

# COMMUNITY SERVICES BLOCK GRANT



**T**rainning  
ools  
for  
**NONPROFIT  
BOARDS**

## GOVERNANCE

**Tripartite Board Composition  
and Selection**

**CAPLAW**

Community Action Program Legal Services, Inc.

# Introduction

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

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

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

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

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

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

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

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

**TIP** The tip text will be here

**EXAMPLE**

**NOTE:**

# Part I. General Tripartite Board Composition and Selection Information

## Learning Objectives for Part I

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

## All Materials Needed for Part I

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

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

### NOTE: REG VS. STATUTE

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

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

## PowerPoint for Part I

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

## Facilitator Task

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

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

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

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

# 1.1 Know Brief History of CAA Tripartite Board

## Facilitator Task

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

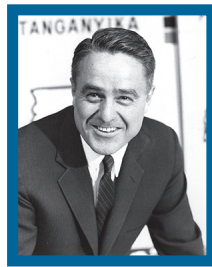
### Answers to the Name that Individual Exercise

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



**Lyndon B. Johnson**

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



**Sargent Shriver**

First director of the federal Office of Economic Opportunity



**Edith Green**

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



**Albert H. Quie**

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

## 1.1 Know Brief History of CAA Tripartite Board

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### Facilitator Task

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

#### Answers to the CSBG History Q&A

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

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

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

**The Economic Opportunity Act.**

##### When was this legislation enacted?

**August 20, 1964.**

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

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

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

**The Quie Amendment and the Green Amendment**

## 1.1 Know Brief History of CAA Tripartite Board

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

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

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

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

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

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

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

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

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

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

#### NOTE: BLOCK VS. DISCRETIONARY

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

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

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### Facilitator Task

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

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

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

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

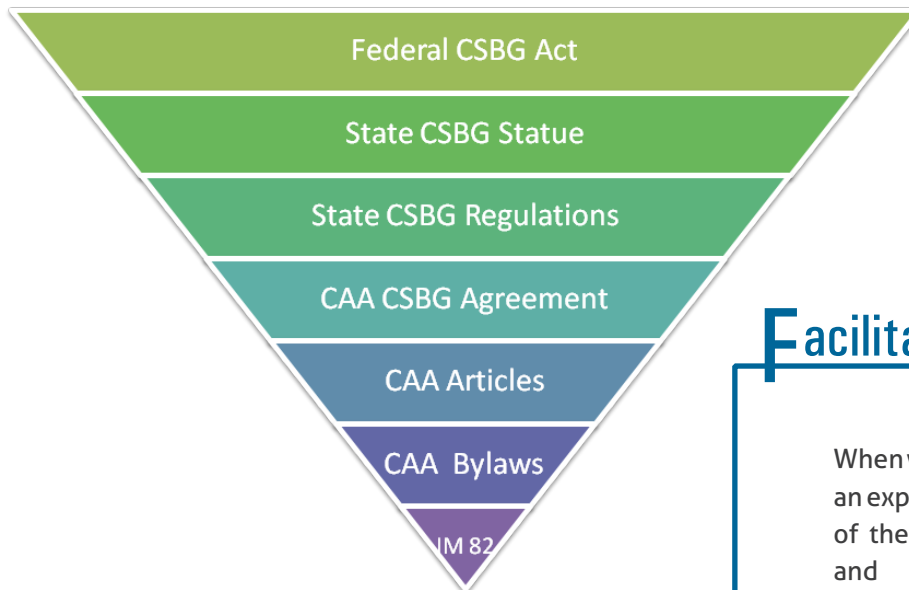
### Answers to the Understanding the Relationship of CSBG Laws and Guidance Exercise

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



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

### Explanation of Above Laws and Guidance in Order of Precedence



### Facilitator Task

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

#### 1. Federal CSBG Act

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

#### What is the purpose of the tripartite requirement?

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

#### 2. State CSBG Statutes and Regulations (if exist)

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

#### NOTE: STATUTE VS. REG.

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

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

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

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

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

### 3. CSBG Grant Agreement with State

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

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

### 4. Articles of Incorporation

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

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

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

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

### 5. Bylaws

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

#### NOTE: OCS

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

### 6. Information Memorandum 82

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

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

## Facilitator Task

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

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

## 1.3 Understand General Concepts Relating to Tripartite Board Composition and Selection

### Facilitator Task

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

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

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

#### Answers to the General Tripartite Board Concepts Q&A

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

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

#### **NOTE: VOTE TO SEAT**

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

## 1.3 Understand General Concepts Relating to Tripartite Board Composition and Selection

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

### EXAMPLE

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

### NOTE: ENTITY

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

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

If not, consider adding language similar to the following:

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

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

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

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

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

## 1.3 Understand General Concepts Relating to Tripartite Board Composition and Selection

### EXAMPLE

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

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

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

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

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

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

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

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

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

## 1.3 Understand General Concepts Relating to Tripartite Board Composition and Selection

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### EXAMPLE

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

### Facilitator Task

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

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

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

## Grant Acknowledgment

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