

COMMUNITY SERVICES BLOCK GRANT



Trainning
ools
for
**NONPROFIT
BOARDS**

GOVERNANCE

**Tripartite Board Composition
and Selection**

CAPLAW

Community Action Program Legal Services, Inc.

Introduction

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

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

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

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

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

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

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

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

TIP The tip text will be here

EXAMPLE

NOTE:

Part IV. Private Sector

Learning Objectives for Part IV

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

All Materials Needed for Part IV

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

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

NOTE: REG VS. STATUTE

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

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

PowerPoint for Part IV

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

Facilitator Task

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

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

4.1 Know Private Sector Composition Requirements

Facilitator Task

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

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

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

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

Facilitator Task

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

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

4.1 Know Private Sector Composition Requirements

Answers to the Private Sector Composition Multiple Choice

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

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

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

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

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

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

4.1 Know Private Sector Composition Requirements

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

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

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

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

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

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

4.1 Know Private Sector Composition Requirements

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

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

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

Facilitator Task

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

4.2 Improve Private Sector Selection

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

Facilitator Task

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

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

4.3 Understand Private Sector Bylaws Provision

Facilitator Task

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

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

Sample Bylaws Provisions

Private sector composition language:

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

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

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

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

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

4.3 Understand Private Sector Bylaws Provision

Answers to the Private Sector Bylaws Questionnaire

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

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

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

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

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

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

4.3 Understand Private Sector Bylaws Provision

Facilitator Task

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

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

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

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