



CAPLAW Webinar Transcript

Mastering the A-B-CSBGs: A Four-Part Fundamentals Series

Tripartite Board Selection and Composition

January 10, 2023

1:00 - 2:15 PM

[Allison Ma'luf, CAPLAW]

Hi, everybody, welcome to today's webinar series. I'm Allison Ma'luf, I'm the Executive Director and General Counsel here at CAPLAW, and I'm really excited to start off this New Year, 2023, with a new webinar series that is focused on the basics of—going back to the basics of the Community Service Block Grant program. You are joining us for mastering the A-B-CSBGs, which is our little fun title that gives us all a chuckle. Hopefully it did you as well. I'm excited to have with me today my colleague Caroline Kelley. She and I are going to walk through the first webinar in this series. And we will be having three other webinars in the series: we have the uses of CSBG funding, the mechanics of CSBG, and monitoring and termination of CSBG funds. This series is really intended to walk through the federal Community Services Block Grant Act. So it's going to help orient those who are sort of new to Community Action, and it's going to serve as a nice reminder for those that have been with Community Action for a long time, and hopefully, it will just help us get a good perspective on this really important funding that we all receive.

So for today, we just have a few sort of housekeeping reminders for everyone. One is that this webinar, as well as all of the other webinars, will be recorded, so don't worry if you have some colleagues who wanted to be here today, but couldn't. They will have an opportunity to watch this on demand. We will send out the recording after the webinar is completed, likely either later today or tomorrow. And then also, if you registered for this session, this webinar today, you have registered for the whole series. So you do not need to re-register, though you will see additional emails that will go out encouraging those who have not registered for this series or the upcoming webinars to register. So just know that if you're with us today, you are hopefully going to be with us for the long haul. Alright, so for today we have on the agenda, some good meaty Community Service Block Grant tripartite board items to discuss with you.

We're going to look at the laws and guidance that govern our tripartite boards. As I mentioned, the focus of this series really is the Community Service Block Grant Act, so that's what we're going to drill down into today. But we're going to mention these other laws and guidance, because they are very informative, and they do govern your tripartite boards. And so it's hard to have a webinar about tripartite boards without touching on a little bit of everything, honestly. We're gonna also talk about each of the three sectors; we have the public sector, the consumer sector, and the private sector. And it's hard to believe that this Act, this law has been around for as long as it has—since the early 80s. And this provision has been a part of that Act, the tripartite board, for that period of time. And we still have a lot of questions regarding it, and how to meet it, and how to fulfill the intent of the Act with respect to these requirements. So we're going to speak a little bit to that today, but also make sure that you know of resources that we have that can help you further with your questions. And as you guys know, you've

been sending us questions for today's webinars as well as the future webinars. And we have incorporated answers to those questions. Some of them in today's webinars, some of the questions were a little outside the scope of what we're going to talk about. So if for some reason we didn't answer your question, and you'd really like to speak with us about it, feel free to contact us afterwards and we're happy to have a conversation. Happy to answer any questions you may have with respect to the tripartite board and the CSBG Act in general. We're also, time permitting, going to talk about a few board mechanics, and some of these board mechanics are intended to address some of those questions that were asked. Whenever we start talking about tripartite boards, as you guys can imagine, a whole bunch of questions come up with respect to "How do we operate?" "How do we make sure that our boards are fresh and current?" and all this sort of things. So we've tried to address some of those questions with the mechanics section and give you a little more detail, a little more bang for your buck today. All right, next slide, please.

We're gonna dive right in to the laws and guidance that govern your tripartite board. The federal Community Service Block Grant Act is the Act that establishes the Community Services Block Grant Program. It's the receipt of that CSBG funding that makes a Community Action Agency a Community Action Agency. In order to receive that funding, you have to have a tripartite board, as well as be able to provide the services that you all provide to the communities that you serve. So the tripartite board is a seminal aspect, part, of the Community Service Block Grant program, and it is really critical, it is unique to the funding that we receive. And it really does, in many ways, define our network. And we're going to talk about the tripartite board's specific requirements. The Act really does set the framework for the structure and the composition of that board, how you select those board members. But there's a lot of, of aspects of that framework that aren't addressed. And we're going to talk about ways that you can address those or where some further guidance or information might be accessible to you. As you'll see on the slide, we have two citations for this law: we have what's referred to as the public law citation, which is section 672—so you'll see this referenced a lot—and you'll also see referenced the companion to the Public Law, which is the United States Code. And that's the statute that is where the federal Community Service Block Grant lives, the Act lives. That's 42 USC 9901 is the beginning of that Act. And so we're not going to keep referring to the code because it's our understanding that a lot of people are familiar with that Public Law reference. But either reference will sort of get you to the same spot, if it's referring to the same section or provision.

There's also some really important guidance that the Federal Office of Community Services—that's OCS—has put out there about tripartite boards. Now, it's not recent guidance. It's been out there for a while, but it actually still has a lot of good information in it. And it talks about the different sectors of the board and some other items that we're going to delve just slightly into today. This information is just guidance, but it is the only guidance that we have from the Federal Office of Community Services about tripartite boards and how they see those boards. So it really is useful.

So, as many of you might know, because of the nature of the Community Service Block Grant funding—it is a block grant, which means it flows through your state. That means that the state has a certain level of authority to facilitate that funding. And where the Act is silent or doesn't address a particular issue, the state could have authority to kind of flush that out in order to help the program operate more effectively. And so you always have to keep in mind when you're working with a Community Service Block Grant program, or any kind of block grant program, are there any state specific rules or guidance or policies that I need to look to that could address an area that isn't covered by the federal act and an area in which the state would have the authority to issue some kind of requirements or guidance? And so we always talk about this with respect to tripartite boards, because as I already mentioned, the federal act really just kind of establishes a framework for the composition of that board and how you select its board members, but a lot

is left open. And so the organization itself may address those open areas if the state laws are not in place to address them, or guidance.

So one sort of important caveat to Information Memorandum guidance that comes from the Federal Office of Community Services. As you can see on this slide, I slotted it in in a very different area than when talking about Information Memorandum 82, this is Information Memorandum 138. This is really critical guidance for the Community Action Network. This is the guidance from the Federal Office of Community Services that established what many of you might be familiar with as the Community Service Block Grant Organizational Standards. And these are requirements that were established back in 2015-16 to help add some accountability and uniformity to the network. Prior to the establishment of the Organizational Standards, every state kind of did things a little differently. And so this was to help us kind of get to a focal point where we're all kind of sort of working off of the same set of overarching standards. And so the legislation that funds the Community Service Block Grant program, as well as the other federal programs that that your Community Action Agency runs, one of the funding acts—the Appropriations Act—during the time in which the IM 138 guidance was issued, made as a part of the of the funding that year, a directive. That directive was to states to formally adopt the Community Service Block Grant Organizational Standards. And so those Organizational Standards are actually included in your laws and guidance with your state. And the state may have them in your monitoring tools. They may have them in their regulations, their statutes, but they're there. And it's important to note this because there is an Organizational Standard, Category Five, that specifically addresses tripartite boards and the governance of your Community Action Agency. And the standards for the most part with respect to composition and selection reflect what the federal act states as to composition and selection, but also as some more guidance with respect to other areas of the board's operations, such as when your bylaws need to be reviewed, when you need to conduct training for your members orientation, all that kind of good stuff. So it's important for you to be aware of that guidance—that those rules that were at one point guidance are law. If my mentioning of the Organizational Standards is new to you, or causes you to get a little nervous, because you're not quite sure what they are, take a look at Information Memorandum 138. That's sort of the—I don't know how else to put it—the birthing document for those standards, and will really give you a lot of good context and understanding about those standards. And then you'll go to your state or look at your state CSBG contract and you'll likely see some reference to either Information Memorandum 138, or the standards themselves.

So there are a couple of other laws that could come to play at the state level with respect to your tripartite boards for nonprofit Community Action Agencies. You've always got to keep in mind that you have a state nonprofit corporation act, and you as a nonprofit were organized under your state laws as the first thing that happened. And you had a board, and the board then hired an executive director and then off, you're off and running at that point. And so those state nonprofit laws don't have a tripartite structure in them. That tripartite structure is unique to CSBG. But they're informative because they oftentimes speak to other operations and mechanics of a board of a nonprofit. And it's in those nonprofit laws where the fiduciary duties of a board are established. It's also in those nonprofit laws where if you in your bylaws and your organizational documents haven't established, let's say, the number of members you're going to have on your board, then there are often defaults in those laws and also minimums. There are sometimes directives in those laws. In other words, you might be required to have a certain vote count in order for an action to have effect. But in general, most of these nonprofit laws have defaults and minimums. And then there are, there could be similar type laws for public Community Action Agencies. We are talking about tripartite boards with respect to both types of entities, both nonprofit and public, even though they are very different in structure. The tripartite board really operates in much the same way and has the same responsibilities with respect to a nonprofit and public. And when I say same, we're going to talk about that in just a minute exactly what that means. And last but not least, I've been alluding to your bylaws or an overarching

governing document that could direct how your CAA tripartite board may operate. And all of those are what we refer to as your Community Action Agency's organizational documents—that sort of, for lack of a better word, your board's Bible. It tells them what they can and can't do with respect to how they operate and how they work with your Executive Director. And they're an organization as a whole. So it's important to be aware of those documents. It's important to realize that some of those documents, like your bylaws, are living documents. They'll change with respect to how your organization is operating, and what direction it's headed in. And if everything else on this slide that I've mentioned is silent with respect to a certain action or way that your organization wants to operate, then your organization would establish some type of process or form or notation in a governing document to its board.

All right, I know that was a lot, but we just wanted to make sure that you guys sort of had a full picture before we dive into more of the specifics regarding tripartite boards. In particular, all the different laws and guidance that could come into play when you're talking about your tripartite board. All right. Next slide.

So as I mentioned, the Federal CSBG Act does direct boards, tripartite boards for both public and nonprofit CAAs, and with respect to their responsibilities as to the CSBG program, or really the CSBG-funded programs that you might be operating at the time—and CSBG is, is really unique funding. And it's unique, because it's the only type of funding that's out there that is very flexible. In other words, you can use that funding to really respond to the needs of your communities. And that's really critical, because the needs and all your different communities really vary. So it's awesome to have funding that enables you to do that. And so when you see the words on this slide, which is sort of the summary of what a tripartite board does, you can see how broad that language really is. It's kind of speaking, overarchingly to the organization as a whole, that that board will be fully engaged, and the development planning, implementation and evaluation of CSBG-funded programs. And that's a lot, there's a lot to unpack there. And that overarching responsibility is really, I think, indicative of the way in which nonprofits really should be operating in general with respect to any kind of programs that they're offering. The board really should be fully engaged in, in each of these aspects of the organization. We're not going to delve deeply today into these responsibilities. There's so much we could talk about. I'm just gonna point you to a few resources that can be helpful to you with respect to those and then in the CAPLAW way, we will be always be doing a board responsibility type training, so check back with us for that.

So keeping that in mind, Information Memorandum 82—that resource I told you is a good one—does actually have some nice information in it about what it means to be involved in the development, planning, implementation, and evaluation of CSBG-funded programs. And you can see, as noted on the slide, you're aware of the needs assessments, you're making sure that they're done in your communities, you're furthering your mission, you're engaging in strategic and annual planning, you're making sure that as a board member, you're participating in those meetings, you're asking good questions, you're exercising what we would refer to as that duty of care. And you're making sure that the policies and operations are sound so that you can actually do these programs. And you're evaluating the results of these programs. That's a real quick snippet of what your overarching responsibilities as board members would be on a tripartite board. So Information Memorandum 82, also, actually as I noted, earlier, talks about a few other aspects of the tripartite board that, again, are really helpful. It has some sector-specific guidance, and by that, I mean it talks about the consumer sector, the elected public official sector, and also the private sector and talks about their selection. You know why we have these sectors, and we're going to talk a little bit about that in just a second. But it is really helpful guidance with respect to that. It touches on this concept of term limits, not promoting them, just touches on them as one option for ways for you to keep that voice on your board fresh and all of the different sectors. It talks about the importance of training, conflicts of interest, and making sure that you have measures and processes in place to ensure that your

board members are acting in the best interest of the organization and not in their own personal or financial interests. It also gives some nice overarching principles for the board and Executive Director relationship, helping to establish what that board's overarching role is with respect to setting policy, vision, mission, and how the Executive Director's responsibility is really to execute on all of those overarching activities that the board engages in. And then, interestingly, the guidance also talks about the state's discretion—what I've already sort of mentioned up to this point—that the state, because of the nature of this funding, does have authority to help facilitate it. And when the federal CSBG Act is silent, the state works with the Community Action Agencies and state associations to kind of understand well, what is the intent of the act here? And are we meeting that intent, by the way in which we are conducting a particular process?

All right, next slide. Oh, these are our great—really pretty, I think, kudos hats off to our Communications Coordinator—resources. We have some really nice, I think, training videos that are geared towards boards. They're animated, they have discussion guides with them, there are nine of them. They're fairly brief—it ranges from anywhere to seven minutes to about 10 minutes—and walk through some of the different responsibilities and some of the composition, selection, recruitment aspects of the tripartite board. We have Tools for Top Notch CAAs, which walks through the different responsibilities that board members have and puts it in a community action context. We also have some interesting resources that help boards kind of go beyond sort of these basic responsibilities that they have, especially when the organization itself is sort of trying to make strategic decisions. And one of those is pictured on this slide, which is a case study around social enterprise. And so that can be useful for a board to read and sort of understand how other Community Action Agencies have sort of launched into new and different areas. And then we have some other self-training tools like a PowerPoint presentation that is annotated that talks about board roles and responsibilities that's available for both nonprofit and public Community Action Agency boards.

So this is our tripartite board. We think it's easiest to see it in a pie form. As you can tell here, we've divided it up into exact 1/3rds. The language of the Act is actually not exactly one-thirds if you so choose not to adopt it, or if the state CSBG rules just reflect the federal act and don't have exact one-thirds in their rules or requirements. So at least 1/3 of your board needs to be comprised of what we refer to as consumers. Now, you can sort of refer to this section of the board in any way that that you really want. And that's reflective of your community. We've chosen for this presentation to say consumers. Some say low-income, representatives of the low-income individuals and families served. So there's a lot of different ways—the target sector. And this sector is really intended to represent the voice of the low-income individuals and families with low incomes that make up your community, that make up your service area. And it's really critical that their perspective be reflected in your, in your governing decisions. The whole premise of the Community Action movement is that those that are being served know best what resources they need to help them move forward. And so this place on the board helps promote that even further. And so you'll see here that we've sort of reflected that in the bullets that are next to that piece of the pie. It's also important to note that those individuals and families with low incomes, when they are serving on their board, they also too, are becoming better advocates for themselves for their community. And it's also helping them develop those leadership skills that they really will need in order to navigate their path to a more sustainable life that is hopefully less challenging for them, especially from a financial perspective. So we encourage Community Action Agencies to try to work with this sector of the board to have those that they serve serve on it. And we're going to talk about the mechanics of that. This is the sector of the board where the representatives are democratically selected. And there's a lot to unpack there with respect to that.

Exactly 1/3 of the board is made up of elected public officials or their representatives—if they're not willing and able to serve, then you have appointed officials that can serve or their representatives. And this portion of the board also brings its own value to the organization as a whole. Having elected public officials

or representatives on your board really helps to connect the organization with other partners helps the organization coordinate with other groups, and businesses within your community. It also helps tap into resources that your organization, you know, may not realize it has access to.

And then the remainder of the board is comprised of private individuals that can either represent groups or could be an individual, such as an accountant or a CFO, that may not be necessarily right representing a group, but is bringing a level of expertise to your organization. And they too can help facilitate access and connection. And also, you know, help tap you into where there could be some financial sustainability for your organization that you may not have been aware of.

All of these sectors play into helping your organization be more engaged in the community that it's serving, and also raise the credibility of your organization, because all of these are members of your community. And so they help you as, as a provider of services in that community, really play that critical role that you do in serving all of them.

All right. So there is an alternative for public Community Action Agencies with respect to their tripartite boards. A public Community Action Agency is different in the way that it's structured, even though the responsibility of being fully engaged in the development, planning, implementation and evaluation of the program is the same as it is for the nonprofit. A public Community Action Agency is oftentimes governed by the local governing officials and that oversee the government within which the community the public Community Action Agency is housed. So the tripartite board really plays a critical role in bringing in the voice of the community to the public Community Action Agency. And so for that reason, a state could choose to designate an alternative mechanism by which to get that voice of the low-income individuals and families served represented for the public community action agencies so that those individuals can help inform the programs and services that the Community Action Agency will offer, we have worked with a couple of states and community action agencies who have sort of gone down this road of an alternative mechanism, though, I will say most Community Action Agencies have a have a tripartite board, both nonprofit and public.

Alright, so now we're actually getting into the nitty gritty of getting those board members on your board and what's sort of required by the federal CSBG Act with respect to the composition of the tripartite board and to the nitty gritty of the language. And as you've seen on this slide, and prior slides, we have included the exact language from the actual act, because we think that it's helpful to see that and it's a good reference point, if you ever need it, to remind yourself of what we've talked about. So you'll see with respect to both the tripartite board for the nonprofit Community Action Agency, and also the public Community Action Agency, that it is the organization itself for a nonprofit, that's the board of directors for a public, that's the local governing officials, that has the responsibility and authority to select the actual board members. Now, this is also subject to the democratic selection process. But the board should and can vote to see all of the members that it serves, that it has chosen to serve on its board. Again, for the public Community Action Agency, it is the local governing officials who have that authority. And oftentimes, they will delegate that authority for the selection of the members of the tripartite board to the tripartite board itself. If they haven't done that the tribe, the tripartite board, would make recommendations to the local governing officials as to what members should serve, and also would help facilitate that democratic selection process to get that voice of the low-income individuals served on the board.

So the first sector we're going to talk about today is the public sector. And again, the language from the act is on this slide. We've highlighted by bolding certain aspects of that language, because this, these are areas where we tend to get questions. We get all kinds of different questions, so these are not the only

questions we get, they just tend to be perhaps some more prevalent ones. So you'll see here that again, it's 1/3 of the board will be made up of elected public officials. And this is the key: holding office on the date of selection or their representatives. And then as you read further on, you'll see you can have appointed public officials or their representatives. So go to the next slide.

So we get this question: well, the elected public official has just been voted out of office, but they're still on our board, can they stay on our board? And the answer is? Well, it depends. According to the federal CSBG Act, there is no requirement that the elected public official roll off so long as they were in office when they were selected. However, Information Memorandum 82 does say in its guidance that the preference would be for elected public officials and the representatives to serve while the elected public official is in office. And often times state laws will mirror that intent, by putting guidance or requirements in place that the elected public official has to be in office to continue to serve on the board. If there isn't that language, then likely the public official could continue to serve until the term has expired and then at that point would step down, as would his or her representative.

If the elected public official is not reelected, or re-designated, as the case may be, for an appointed official, so the same sort of concept plays with respect to appointed officials that the representative and the official would serve, so long as they're in their appointed position.

So we also have gotten questions around well, what does it mean to be an appointed official. And there is no rule, from the federal level. I think there are characteristics that you can look to. To determine whether or not an official is appointed, you can look at your local and state laws to see how they define what is considered an appointed official. Generally, if someone is appointed, it is noted with respect to that position that this is an appointed position, appointed officials often and typically serve for a certain amount of time. So they're serving a term, and they have to be re-designated or reappointed. The term usually aligns with whoever is serving in office at that time, for that county, that city that you're looking to have that appointed official come from. So there are all kinds of indications that you can look to an appointed official will typically be a government employee, because that's how they're getting paid. And they were appointed by that government to serve in that position. So the mere fact that they are not a government employee isn't necessarily going to be determinative, but generally an elected or public official will be an employee of the of the government that they are representing.

The other question we get a lot is around representatives of elected and appointed officials. And it really, the question really has to do with, is the representative the board member? Or is the elected or appointed official a board member? And the answer really, is there's no clear definitive, you know, yes, or no. And it, it really depends on the facts that are at play.

So, we have a recommendation, and it's a very general recommendation. And it's really based on board members really fulfilling those duties that they have to the organization to be engaged and be acting on behalf of the organization in the organization's best interest, and to do their diligence with respect to actions and oversight of the organization. And for those reasons, we generally recommend that the representative of an elected or appointed official be seated and serve as the board member, and not the public elected public official, or appointed official that they are representing. So it would be that representative serving as a board member. I'll caveat that with a couple of, sort of, angles to think about for a public Community Action Agency.

Having what we would refer to as a proxy, someone who could stand in your stead for a very temporary period of time and take action on your behalf, is quite common. And so for a public Community Action

Agency, that kind of analysis will depend. We still recommend, if at all possible, you sort of choose one board member and have that person be the board member, because again, it helps with continuity, it helps with engagement. But it's possible that you could have proxies who stand in for elected public officials.

Another caveat to keep in mind is that for nonprofit community action agencies, there could be a prohibition against what's referred to as proxy voting for nonprofit board members. And if that's the case, then you really do have to choose between one or the other. Is it going to be the representative that's going to be the board member? Or is it the elected or appointed official that's going to be the board member? Now, that's not all nonprofit corporation acts. But there are some that do have that prohibition in them. So you want to keep that in mind.

And then we have, as I mentioned, some great resources. We put together this FAQ a little while back to help kind of walk through many of the questions that we were seeing around this sector of the board. So please take a look at that guidance and see if that helps you as you're making decisions with respect to the public sector of the board.

Okay. I've done a lot of talking. With that, I'm going to hand it over to Caroline.

[Caroline]

Thanks, Allison. Before we move on, we did get a question in the chat: can a board member serve in two roles for example, as an appointed official, and in the consumer sector?

[Allison]

Yeah, that's a great question. Generally, the answer would be no to that question, because you do need to have the 1/3, 1/3, 1/3. Generally, on your board, and when I hedged on that a little, the hedge really comes in...that our understanding is that you would have exactly 1/3 [elected public officials] under the federal CSBG Act, you have to have at least 1/3 of the consumer sector, which indicates you could have more of a consumer sector and the remainder would be the private sector, which means you could have fewer private sector and more consumer sector. That's just a slight aside.

But generally, you would need to have the appointed official serve in the, if you are looking to have, maybe I think...Are you asking about whether or not...

[Caroline]

I think they're asking about whether one board member can serve in two different tripartite roles. And we usually recommend against that practice.

[Allison]

Yeah, yeah, definitely. Yeah. So someone said, so, no conflict. And I think it, it could be a conflict to have someone serve in both sectors, it wouldn't meet the intent of the tripartite board.

[Caroline]

Right, the intent of the act, I guess, you emphasize this a lot at the beginning, the intent of the Act is to have

all three of these groups represented: the public sector of government officials, the low-income sector served by the community, and private groups.

[Caroline Santilli]

So the moving on to our consumer sector section. As, as you can see, we have the language here from the Act as well. So basically, the Act says no fewer than 1/3 of the members are persons chosen in accordance with democratic selection procedures that assure that those members are representative of low-income individuals and families in the neighborhood served. So basically, that means 1/3 or more, or at least 1/3 of the board should be democratically selected representatives of the low-income community.

We're going to talk about residency in a moment. But we also have that language from the Act here. IM 82 also provides us with some context for this. So sometimes we get asked about what a sufficient democratic selection procedure is. And CAPLAW does have resources, where we profiled different democratic selection procedures from around the country, and talk about, you know, all of which meet the requirements of the Act. And we're going to point you to those resources at the end of this section.

IM 82 says that the democratic selection procedure should be some form of democratic procedure. And that could be a direct procedure or an indirect procedure. Directly would mean that you hold an election or a public forum of some kind, involving low-income clients and community members, and you vote for individuals to serve in the low income in the consumer sector. Indirectly, you could also identify a community organization that is composed predominantly of low-income people and have that organization select someone to serve in the consumer sector of the board.

Members who are elected to this sector do not need to be low-income themselves, but they should represent the interests of the current low-income residents of the community that your agency is serving. This can be one of the hardest sectors to fill on a tripartite board, but it's the heart of community action. And the purpose of this part of the law is to allow the voices of low-income clients to come into decision making for the agency as a whole. So when you're making decisions about electing folks to this sector, that should be your guiding principle.

Moving on to the residency section of the statute. The nonprofit section of the CSBG Act says that consumer sector board members, if they are selected to represent a specific neighborhood within a community, they must reside in the neighborhood represented. And that means that if the if the agency has designated a certain geographic area for the low-income sector representative to serve, that person needs to reside in the community served. But in the absence of any of those geographic restrictions, there's no residency requirement for consumer sector directors on a tripartite board. So you might find residency requirements in your bylaws. So double check to make sure that the bylaws do not require board members to reside in certain geographic areas. But if you don't have any restrictions in your bylaws or in your state laws or guidance, the individual would be able to reside outside of the geographic area served.

We got a question in the chat: what if a board member lives in another state and owns a business? So, neither living in another state nor owning a business would automatically disqualify an individual under the federal Act from serving in the consumer sector. However, they would need to be democratically selected by the low-income people in the area that your CAA serves. So, the idea here is that they've gone through a process of being democratically selected, not necessarily any inherent quality about the member themselves. It's the way that they have been selected to serve on the board that defines their eligibility to serve in the consumer sector.

Someone asked for public CAPs do you have to be low income to vote in a candidate that will represent low income? So this is a question that applies to public CAPs and to nonprofit CAPs. There's no explicit requirement in the federal statute, that you confirm that voting, that individuals voting in your consumer sector elections be low-income themselves. However, some states have put out guidance that says that the individuals voting for the consumer sector need to be low income. Some agencies will ask voters to verify that they are low-income in order to participate in the election. And some don't, there's no requirement that you do so. The Act simply requires that the individual selected be representative of the interests of the current low-income members of the community. And remember that the individual who is ultimately selected for the consumer sector does not need to be low-income themselves in order to serve on the board.

[Allison]

So Caroline, someone asked, with respect to the micro-democratic selection process, where that language comes from?

[Caroline]

Yeah, that's a great question. So, let's go back to the language of the Act. And we see that...

[Allison]

Just to quickly just jump in here, just as a matter of time. So the Act is not specific as with respect to that micro-democratic selection process. And the idea that a group that's predominantly comprised of low-income individuals would vote from within its group or have an officer that was elected by its group serve on the board, really comes from the guidance, Information Memorandum 82. One of the options in there is that indirect option that Caroline talked about. And so that's always been our understanding as another way to really meet that intent of the federal CSBG Act, that you really have that voice represented on your board.

[Caroline]

Yeah, that's a great point. Yeah. So the micro-democratic selection procedure comes from IM 82, not from the CSBG Act.

Someone asked, can democratically selected (and I'm going to try to get to a couple more of these, and then we're going to move on to our next sector. I just, I noticed that these are some great questions that we're getting in the chat). Someone asked if democratically selected can be as simple as an individual willing to serve on the board who's presented to the board during a meeting of the board, and members vote to seat the individual. And so, our take on that is that generally would not count as being democratically selected. The idea here that that would be the kind of procedure that you would go through in order to seat a democratically selected individual onto your board to allow the board to retain the ability to, to remove that member, if they, if they violate the board's policies. But "democratically selected by low-income individuals" is really meant to capture the voice of low-income members of your community who are being served by your Community Action Agency.

Another question that we sometimes get is if an elected official can serve in the consumer sector, and we did get that question in advance of this session. So...that individual's election to their government post,

you know, involve voting from many different people, not necessarily low-income people. And so, their election to a public office would not automatically qualify them to serve on your board in the consumer sector. However, we do want to be mindful of the fact that there are some geographic areas that are predominantly or almost exclusively low income. And so you could if you wanted to, you know, if you had a certain individual who you wanted to serve on your board, specifically to represent the interests of low-income individuals of a certain area, and that individual was happened to be a public official, we would recommend, you know, talking to your state about whether that meets the requirements for tripartite boards in your state in order to determine whether that individual could serve in the consumer sector.

With respect to the consumer sector for public CAAs, there is an additional caveat. You'll see here that the language in the CSBG Act is pretty much the same for public CAAs as it is for private CAAs except for this particular fact, which is that for public CAAs, all consumer sector board members must live within the service area for the CAA. And that is, that's a requirement that comes from this language in the Act that says that, that the individuals must reside in the neighborhood served. This language only appears in the section on public CAAs, not the section on nonprofit CAAs.

And remember again that as Allison said, there may be another mechanism in your state for assuring decision making and participation by low-income individuals in the development planning, implementation and evaluation of CSBG programs for public CAAs.

So I noticed in the chat that we got a couple questions about some examples of low income of democratic selection procedures. And you can find many examples of democratic selection procedures in CAPLAW's two resources, *Raising the Low-Income Voice* and *Preserving the Low-Income Voice*. *Raising the Low-Income Voice* profiles four specific Community Action Agencies from around the country and provides sample documents that show how these agencies conduct their democratic selection procedures. And *Preserving the Low-Income Voice* highlights different ways that CAAs switched it up and adapted their democratic selection procedures during the pandemic in order to continue providing a representative of the low-income community on their board. So, I would ask maybe if one of my colleagues could drop those links in the chat for these two resources, that would be amazing. Thank you.

So, moving on to the private sector of the tripartite board. The language in the Act here says that the remainder of members are officials and members of business industry, labor, religious, law enforcement, education or other major groups and interests in the community served. So, this is a really broad group. This may include individuals who are from the private or public sector groups. And it's really an area where you can utilize the flexibility of the CSBG Act in order to craft a board that that really works well and works best for your agency.

Some CAAs specify specific organizations that they want to be represented on their board. Generally, we recommend that you don't designate these organizations in your bylaws, because we want you to have the maximum amount of flexibility to select and switch things up if you feel that your board would benefit from folks within a different area of expertise, for example, or other factors. But we have a FAQ resource that specifically discusses the private sector available in our resource library. It's about unlocking the potential of the tripartite board, private sector, and how to make that flexibility within the Act work for your organization. So that's a really great resource specifically about the private sector of the tripartite board.

So a couple quick things before we open it up for questions. The CSBG Act also requires that states require each eligible entity to establish procedures under which low-income individuals or organizations can petition to be represented on the tripartite board. And so, this is the language from the Act that

that establishes that requirement. And what this means is that Community Action Agencies must have procedures for individuals with low incomes or community organizations to petition to be represented on the CAA board if they feel that they're not being adequately represented on the tripartite board. And usually, we recommend that CAAs put this language in their bylaws, and have a couple of steps or a description of the means or method by which a group may petition for representation on the board. So, you may see that, you know, when you're reviewing your CAA's bylaws, you may see a section on petitions for representation. And that's where that comes from, is a requirement in the CSBG Act for states actually.

So, we also wanted to highlight, you know, a couple, you know, we've talked a lot about the substance of the three sectors of the tripartite board. But more generally, you know, how do you see a board member? That is a common question, and that's a good question. We generally recommend that boards have an ongoing or established committee, that is always thinking about what the board needs and how to support recruitment to the board. So, we recommend that you have a committee to support those ongoing governance needs. We suggest requiring an application for board service, because this helps to set expectations for board service CAAs have. A lot of CAAs have big boards, and a lot of them have board members who have never served on a board before. So, it's important to establish those expectations for what it means to be a board member, before seeing an individual on the board.

We also recommend, as Allison mentioned that new members be, once they're designated, for example, by an elected official, or once they're elected, that the board itself vote to seat them. And the reason we suggest that is because that allows the board to vote to remove them if, God forbid, something goes horribly wrong, and you need to do so that allows the board to keep its authority over its own, you know, composition, just kind of as a stopgap measure.

And so, we do recommend that once an individual has been elected by the democratic selection procedures, for example, that the board vote to seat them on the board, you'll see a little snapshot here from one of CAPLAW's very helpful resources, our template meeting minutes and index of form resolutions. So, these are two documents available in our resource library. One is a template set of board meeting minutes that you can fill in, you can download in Microsoft Word and fill in to help reflect what happened at your board meetings. And we also have an index of forum resolutions that you can copy and paste into those meeting minutes, which includes resolutions for electing board members, as you can see here, removing board members expanding or reducing the size of the board and other actions related to officers, board committees and a variety of different things.

Before we kind of get back into the questions, I just want to highlight the fact that the federal CSBG Act is actually silent with respect to these aspects of board mechanics. It does not say how long an individual term should be for a board member and doesn't say whether you need to, you know, require board members to rotate off after a certain number of terms. It doesn't have any prescriptive requirements around vacancies, resignation or removal. But many times in many states, these mechanics are addressed in state laws and guidance from your state CSBG office. So always make sure that you're checking your handbook, your state CSBG laws and policies, nonprofit corporation act, local laws and your articles and bylaws in order to determine if any requirements apply to your agency with respect to seating board members and removing them.

[Allison]

Yeah, that's great. Um, so we've gotten a handful more questions, Caroline. So maybe we'll dive into those, and try to get things covered for everyone as best we can. So this last question that came in is, I think,

a really good one that's talking about what do you do as a CAA, a CAA's executive director is basically recruiting the board members with little involvement by the board. Is there any clear guidance on the board being responsible for that selection and if you recall back in the slides, I think it's about midway back when we first started talking about the federal CSBG Act, and what the provisions were with respect to the tripartite board, it says very specifically, whoa, back. Go forward. A little bit more. One more, there. Oh, back one. There.

So you see there, it specifically says that the Board should be selected by the entity. And for nonprofit boards, that is the board of directors. And so that directive is also clear. When you look at the nonprofit corporation act, the nonprofit corporation act clearly says that boards select their members and that the board is the organization. It is the board that then hires an executive director as the administrator of all the business that the organization will conduct. So that is not just a principle. It's not just a recommendation, it is actually the requirement that the entity, the board itself, select the executive director.

For public CAA's, the organization that selects the board members is the local governing officials because they are the group that oversees that county or local government or city. And as I mentioned before, those local governing officials often delegate that authority to select the board members to the tripartite board for the public CAA.

So we come up with our own about a nonprofit employee of a nonprofit organization, serving in the private sector.

[Caroline]

Oh, I think it says the community sector, I think, do they mean consumer sector? Oh, maybe they mean consumer sector? Yeah. Well, I can talk about it.

[Allison]

Talk about it. Yeah, let's do both.

[Caroline]

So that's a great question, can an employee of a nonprofit, be a member of the community sector, let's, if you're talking about the consumer sector, then remember, it's about the process, not the person, the person should have gone through some sort of democratic selection procedure. And so let's say they work for a nonprofit, my question to you would be, you know, who makes up this nonprofit or is the nonprofit staffed by low income individuals? If so, they could elect the individual to serve on your or so and they also reside in your community that you are serving, you know, as the CAA, then they could conduct an election to elect that individual to serve on their behalf on your board. Simply serving as an employee of a local nonprofit, you know, would, we would recommend there being some additional democratic selection procedure in order for that person to serve on your board.

However, that person would not need to go through a democratic selection procedure in order to serve in the private sector of your board, because there's this broad, broad mandate here to have members of, you know, other major groups and interests in the community serve, which could be a nonprofit. So it would be perhaps a little bit more straightforward to put them in the private sector. But, definitely think about who, you know, in your board's recruitment pipeline, might be a good fit for that consumer or community sector,

and might be able to go through the democratic selection procedure and be elected to the consumer sector.

[Allison]

And I'll just add to that, that Information Memorandum 82, does offer guidance, specifically with respect to employees of other social service providers or providers in your community. And it's pretty clear that just by the mere fact that they work for an organization that's similar to yours doesn't give them any additional criteria or weight with respect to serving in that sector that is intended to represent the community that you serve. They really want the individuals of that community, as Caroline said, it's the process. You want the individuals of that community to select who is going to represent them.

[Caroline]

There's a great question.

[Allison]

Oh, yeah, go ahead. There's so many great questions.

[Caroline]

Yeah, there are. I wanted to highlight this one from Jane. Is it a requirement that you confirm each year that a board member is still the representative for a specific organization, even though there are term limits, and we do have a slide here on term limits that I'll just navigate to real quick because I think it's important to think about terms and term limits in the context of the tripartite board structure. You know, as I mentioned, there are, there are no, you know, the, for example, the you don't have to have the same term of service for each tripartite board sector. And I think that's very important to think about, you know, going through a democratic selection procedure is, you know, it's time consuming. So you may want to have a longer term for your consumer sector than you do for your private sector.

So if an individual has been selected by a specific organization, I would think about what the term of that individual has been selected to serve on the board. And then perhaps after that term is up, just making sure too, that they are, you know, if they are eligible to serve for another term, I think it would probably be a good governance practice to make sure that they are still designated by that organization. However, once they've reached their, you know, term limit, term limit is really the number, the maximum number of terms that an individual can serve on a board before rotating off. And so if they've hit that term limit, then they would have to rotate off. But I think then, you can let your terms in your bylaws provide you with a little bit of guidance. Although, you know, let's say you elect a person to serve in the private sector, and then they tell you that they're, you know, leaving their organization that you really want represented on your board, you probably shouldn't just say, Oh, well, that's fine. You know, you might want to think about having that board designate a different person to serve as their representative on your board.

[Allison]

And you also have to add we've sort of talked about all throughout this is why I tripartite boards can be kind of complicated, is that you've got to check your bylaws, you know, if you happen to have organizations specifically listed in your bylaws, from which the private sector member will be selected from our elected

from or appointed from that then your board will seat vote to seat on your board, then you might be limited in your ability to kind of move away from that organization, which is why we generally recommend that you leave your bylaws very flexible, and you don't make those kinds of designations in your bylaws. Now, some organizations find that it's beneficial to do those designations because otherwise it's hard to get organizations to commit. And if they go to an organization and say, hey, you've got to do this because you're in our bylaws that helps with that kind of engagement by that organization.

There was also a question in here, that's really directed to the elected public official sector. That was a little ways back about a county commissioner recently retired from the public office. This rep has always served as our board member is the rep still authorized to serve as a board member? So there's a yes and no answer to this question. The yes is of course, but just not as the representative of that appointed official. So basically, what you would need to do if you want that individual to continue to serve, either slot them in consumer sector, sorry, not the consumer sector, in the private sector, have them elected by the board and that sector, or if you have a new appointed or elected official, and you are set up in such a way that you the Community Action Agency board can recommend for that elected or appointed official representatives that could serve in his or her place and that elected or appointed public official, they want a representative, then you could recommend that that representative continue to serve but for a different elected or appointed official. So there are options to kind of continue that institutional knowledge if it really is vital. And that level of engagement support if it is really vital and important to your organization.

[Caroline]

So when asked if there's a software out there that allows you to type in a concern, a chat box for CAPLAW. And I will say there is, it's emailing CAPLAW at admin@CAPLAW.org. You can email us with your specific questions about your board, and we will talk about that with you. So please contact us with your specific board questions. And we will get back to you as soon as we can. It's just like the chatbox but better because we send you an email with links in it. And then you can look back at that email whenever you need whenever you need those links.

[Allison]

So one sort of variation, I'm not sure we addressed it with respect to that term limits question is, are you expected to confirm every year? And I think just to be clear, you know your process with how you ensure that your board members are still connected to whatever organization or elected or appointed official that they are connected to, is really generally up to your organization. So, you know, I think a lot of community action agencies have board liaisons that are, somebody in the organization wears that hat, whether they do it solely or as part of other responsibilities. And I think it's always good to have what we've termed as a kind of matrix, where you've got all your board members listed, why they're there, what kind of role they're serving, what sector they're serving in. And that also helps you with sort of continual recruitment of new board members, because you can kind of see, well, this is this person's term, their term limit, this is where they're gonna roll off, we don't have an option with our term limits for people to roll back on after a year or we do so we're going to slot them there, you know, all kinds of ways to strategize with respect to your board.

So someone asked a CA employee, are they eligible to serve on the board? And the short answer is no. And that is, a slightly longer version of that short answer, and that's because generally under the nonprofit corporation act, board members cannot receive compensation. That's usually in there. Even if it's not in there, there is some funding that community action agencies receive. The most notable one is the Head

Start funding, that prohibits board members from receiving compensation. There is no specific rule or guidance, well there's no specific requirement under the federal CSBG act. With respect to compensation, IM 82 does talk about reimbursing board members but discourages compensation or payment for board members. And we have gotten questions around well, can we give our board members stipends, and that is sort of in the same vein that generally, we recommend that even though it is tough, and you are asking a lot of individuals to take this responsibility on. There are often rules that prohibit use, such as the nonprofit rules, could prohibit you from paying and compensating board members. And it also gets tricky with respect to other funding.

So generally, we recommend against compensation for board members, but do encourage reimbursement of expenses and to think broadly with respect to what those expenses may be that could hold back or make it challenging for certain individuals to serve on your board. So for instance, daycare, that sort of thing, childcare could potentially be a reasonable expense.

[Caroline]

I should note that this doesn't mean that a board member who is eligible to receive services from your CAA is prohibited from receiving such services. So I think somebody asked that earlier, if your board member is otherwise eligible to receive services from your agency, they can receive those services, as long as they're not given any special treatment. And they're treated just like any other applicant from the general public.

[Allison]

And I'll just add to that, I'm so glad you remembered that, I noticed that one. I wanted to mention it, that our CAPLAW sample conflicts of interest policy has language in it that addresses that concept with respect to the consumer sector board members with low incomes in particular who might be receiving services from your organization. Okay, we got more questions, Caroline.

[Caroline]

Yeah, so someone mentioned mileage reimbursement? Yes. That's the type of reimbursement that Allison was talking about that would be generally accepted for nonprofit board members.

Is there a rule that former employees stay away for a specific length of time before joining the board? This is something that some agencies have in their bylaws in order to prevent, you know, that appearance of a conflict of interest of an employee going to work on board or vice versa, you know, you don't want your board to be seen as a pipeline to employment at the agency itself. This is going to depend on your state, your state laws, generally your nonprofit corporation act if you're a nonprofit, and your bylaws whether you're a nonprofit or a public CAA. So I would say there's no federal guidance on that, but it is, you know, a practice that a lot of agencies have adopted just from principles of good governance for perspective. So I would look at your state laws and your bylaws for the answer to that question.

[Allison]

Yeah, and also just keep in mind that is something as Caroline noted that your organization can decide generally what it wants to do there if there is no requirement. And sometimes it is best to have we have had organizations contact us with challenges around employees, former employees, seeking to serve on the board. Now, if they are democratically selected to serve on your board, that could be challenging. And you'll have to navigate that, because there's not much you can do with respect to rejecting or not

seating an individual who is democratically selected. Now, they could not be seated if they had a conflict of interest, they couldn't be seated for any reason that any other board member may not be able to be seated on your board.

We got a question around decreasing the size of the board. And yes, there's nothing in the federal act that requires you to have a certain size board, nonprofit corporation acts, as I mentioned before, oftentimes set minimums for board size. Where we see board size requirements come into play is in the state CSBG laws, regulations, policy, they sometimes have board size requirements. And those are usually minimums, where you can't go below a certain number of board members. So if none of those are at play, then it's really up to your organization, you just want to try to find a way that you're getting a good representation of the community that you're serving on your board. And you want to think about that, with respect to all of your sectors. And I know with elected public officials in this question was sort of getting that that they're trying to represent all the different communities, counties, cities, locales that are in their service areas. So that's why they have a bunch of elected public official board members, but there may be ways to kind of gather capture that representation that doesn't necessarily require those numbers.

[Caroline]

Ah, all right. I think we are at time. Someone mentioned that they have a range of board seats, that's a great idea to have in your bylaws gives you some flexibility.

[Allison]

So Yeah, so thank you guys so much. As you can tell, we're kind of passionate about the tripartite board, have a lot to say about it. So appreciate your joining us. We will be sharing the slides, this will be recorded, as you see on this last slide, please join us for our other webinars in this series. And for those of you who are still remaining, as you're signing off, know that this is Caroline's last webinar with CAPLAW. This is a weird way to kind of let people know but we had a lot of participation. So she's been wonderful. And she's passionate about community action, and will be working with other organizations to support similar populations that community action agencies support. So we are excited about that. So she'll be around but just in a different capacity, but not with CAPLAW. So, but she's been fantastic so far. So, thank you, Caroline. Thank you, everyone for joining.

[Caroline]

Thank you, everyone. Take care

This publication is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance (T/TA) Center. It was created by Community Action Program Legal Services, Inc. (CAPLAW) in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement – Award Number 90ET0482-03. Any opinion, findings, conclusions, or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Health and Human Services, Administration for Children and Families.

The contents of this publication are intended to convey general information only and do not constitute legal advice. Any communication through this publication or through CAPLAW's website does not constitute or create an attorney-client relationship. If you need legal advice, please contact CAPLAW or another attorney directly.