



## Working with an Elected Public Official's Representative on the Tripartite Board

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Elected public officials serve a crucial role on a Community Action Agency's (CAA) tripartite board. Not only do they raise awareness of poverty in the community and at various levels of government, they are also integral in fostering close coordination between local public agencies and Community Action efforts. Recognizing the often overwhelming demands elected public officials regularly face, the federal Community Services Block Grant (CSBG) Act gives a public official invited to serve on the tripartite board the option to have a representative serve in his or her place. This FAQ addresses a variety of questions received by CAPLAW about the selection and management of representatives serving in place of elected public officials on tripartite boards. The answers to these questions often depend on the requirements in a CAA's bylaws. While this FAQ discusses the federal CSBG Act's requirements and offers recommended practices, CAAs should note that they must continue to follow their bylaws as currently written until they are amended pursuant to the applicable bylaws provisions and/or state or local laws.

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## What legal requirements apply to how representatives of elected public officials are selected and managed?

Very little information exists in either the federal CSBG Act or Office of Community Services (OCS) guidance about who may serve as representatives of elected public officials and the parameters of that service. The federal CSBG Act simply requires that exactly one-third of a tripartite board be comprised of elected public officials or their representatives. The CSBG Act explains further that the elected public official must be holding office on the date of selection to the CAA's board and, if not enough elected public officials are reasonably available and willing to serve, then appointed public officials or their representatives may be counted toward the one-third requirement.<sup>1</sup> Applicable OCS guidance, which is instructive but nonbinding, suggests that representatives of elected public officials should serve only while that public official holds office.<sup>2</sup> State CSBG laws may also impose additional requirements relating to elected public officials and their representatives. CAAs should review their state CSBG laws, policies and grant agreements for compliance with additional, state-specific requirements.

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## Can a representative serve as an alternate or proxy rather than in place of the elected public official?

For nonprofit CAAs, a state's CSBG laws and nonprofit corporation act govern the use of alternates and proxies. Very few states have nonprofit corporation laws that allow for alternates or proxy voting by board members of a nonprofit corporation. Often, a state's CSBG laws are silent as to the use of alternates and proxies. Only if both the state nonprofit corporation act and CSBG laws permit alternates or proxy voting by board members may such be used. Even if proxies and alternates authorized to vote on behalf of a board member are permitted under state laws, CAPLAW generally recommends that CAAs not use them. State nonprofit corporation law imposes fiduciary duties on board members, which attach to individual directors and are not transferable (for example, to alternates). As a result, once a representative of an elected public official is seated on the board, that individual assumes those fiduciary responsibilities and, legally speaking, is the board member, not an alternate or proxy for the public official. A prior CAPLAW FAQ, [May tripartite board members have alternates or vote by proxy?](#), explains in greater detail the use of alternates and proxy voting within the context of nonprofit boards.

The state and local laws that govern public CAAs will often permit the use of alternates and proxies for public CAA tripartite boards. Thus, it may be possible for a representative of a public official serving on a public CAA tripartite board to act as an alternate or proxy for that public official, rather than serve in place of the public official. Nevertheless, CAPLAW still encourages public CAAs, if possible, to limit the use of alternates and proxies as one way to help board members be fully engaged in the planning, development, implementation and evaluation of the CSBG program as required by the federal CSBG Act.

### 3 Who may serve as a representative of an elected public official?

Neither the federal CSBG Act nor guidance from OCS addresses who may serve as a representative of an elected public official. For example, there is no requirement that the representative must work for or personally know the elected public official he or she represents. Some tripartite boards will provide elected public officials with recommendations of individuals the board thinks would be a good fit, while other CAAs leave the decision as to the type of representative to the public official. CAAs should work with public officials and representatives who are willing to establish channels of communication to share information about the CAA's activities, issues of poverty in the community, and local resources that might be marshaled in support of the CAA's anti-poverty efforts.

CAPLAW recommends not including language in the bylaws or governing documents as to the type of representative who may serve in place of an elected public official. Instead, boards should keep their options open and flexible so that they are positioned to select board members who best meet the current needs of the CAA.

### 4 Is a tripartite board required to accept an elected public official's choice for a representative?

The answer is different for public and nonprofit CAAs.

Nonprofit CAAs are not required to automatically accept the elected public official's choice of representative. The federal CSBG Act is clear that the nonprofit CAA itself selects its board

*Nonprofit CAAs are not required to automatically accept the elected public official's choice of representative.*

members, subject only to the democratic selection requirement for the low-income representatives of the tripartite board.<sup>3</sup> CAPLAW recommends that a nonprofit CAA's bylaws explicitly state that if a public official chooses a representative to serve in his or her place, the tripartite board will formally vote whether to seat the representative. Including a provision to this effect in the nonprofit CAA's bylaws will help ensure that the board retains ultimate control over its

composition and is able to fill the board with engaged individuals who best meet the board's current needs. Requiring the board to take a formal vote to seat the representative also ensures that the board retains the right to remove the representative, if necessary. Under some state nonprofit corporation acts, unless the organization's bylaws state otherwise, if a third party appoints an individual to a board, then only that third party has the authority to remove that individual from the board. In other words, including language in the bylaws about voting to seat a representative may be required under some states' laws to preserve a nonprofit CAA's right to remove that individual.

CAPLAW is aware that some nonprofit CAAs have struggled with disruptive or absentee representatives chosen by public officials because the board had no say in the selection of the representative. Practically speaking, to avoid situations where the board is at odds with a

public official over the choice of a representative, the board should implement a process for working with public officials who wish to select representatives who will serve in their place. The process may include regularly communicating with the public official to discuss the needs of the organization and the individuals proposed. Through this process, if a board finds that the interests of an elected public official and the tripartite board are not aligned, the board may ultimately need to consider selecting a different public official. Choosing a different public official is easier if the nonprofit CAA's bylaws do not identify specific public officials who will serve.

For public CAAs, the answer is more complicated. The local governing officials may retain the authority to select tripartite board members, or they may delegate that authority to the tripartite board, subject to the democratic selection requirement for the low-income representatives of the board. If the authority to select board members is delegated to the tripartite board, then the tripartite board should consider including language in its bylaws enabling the board to retain ultimate control over the selection and removal of representatives of elected public officials. Doing so enables the board to select engaged board members who best fit the CAA's current needs. Public CAA tripartite boards without the authority to select board members should make recommendations to their local governing officials of representatives they think will be the best fit and bring the most value to the CAA.

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### What if an elected public official delays in appointing a representative to serve in his or her place?

To ensure that the selecting and seating of a representative runs smoothly, tripartite boards should outline the appointment process as approved by the board. As previously noted, neither the federal CSBG Act nor guidance from OCS addresses the process by which representatives may be selected. If state CSBG laws and policies are silent as to that process, a CAA may develop its own processes and procedures. When doing so, a CAA may consider imposing time frames within which a public official must appoint a representative, and including options for the board to select another public official.

*...a CAA may consider imposing time frames within which a public official must appoint a representative...*

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### If an elected public official is no longer in office, can the representative continue to serve on the board?

It depends on whether state CSBG laws and/or the CAA's bylaws impose additional requirements. The federal CSBG Act only requires public officials to hold office on the date of selection to the CAA board.<sup>4</sup> Thus, under the federal CSBG Act, the representative of a public official may continue to serve the remainder of his or her term as a board member even if it extends past the public official's term in elected office. However, some states have adopted OCS' guidance recommending that public officials or their representatives serve only while the public

officials are in office.<sup>5</sup> Such states specifically require in their CSBG laws that public officials be “currently holding office” for either the official or his/her representative to remain on the board. Even if a state requirement does not exist, a CAA could choose to specify in its bylaws that a public official must be currently holding public office. If so, then once the public official is no longer in office, the term of the public official or his/her representative automatically expires, and the CAA should follow the procedures specified in its bylaws to select a new public official.

If a representative of a public official has been a good board member and the board would like him or her to remain on the board after the public official leaves office, the CAA has a few options. Unless a CAA's bylaws or governing documents provide otherwise, a representative of a public official who leaves office may be selected by a new public official to serve as that official's representative on the board. The board may also consider electing the representative to serve in the private sector of the board.

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### Can a representative of an elected public official be unilaterally removed by the elected public official?

The answer is different for public and nonprofit CAAs.

For a nonprofit CAA, it depends on the organization's bylaws. Removal provisions in a nonprofit CAA's bylaws should give the board authority to remove all board members, including representatives of elected public officials. As we explain in Question 4, some state nonprofit corporation acts give third parties the right to remove board members they appoint unless the organization's bylaws state otherwise. CAPLAW therefore recommends that, if a public official chooses a representative to serve in his or her place, the tripartite board of a nonprofit CAA vote to seat the representative so that the board retains the right to remove him/her, if necessary.

*Public CAAs should include removal provision in their bylaws or governing documents that reflect the tripartite board's authority to act...*

For public CAAs, while the local governing officials may retain the authority to remove board members, the tripartite board may (and should, when necessary) recommend the removal of board members. Public CAAs should include removal provision in their bylaws or governing documents that reflect the tripartite board's authority to act in such situations.

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### What happens when a representative of an elected public official is no longer able to serve?

The answer is different for public and nonprofit CAAs.

As explained in Question 2, for a nonprofit CAA, a representative who is selected to serve in place of the elected public official is the board member. If the representative is no longer able to serve, the public official will either need to fill the board seat him- or herself or select another

representative who – when seated by the board – would serve for the remainder of the original representative's board term. A nonprofit CAA should check its bylaws for language that might interfere with the board's involvement in the selection and seating of a new representative. For example, bylaws that state, "Upon a vacancy, the board shall request that the elected public official name a replacement," could be interpreted as giving the public official unilateral control over the selection of, and subsequently retaining the right to remove, the representative. CAPLAW recommends that language addressing the way in which a replacement representative is selected and seated specify that the public official "recommends" a replacement representative or that the replacement will be "subject to board approval." Conversely, even though CAPLAW recommends that nonprofit CAAs not use proxies or alternates, if they do use them as permitted under their state laws, the public official should follow the CAA's bylaws to select another proxy or alternate when the current one is no longer available to serve.

For public CAAs, it depends on whether, as discussed in Question 2, the public CAA is permitted to use alternates and proxies, and whether the CAA chooses to do so. If the representative of the elected public official was merely acting as a proxy or alternate, then the elected public official could choose another representative to serve as a proxy or alternate (but would not be required to do so, unless otherwise specified in the bylaws). Alternatively, if the representative is serving as the board member, i.e., in place of the public official, then the public official would either fill the seat him- or herself or identify a replacement representative to serve in his or her place. Whether the local governing officials or the CAA tripartite board must ultimately vote on the seating of the replacement representative depends on the delegation of authority to the tripartite board and the tripartite board's bylaws.

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### End Notes

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<sup>1</sup> See 42 U.S.C. § 9910(a)(2)(A).

<sup>2</sup> See OCS Information Memorandum (IM) 82.

<sup>3</sup> See 42 U.S.C. § 9910(a)(2).

<sup>4</sup> See 42 U.S.C. § 9910(a)(2)(A).

<sup>5</sup> See OCS Information Memorandum (IM) 82.

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