



Unlocking the Potential of the Tripartite Board Private Sector

By Jonathan Cohen, Esq.
March 31, 2021

The language in the federal Community Services Block Grant (CSBG) Act lays the groundwork for community action agencies (CAAs) to exercise great discretion when identifying, recruiting, and selecting private sector members and groups to serve on the tripartite board.

A hallmark of Community Action, the tripartite structure of a CAA board embodies the grassroots nature upon which the movement to alleviate poverty was founded, as it requires involvement by all facets of the community – elected officials, clients, and private sector members and groups. While the structure is required by the federal CSBG Act and at times can seem daunting, the involvement of private sector members and groups offers CAAs an opportunity to attract the knowledge, passion, and financial support they need to thrive.

Because of the flexibility in the CSBG Act, CAAs often have questions about the private sector, ranging from who may serve in it to how that person may be selected to serve. This FAQ seeks to answer these and other key questions, and to present ways in which CAAs can utilize the private sector seats to boost board capacity.

TABLE OF CONTENTS

1.	What laws govern the private sector of a tripartite board?	2
2.	Why does a CAA's tripartite board have private sector board members?	2
3.	Who is eligible to be a private sector board member?	2
4.	How can thinking strategically about filling private sector seats address our board's needs?	3
5.	What steps can we take to strategically fill private sector seats?	3
6.	Is there a specific process or procedure required for selecting and appointing private sector board members?	4
7.	What is the difference between democratically selected low-income representatives from a group and representatives from a private sector group?	4
8.	How does a private sector board member manage the duty of loyalty when representing an organization or interest within the community?	4

- | | | |
|-----|--|---|
| 9. | If we receive Head Start funding, must we use private sector seats to include designated professionals on our board? | 5 |
| 10. | Do all private sector board members need to reside in the community served? | 5 |
| 11. | What should our bylaws say about who private sector board members are and how they are seated on the board? | 5 |

1. What laws govern the private sector of a tripartite board?

The federal CSBG Act requires that one sector of the tripartite board be comprised of “officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.” [42 U.S.C. § 9910\(a\)\(2\)\(C\)](#).¹ These members are often referred to as the private sector.²

While the federal law that governs the private sector is quite broad, state CSBG laws and regulations that exist may impose additional requirements. This FAQ will highlight where state-specific issues may factor into a CAA’s considerations with regard to the private sector. CAAs should consult with an attorney licensed in their state for clarity on issues of state law.

2. Why does a CAA’s tripartite board have private sector board members?

The tripartite board structure was established so that a diverse set of voices from the community play an active role in helping a CAA fulfill its mission to meet the needs of the low-income individuals and families in that community. Within that context, the private sector is vital because it dedicates space on the board for an array of interests within the community to have a say and stake in the success of the CAA.

[Information Memorandum \(IM\) 82](#), non-binding guidance issued by the federal Office of Community Services, emphasizes further the diverse interests that a private sector embodies by explaining that CAAs should strive to include representation from “groups and interests with current influence or resources deemed critical to the success of the agency.” Through the private sector of a CAA’s board, CAAs can gain knowledge of and deepen ties to the communities served, as well as increase the capacity of the board.

3. Who is eligible to be a private sector board member?

The federal CSBG Act lists as potential private sector directors: “officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.” [42 U.S.C. § 9910\(a\)\(2\)\(C\)](#).

As a result of this broad federal language, a wide range of individuals may qualify to serve on the private sector of a CAA’s board. This includes individuals with a personal interest or background in the mission of community action, as well as those affiliated with other groups and interests in the community. Even when considering a private sector board

member who is affiliated with a group, the Act does not require that they be a “representative” chosen by that group. For example, a private sector member may be an executive director of a group that the *board elects* as opposed to an organization designated in the bylaws that appoints someone to the CAA board.

Chances are that if an individual has an interest in the community, they are eligible to serve as a private sector director. Some examples of individuals that CAAs have selected for the private sector of their boards are:

- An employee of a local bank or lending institution;
- A respected elder who has lived in the community for decades; and
- Someone affiliated with a local nonprofit.

4. How can thinking strategically about filling private sector seats address our board’s needs?

The federal CSBG Act places stricter composition and selection requirements on the low-income representative and public sectors of the tripartite board than on the private sector. As a result, a CAA has an opportunity to leverage that inherent flexibility to strategically target potential directors with specific skills, knowledge, and expertise to fill private sector seats.

Expertise in the areas of law, accounting, communications, advocacy, and finance can all boost the overall capacity of the board to fulfill its functions at a high level, while also benefitting the CAA and the community that it serves. Unlike directors in the low-income and public sectors of the board, private sector directors are not subject to additional eligibility requirements, unless specified by state law or the CAA’s bylaws. As a result, when filling seats in the private sector, a board can decide that it needs an individual with a specific skill set (such as a lawyer, accountant, communications professional, and experienced organizer), and may prioritize its search and selection accordingly. CAAs may also strategically choose to include representatives from organizations and groups that are partners in the community to broaden the board’s perspective on key issues or add the voice of underrepresented constituents. The important point for all CAAs to remember is to view the private sector as an opportunity to diversify the board’s makeup and expertise in a way that can help the CAA increase its impact in the community served.

5. What steps can we take to strategically fill private sector seats?

To engage in strategic recruitment effectively, each board should understand who its existing members are and what each board member brings to the organization. This can help the board recognize where its own limitations lie and plan how best to address them. One approach is for CAA boards to authorize a governance committee to continuously track board composition, including board member terms and the sector that they represent, and take the lead on identifying, recruiting, and interviewing candidates for board service. These committees also gain an understanding of the board’s current capacity and strategize about where it wants to go in the future. Boards might also use a board composition matrix to assist them in their efforts to track key characteristics of existing board members and gaps they hope to fill with new ones. Many boards will also solicit applications from candidates for board service, even when no vacancy exists, to develop a pipeline of interested candidates to fill seats when they become available.

The needs of each CAA board differ. Once they are understood, strategic private sector director selection can be an invaluable way for a CAA board to meet those unique needs.

6. Is there a specific process or procedure required for selecting and appointing private sector board members?

There are no federal requirements for how private sector directors must be selected by the board. Selection procedures should comply with applicable state and local requirements, including state non-profit corporation laws and any applicable state CSBG laws, and should be reflected in the organization's bylaws or governing documents.

If a CAA authorizes an external organization to select a representative to serve as a private sector director on the CAA's board, as explained in [Question 11](#), CAPLAW recommends that the board vote to seat that director. This allows the CAA to retain a degree of control over its membership.³

7. What is the difference between democratically selected low-income representatives from a group and representatives from a private sector group?

Groups from the community served may play a role in selecting board members for service on the low-income sector as well as the private sector. However, a group that selects a low-income sector board member must be predominately made up of low-income individuals or itself be representative of low-income individuals. No such restriction exists for a group that selects a private sector board member.

In addition, the CAA board completely controls who serves as the private sector representative of a group unless the bylaws provide otherwise, whereas the CAA's board generally must accept the results of a low-income democratic selection process and can only vote against seating a low-income representative for a reason that would prohibit any individual from serving on the board, e.g., the individual has a conflict of interest that prevents them from serving.

8. How does a private sector board member manage the duty of loyalty when representing an organization or interest within the community?

Regardless of how any board member is appointed or selected to serve on a CAA's board, a CAA board member has a duty of loyalty to the CAA.⁴ This means that while in their role as a board member, they must act in the best interests of the CAA, not in their own personal interest, or in the interests of any other organization or group.

To help manage a board member's duty of loyalty, a CAA adopts a conflict of interest policy so that all board members know how to identify competing interests, understand when and how to disclose them, and recuse themselves from decisions when necessary. CAPLAW has developed several resources to assist CAA board members in understanding and managing the duty of loyalty and conflicts of interest, including sample conflict of interest policies for boards of CAAs [with a Head Start program](#) as well as [without a Head Start program](#), and a board training video, [In Boards We Trust](#).

9. If we receive Head Start funding, must we use private sector seats to include designated professionals on our board?

Under the Head Start Act, at least one member of a Head Start agency's governing body must be experienced in financial management or accounting, at least one member must possess expertise in early childhood education and development, and at least one member must be a licensed attorney. If any of these professionals is not available to serve, the governing body shall work with a consultant who possesses expertise in that area. [42 U.S.C. § 9837\(c\)\(1\)\(B\)](#).

Though CAAs with Head Start programs must comply with these requirements and include designated professionals on their boards, CAAs are not required to use the private sector seats to do so. Attorneys, accountants, and experienced educators may also serve in the low-income sector if they are democratically selected to represent the community served, or in the public sector as elected public officials, or their representatives. Given the flexibility of the private sector, however, many CAAs may find this sector to be the most practical way to comply with designated professional requirements and may prioritize them when filling private sector seats.

10. Do all private sector board members need to reside in the community served?

No federal laws or regulations require that private sector directors reside in the community served. Unless required by state law or by the organization's bylaws, a private sector board member is not required to reside in the community served. While no residency requirement exists, it is important to note the importance of board members maintaining a connection to the community served when considering board composition. [CSBG IM 82](#) adds that the role of private sector directors is to "reflect and involve key interests and resources within the community to guide agency actions and outcomes."

11. What should our bylaws say about who private sector board members are and how they are seated on the board?

Each CAA's bylaws provisions regarding private sector board members will differ, depending on how that organization wants to appoint those board members, and what applicable state laws require. We generally recommend keeping the language in the bylaws flexible, if possible; however, it is important to consider what the CAA is trying to achieve with the sector. If a CAA has difficulty attracting groups and/or individuals to serve, it may choose to specifically delineate the groups and offices from which individual representatives will be chosen. Regardless of how detailed the bylaws are with respect to who may serve in the private sector, the board should maintain its authority to vote to seat all private sector members. This enables the board to reject representatives from groups and offices whose values and interests may not align with those of the CAA.

Language that is broad and flexible often mirrors the federal CSBG Act and maintains the full discretion of the board to choose any individual or representative from a group to serve, for example:

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.

For those CAAs that feel it is beneficial for groups in the community to have a standing board seat in the private sector, the bylaws may include language similar to the following:

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.

CAAs that choose this option have greater stability and predictability with regard to board member recruitment and filling vacancies. Under such an arrangement, however, as previously noted, the board relinquishes a degree of control over its composition and may not have the level of flexibility to select individuals who do not have an affiliation with a previously designated group.

ENDNOTES

- ¹ The federal CSBG Act provides minimum requirements that govern each of the three sectors of a CAA board. With respect to the other two sectors, the Act sets forth that at least one-third of a CAA's board members be democratically selected representatives of the community served (low-income representative sector) and that exactly one-third be elected or appointed public officials or their representatives (public sector). [42 U.S.C. § 9910\(a\)\(2\)\(A-B\)](#).
- ² Under the federal CSBG Act, public CAAs may have a tripartite board or "another mechanism specified by the State" that assures members of low-income communities served participate in the development, planning, implementation, and evaluation activities of the CAA. See [42 U.S.C. 9910\(b\)\(2\)](#). While the Act permits public CAAs to have a different board structure, most maintain some level of community involvement.
- ³ Some states nonprofit corporate laws only allow a non-profit organization board member to be removed by those who appointed the individual to the board. To retain the authority to remove board members when necessary, the board should vote to seat all members.
- ⁴ The duty of loyalty is a requirement for nonprofit CAAs under state nonprofit corporation laws. While these laws do not apply to public CAAs, the duty of loyalty concept still applies to public CAA board member for the reasons included in this section, even if local laws do not explicitly require it.

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 - Grant Award Number 90ET0482-01. 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.