own CSBG statutes and regulations to help administer the funding it receives. These state statutes and regulations must be consistent with the federal CSBG Act. It

NOTE: STATUTE VS. REG.

State statutes will always trump state regulations. Typically, a state statute will authorize the state agency charged with enforcing the statute to develop regulations to help those responsible for administering the statute, as well as those required to comply with the statute, better understand the statute's requirements.

1.2 Recognize Laws and Guidance Relating to Tripartite Board Selection and Composition

is important to note that the federal CSBG Act will prevail over state statutes and regulations if the federal and state laws conflict.

Whether additional requirements exist depends on the state. Various possibilities for state requirements include:

- no state CSBG statutes and regulations exist;
- state CSBG statutes and regulations exist but neither address tripartite board composition and selection;
- state CSBG statutes and regulations exist and they address tripartite board composition and selection in the same way as the federal CSBG Act or
- state CSBG statutes and regulations exist and they add additional requirements that are consistent with the federal CSBG Act tripartite board composition and selection requirements. Later, in this section is an exercise that asks board members to compare the state CSBG statutes and regulations (if any exist) to the federal CSBG Act.

3. CSBG Grant Agreement with State

The CSBG grant agreement that the CAA enters into with the state may also govern a CAA's tripartite board composition and selection procedures. The agreement will most likely include citations to the applicable federal and state laws and regulations. Once a CAA signs an agreement with the state, the agreement becomes an enforceable contract under that state's laws so a CAA should ensure prior to signing it that it is able to meet all of the requirements referenced and/or included in the agreement and that they are consistent with federal and/or state laws. The agreement is an external document that the CAA chooses to enter into and which binds the CAA regardless of the CAA's internal governing documents such as the articles of incorporation and bylaws.

TIP Before signing any agreement, the CAA should ensure that there is nothing in it that will lead to the CAA taking actions that are inconsistent with or in opposition to its internal governing documents.

4. Articles of Incorporation

When a nonprofit CAA is first created, it is organized under its state nonprofit corporation law. As part of the creation process, those incorporating the nonprofit are required to file articles of incorporation with the state (usually the secretary of state's office but sometimes with another state office). The state nonprofit corporation law specifically lists the information required to be included in a nonprofit's articles of incorporation. The state nonprofit corporation law will not require the CSBG tripartite board composition and selection information to be included in the articles of incorporation.

TIP CAPLAW recommends **not** including information about tripartite board selection and composition in the articles of incorporation. Rather, only include the information required by the state nonprofit corporation law (as well as certain information required by the Internal Revenue Service (IRS) to maintain the CAA's tax-exempt status as a 501(c)(3) organization) in the articles. Amending articles may require a fee, a higher board vote and/or a filing of the amendment with the state.

1.2 Recognize Laws and Guidance Relating to Tripartite Board Selection and Composition

The articles will trump the bylaws so a CAA should ensure that the language in each is consistent.

5. Bylaws

The bylaws are the rules and procedures the board of directors follows in governing the organization. A nonprofit CAA's bylaws must be consistent with the state's nonprofit corporation laws which will not include information about the CSBG tripartite board composition and selection requirements. Often, however, the state's CSBG statutes, regulations and/or CSBG agreement with the CAA will require information about tripartite board composition and selection to be included in the bylaws. A CAA may amend its bylaws at any time so long as the number of board members required to vote for such an amendment does so and the proper process specified in the bylaws and the state nonprofit corporations act is followed. The bylaws of a nonprofit CAA are a legally enforceable document and actions of the board of directors may be invalidated if they are not conducted pursuant to the bylaws.

NOTE: OCS

OCS is the office within the U.S. Department of Health and Human Services (HHS) that administers the CSBG program.

6. Information Memorandum 82

The only guidance from the federal government available to a CAA regarding how to comply with the tripartite board composition and selection requirements in the federal CSBG Act is the federal Office of Community Services' (OCS) Information Memorandum (IM) 82. This guidance is non-binding.

TIP Read IM 82 as it provides insight as to how OCS views tripartite board composition and selection as well as the board's role in overseeing the CSBG program.

Facilitator Task

If state CSBG statutes and regulations exist, ask board members either individually or in groups to conduct a side-by-side comparison of the federal CSBG Act tripartite board section (Title 42 of the United States Code, Section 9910) with the state CSBG statutes and regulations regarding tripartite board composition and selection.

The board members should then discuss whether or not the state and federal requirements seem consistent. If the board members are separated into groups for this exercise, the facilitator should consider assigning each group sections of the federal act to analyze in relation to the state CSBG statute and regulations.

1.3 Understand General Concepts Relating to Tripartite Board Composition and Selection

Facilitator Task

Ask yourself and the board members the questions listed below and also in the **General Tripartite Board Concepts Q&A** to stimulate a discussion about general concepts relating to tripartite board selection and composition. Before asking the questions, briefly restate for the board the following:

We will be answering general questions regarding tripartite board composition and selection. Before doing so, I would like to remind everyone that the tripartite board requirement is from the federal Community Service Block Grant (CSBG) Act, specifically Section 9910, and is one of your handouts. This section of the Act requires each CAA to have a tripartite board made up of three sectors: no fewer than 1/3 must be representatives of the low-income people being served, 1/3 must be public officials or their designees, and the remainder must be from other major groups and interests in the community.

With each question, after you discuss the group's answers, read and discuss the answer supplied by CAPLAW.

Answers to the General Tripartite Board Concepts Q&A

Do we vote to seat all board members after they have been selected or elected pursuant to our CAA's bylaws? If yes, why? If no, why not?

Several reasons exist as to why the full board should consider voting to seat board members once they are elected via the selection/election process set forth in the bylaws. Take a look at the federal CSBG Act provision on tripartite boards (42 United States Code (U.S.C.) Section 9910). Specifically look at (a)(2) and underline the following phrase **"The members of the board referred to in paragraph (1) shall be selected by the entity."** As you can see, the federal CSBG Act requires the board, which is the decision-making body for the entity, to select all board members.

NOTE: VOTE TO SEAT

Throughout this training tool is the phrase "vote to seat." The phrase refers to the full board voting to approve or disapprove a potential candidate to fill a board member vacancy in any sector of the board or to add members to the board.

1.3 Understand General Concepts Relating to Tripartite Board Composition and Selection

Under some states' nonprofit corporation laws, board members appointed by individuals or entities other than the nonprofit's board of directors can only be removed by the person or entity that appointed them; however, if the board votes on the election of all board members, it retains the power to remove them.

EXAMPLE

XYZ CAA's full board votes to seat a low-income representative sector board member once he or she has been elected democratically pursuant to the bylaws. The vote only ensures that the board member meets certain qualifications required under federal and state laws as well as by the CAA's bylaws. This CAA has a Head Start program, so one of the qualifications considered is that the board member has no financial conflict of interest with the CAA and no immediate family members of the board member is employed by the CAA.

NOTE: ENTITY

The "entity" is the nonprofit CAA. The decision-making body for the entity is the board of directors. Having the full board vote to seat the board members once they have been selected/elected pursuant to the composition requirements each sector ensures compliance with the federal CSBG Act which requires the "entity" to select the board members.

Do the bylaws include general language about the board's role in seating all board members?

If not, consider adding language similar to the following:

Selection Generally. After each prospective director has been selected to serve on the board through the appropriate selection process described for the sector in these bylaws and has been determined by the board (or a committee thereof) to meet the qualifications set by the board for service as a director, the board of directors shall vote whether to elect him or her to the board.

Who on the board is in charge of ensuring that tripartite board composition and selection requirements are met?

One way to ensure that the board is complying with tripartite board composition and selection requirements is to establish a **board committee** charged with overseeing these tasks. This committee is often referred to as the **board governance committee** and may perform several tasks as discussed in greater detail below.

May a CAA have a tripartite board that is not divided into equal parts, i.e., into thirds?

The federal CSBG Act does not require that each of the three parts of the tripartite board be equal to 1/3 of the total. Rather, section 9910 of the federal CSBG Act requires that a CAA's tripartite board be composed of 1/3 elected public officials (or appointed, if no elected one is available or willing to serve); no fewer than 1/3 democratically elected representatives of the low-income individuals and families from the community served; and the remainder from major groups and interests in the community served. Thus, the Act allows for more than 1/3 of the board to be comprised of low-income representatives as long as 1/3 are elected public officials (or appointed, if necessary). However, it is important to note that some states may require in their CSBG laws and/or policies that each sector of the board be exactly 1/3 of the total rather than adopt the federal CSBG Act language.

1.3 Understand General Concepts Relating to Tripartite Board Composition and Selection

EXAMPLE

A 12 member board must have 4 members that are elected public officials but could have 5 members that are low-income representatives and 3 members from major groups and interests.

Do we have language in our bylaws establishing a board governance committee?

It is important to define the role of the governance committee so that the committee and full board will understand the scope of the committee's authority and the committee members will understand what is expected of them. Here is some sample bylaws language describing a governance committee:

Governance Committee. The governance committee shall be composed of [specify number and composition of governance committee members]. The governance committee shall: (1) oversee board member recruitment (including administering the Low-Income Sector board member democratic selection process, recommending candidates for Public Official and Private Sector board seats, and ensuring that the board fills vacancies promptly), orientation, and training; (2) coordinate the board's periodic evaluation process of itself and the CAA's governance structure, policies and procedures; (3) coordinate periodic review of the CAA's articles of incorporation and bylaws; and (4) have such other powers and perform such other duties as the board may specify from time to time.

How does the board generally ensure that it is recruiting individuals to serve on the board who meet the needs of the CAA?

One way for a board to ensure that it is recruiting the right types of individuals for the board has already been discussed – use a governance committee to oversee the process. A helpful tool for the governance committee and/or full board is a **board matrix** available in the handouts. A board matrix is a useful way to visualize what types of individuals will fit the needs of your CAA. It is important when using tools, such as a board matrix, that the board not overly focus on “who people are” and lose sight of what the CAA needs board members to do.

TIP When using a board matrix the board should ask itself questions like: (1) what are the three most important things for our board to accomplish this year? and (2) do we have the right people on the board to make that happen?

How does the CAA ensure that it fills board vacancies in a timely manner?

Recruiting board members on an ongoing basis is the best way to avoid long-lasting vacancies. A **governance committee** may, again, help with this. The committee may keep a list of potential board members that it reviews and updates regularly. Also, a CAA may consider creating an **advisory board** that would not have the authority to deliberate or vote on board matters but whose members may be elected to a board seat in the event of a vacancy. Remember, that if an advisory board is used to fill vacancies, members of the advisory board must be selected according to the same requirements that board members are selected.

1.3 Understand General Concepts Relating to Tripartite Board Composition and Selection

EXAMPLE

XYZ CAA uses its advisory board to fill board vacancies. Thus, all low-income representative members of the advisory board are democratically elected pursuant to the CAA's selection process and procedures so that they may be seated on the board when vacancy arises.

Facilitator Task

After finishing Part I, consider asking the group to complete the following tasks to gauge what and how much information was learned:

- **List three pieces of information that you learned after completing Part I of this training**
- **List what, if any, changes you would recommend in how the board functions**

After the board members have completed these tasks, ask them to share and discuss their responses with the full board. The board should consider whether it would like to move forward with any changes proposed to improve board operations and consider authorizing the governance committee to research the proposed changes further, if necessary.

Part II. Public Official Sector

Learning Objectives for Part II

- 2.1 Know public official composition requirements
- 2.2 Improve public official selection
- 2.3 Understand public official bylaws provision

All Materials Needed for Part II

Below is a list of all of the materials needed for the three learning objectives covered in this Part.

- Federal CSBG Act section setting forth tripartite board composition and selection requirements, 42 U.S.C. § 9910*
- Public Official Key Components Questionnaire**
- State CSBG statutes/regulations, if any exist
- U.S. Department of Health and Human Services (HHS) Federal Office of Community Services (OCS) Information Memorandum (IM) 82*
- Public Official Common Questions Questionnaire**
- CAPLAW Board Composition and Selection Matrix**
- List of CAA's current programs
- Current CAA's community needs assessment
- Current CAA's strategic plan
- Public Official Bylaws Provisions Questionnaire**
- Sample Public Official Bylaws Language*
- Excerpt from the CSBG grant agreement with the state setting forth tripartite board composition and selection requirements, if applicable.
- Excerpt from the CAA articles of incorporation (and/or articles of amendment) addressing board composition and selection, if such provisions exist
- Full CAA bylaws with section(s) addressing board composition and selection highlighted for easy reference

NOTE: REG VS. STATUTE

A *statute* is a law passed by a legislative body, while a *regulation* is a legal requirement issued by an executive branch agency.

* Included in handouts. All other materials listed must be obtained by the board.

PowerPoint for Part II

The facilitator may choose to use the PowerPoint that accompanies this Part to help guide the discussion. The PowerPoint mostly mirrors the text in the tool and copies of it should **not** be distributed to the board as it contains answers to questions that the board will be addressing throughout the training.

Facilitator Task

Direct the full board to review the handouts prior to the training. Consider assigning each of the handouts to one or more individual board member(s) to read in depth so that they are prepared to help lead discussions on those handouts.

Also, if this part is conducted prior to Part I, see Part I for ways to involve the board members in gathering the materials needed for this part.

2.1 Know Public Official Composition Requirements

Facilitator Task

Ask one board member to read the public official sector tripartite board requirement for nonprofit CAAs from the handout containing the tripartite board composition provision in the federal CSBG Act. The requirement is also listed below.

Section 9910(a)(2)(A) sets forth the public official composition requirement which is as follows:

(2) Selection and composition of board. The members of the board referred to in paragraph (1) shall be selected by the entity and the board shall be composed so as to assure that –

(A) 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.

Facilitator Task

Ask board members, either individually or in groups, to break down into segments the language in the federal CSBG Act setting forth the public official sector requirement. The board members may do so by creating a brief bulleted list of the key components of the requirement.

A tool to help board members identify the key components of the public official sector requirement is the **Public Official Key Components Questionnaire** included as one of the handouts. The facilitator should either ask the board the questions in the questionnaire, distribute copies of the questionnaire and/or refer to the PowerPoint.

If either a whiteboard or easel with a large note pad is available, designate a board member to write down the key components as they are identified by the board members.

2.1 Know Public Official Composition Requirements

Answers to the Public Official Key Components Questionnaire

What portion of the board is comprised of public official board members?

1/3 of the members of the board.

What type of public official should the board first try to identify as a potential board member?

One that is elected to a public office.

When must the public official be in the office to which she or he is elected to be in compliance with the public official requirement?

Must be holding public office on the date of selection to the tripartite board.

What if an elected public official is unable to attend board meetings?

The elected public official may select a representative to serve in his or her place as a member of the tripartite board.

What if there are not enough elected public officials reasonably available to serve?

The CAA may ask an appointed official to serve.

What if an appointed official is unable to attend board meetings?

The appointed official may select a representative to serve in his or her place as a member of the tripartite board.

2.1 Know Public Official Composition Requirements

Facilitator Task

Ask board members either individually or in groups to compare the federal CSBG Act public official sector requirement with any public official sector requirement in the state CSBG statutes or regulations, if they exist. Have the board members identify and discuss the differences between the federal and state requirements, if any exist.

Ask the board members to read and highlight the sections of IM 82 discussing public official sector board composition and selection requirements.

Once the comparisons are complete, ask yourself and the board members the questions below, distribute copies of the **Public Official Common Questions Questionnaire**, and/or refer to the PowerPoint to ensure everyone understands how to best comply with the requirements. Encourage board members to discuss their answers to the questions and, if the answers differ from the ones written below, read the answers below and discuss them.

Answers to the Public Official Common Questions Questionnaire

Why does the CSBG Act require public officials to serve on the board?

The overarching purposes for having public officials serve on tripartite boards are to facilitate awareness of and action on issues facing low-income people in the community by local and state governments and to foster close coordination and partnership between local and state governments and CAAs in addressing those issues.

Does the current federal CSBG Act authorize the CAA board to select public official board members or does the authority lie with the chief elected local official(s) in the area served?

The current federal CSBG Act does not require public official sector board members be chosen by chief elected local official(s); in fact, the CSBG Act specifies that the **CAA is to select the board**. The predecessor to

NOTE: EOA LANGUAGE

Some state CSBG laws and/or regulations still use the Economic Opportunity Act of 1964 (EOA) language which gives the chief elected local official(s) the authority to select public official board members. CAPLAW's view is that the state laws that still require selection by chief elected local officials are inconsistent with the federal CSBG Act. Some states whose laws still contain this requirement do not enforce it, while others do. If your state is one that enforces the chief elected official requirement and your CAA does not want to follow that requirement, your CAA may dispute, and possibly litigate, the issue with the state.

2.1 Know Public Official Composition Requirements

the federal CSBG Act, the Economic Opportunity Act of 1964 (EOA), had required that the public official sector board members be designated by the chief elected official(s) in the area served. However, this language was removed when the EOA was repealed and the federal CSBG Act was enacted 1981.

Is the CAA required to select local county commissioners/supervisors or city councilors as public official board members?

The federal CSBG Act does not identify which public officials ought to serve on the tripartite board. Rather, the language of the federal CSBG Act indicates that the decision of which public officials should be selected to serve on a CAA's board is to be made by the tripartite board. The board should make this decision based on its determination of which public official(s) will best meet the CAA's needs.

Is an elected public official required to be in office to continue serving on the board? In other words, if, while the elected public official is serving on the board, his or her term in public office ends and he/she is not reelected or chooses not to run for public office again, must the public official step down from the tripartite board?

The federal CSBG Act only requires that a public official be holding office on the date of selection to the tripartite board. There is no prohibition in the federal CSBG Act preventing a public official from continuing to serve the remainder of his or her term as a director even if it extends past his or her term of public office. However, the federal Office of Community Services (OCS) recommends in non-binding guidance issued in IM 82 that elected officials serve on boards only while they are in office. Moreover, state CSBG laws/regulations may require that public officials be "currently holding office." If your state requires that public official directors be currently holding public office while serving on the CAA board, this requirement should be specified in the CAA bylaws.

May a representative appointed by a public official continue to serve on the board even if the public official who designated him or her is no longer holding office?

Again, the federal CSBG Act does not directly answer this question. However, OCS IM 82 interprets the CSBG Act language regarding public officials holding office on the date of selection as requiring individuals designated by elected or appointed officials to serve only while their principals are in office or be re-designated by a public official still in office.

When a public official designates a representative to serve in his/her place, who is seated on the board and who votes?

The individual who the representative has chosen, not the public official, serves as the board member and votes at the board meetings.

Do any requirements exist regarding the type of representative a public official may appoint to serve in his or her place?

No. It is within the public official's discretion to choose the representative who will serve in his or her place.

TIP CAPLAW recommends that the board develop a process for the public official to follow when designating a representative which may include the board providing the public official with recommendations of possible representatives the public official may consider designating to serve in his/her place.

2.2 Improve Public Official Selection

Selecting a board member is no easy task. With each sector of the board, the needs of the organization along with the passion, experience and skills of a potential board member must be weighed. The following exercise is intended to educate all board members on one way to approach selecting public official sector board members when filling current or potential vacancies. A similar exercise is available for each sector of the board in Learning Objective 2 of each part. The board may conduct all three exercises separately or at the same time.

Facilitator Task

Ask board members either individually or in groups to identify the current public official board members and the office that they are either elected or appointed to fill. If the public official has designated a representative to serve in his or her place, list the representative and the public official designator. Also, ask the board members to briefly review the current community needs assessment, strategic plan and list of CAA programs. The board should then discuss the current and future needs of the CAA and make a list of the attributes they are looking for in prospective public official board members. Consider using a board matrix available in the handouts to help track the attributes important to the board.

Ask board members to then make a list of elected and appointed public officials in your service area. This list may include judges, law enforcement professionals, superintendent of schools, school committee members, etc. The board should determine if the attributes identified match up with characteristics of potential public official sector board members. Making this assessment may require assigning board members to research and/or meet with those public officials identified and report back to the board. Once prospective public official board members are determined to be a good fit, make a list which may be used to fill future vacancies on the board. Also, consider inviting these prospective board members to board meetings or asking them to sit on an advisory board, if your CAA has created one. The advisory board would not make decisions or vote on resolutions but may make recommendations to the board and help fill vacancies.

2.3 Understand Public Official Bylaws Provision

Facilitator Task

Ask yourself and the board members the following questions, distribute copies of the **Public Official Bylaws Provisions Questionnaire**, and/or refer to the PowerPoint to determine if your current bylaws provision(s) may need to be revised.

TIP If board composition and selection provisions are included in the CAA's articles, CAPLAW recommends that those be removed unless such provisions are required to be included by your state's laws.

Ask board members either individually or in groups to compare the language in the **Sample Public Official Bylaws Language** handout (and also pasted below) to the CAA's current bylaws language. Board members should note the differences and discuss them. Board members should discuss why the language may differ and, whether it would be beneficial to revise the existing bylaws language.

Sample Bylaws Provisions

Sample bylaws public official board member composition language:

One-third of the directors shall be 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 one-third of the membership of the board, appointive public officials or their representatives may be counted in meeting such one-third requirement (Public Sector Directors).

Sample bylaws public official board members selection language:

Public Sector Directors. The board of directors shall select elected public officials to serve as Public Sector Directors. If the number of elected officials reasonably available and willing to serve on the board is less than one-third of the board, the board may select appointed public officials to serve. If a public official selected by the board of directors cannot serve him- or herself, s/he may designate a representative, subject to approval of the corporation's board, to serve as a Public Sector Director; the representative may, but need not be, a public official. Should a public official fail, within the period specified by the corporation's board, to accept the seat him- or herself or to designate a representative to serve, the corporation's board shall select another public official to fill the seat or to appoint a representative, subject to approval of the corporation's board, to fill the seat.

2.3 Understand Public Official Bylaws Provision

Answers to the Public Official Bylaws Provisions Questionnaire

Do the bylaws establish a procedure for selecting or appointing public official board members?

- If yes, what is the procedure? How was it developed? Does it comply with the requirements for public official board members set forth in the federal CSBG Act and/or state CSBG statutes and regulations (if any exist)?
- If no, how has the board been conducting the selection of public official board members? Is the procedure used compliant with the requirements for public official board members set forth in the federal CSBG Act and/or state CSBG statutes and regulations (if any exist)?

Do the bylaws establish terms for public official board members?

The federal CSBG Act does not include requirements addressing tripartite board terms. Because public official board members must be holding office on the date of selection, establishing terms that public official board members are to serve helps to ensure that public official board members are in office for most of the time they are serving on the board. Moreover, many state nonprofit corporation acts set a default term (for example, one year) if a nonprofit's bylaws fail to establish a term. In some cases, public official board members will have shorter terms than board members from the other sectors of the board to correspond with their terms in public office. CAPLAW recommends addressing terms for all board members in a separate section of the bylaws addressing terms and, if desired by the board, term limits. For sample term and term limits language see **CAPLAW's Bylaws Toolkit** available for purchase on CAPLAW's website, www.capl原因.org.

Do the bylaws specify the public official who must be selected (i.e., they state that the current county commissioners/supervisors or city councilors representing a particular service area will always be selected to fill the public official board member seat, etc.)?

CAPLAW recommends not designating specific public officials in the bylaws. By not specifying public officials, the board will have more flexibility throughout the selection process and will not run the risk of having to seat an individual on its board who may neither meet the needs of the CAA nor further the CAA's best interest.

NOTE: STATE CSBG LAWS

Some state CSBG laws include specific information that CAAs must include in their bylaws. If a CAPLAW recommendation differs from the state requirement, the CAA should either comply with the requirement or contact CAPLAW.

Do the bylaws give the authority to a third party to choose the public official board member to sit on the board (e.g., county commissioners/supervisors of each county served appoint a representative to the board)?

CAPLAW recommends not giving authority to a third party to choose public officials to sit on the board but rather ensure that the board has the final say on who will be seated and that the bylaws remain flexible as to who the CAA might choose to serve as a public official on its board. If the CAA prefers to have a third party, such as the board of county commissioners, appoint someone to its board, the CAA should either ask for recommendations from the third party (rather than have the third party choose someone on the CAA's behalf) or make any appointment by a third party subject to final approval by the board. This is consistent with the federal CSBG Act (42 U.S.C. § 9910), which specifies that the CAA itself selects its tripartite board members (subject to the requirement that low-income board members be chosen through a democratic selection process). In addition, under some states' nonprofit corporation laws, board members appointed

2.3 Understand Public Official Bylaws Provision

by individuals or entities other than the nonprofit's board of directors can only be removed by the person or entity that appointed them; however, if the board votes on the election of all board members, it retains the power to remove them.

TIP The bylaws should specify that, if a public official chooses a representative to serve as a board member, that person, and not the public official, is the board member and votes at the board meetings.

Do the bylaws require the board to vote to seat a representative appointed by a public official to serve in his or her place?

CAPLAW recommends drafting the bylaws to make representatives of public officials subject to approval by the CAA's board. The board would also vote to seat the representative designated by the public official. By doing so, the board maintains control over its board members and ensures that board members meet the needs of the CAA.

Facilitator Task

After finishing Part II, consider asking the group to complete the following tasks to gauge what and how much information was learned:

- **List three pieces of information that you learned after completing Part II of this training**
- **List what, if any, changes you would recommend in how the board functions**

After the board members have completed these tasks, ask them to share and discuss their responses with the full board. The board should consider whether it would like to move forward with any changes proposed to improve board operations and consider authorizing the governance committee to research the proposed changes further, if necessary.

Part III. Low-Income Representative Sector

Learning Objectives for Part III

- 3.1 Know low-income representative composition requirements
- 3.2 Improve low-income representative selection
- 3.3 Understand low-income representative bylaws provision

All Materials Needed for Part III

Below is a list of all of the materials needed for the three learning objectives in this Part.

- Federal CSBG Act section setting forth tripartite board composition and selection requirements, 42 U.S.C. § 9910*
- State CSBG statutes/regulations, if any exist
- Low-income Representative True & False Quiz**
- U.S. Department of Health and Human Services (HHS) Federal Office of Community Services (OCS) Information Memorandum (IM) 82*
- CAA's current democratic selection process which, may be included in the excerpt from the CAA bylaws addressing board composition and selection or which may be contained in a separate written document approved by the board
- Sample Low-Income Representative Bylaws Language*
- Low-income Representative Bylaws Provisions Questionnaire**
- Excerpt from the CSBG grant agreement with the state setting forth tripartite board composition and selection requirements, if applicable
- Excerpt from the CAA articles of incorporation (and/or articles of amendment) addressing board composition and selection, if such provisions exist
- Full CAA bylaws with section(s) addressing board composition and selection highlighted for easy reference

NOTE: REG VS. STATUTE

A statute is a law passed by a legislative body, while a regulation is a legal requirement issued by an executive branch agency.

* Included in handouts. All other materials listed must be obtained by the board.

PowerPoint for Part III

The facilitator may choose to use the PowerPoint that accompanies this Part to help guide the discussion. The PowerPoint mostly mirrors the text in the tool and copies of it should **not** be distributed to the board as it contains answers to questions that the board will be addressing throughout the training.

Facilitator Task

Direct the full board to review the handouts prior to the training. Consider assigning one of the handouts to one or more board members to read in depth so that he or she is prepared to help lead discussions regarding that handout.

Also, if this part is conducted prior to Part I, see Part I for ways to involve the board members in gathering the materials needed for this part.

3.1 Know Low-Income Representative Composition Requirements

Facilitator Task

Ask one board member to read to the board from the handout containing the tripartite board composition provision in the federal CSBG Act setting forth the low-income representative requirement for nonprofit (private) CAAs. The requirement is also listed below.

Section 9910(a)(2)(B) sets forth the low-income representative composition requirement which is as follows:

(2) Selection and composition of board. The members of the board referred to in paragraph (1) shall be selected by the entity and the board shall be composed so as to assure that –

...

(B)(i) 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 (ii) each representative of low-income individuals and families selected to represent a specific neighborhood within a community under clause (i) resides in the neighborhood represented by the member

Facilitator Task

You and the board members should either individually or in groups take the **Low-Income Representative True and False Quiz**. After taking the Quiz but before discussing the answers, ask the board members to read and highlight the sections of Information Memorandum (IM) 82 that specifically pertain to low-income representative composition and selection.

After these actions are completed, the full board should discuss each question – including why each answer is right and if some board members mark the wrong answer, why they chose that answer. Consider using the PowerPoint, referring to the highlighted sections of IM 82, and reading the annotated answers to the questions listed below.

3.1 Know Low-Income Representative Composition Requirements

Answers to the Low-Income Representative True & False Quiz

1. To meet the democratic selection requirement the CAA may have another board or council made-up predominately of low-income individuals select an elected officer on that board or council to serve as a low-income representative.

True or False

OCS advises CAAs in IM 82 that every effort should be made to ensure that board members representing low-income individuals and families are selected on the basis of some form of democratic procedure either directly through election, public forum, or, if not possible, through a similar democratic process such as election to a position of responsibility in another significant service or community group predominately made-up of low-income individuals such as a school PTA, a faith-based leadership group; or an advisory board/governing council to another low-income service provider.

2. If a CAA is facing difficulty filling the low-income representative sector, it may elect to the board individuals who provide services or support to low-income residents.

True or False

Low-income people in the community served by the CAA must have input at some point in the selection process. For this reason, low-income sector board members should not simply be chosen by the CAA's executive director or tripartite board, nor should they be staff of another low-income service provider chosen by the executive director or board of that other organization (unless low-income people make up a majority of that board and that board selects the CAA board member).

3. By serving on a CAA board, low-income representatives provide those currently living in the service area with a strong voice in the CAA's governance and direction.

True or False

IM 82 explains that the implicit intent of low-income representative requirement is to ensure that those who currently live in areas served by the CAA are represented so that they have a strong voice in CAA governance and direction of the CAA and are able to convey to those they represent the presence and significance of community action in their lives.

4. Low-income representatives must be low-income themselves.

True or False

No requirement exists that low-income representatives be low-income themselves. However, as noted by the prior question, the intent of the low-income representative requirement is to represent the voice of the low-income people served because they will most likely know best what their needs are. Thus, it is important for CAAs to have as many low-income individuals as possible serve as low-income representative board members.

5. Low-income representatives of a nonprofit CAA must reside in the specific neighborhood they are representing if the bylaws require them to do so.

True or False

For nonprofit CAAs, there is no general residency requirement for low-income representatives. However, the federal CSBG Act requires low-income representatives

3.1 Know Low-Income Representative Composition Requirements

to live in a specific neighborhood if they were selected to represent that neighborhood. Thus, if a CAA's bylaws require low-income representatives to represent a specific neighborhood or geographic area, then the representatives must reside in those designated neighborhoods or areas.

Facilitator Task

Ask board members either individually or in groups, to compare the federal CSBG Act low-income representative requirement with any low-income representative requirement in the state CSBG statutes or regulations, if any exist. Have the board members identify and discuss the differences between the federal and state requirements, if any such differences exist.

3.2 Improve Low-Income Representative Selection

One of the trickiest aspects of the low-income representative selection requirements is establishing a democratic selection process that the low-income community willingly participates in and that results in an accurate representation of the community served. The following exercise is intended to help all board members think creatively about the democratic selection process when filling current or potential board vacancies. A similar exercise is available for each sector of the board in each Part. The board may conduct all three exercises separately or at the same time

Facilitator Task

Designate one board member to locate and read to all board members the CAA's current democratic selection process. Designate another board member to read aloud the section in IM 82 referring to the democratic selection process that the board highlighted for learning objective one of this part. Then, ask each board member to write down on a piece of paper at least one alternative way to conduct the democratic selection process that differs from the CAA's current process. The differences could be variations of the current process and do not necessarily need to be a whole new process.

Have each board member read his/her response and note the response on a whiteboard, easel with a notepad or a piece of paper. As each response is read, categorize similar responses together. Once the responses have been gathered and similar ones placed together, read the responses again and poll the board members on their top two or three choices. After the top two to three choices are determined, assess the pros and cons of each choice either as a full board or in groups. If this process is conducted in groups, be sure to reconvene the full board to discuss the individual group results. Rank the choices and consider adding to, revising and/or updating your CAA's current procedures.

TIP If few or no board members are able to think of different ways to conduct the democratic selection process, consider assigning board members the task of researching how other CAAs in your state conduct the process. Also, consider asking the state association to maintain an ongoing list of options for conducting the democratic selection process that all CAA boards can contribute to on a regular basis, such as annually or biannually.

Here are a few examples of democratic selection procedures for obtaining low-income representatives:

- Ask CAA staff to assist with finding potential low-income representatives by identifying clients who have shown leadership potential while participating in CAA programs or who have performed well in the CAA programs. Staff could inform the client of the opportunity to participate on the CAA board and direct the client to the executive director for more information about this opportunity. The executive director could explain the democratic selection process to the client and consider inviting

3.2 Improve Low-Income Representative Selection

the client to a board meeting. The board governance committee and/or executive director could also meet individually with the client to describe the responsibilities of CAA board members. If the client is interested in serving on the board, he/she could request to be added as a candidate in the next democratic selection process;

- Conduct an election where ballots are cast by CAA clients and/or by other low-income people in the CAA's service area (ballots may be cast, for example, at designated polling place(s) in the service area, at the CAA's offices, at the offices of other organizations providing services to low-income people or via the Internet);
- Take a vote at a community meeting of low-income people (attendance may be improved if the meeting serves to not only select low-income representatives but also to address a topic of interest to low-income people in the community);
- Designate community groups composed predominantly of and representing low-income people in the service area (for example, a Head Start policy council, low-income housing tenant association, or the board of a federally-qualified community health center) to elect members from within their group to the CAA's board or whose boards will choose someone from among their elected officers/board members to serve on the CAA's board.

3.3 Understand Low-Income Representative Bylaws Provision

Facilitator Task

Provide board members with the **Sample Low-Income Representative Bylaws Language** handout and ask them either individually or in groups to compare it to CAA's current bylaws.

Ask yourself and the board members to distribute copies of the **Low-Income Representative Bylaws Questionnaire** and/or refer to the PowerPoint. These questions may be used to determine if the CAA's current bylaws provision(s) need to be revised.

TIP If board composition and selection provisions are included in the CAA's articles, CAPLAW recommends that those be removed unless such provisions are required to be included by your state's laws.

Sample Bylaws Language

Low-income representative composition language:

At least one-third of the directors shall be 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 (Low-Income Sector Directors)

Low-income representative selection language:

Low-Income Sector Directors. The board shall adopt and implement written democratic selection procedures for Low-Income Sector Directors, which it may revise from time to time. Such procedures may include, either alone or in combination: (1) election by ballots cast by the corporation's clients and/or by other low-income people in the corporation's service area; (2) selection at a community meeting in a low-income neighborhood in the corporation's service area and/or on a topic of interest to low-income people and publicized to low-income people in the corporation's service area; and/or (3) designation by organizations in the corporation's service area composed of a majority of low-income people (Low-Income Organizations).

3.3 Understand Low-Income Representative Bylaws Provision

Answers to the Low-Income Representative Bylaws Questionnaire

Do the bylaws state that the CAA will use a democratic selection procedure for selecting low-income representative board members?

The bylaws should state that the CAA will use a democratic selection procedure for selecting low-income representative board members. However, in general, the bylaws may, but do not need to, describe the procedure used; instead this procedure may be described in a separate document approved by the board. It is important to note that some states' CSBG laws, regulations or other guidance require CAA bylaws to include the details of the democratic selection procedure in the bylaws.

TIP Check your state CSBG statutes, regulations and policies, if any exist, to determine if the CAA is required to detail in the bylaws its democratic selection procedure.

Do the bylaws set terms for low-income representative board members?

The federal CSBG Act does not include requirements addressing board terms and term lengths. According to Information Memorandum (IM) 82 the implicit intent of the federal CSBG Act democratic selection procedure is to assure that those who currently live in areas served by the CAA are represented. Implementing terms helps to assure that those low-income representatives serving on the board accurately reflect the needs of the current community served by the CAA. Additionally, many state nonprofit corporation laws will set a default term (for example, one year) if a nonprofit's bylaws fail to establish a term and the state CSBG laws may require them.

NOTE: TERM VS. TERM LIMIT

A board **term** is the length of time a board member serves on a board and a **term limit** establishes the number of times that a board member can serve on the board. For example, a CAA may state in its bylaws that board members serve 3 year terms and may serve no more than two consecutive 3 year terms. Capping the number of terms a board member serves is a **term limit**. Some CAAs enable board members to serve after term limits have been met as long as the board member remains off the board for a certain period of time, e.g., for at least a one-year absence.

Do the bylaws require the board to vote to seat democratically elected low-income representatives?

For low-income representatives, the board's vote to seat an elected representative would only ensure that the representative met the residency requirement, if one exists, and that no other federal or state law prevents the representative from sitting on the board. In addition, under some states' nonprofit corporation laws, board members appointed by individuals or entities other than the nonprofit's board of directors can only be removed by the individual or entity that appointed them; however, if the board votes on the election of all board members, it retains the power to remove them.

3.3 Understand Low-Income Representative Bylaws Provision

Facilitator Task

After finishing Part III, consider asking the group to complete the following tasks to gauge what and how much information was learned:

- **List three pieces of information that you learned after completing Part III of this training**
- **List what, if any, changes you would recommend in how the board functions**

After the board members have completed these tasks, ask them to share and discuss their responses with the full board. The board should consider whether it would like to move forward with any changes proposed to improve board operations and consider authorizing the governance committee to research the proposed changes further, if necessary.

Part IV. Private Sector

Learning Objectives for Part IV

- 4.1 Know private sector composition requirements
- 4.2 Improve private sector selection
- 4.3 Understand private sector bylaws provision

All Materials Needed for Part IV

Below is a list of all of the materials needed for the three learning objectives in this Part.

- Federal CSBG Act section setting forth tripartite board composition and selection requirements, 42 U.S.C. § 9910*
- Private Sector Composition* Multiple Choice*
- U.S. Department of Health and Human Services (HHS) Federal Office of Community Services (OCS) Information Memorandum (IM) 82*
- State CSBG statutes/regulations, if any exist
- Board Composition and Selection Matrix**
- List of CAA's current programs
- CAA's current community needs assessment
- Current CAA strategic plan
- Sample Private Sector Bylaws Language*
- Private Sector Bylaws* Questionnaire*
- Excerpt from the CSBG grant agreement with the state setting forth tripartite board composition and selection requirements, if applicable.
- Excerpt from the CAA articles of incorporation (and/or articles of amendment) addressing board composition and selection, if such provisions exist
- Full CAA bylaws with section(s) addressing board composition and selection highlighted for easy reference

NOTE: REG VS. STATUTE

A *statute* is a law passed by a legislative body, while a *regulation* is a legal requirement issued by an executive branch agency.

* Included in handouts. All other materials listed must be obtained by the board.

PowerPoint for Part IV

The facilitator may choose to use the PowerPoint that accompanies this Part to help guide the discussion. The PowerPoint mostly mirrors the text in the tool and copies of it should **not** be distributed to the board as it contains answers to questions that the board will be addressing throughout the training.

Facilitator Task

Direct the full board to review the materials prior to the training. Consider assigning one of the handouts to one or more board members to read in depth so that he or she is prepared to help lead discussions regarding that handout.

Also, if this part is conducted prior to Part I, see Part I for ways to involve the board members in gathering the materials needed for this part.

4.1 Know Private Sector Composition Requirements

Facilitator Task

Ask one board member to read to the board the tripartite board composition provision in the federal CSBG Act setting forth the private sector tripartite board requirement for nonprofit (private) CAAs. The requirement is also listed below.

Section 9910(a)(2)(C) sets forth the private sector composition requirement which is as follows:

(2) Selection and composition of board. The members of the board referred to in paragraph (1) shall be selected by the entity and the board shall be composed so as to assure that –

*...
(C) the remainder of the members are officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.*

Facilitator Task

You and the board members should either individually or in groups answer the **Private Sector Composition Multiple Choice**. After completing the questionnaire and before discussing the answers, ask the board members to read and highlight the sections of **Information Memorandum (IM) 82** that specifically pertain to private sector composition and selection.

After these actions are completed, the full board should discuss each question – including why each answer is right and if some board members mark the wrong answer, explore with that board member why he or she chose that answer. Consider using the PowerPoint and referring to the highlighted sections of IM 82, and reading the annotated answers to the questions listed below.

4.1 Know Private Sector Composition Requirements

Answers to the Private Sector Composition Multiple Choice

1. Under the federal CSBG Act, which of the following may be considered as a potential private sector board member:

- A. Accountant who works for an internet company
- B. President of the local teachers union who is appointed by the union
- C. Pastor of a small, local Baptist church who is appointed by the congregation
- D. B and C
- E. All of the above

The answer is E. Unless state CSBG laws or regulations require otherwise, the grantee may fill private sector seats with either individuals or organizations that are asked to designate a representative. Even though this sector is often referred to as the "private sector," it may include both public and private sector groups and interests.

2. When choosing a private sector board member, the board should focus on those who:

- A. Are involved with community groups and interests that would be good partners
- B. Possess the skills, experience and resources the CAA needs
- C. Are possible donors even though they are unable to attend at least half of the scheduled board meetings
- D. A and B
- E. All of the above

The answer is D. In selecting private sector board members, it is important to not only choose people who are involved with community groups and interests that would be good partners for the CAA and its programs, but to also choose people who have the skills, experience and resources that the CAA needs. Even though attracting private funds is a crucial task faced by most CAAs, a CAA must not do so at the expense of a well-run organization. Ensuring that a CAA is operating effectively, furthering its tax-exempt purposes and using public and private funds properly is a great responsibility for each board member. Thus, it is important that board members be able and prepared to attend as many board meetings as possible. Offering a potential donor a seat on the board of directors knowing that the donor is unable to commit the time needed to fulfill his/her board responsibilities is not sound governance. A CAA in this position should explore other possibilities for engaging potential donors such as creating an advisory board.

4.1 Know Private Sector Composition Requirements

3. A CAA should be aware that a state's CSBG statute and/or regulations, if any exist, may require:

- A. Specific organizations be represented as private sector board members
- B. The full board seat a representative appointed by an organization without first approving the representative via a board vote
- C. CAAs select organizations that designate a representative to serve on the board subject to board approval
- D. A and C
- E. All of the above

The answer is C. Because the CSBG Act is a block grant, the state may administer the CSBG program pursuant to its own statutes and regulations as long as these laws are consistent with the federal law. Thus, state CSBG laws or regulations may require that a grantee select organizations that will select in turn a representative to serve on the board subject to the board's approval. Both of the requirements listed above in choices A and B seem overreaching and most likely inconsistent with the federal CSBG Act. The federal CSBG Act specifically states that all board members "shall be selected by the entity." As discussed in Part I, the board of directors is the decision-making body for the entity and a state law that prohibits the full board from either selecting the private sector board member or voting to seat board members would appear to directly conflict with the federal CSBG Act.

4. Requiring the full board to vote to seat private sector board members, even those appointed by groups, enables the full board to:

- A. Exercise greater control over the board composition
- B. Remove those board members appointed by an outside organization
- C. Implement its authority under the federal CSBG Act to select board members
- D. A and C
- E. All of the above

The answer is E. Giving the tripartite board the authority to seat all of the board members, enables the board to play a more active role in determining who the private sector board members will be. Moreover, as noted in the answer to Question 3 above, the federal CSBG Act specifically states that all board members "shall be selected by the entity." As previously explained, it is a good idea for the board to vote to seat nominees, since under some states' nonprofit corporation laws, board members appointed by individuals or entities other than the nonprofit's board of directors can only be removed by the person or entity that appointed them; however, if the board votes on the election of all board members, it retains the power to remove them.

4.1 Know Private Sector Composition Requirements

5. Private sector board members serve an important role on the tripartite board because they enable the board to:

- A. Attract board members with various types of expertise
- B. Comply with governance requirements associated with other types of funding received
- C. Develop contacts with potential corporate donors
- D. A and B
- E. All of the above

The answer is E. The private sector plays an important role in board governance because the sector enables a board to choose people who possess the skills, experience and resources that the CAA needs – for example, people with financial expertise, fundraising skills and contacts, or with the various forms of expertise needed to fulfill composition requirements of other public or private funding received such as the Head Start board composition requirements.

Facilitator Task

Ask board members either individually or in groups to compare the federal CSBG Act private sector requirements with any private sector requirements in the state CSBG statues or regulations, if any exist. Have the board members identify and discuss the differences between the federal and state requirements, if any such differences exist.

4.2 Improve Private Sector Selection

Selecting board members for the private sector, like the other sectors, is no easy task. With each sector of the board, the needs of the CAA along with the passion, experience and skills of a potential board member must be weighed. The following exercise is intended to educate all board members on one way to approach selecting private sector board members when filling current or potential vacancies. A similar exercise is available for each sector of the board in Learning Objective 2 of each part. The board may conduct all three exercises separately or at the same time

Facilitator Task

Ask board members either individually or in groups to identify the current private sector board members. Then ask the board members to briefly review the current community needs assessment, strategic plan and list of CAA programs. The board should discuss the current and future needs of the CAA and make a list of the attributes they are looking for in prospective private sector board members. Consider using a **board matrix**, available in the handouts, to help track the attributes that are important to the board.

Ask board members to then make a list of individuals and organizations in your CAA's CSBG service area. The board should determine if the characteristics of potential private sector board members identified match up with the identified short- and long-term needs of the CAA. Making this assessment may require assigning board members to research and/or meet with potential private sector individuals and/or organizations and to report back to the board. Once prospective private sector board members have been identified, create a list of that may be used to fill future vacancies on the board. Also, consider inviting them to board meetings or creating an advisory board that does not make decisions or vote. Rather, the advisory board could make recommendations to the board and help fill vacancies.

4.3 Understand Private Sector Bylaws Provision

Facilitator Task

Provide board members with **Sample Private Sector Bylaws Language** handout (and also copied below) and ask them to compare it to the language in the CAA's current bylaws. Board members should note the differences between the two and discuss them. Board members should determine why the language may differ and if the bylaws may need to be revised.

Also, ask yourself and the board members the following questions, distribute copies of the **Private Sector Bylaws Questionnaire**, and/or refer to the PowerPoint to determine if it would be beneficial to revise the existing bylaws language.

Sample Bylaws Provisions

Private sector composition language:

The remainder of the directors shall be officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served (Private Sector Directors).

Private sector language where the board itself selects such board members:

Private Sector Directors. The board shall select individuals who are officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served to serve as Private Sector Directors.

Private sector language where the board chooses such board members through community organizations:

Private Sector Directors. To fill Private Sector Director seats, the board of directors shall select organizations representing business, industry, labor, religious, law enforcement, education, or other major groups and interests in the corporation's service area (Private Sector Organizations) to designate, from among their officials or members, individuals to serve on the corporation's board of directors. Each such organization shall be entitled to designate one individual, subject to approval of the corporation's board, to serve as a Private Sector Director. Should such an organization fail, within the period specified by the corporation's board, to designate an individual to serve as a Private Sector Director, the corporation's board shall select another organization to designate such an individual.

4.3 Understand Private Sector Bylaws Provision

Answers to the Private Sector Bylaws Questionnaire

Do the bylaws give the authority to a third party (e.g., private or public organization) to choose the private sector board member to sit on the board?

CAPLAW recommends not giving authority to a third party to choose private sector board members. If a 3rd party is authorized to choose the private sector board member, it is a good idea for the board to vote to seat that board member. This is consistent with the federal CSBG Act (42 U.S.C. § 9910), which specifies that the CAA itself selects its tripartite board members (subject to the requirement that low-income board members be chosen through a democratic selection process). In addition, under some states' nonprofit corporation laws, board members appointed by individuals or entities, other than the nonprofit's board of directors, can only be removed by the person or entity that appointed them; however, if the board votes on the election of all board members, it retains the power to remove them.

Do the bylaws specify which organizations will appoint private sector board members?

CAPLAW recommends not specifying in the bylaws which organizations may appoint a representative to serve as a private sector member, but rather maintaining flexibility so that the board may choose the individual or organization that best meets the CAA's current needs.

If the bylaws specify organizations that will have the authority to appoint private sector board members, are these organizations reviewed on a periodic basis to ensure that their presence on the board is fulfilling or meeting a current need?

IM 82 explains that the role of the private sector board member is to reflect and involve key interests and resources within the community to guide a CAA's actions and outcomes. CAAs should therefore strive to assure that the groups and interests with current influence or resources deemed critical to the success of the organization are represented. One simple action a CAA may take to ensure that the organizations selected by the CAA to appoint private sector board members meet current needs is to assign the board governance committee the task of reviewing the organizations on an annual or bi-annual basis.

4.3 Understand Private Sector Bylaws Provision

Facilitator Task

After finishing Part IV, consider asking the group to complete the following tasks to gauge what and how much information was learned:

- **List three pieces of information that you learned after completing Part IV of this training**
- **List what, if any, changes you would recommend in how the board functions**

After the board members have completed these tasks, ask them to share and discuss their responses with the full board. The board should consider whether it would like to move forward with any changes proposed to improve board operations and consider authorizing the governance committee to research the proposed changes further, if necessary.

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