


# Weatherproofing CAA Bylaws

Preparing for Emergency  
Governance

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This resource was created by Community Action Program Legal Services, Inc. (“CAPLAW”) and has not been approved by any outside authority. You should review the sample bylaws provisions and related considerations thoughtfully and modify them as necessary to meet the individual needs of your organization and applicable laws. CAPLAW strongly recommends that when working with this resource, you consult with an attorney in your state who is well-versed in state laws that are applicable to community action agencies (CAAs).

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# I. Introduction

The COVID-19 pandemic presented numerous challenges for CAAs that impacted existing governance structures and practices. Due to widespread restrictions on gathering, many boards were unable to meet in person or had to postpone regular meetings. Requirements related to the allowability and conduct of virtual board meetings varied and often complicated the issuance of meeting notices. Board member terms expired and selection processes were disrupted and/or rendered inoperable. The need for special meetings or executive committee actions increased to address situations requiring immediate attention. Many of these scenarios resulted in boards grappling with competing concerns such as compliance with bylaws provisions and health and safety precautions. For a significant number of CAAs, the pandemic emphasized the need for and benefit of flexible bylaws that contemplate emergency situations.

CAPLAW created this resource in response to the pandemic and the resulting challenges that confronted CAAs and their boards related to compliance with organizational bylaws. While it has been informed by lessons learned during the COVID-19 pandemic, the suggested bylaws language and actions to consider can help CAAs prepare their bylaws for future emergencies and avoid the significant problems that result from failing to comply with the rules that govern the organization.

While no set of bylaws can account for every emergency situation, a key intent of this resource is to position CAA boards for rapid action during difficult situations. In many cases, this action will depend on the scope and flexibility of the bylaws and result in the passage of resolutions that relax controls and grant greater authority to act to the executive director, including the ability to update policies absent board approval. Generally, measures that result in increased authority will be enacted with limits, such as a time frame within which this authority may be exercised, and/or direction to consult with the board chair and/or the executive committee.

## A. Legal Framework Refresher

CAA bylaws are governed and informed by federal, state, and local laws. At the federal level, funding source requirements and guidance may impact both nonprofit and public CAAs. For example, the federal Community Services Block Grant (CSBG) Act requires the tripartite board structure, a hallmark of Community Action that is reflected in a CAA's bylaws. CAAs must also abide by state-specific CSBG requirements, where applicable, which may prescribe additional bylaws provisions. CSBG Organizational Standard 5.3 specifically requires a nonprofit CAA's bylaws to be reviewed by an attorney at least every 5 years.

Nonprofit CAAs are tax-exempt under section 501(c)(3) of the Internal Revenue Code. To obtain this classification, an organization must exist and operate to further a tax-exempt purpose. This purpose must be included in the organization's articles of incorporation, and it should guide all the actions of the organization's board. For nonprofit CAAs, any bylaws revisions must always be done in conjunction with a review of the organization's articles of incorporation as the articles will take precedence over bylaws. Reviewing the articles not only ensures consistency between the two governing documents, but also ensures that the articles reflect current law and the organization's existing operations.

At the state and local level, the laws that apply to nonprofit and public CAAs differ. Nonprofit CAAs are formed under and governed by their state nonprofit corporation laws, which often set minimum requirements as well as default provisions around board composition, meetings, votes, quorums, removal, and more. The content of a CAA's bylaws often directly reflects these laws. When a nonprofit corporation fails to comply with its bylaws, an external third party may question and challenge certain actions based on this failure.

For public CAAs, local law will govern and dictate whether a tripartite board is required to adopt bylaws or some other form of governing document to establish a framework for board operations. Even if the local laws are silent, CAPLAW recommends that a public CAA adopt a form of bylaws or governing document that reflects composition requirements, the authority of the board, and how the board will operate. The bylaws provisions discussed in this resource with respect to nonprofit CAAs may serve as an informative, nonbinding guide to public CAAs seeking to adapt their bylaws to address an emergency. Unless stated otherwise, the guidance provided in this resource is intended for both nonprofit and public CAAs.

Both nonprofit and public CAAs should also consider any state and local laws, regulations, and guidance that applies in times of emergency. This can include, for example, state executive orders issued during these times that may impact the applicability and interpretation of various state law requirements that a state governor may choose to relax to help organizations during a crisis.

## **B. A Note on Preemptive Emergency Bylaws Provisions Under State Nonprofit Corporation Law**

While the focus of this resource is on how CAAs can modify or interpret existing bylaws provisions for maximum flexibility as an emergency situation develops, it is important to note that a number of state nonprofit corporation laws allow organizations to preemptively adopt emergency bylaws provisions that apply only during defined times of crisis. Many of these provisions allow organizations to codify similar flexibilities in the bylaws to apply during an emergency. For example, California nonprofit corporation law permits organizations to include in their bylaws “any provision, not in conflict with the articles, to manage and conduct the ordinary business affairs of the corporation effective only in an emergency...including, but not limited to, procedures for calling a board meeting, quorum requirements for a board meeting, and designation of additional or substitute directors.” CA CORP § 5151(g)(1). Illinois nonprofit corporation law provides for the adoption of emergency bylaws provisions “as may be deemed practical and necessary for the interim management of the affairs of the corporation.” 805 ILCS 105/102.30.

CAAs should check whether their state nonprofit corporation laws allow them to preemptively adopt emergency bylaws provisions and, if so, what topics those provisions may address. In states that permit them, emergency bylaws provisions are one way CAAs can plan for potential emergencies within their governing documents. Any nonprofit CAA considering this option should consult with a licensed attorney within its state for greater clarity on what emergency provisions are allowable, and whether and how to incorporate them into the CAA's bylaws.

## **C. How to Use This Resource**

This resource presents and analyzes various bylaws provisions that provide flexibility for a CAA as it prepares to confront the impacts of an emergency on its operational and governance capacities. This resource is divided into sections that correspond to specific bylaws provisions. Each section

presents one or more bylaws-related issues CAAs have grappled with during the COVID-19 pandemic. It provides analysis of applicable laws related to that issue, as well as actions to consider to help address that issue in the future. Finally, sample bylaws language is offered to assist CAAs in weatherproofing their bylaws. Annotated footnotes offer analysis of the sample language and considerations for CAAs to weigh. The considerations presented are intended to help CAAs better understand some key options available when modifying bylaws and when adapting them to meet the different needs of individual CAAs.

CAPLAW's Bylaws Toolkit is also a useful supplement to this resource as part of a CAA's bylaw's review process. CAPLAW recommends that a CAA work with an attorney who is licensed in its state when using this resource to review and update its bylaws.

At the outset of the process to review and consider updates to its bylaws, a CAA should think critically about how various emergency situations could impact its ability to govern itself. Some key questions that a CAA and its board should consider include:

- What is an emergency and how should we define it?
- How should the board meet during an emergency?
- Is our CAA subject to state open meetings laws?
- Do our bylaws have provisions that allow the board to act and respond in real time to an emergency?
- Who has the authority to do what?
- What if an officer or board chair is unavailable because of an emergency?
- What governance flexibilities are allowed under our state's laws, and have we incorporated them into our bylaws?

Answers to these questions will provide the overall framework to guide CAA leaders as they review and adapt the organization's bylaws for emergency situations. This resource will highlight the main issues that CAAs should consider when responding to these questions.

The terms "board member" and "director" are used interchangeably in this resource.

## II. Defining an Emergency

Each issue and action to consider addressed in this resource hinges on establishing the flexibility a board of directors and organization need to respond quickly and effectively to an emergency. While a CAA may gain some governance and operational flexibility simply by revising existing language or taking a broader interpretation of a particular bylaws provision, other board actions are likely tied to what the organization establishes as an “emergency” scenario. Thus, it is important that the board define, at the outset, when certain events rise to the level of an “emergency.”

A CAA can include its definition of an emergency directly in its bylaws or address it in an organizational policy that is referenced in the bylaws. While both methods are permissible, including the definition in an organizational policy makes it easier to amend without needing to go through a formal bylaws amendment process (see [Amending Bylaws](#) section). This makes it easier for the board to regularly review and revise the definition, as necessary.

A CAA may look to various resources to help it define an emergency. For example, the Federal Emergency Management Agency has defined “emergency” as:

*Any occasion or instance--such as a hurricane, tornado, storm, flood, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, fire, explosion, nuclear accident, or any other natural or man-made catastrophe--that warrants action to save lives and to protect property, public health, and safety.<sup>1</sup>*

Another option is to tie the definition of “emergency” in the bylaws to federally, state, or locally declared emergencies and natural disasters. This ensures that bylaws provisions specifically triggered by an emergency apply at the same time that government authorities recognize that an emergency situation exists. The key is to devise a definition broad enough to anticipate the variety of emergencies that could occur, while streamlined enough to keep the activation of emergency powers in check.



# III. Bylaws Issues During an Emergency

## A. Selection

### Issue 1: Will our CAA's board be able to follow its board member selection process?

Following selection procedures to fill empty seats is an essential part of a CAA board's role, and the bylaws inform various aspects of this process, including who is eligible for board service and how new board members are seated. Some CAAs include board member selection processes in their bylaws, while other CAAs specify such processes in a separate board policy referenced in the bylaws. It can be challenging, if not impossible, to follow these processes if unforeseen events impact the identification, recruitment, and selection of board members. The COVID-19 pandemic, for example, raised health and safety concerns around in-person voting to select low-income sector directors. Where bylaws prescribe a process that cannot be undertaken due to an emergency, the bylaws must be amended for a CAA to remain in compliance, a process that itself poses additional challenges.



#### Applicable Law

A CAA must consider the impact of an emergency on its selection processes within the context of the different applicable federal funding source requirements. For example, all CAAs must comply with the tripartite board requirements of the federal CSBG Act, including that at least one-third of its board members be democratically selected representatives of the community served. While there is no prescribed democratic selection process that CAAs must follow, a process must exist to meet this requirement. Unless state CSBG laws require it, a CAA's specific process for identifying, interviewing, and selecting directors for each sector does not need to be included in its bylaws. Rather, the process can be detailed in a separate board policy and simply referenced in the bylaws. This allows the board to modify the selection process by changing a board policy, rather than amending the bylaws. Public CAAs may also need to consider applicable state and local laws and regulations around board member selection.



#### Actions to Consider

Consider including general language in bylaws that establishes the organization's need to comply with different funding source requirements, but does not detail or restrict the CAA to a specific process. For example, a CAA can omit from the bylaws a description of the specific steps required in a board member selection process to increase the level of flexibility it has when confronted with emergency-related challenges. Rather, a CAA may prescribe exact selection procedures in policies that are separate from the bylaws. Any such policy may also define an emergency and specify the selection process that applies during one.

Proactively mitigate the impact of an emergency by engaging in a continuous process to identify, recruit, assess, and select directors, through a board governance or

nominating committee that tracks current board composition and future recruitment needs. Developing a pipeline of possible board members can make it less challenging to fill board seats during an emergency. A CAA is better positioned to select new board members in challenging circumstances if it already has an understanding of the board's needs in the short- and long-term, and will be even better equipped if it has solicited applications of interested candidates or met with or assessed potential candidates.

For additional resources on adapting democratic selection procedures for CAAs during emergency situations, see [Preserving the Low-Income Voice: Snapshots of Democratic Selection Procedures in a Pandemic](#). See also, [Raising the Low-Income Voice: Case Studies in Democratic Selection Procedures](#), which discusses how CAAs updated their selection procedures to safely and effectively engage with the communities they serve during the COVID-19 pandemic.

## **Issue 2: What if organizations or individuals who can designate a representative to serve on our board are unable to do so?**

CAA bylaws often designate other individuals or organizations to select certain board members to serve on the board. An emergency may hinder the ability of such outside groups or individuals to select board members to serve on the CAA's board. For example, if a local faith-based organization nominates and selects a representative at one of its regularly scheduled meetings to serve on the private sector of a CAA's board, this selection process may be impeded by the organization's inability to meet due to an emergency, or because members of the group have other priorities at that time.



### **Applicable Laws**

A CAA may designate external groups and individuals to select board members to serve in each sector, if desired, and remain in compliance with the federal CSBG Act and any applicable state requirements. It is permissible for public officials to choose representatives to serve as part of a CAA's public sector. In addition, a CAA may authorize external organizations to nominate and/or select board members for the low-income<sup>2</sup> and private sectors of its board. These and other types of designations should be detailed in a CAA's bylaws.



### **Actions to Consider**

Adopt bylaws that provide for flexible board selection processes. Flexibility may include leaving the specific individual or organization that selects the board member open-ended, rather than specifying the names of particular people or groups in the bylaws. If the bylaws specify that an individual or organization is to select a CAA board member, language should be included that allows the board to authorize another individual or organization to select an individual to fill that board seat if the initial individual or organization fails to respond within the time specified by the board.

## Sample Bylaws Language

The CAPLAW Bylaws Toolkit includes language that establishes the tripartite board requirements but does not dictate the ways in which a CAA selects board members. Rather, the bylaws provisions are written broadly to provide for the most flexible possible selection process. This sample language includes the following:

- **Public Sector Directors.** *The board of directors shall select elected public officials to serve as Public Sector Directors. If the number of elected officials reasonably available and willing to serve on the board is less than one-third of the board, the corporation may select appointed public officials to serve. If a public official selected by the board of directors cannot serve him- or herself, s/he may designate a representative, subject to approval of the corporation's board, to serve as a Public Sector Director; the representative may, but need not be, a public official. Should a public official fail, within the period specified by the corporation's board, to accept the seat him- or herself or to designate a representative to serve, the corporation's board shall select another public official to fill the seat or to appoint a representative, subject to approval of the corporation's board, to fill the seat.*
- **Low-Income Sector Directors.** *The board shall adopt and implement written democratic selection procedures for Low-Income Sector Directors, which it may revise from time to time. Such procedures may include, either alone or in combination: (1) election by ballots cast by the corporation's clients and/or by other low-income people in the corporation's service area; (2) selection at a community meeting in a low-income neighborhood in the corporation's service area and/or on a topic of interest to low-income people and publicized to low-income people in the corporation's service area; and/or (3) designation by organizations in the corporation's service area composed of a majority of low-income people (Low-Income Organizations).*
- **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 use where board chooses Private Sector Directors 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.*

## B. Term and Term Limits

### Issue 1: What happens when a board member's term expires?

A board member's term, i.e., length of time the board member serves before they must be reelected, is usually specified in the bylaws. Expiring board terms can be particularly challenging to manage during an emergency. In some cases, the board cannot meet to formally reelect board members to a new term because it is not safe to do so. In other cases, board members who step down because they choose not to renew their terms, or are subject to term limits, will create a vacancy that the board must fill.



#### Applicable Laws

Federal CSBG requirements do not dictate any particular term of service for CAA board members; however, state rules and laws, such as state CSBG requirements, may impose them. If so, these requirements should be referenced in bylaws. Generally, for a non-profit CAA, if a term is not set in the bylaws, the default term will be that which is in the applicable state's nonprofit corporation act, often one year. These laws may also specify a maximum term for board members. For public CAAs, local laws and regulations may require specific terms of service for board members.



#### Actions to Consider

Include language in bylaws that authorizes the board to extend the expiring term of a board member during an emergency. The extension should only be for a limited period of time, such as the shorter of one year or until the next annual meeting (if board members are selected and seated at the annual meeting), and until their successor is chosen and seated, so that continuity can be maintained while the emergency lasts. For nonprofit CAAs, keep in mind that if your state's nonprofit corporate law contains maximum term lengths, an extension must not exceed those limits, unless done so pursuant to state-issued orders or guidance.

Consider having term extensions apply equally to all directors whose terms are set to expire during an emergency. Term extensions that apply to some board members but not others could raise concerns about fairness and consistency.

### Issue 2: What happens when a board member's term limit is met?

Term limits restrict the number of times a board member may be reelected to serve for another term on the board. The application of such limits by CAA tripartite boards varies widely. Absent state requirements, each CAA will determine whether term limits should apply and, in doing so, will usually consider a number of factors, including the preservation of institutional knowledge and the availability of potential directors, as well as the desire to have new voices and perspectives on the board.

Term limits may impact a CAA during an emergency as board members roll off the board either permanently or for a set period of time. As previously noted, filling vacancies may be difficult and potentially unsafe during an emergency. These circumstances may result in a CAA needing to extend a board member's term even if that board member has reached his or her term limit.



### Applicable Laws

There is no requirement at the federal level that imposes term limits and, for nonprofit CAAs, state nonprofit corporation acts typically do not require them. State CSBG laws vary as to term limits for board members. If state requirements impose them, they should be referenced in bylaws. For public CAAs, local laws and regulations may impose term limits on board members.



### Actions to Consider

Add language to bylaws that allows for the extension of any terms or term limits in light of an emergency, if doing so does not violate state law. Any extension of a board member's term as well as relaxation of the limit may be desirable, and at times essential, during an emergency. Language can also be added to the bylaws to say that an emergency-related extension of a board member's term shall not count toward the term limits specified in the bylaws.

### Sample Bylaws Language

Language that allows for the extension terms and term limits during an emergency may look like the following:

- *Notwithstanding any other provision of these bylaws, during an Emergency,<sup>3</sup> the Board may vote to extend, by up to one year, the term of any board member whose term is expiring. Any such extension shall constitute an extension of that board member's current term rather than an additional term, and shall not count toward any applicable term limits included in these bylaws.*

## C. Removal

### Issue 1: Are we required to remove board members who cannot attend board meetings?

CAA bylaws should specify the board's authority to remove board members. Removal provisions will often state whether a board member may be removed for cause (and provide a definition of cause) or without cause, as well as the process and vote needed to remove a board member.

Some CAAs include language in their bylaws that requires a director to be removed following a specified number of meeting absences. These requirements were likely put in place to emphasize the importance of regularly attending board meetings, as well as the critical need to engage in board work to fulfill a board member's fiduciary duty of care to the CAA. Depending on the text of the bylaws provision, the board may or may not have discretion to determine whether absences, excused or unexcused, will trigger automatic removal. During an emergency, where it may be difficult for directors to attend board meetings, automatic removal of directors for failure to attend board meetings could become problematic.



#### Applicable Laws

Under state nonprofit corporation law, nonprofit CAA board members must meet their fiduciary duty of care. Active engagement in the work of the board, of which meeting attendance is crucial, is a key way in which a board member satisfies this legal duty. State nonprofit corporation laws may address board member removal and, if so, may require bylaws to specifically describe the conditions triggering it. For example, some state laws require bylaws to state the number of unexcused absences that must occur before a board member can be automatically removed. In some states, CSBG law or regulations require CAAs to include a provision in their bylaws addressing removal for failure to attend a specified number of board meetings. In addition, local laws and regulations may contain attendance requirements for public CAA board members.



#### Actions to Consider

Consider amending any language in bylaws that requires a director's automatic or definitive removal for missing a specified number of meetings. Rather than state that a director **must** be removed, bylaws could (if permitted by state law) be revised to say that a director **may** be removed. This language offers a CAA greater flexibility in times of emergency, when missed meetings are more likely to be due to reasons related to the emergency rather than a dereliction of a board member's fiduciary duty of care.

Increase flexibility further by amending the removal provision to provide that only "unexcused" absences trigger removal. This allows the board to use its discretion to excuse absences that are caused by emergency circumstances, such that these absences would not count towards the number of "unexcused" absences that could lead the board to remove the board member.

If limiting removal to "unexcused" absences, maintain consistency and fairness as the distinction between "excused" and "unexcused" absences may lead to disputes about what will be considered an excused absence. Moreover, some CAAs may feel that

excused absences are not any less detrimental to the board's ability to function than unexcused absences. Therefore, many organizations simply treat all absences in the same manner. In this situation, consider adding language that allows for removal for absences, except during times of emergency, as defined in the bylaws.

### Sample Bylaws Language

For CAAs that include removal for "cause" in their bylaws, the following is sample language that allows for greater flexibility in such situations:

- **Removal of Directors**

1. *Grounds for Removal.*

- (a) *Incapacity. The board may remove a director, if in the opinion of the board, the director is incapacitated or otherwise unable to carry out the duties of his/her office.*

- (b) *Cause. The board of directors may remove a director for cause for one or more of the following reasons: conduct the board deems contrary to the best interests of the corporation; violations of the corporation's articles of incorporation, bylaws, conflict of interest policy, board resolutions or other policies; [unexcused] absence from three (3) or more consecutive board meetings, except for absences during an Emergency<sup>4</sup>; repeated disruptions of board and/or committee meetings; or false statements on documents completed in connection with service as a director or officer of the corporation.*

2. *Removal Procedures. The board shall provide all directors, including the director proposed to be removed, with at least [check state law on whether there is a required notice period; specify number of days] days' notice of the meeting at which the removal is to be considered. The notice must specify that a purpose of the meeting is to consider removal of the director. The director proposed to be removed shall be entitled to an opportunity to be heard at that meeting. A vote of [check your state's nonprofit corporation law to determine the minimum vote required] directors is required to remove the director.*

## D. Vacancies

### Issue 1: Will our CAA be able to fill a vacancy within a specified period of time?

CAA board vacancies are complicated to manage even in normal times because of funding source requirements. The federal CSBG Act requires CAA boards to adopt the tripartite structure. CAAs must ensure that at least one-third of its board members are democratically selected representatives of the community served; exactly one-third are elected public officials or their representatives; and the rest are from the private sector. Some CAAs are subject to additional board composition requirements because they have a Head Start program, seek to maintain status as a Community Development Housing Organization, or operate a Federally Qualified Health Center.

When vacancies occur during an emergency, a CAA must adhere to what its bylaws say about filling vacant board seats, unless the CAA receives guidance from its state or funding sources that says otherwise. Furthermore, vacancies on a board during an emergency can reduce a board's capacity at a pivotal time.<sup>5</sup> Filling vacancies during an emergency can be even more difficult if bylaws require that boards fill vacancies within a specific period of time.



#### Applicable Law

Although the federal CSBG Act does not prescribe a specific time frame within which vacancies must be filled, some states have CSBG statutes and regulations that address this issue. For example, some states recognize that in light of the tripartite requirements, it could take up to 90 to 180 days to fill a vacant board seat. In the absence of other external deadlines for filling vacancies, the CAA's bylaws will govern. CSBG Organizational Standard 5.5 also defers to a CAA's bylaws as to the process for filling board vacancies. Public CAAs may also be subject to local laws and requirements that specify time periods for filling vacant board seats.



#### Actions to Consider

Include bylaws language that accounts for the process that must be followed to fill vacancies and balances that against the need to fill seats as quickly as possible. Where there is no state law or local requirement to fill board seats within a specific time frame, bylaws language such as “in a timely manner” or “within a reasonable period of time” provides greater flexibility for an organization to fill vacancies, which is often needed during an emergency. This language enables a CAA to take the position that what is considered “reasonable” in an emergency is different than how that term may be interpreted and defined during normal times.

### Issue 2: Will vacant seats affect our board's ability to make decisions?

CAAs should review their bylaws language carefully to ensure that vacancies will not impact the ability of the board to take actions and make decisions that require a vote or approval of the full board. Emergencies often limit the ability of the full board to meet and vote on issues. However, boards should be able to act regardless of any vacancies, provided that board action is taken in accordance with applicable provisions of the bylaws.





## Applicable Law

Federal laws do not address a board's ability to act when vacancies are present. State nonprofit corporation laws may specifically address the ability of the board to act notwithstanding vacancies and, if so, should be reflected in the bylaws. State nonprofit corporation laws also contain quorum requirements for the number of voting board members required to be present for the board to take valid action and vote. State CSBG laws and regulations often require the quorum to be fifty percent of the filled seats on the board (i.e., board members currently in office). Public CAAs may also be subject to local quorum and voting laws and requirements that could be implicated by board vacancies.



## Actions to Consider

Consider how vacancies on the board affect the quorum and voting requirements in the bylaws with respect to taking official board action (see [Quorum](#) and [Board Actions](#) sections). Ensure that bylaws language related to the vote required for the board to take action specifies that it is a vote of the directors who make up a quorum. For example, if valid board action requires a majority vote, the bylaws should clarify that it is a majority of a quorum rather than a majority of the board's total number of directors. This way, vacancies do not count for or against the vote, ensuring that a board with vacancies is still able to take official action.

## Sample Bylaws Language

Consider adding the following language to sections related to vacancies and voting and action by the board:

- **Vacancies**

- *The board shall take steps to ensure that vacant seats are filled in a timely manner.*
- *If a board seat vacancy occurs during an emergency, the seat shall be filled when reasonably practicable for the organization to do so.*
- *The Board may exercise its powers and act on any matter notwithstanding any vacancies.*

- **Voting and Action by the Board**

- *Unless a greater number is required by the corporation's articles of incorporation, these bylaws or applicable law, the act of a majority of the directors at any meeting at which a quorum is present shall be an act of the board.*

## E. Board Meetings – Number, Timing, Type, and Manner

### Issue 1: What if our board cannot convene for the number of meetings required by the bylaws?

The bylaws typically specify the number of meetings that will occur throughout the year either directly (e.g., *The board shall hold an annual meeting as well as 4 regular meetings during a year*) or indirectly (e.g., *The board shall hold regular meetings at least once every month*). These provisions, while recommended and sometimes required, often complicate efforts to postpone or cancel meetings during emergencies, and CAAs risk being out of compliance with their bylaws by doing so.



#### Applicable Laws

Federal laws do not address how often boards must hold meetings. For nonprofit CAAs, state nonprofit corporation laws may require boards to hold an annual meeting. Local laws governing public CAAs may dictate the number and frequency of board meetings. Some state CSBG laws and regulations also require a CAA's board to meet a minimum number of times per year.



#### Actions to Consider

Consider including language in bylaws that increases flexibility around holding meetings and the types of meetings (i.e., special, annual, etc.) that will count towards a required number of meetings. Add language to bylaws that automatically reduces the number of required board meetings if an emergency occurs within the applicable period of time. Further, if possible, avoid specifying that the board will hold a set number of “regular meetings” each year and instead, require the board to hold a certain number of “meetings” each year. This would allow a CAA board to convene a special meeting in place of a regular meeting.

### Issue 2: What if our board cannot convene its meetings at times specifically designated in the bylaws?

Some CAA bylaws specify when board meetings must occur (e.g., each year in July, the second Wednesday of each month, etc.). These provisions may complicate board efforts to adjust scheduled meetings due to health and safety concerns. For example, a CAA board that is required by its bylaws to hold regular, monthly meetings would need to amend its bylaws or have other flexibilities in place such as remote meeting capability to maintain compliance.



#### Applicable Laws

Federal laws do not address when a board must hold a meeting. For nonprofit CAAs, state nonprofit corporation laws may require that the board hold an annual meeting. Public CAAs may also be subject to local laws and requirements related to the timing of board meetings. In addition, state CSBG laws may also dictate how often board meetings must occur. Absent state and local requirements, a CAA has discretion to establish timing requirements for board meetings in its bylaws.



### Actions to Consider

If permitted by applicable state and local law, add language to bylaws that permits the timing of the board's meetings to be adjusted, rescheduled, or postponed due to an emergency. If the bylaws specify the month in which an annual meeting will occur, the bylaws should allow for the meeting to take place and have full effect in a month other than the one designated in the bylaws, if necessary and permitted under state law.

## Issue 3: Can our CAA hold different types of meetings and in a manner that utilizes different technologies?

CAA bylaws usually specify different types of board meetings and the manner in which they are held. Typically, CAA boards hold an annual meeting at which directors and officers are elected, as well as a specified number of regular meetings each year. CAA bylaws should also provide for the board to call special meetings, as necessary, in between regular meetings. The bylaws may specify different ways that the board may convene, including meeting in-person, via telephone, or via video conference.

During the COVID-19 pandemic, many CAA boards utilized special meetings to discuss and make decisions about a host of issues, including operational changes, new sources of funding, new safety policies and protocols, and granting emergency authority to executive directors to act more quickly. Meetings moved from boardrooms to virtual video platforms or phone conference lines, and CAA boards had to ensure that the manner in which they were conducting meetings complied with their bylaws.

When the pandemic limited in-person gatherings, many CAAs realized their bylaws were silent as to whether their boards could convene virtually, either via telephone or videoconference. Further, certain CAAs had held board meetings that were open to the public prior to the pandemic—either due to state laws requiring open meetings, or voluntarily to foster greater community engagement—and were unsure of how to maintain open meetings in a virtual environment. CAAs that were required to follow state open meetings laws usually had bylaws provisions specifying meeting procedures, and wondered whether there were any exceptions available for emergencies.



### Applicable Laws

For nonprofit CAAs, state nonprofit corporation laws may include requirements that must be met to call a specific type of meeting (e.g., annual, regular, or special). For example, special meetings may require a specified notice period and may need to be called by certain specified officer(s) or a certain proportion of directors. State nonprofit corporation laws also often include requirements about how board meetings must be conducted (e.g., remote or in-person). For example, some state laws may require that if meetings via audio- or video conference are allowed, the organization's bylaws must state this explicitly. Further, the laws may require that for any meeting where remote participation is allowed, all participants must be able to simultaneously hear each other.

For public CAAs, local laws and regulations may have specific requirements related to how certain board meetings must be called, as well as how they must be conducted.

Public CAAs and some nonprofit CAAs are subject to open meetings laws in certain states, typically by the terms of their state’s open meetings law or under their state’s CSBG law or regulations. These laws will specify how open meetings may be conducted and how board members must participate in them.<sup>6</sup> For example, some open meeting laws permit remote participation via virtual means so long as certain specified criteria are met.



### Actions to Consider

Review bylaws to ensure that there is a process for the board to call special meetings outside of regularly-scheduled meetings. The process should allow for either an officer or a specified proportion of directors to call the meeting, to provide for flexibility in case some board members are unavailable during an emergency.

If your CAA is subject to your state’s open meetings laws, your bylaws should be written to comply with those requirements. During the pandemic, a number of states relaxed various aspects of state open meetings laws, including remote participation and public access to meetings. While an organization cannot plan for every instance in which a state legislature or governor may relax these rules, consider using more flexible language in the bylaws that ensures compliance with state open meeting requirements if they are relaxed or changed. For example, instead of mirroring the language in state open meetings laws in the bylaws, simply have the bylaws state that the CAA board will comply with state open meetings requirements, which will allow the board to adopt any exceptions or changes to the state’s open meeting laws without having to amend the existing bylaws.

### Sample Bylaws Language

#### • Required Number of Regular Meetings

- *The board shall hold [number] regular meetings each year. If the board cannot meet because of an Emergency<sup>7</sup>, the number of required regular meetings shall be reduced by the number of regular meetings for which the Emergency rendered it unable to meet.<sup>8</sup>*

#### • Annual Meetings Flexibility

- *Annual Meeting. The annual meeting of the board shall be held during the month of [insert month] each year, subject to postponement by the board. If the annual meeting is postponed, a regular or special meeting may be held in its place, and any business transacted shall have the same force and effect as if transacted at the annual meeting.*

#### • Special Meetings

- *Special meetings of the board may be called by the [president/chair] or by [check state law to see if it specifies a proportion of directors who can call a special meeting] of the directors then in office.<sup>9</sup>*

#### • Remote Board Meetings

- *Participation by Audio- or Video Conference. Members of the board of directors or*

*any committee designated thereby may participate in a meeting of the board or such committee by means of a conference telephone, video conference, or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at the meeting [provided, however, that members of the public attending the meeting must also be able to hear all persons participating in the meeting].<sup>10</sup>*

## F. Notice

### Issue 1: Will our CAA be able to provide adequate notice of a meeting to board members?

The timing and content of meeting notices issued to board members are typically established in the bylaws. Notices of meetings are critical as they set forth the time, date, location, and agenda of each meeting. Because emergencies often impact the speed of communications, they may delay board members' timely receipt of notice, depending on the mechanisms of delivery used. Any such delays can make it more difficult to comply with the notice provisions in bylaws.



#### Applicable Laws

For nonprofit CAAs, state nonprofit corporation laws typically set defaults for notices if the bylaws are silent with respect to them, including the number of days' notice required prior to a board meeting, and what the notice must contain. Local laws and regulations may include notice requirements for public CAAs. In addition, all public CAAs, and some nonprofit CAAs, are required to comply with open meeting laws, which often impose more detailed notice requirements and require notice be provided to the public as well as to board members.



#### Actions to Consider

Ensure that bylaws allow for flexibility, to the extent permissible under state laws, as to the issuance of notices to directors. If possible and as allowed by state law, include "electronic delivery" as an acceptable method for providing notice and information to board members about meetings. This can offer directors immediate access to notice and information that is less reliant on external parties, and can save on preparation and delivery time, costs, and resources. In general, the bylaws should not overly restrict the method of providing notice to directors.

Consider including in your bylaws the lowest number of days allowed under state law for required notice before either a regular or special meeting. This allows the board to move as quickly as possible in either incidence when emergency circumstances require it.

Most state nonprofit corporation laws also allow board members to waive notice requirements. This means that, even if the notice required by law is not given or is given in an improper manner, the meeting may still be held and business may be conducted at the meeting if the board members sign a statement that waives notice, or if they attend the meeting without objecting to a lack of notice. A waiver provision is recommended to avoid disputes about whether adequate notice is provided for board meetings. This ability to "cure" notice failures can also be an important flexibility offered in the bylaws if an emergency makes compliance with regular notice requirements difficult.

For nonprofit and public CAAs subject to state open meeting laws, notices of board meetings issued to the public will be the same as that provided to board members and is discussed in Issue 2.

## Issue 2: Will our CAA be able to provide meeting notice to the public, if required?

Public CAAs and some private nonprofit CAAs are subject to state open meeting laws that require notice be provided to the public about upcoming board meetings. For nonprofit CAAs not subject to open meeting laws, some state CSBG laws may require a form of public notice be issued for some or all board meetings. Emergencies may interrupt the timing and delivery of traditional methods of notice to the public.



### Applicable Laws

State open meeting laws typically include requirements about what information board meeting notices must contain and how and when the public must be notified of upcoming meetings. Public notice required by these laws cannot be waived. If public notice of a meeting is not given or is given improperly, actions taken at that meeting can be challenged. Furthermore, some state CSBG laws require CAAs to provide a form of notice to the public of upcoming board meetings. During the pandemic, a number of states relaxed rules related to open meetings, either through state legislative action or executive order.



### Actions to Consider

If permitted under state law, develop a process to provide electronic notice, either through the CAA's website or through a centralized online portal hosted by the local government. Consider revising bylaws to be as flexible as possible with what constitutes allowable notice. For example, do not detail the steps your CAA will take to comply with notice requirements, but ensure the bylaws note the organization will provide notice to the public of open meetings consistent with state requirements. Since notice cannot be waived under open meeting laws, it is a good idea for the board to vote at the next, properly noticed meeting to ratify any actions taken at an improperly noticed meeting.

### Sample Bylaws Language

#### • Notice to Board Members

*- Notice. Written notice of the time, date, location and agenda of each meeting of the board shall be given by [specify means<sup>11</sup> permitted by state law, including any allowable technology or platform that may disseminate notice and information] to each director at least [insert number] days before regular meetings and at least [insert number] days before special meetings. Whenever notice of a meeting is required to be given to the directors, such notice need not be given to any director if a written waiver of notice, executed by him or her (or his or her duly authorized attorney) before or after the meeting, is filed with the records of the meeting, or to any director who attends the meeting without protesting the lack of notice to him or her before or at the beginning of the meeting.*

#### • Notice to the Public

*- Written notice of the time, date, location and agenda of each open meeting of the board shall be given in accordance with [name of state] [open meeting and/or public notice requirements].*

## G. Quorum

### Issue 1: Is our board able to meet the quorum requirements necessary to take valid action?

A quorum is the minimum number of directors needed at a board meeting to take action on behalf of the organization. As the pandemic has shown, emergencies can hinder board members' ability to attend meetings at which they are expected to make decisions and vote on board actions. Thus, how a quorum is established in the bylaws impacts the board's ability to conduct business, as a board cannot take valid action without meeting quorum requirements.



#### Applicable Laws

Under the nonprofit corporation laws in most states, a quorum is a majority of the voting board members currently in office. Some states allow lower percentages for a quorum, but generally not less than one-third of the voting board members currently in office. State CSBG laws and regulations often require the quorum to be fifty percent of the filled seats on the board (i.e., board members currently in office). Public CAAs may also be subject to local laws and requirements related to quorums and voting.



#### Actions to Consider

Consider whether it makes sense to include a low quorum percentage requirement (e.g., one-third of the directors then in office) in the bylaws in general, as that will be the quorum necessary at all meetings unless further specifications are made. However, outside of emergencies, a board might not want a smaller number of directors being able to take official action. Doing so may call into question the duty of care that each board member owes to be engaged in the board's work and to make informed decisions about the organization. For this reason, a board may allow the percentage of directors constituting a quorum to drop to a smaller percentage only during an emergency. As noted above, in some states, CSBG law or regulations may not permit reducing the size of a quorum in an emergency.

Remember that quorum decisions are often specific to an organization. Each CAA has insight into the ease or difficulty it has assembling a quorum, and how an emergency might impact the CAA in this respect. In addition, these considerations should be made in tandem with other provisions in the bylaws that could make it easier or more difficult to achieve a quorum, such as the degree of flexibility around virtual meetings and virtual voting that is allowed.

#### Sample Bylaws Language

When permissible under applicable law, a CAA may apply the lowest allowable quorum percentage during a declared emergency as follows:

- **Quorum.** *At all meetings of the board of directors a quorum shall equal a majority of the directors then in office. At all meetings of the board of directors during an Emergency,<sup>12</sup> a quorum shall equal [the lowest percentage allowable under state law] of the directors then in office.*



## H. Board Actions

### Issue 1: Is a CAA board able to vote at a meeting via electronic means or by proxy?

When the pandemic limited in-person gatherings, many CAAs realized their bylaws were either silent as to and how their boards could take official action without an oral roll call of votes, and if options such as votes by proxy were allowed.



#### Applicable Laws

State nonprofit corporation laws that permit participation in meetings via electronic means so long as all participants can hear one another also permit actions to be taken at such a meeting. Public CAAs and some nonprofit CAAs subject to open meeting laws must comply with those requirements, which often vary with respect to remote participation in meetings and actions that may be taken via electronic means.

In many states, votes by proxy are prohibited. For nonprofit CAAs, state nonprofit corporation laws, as well as state CSBG laws, govern the use of alternates and proxies. Very few states have nonprofit corporation laws that allow directors to vote by proxy, with many requiring voting in person or by audio or video conference. For public CAAs, state CSBG laws, if any, and local ordinances or laws will govern the use of alternates and proxies. Often, they permit public CAA board members to vote by proxy.



#### Actions to Consider

Update bylaws to enable directors to vote via electronic means such as video- or teleconference, if allowed under state laws, including open meeting laws, when applicable.

Although vote by proxy could provide flexibility for directors unable to attend meetings because of an emergency, most state nonprofit laws do not permit directors to vote by proxy. Even in states that do, a CAA—nonprofit or public—should only include the ability to vote by proxy in the bylaws after careful consideration. While proxy voting provides another option for the CAA board to use during an emergency when board members may be unable to convene to vote on important issues, its use should be limited so that board members remain engaged in the planning, development, implementation, and evaluation of the CSBG program as required by the federal CSBG Act.

### Issue 2: How can our board take action if it cannot meet either in person or via telephone or video conference?

In certain circumstances, it is difficult to convene a board meeting where board members attend either in person or via telephone or video conference. In this case, taking board action without a meeting offers boards another option for conducting business. These are typically referred to as the board taking actions by written consent, and can be particularly useful during an emergency, when a meeting may be challenging to schedule.



## Applicable Laws

For nonprofit CAAs, taking action without a meeting is typically addressed by state nonprofit corporation laws. While some states have statutes requiring that board action be taken at an in-person meeting, a teleconference, or other method in which two-way communication allows debate, many states also allow action without a meeting in the form of unanimous written consent,<sup>13</sup> so long as the bylaws permit it. The rationale behind requiring a unanimous vote is to allow (or, in fact, require) full debate and deliberation by the board of directors and their committees on any issue where there is dissent before taking action. If even one director is opposed to the action, or fails to submit his or her written consent, then the matter voted on will not be enacted as an action of the board of directors.

When action is taken by written consent, the action becomes effective upon receipt of the last board member's signature. Each director's written consent must be kept with the minutes of the organization.

Note that CAAs that are required to make their board meetings open to the public, including public CAAs, may not be able to take action by written consent.



## Actions to Consider

If your CAA is not required to make meeting open to the public, add the option of taking board action by unanimous written consent to the bylaws to provide additional flexibility to your CAA when it is difficult to gather board members, either in person or remotely. Ensure that the unanimous written consent process requires board members to be appraised of the action to be taken and to receive all necessary information to make their decision. This involves explaining the decision and allowing for questions and answers (e.g., over email), which could potentially delay receiving the final vote.

Unanimous written consent conducted via email requires that all directors have consistent, reliable access to the internet. Collecting signed written consents can also be challenging as board members need a way to either electronically sign consent (e.g., via DocuSign or Adobe Sign) or print the consent, sign, and take a picture, fax, or mail the signed consent back to the board chair or board liaison. Consider these options carefully, as unanimous written consent is not effective until the last board signature is received.

Remember that meetings, debate, and discussion about possible actions are critical to effective board functioning. All board members must fulfill a duty of care which entails being informed and engaged, i.e., attending meetings, reading reports, researching matters, hearing from experts, and participating in discussions. Thus, if a board seeks to take action without a meeting, be sure that the process involved allows board members to fulfill their duty of care.

### Sample Bylaws Language

Typical language for bylaws could include:

- **Action without a Meeting.** *Any action required or permitted to be taken at a meeting of the board of directors may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the directors of the corporation entitled to vote with respect to the matter. Action taken without a meeting is effective when the last director signs the consent, unless the consent specifies a later effective date. Such written consent or consents shall be filed with the minutes of the board of directors.*

# I. Parliamentary Procedures

## Issue 1: Do we need to follow our parliamentary procedures?

Some CAAs conduct their board meetings according to external parliamentary procedures, which could be referenced in their bylaws. One example is Robert's Rules of Order, which includes detailed procedures for running meetings. Emergencies may create challenges that impact how board meetings are conducted and may make it difficult to follow prescribed procedures. This poses additional challenges if these procedures are required in a CAA's bylaws.



### Applicable Laws

Neither the federal CSBG Act nor state nonprofit corporation laws require CAAs to follow a particular set of parliamentary procedures. Public CAAs, however, may be subject to procedural requirements via local laws and rules. Both nonprofit and public CAAs may also be subject state CSBG laws and regulations that specify certain procedures be followed.



### Actions to Consider

Carefully consider including parliamentary procedure provisions in bylaws that adopt external procedures. If you do include them, understand the ways in which an emergency could impact the ability to conduct business under them.

If a CAA's bylaws reference external parliamentary procedures, use them as a guide, rather than a requirement. This provides the CAA with flexibility to adopt different procedures, or to exclude them entirely, during times of emergency.

## Sample Bylaws Language

For example:

- **Parliamentary Procedure.** *Where necessary and in matters not covered by these bylaws, "Robert's Rules of Order, Newly Revised" shall serve as a guide to proper procedure at meetings of the board and its committees.*

## J. Committees

### Issue 1: Can we delegate authority to a board committee to act on the board's behalf?

Due to the challenges of convening the full board during an emergency, board committees, specifically an executive committee, can help CAA boards move more quickly and respond to time-sensitive situations. Board committees consist of a small number of directors who have been authorized by the board to make recommendations or take action with respect to specific matters. Typically, the executive committee is comprised of the board's primary officers and is the only standing committee of the board authorized to take official action on behalf of the board.



#### Applicable Laws

State nonprofit corporation laws often limit the types of authority that may be delegated to a committee. These limits often provide that no committee of the board will have the authority to take action to amend the bylaws or articles of incorporation, approve the election or removal of directors, or approve a dissolution or merger of the corporation or the sale of all the corporation's assets. Local law may limit the ability of a public CAA board to delegate authority to an executive committee as well.

Some state CSBG laws require the composition of executive committees to mirror the full board. This means that the executive committee of a CAA will need to have a tripartite structure, with representatives from the low-income, public, and private sectors all represented in proportion to those sectors' representation on the full board.



#### Actions to Consider

Confirm with an attorney in your state whether your board may authorize an executive committee to act on its behalf and determine the extent to which it may do so. Include language in the bylaws that clarifies the limits on an executive committee's authority. Bylaws should specify the amount of authority that can be delegated to committees. Almost all state nonprofit corporation acts provide limits of the sort described above on the authority that may be delegated to committees. However, a board may find it helpful to have an executive committee authorized to approve policy changes or other items during an emergency.

If your board establishes an executive committee, it is recommended (and in some states, a requirement) to ensure that its composition mirrors the tripartite structure of the full board. This may mean that while all primary officers are members of the executive committee, other directors may also need to be included to reflect the tripartite structure of the board.

Avoid using language such as "pending board approval" or "subject to ratification by the board" with respect to actions taken by executive committees. If the intention is to authorize the executive committee to take official action on behalf of the full board, this language suggests that the decisions already made by the executive committee will not bind the organization until the board takes action to approve or ratify the executive committee's decision.

Remember that while a strong executive committee allows a board to function efficiently and on short notice, board members still must exercise their fiduciary duties and be wary of relying too heavily on a committee when it is able to act as a full board.

## Issue 2: Do committee meetings need to follow state open meetings requirements?

For public CAAs and some nonprofit CAAs which are subject to state open meeting laws, using an executive committee may not necessarily be a simpler option for actions that may be difficult for the full board to take during a pandemic.



### Applicable Laws

If the bylaws authorize an executive committee to take certain actions on behalf of the board during an emergency, state open meetings law could apply. These laws vary by state, but typically will require any meeting of the board or a board committee to which the board has delegated some of its powers to be open to the public.



### Actions to Consider

If subject to open meeting requirements, ensure that bylaws provisions on board committees reflect open meeting requirements. Instead of mirroring the language in state open meetings laws in your bylaws, specify simply that the CAA board will comply with state open meeting requirements.

### Sample Bylaws Language

The bylaws could state:

- **Executive Committee.** *The executive committee shall be composed of [specify the number of executive committee members, and criteria and process for their selection (executive committee members often include the Primary Officers and may need to include other directors to reflect the tripartite structure of the board)]. This committee shall have all the powers and authority of the board of directors (except those powers specifically prohibited by Section \_\_\_ of these bylaws) in the intervals between meetings of the board, and is subject to the direction and control of the full board. The executive committee shall make a report of its actions and proceedings to the board at the next meeting of the board held after such actions or proceedings. [if CAA is subject to the requirements of state open meetings laws, specify that the executive committee shall comply with state open meetings requirements for its meetings, notice, etc.].*

## K. Execution of Instruments

### Issue 1: Who is authorized to sign documents on behalf of our CAA, and what if they are unavailable?

During an emergency, individuals authorized to execute instruments may be unavailable due to emergency conditions in the area. This could pose problems for a CAA attempting to operate and provide essential services during an emergency. In addition, if a CAA requires that certain documents be signed by multiple people, emergencies may pose additional challenges, especially if the CAA has limited options for people to sign (in-person, mail, etc.) (see [Electronic Signatures](#) section).



#### Applicable Laws

No federal law requires that a particular officer or director be authorized to execute instruments on behalf of a CAA. While it is possible that some state law addresses this issue, it is typically an issue addressed in bylaws. The authority to sign on behalf of the CAA, and bind it to terms of an agreement is typically either provided in the bylaws and/or by board resolution. Additional internal procedures may also be in place to help CAAs manage risks associated with this delegation of authority. It is standard practice that at least the executive director and board chair of an organization have signatory authority. Public CAAs are subject to local laws and regulations, which may include specific requirements related to who is authorized to execute instruments on behalf of the CAA.



#### Actions to Consider

When reviewing bylaws, keep in mind that if an execution of instruments provision is too limited, an organization risks having nobody authorized to sign on its behalf in an emergency. If it is too broad, it could increase risk for the organization in general, as too many individuals would possess the authority to bind the CAA to agreements, contracts, and other documents.

Consider adding language to the bylaws that allows the board to authorize a board member, employee, or other agent to execute instruments on behalf of the CAA. Be sure that when the board authorizes individuals to execute instruments, it specifies the type and timing of the authorization granted. Be aware that boards may review and revisit authorizations regularly.

Where multiple signatures are required, consider adding bylaws language that relaxes multiple signature requirements during an emergency to increase flexibility and allow the organization to respond more quickly to the emergency.

### Sample Bylaws Language

The following language adds a level of flexibility to the execution of instruments section in the bylaws:

- *The following board members and officers of the organization are authorized to execute instruments on behalf of the organization: [board chair, treasurer, secretary, executive director<sup>14</sup>]. The board may generally or in particular cases authorize other board members, officers, employees, or agents to execute instruments on behalf of the organization.*



## L. Electronic Signatures

### Issue 1: How do we ensure that our CAA can sign documents essential to its programs and operations?

As emergencies often limit the ability of authorized signatories to sign documents (e.g., signing at an in-person meeting), CAAs should consider other ways of obtaining necessary signatures to minimize disruptions to operations.



#### Applicable Laws

Federal laws and practices have increasingly recognized the use of electronic signatures. The Government Paperwork Elimination Act of 1998 (GPEA) requires federal agencies to provide individuals or entities that deal with those agencies the option of submitting information and maintaining records electronically. GPEA specifically states that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form, and encourages federal governments to use a range of electronic signature alternatives. Federal agencies may specify standards for the acceptance of electronic documents. For example, HHS accepts electronic signatures on timesheets, checks, and encourages electronic filing (including electronic signatures) of grant applications.

State rules vary in their acceptance of electronic signatures. The Electronic Signatures in Global and National Commerce Act of 2000 (E-SIGN) is a federal statute intended to promote electronic commerce and to promote the adoption of Uniform Electronic Transaction Act (UETA) by states. UETA is not a law but a model for states to use when developing their own electronic transaction laws. The principal provision of E-SIGN and UETA is that a business or commercial transaction will not be denied legal effect solely because it is in electronic form. Many states have adopted the UETA in some form. CAAs should consult attorneys in their states for greater clarity on rules with regard to electronic signatures.

Public CAAs are subject to local laws and regulations, which may include specific requirements related to the use of electronic signatures.



#### Actions to Consider

Allow for flexibility in how someone who is authorized to execute instruments is able to do so on behalf of your CAA. For example, the authorization of electronic signatures in the bylaws can increase speed and flexibility for the execution of instruments.

Ensure that privacy and security concerns are understood and addressed when implementing electronic signature systems.

#### Sample Bylaws Language

Bylaws language could state that:

- *Persons authorized to execute instruments on behalf of [CAA] may do so electronically.<sup>15</sup>*

## M. Amending Bylaws

### Issue 1: Should our CAA amend its bylaws?

Emergencies often reveal that certain bylaws provisions are too rigid or overly prescriptive. CAAs may realize that it is difficult to maintain compliance with such provisions, and thus need to consider bylaws amendments.



#### Applicable Laws

State nonprofit corporation laws require bylaws to include provisions for amending organizational bylaws. These requirements often set a minimum threshold for votes needed to amend, and typically require consideration and vote by the full board. An executive committee cannot approve an amendment on behalf of the rest of the board. Some state nonprofit corporation laws require that the notice of the meeting at which the bylaws are to be amended include a statement indicating that one of the purposes of the meeting is to amend the bylaws. Some states also require that the specific language of the amendment be provided in the notice document.

In addition, 501(c)(3) tax exempt organizations must report significant bylaws changes to the IRS. As noted earlier, changes to the bylaws should be reviewed for consistency with the articles of incorporation. If these changes result in the bylaws being inconsistent with the articles of incorporation, the articles will also need to be amended and the CAA will need to file the amended articles with the secretary of state's office in its state of incorporation.

If a nonprofit CAA fails to comply with bylaw requirements grounded in state nonprofit corporation law, that may render actions taken by the organization invalid. If, on the other hand, a nonprofit or public CAA fails to comply with bylaw requirements derived from funding source requirements, such as state CSBG laws, that would raise a monitoring issue with the funding source, rather than a question about the validity of a board action. In certain circumstances, state laws may allow a nonprofit organization to contravene its bylaws, but this kind of relief will vary from state to state and will likely be granted only on an ad hoc basis.

Public CAAs should be aware of and comply with any local laws, regulations, and processes for amending bylaws.



#### Actions to Consider

Do not provide for an alternative bylaws amendment procedure for use during emergencies, unless state or local laws permit such a process.

Be thoughtful about amending bylaws in response to specific emergency situations and challenges, as changes can alter the rules of engagement and shift board members' expectations for how the board will function after the emergency has passed. Balancing the need to respond to the current exigency while maintaining good governance practices and precedents is one of the more difficult aspects of board service during an emergency.

If your CAA is out of compliance or cannot comply with its bylaws because of an emergency, determine if any government action in response to that emergency, including executive orders or legislation, provides temporary relief from normal requirements. For example, in response to the pandemic, Massachusetts passed an emergency law that allowed nonprofit boards to take a number of actions for a limited period of time, notwithstanding the requirements of their bylaws, unless those actions violated their articles of incorporation. 2020 Mass. Acts, Ch. 53, Sec. 16. Other states may have acted similarly. This would allow a CAA to avoid amending bylaws it could no longer comply with due to an emergency.

Ensure bylaws are flexible enough to address future challenges by having a standing committee, typically the governance committee, charged with coordinating the periodic review of the CAA's bylaws and articles of incorporation. Reviews and revisions of the bylaws should be a regularly scheduled process that occurs over a period of time, rather than as piecemeal reactions to individual challenges. See, for example, CSBG Organizational Standard 5.3, which requires that nonprofit CAAs have their bylaws reviewed by an attorney at least every 5 years.

## IV. Conclusion

As the pandemic has revealed, a CAA's bylaws can limit the board's ability to respond effectively to operational challenges facing the organization during an emergency. Thoughtful consideration to how a board could adjust its governance structures and practices can go a long way towards preparing the organization to better weather future emergencies. While no bylaws will be able to fully anticipate how a CAA board may be affected by emergency situations, CAAs that proactively build in flexibilities will be better equipped to more nimbly and effectively streamline operations in response to future, unknown challenges.

## V. Endnotes

<sup>1</sup> FEMA, Guide for All-Hazard Emergency Operations Planning, <https://www.fema.gov/pdf/plan/glo.pdf>.

<sup>2</sup> 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.

<sup>3</sup> Any CAA that uses this language should ensure that “emergency” is defined in the bylaws and limited in scope. A definition that is too broad could cause confusion about when an emergency exists, and uncertainty over the authority of the board to extend terms under this provision.

<sup>4</sup> Any CAA that uses this language should ensure that “emergency” is defined in the bylaws and limited in scope. A definition that is too broad could cause confusion about when an emergency exists, and uncertainty over the authority of the board to extend terms under this provision.

<sup>5</sup> During an emergency, vacancies in the low-income sector can be especially challenging to fill, as the ability to identify, recruit, interview, and engage in a democratic selection process may be limited. A CAA should stay in constant communication with its funding sources about these challenges and consider whether its current processes are sufficiently flexible to adapt to the CAA’s definition of emergency situations. For additional resources on democratic selection procedures, see [Preserving the Low-Income Voice: Snapshots of Democratic Selection Procedures in a Pandemic](#). See also, [Raising the Low-Income Voice: Case Studies in Democratic Selection Procedures](#).

<sup>6</sup> State open meeting laws may apply to a nonprofit CAA either (1) via the law itself if a nonprofit CAA falls within the statute’s definition of a public body subject to the requirements of the law (for example, some definitions include entities that receive a certain percentage of public funding) or (2) via a state’s CSBG law or regulations.

<sup>7</sup> Any CAA that uses this language should ensure that “emergency” is defined in the bylaws and limited in scope. A definition that is too broad could cause confusion about when an emergency exists, and uncertainty over the authority of the board to extend terms under this provision.

<sup>8</sup> CAAs should check applicable state CSBG laws and regulations to determine whether they require a certain number of board meetings to be held per year and, if so, whether this provision is permissible. If necessary, a CAA may check with its state CSBG office.

<sup>9</sup> CAAs should be careful in the bylaws to ensure that vacancies will not impact the ability of the board to call special meetings. Within this context, this sample language references “the directors then in office” rather than “the full board.”

<sup>10</sup> Some states require nonprofit CAAs to comply with state open meetings laws. These laws vary by state and may restrict whether CAA board meetings may be held remotely and how remote meetings must be conducted. Nonprofit CAAs should consult with attorneys licensed in their states to determine whether state open meetings laws apply, and if so, what those laws permit/restrict with regard to the conduct of meetings, whether remote meetings are permitted, and what steps must be taken to hold a compliant open meeting.

<sup>11</sup> CAAs should consider different kinds of technology that could be used to provide both notice for meetings as well as to distribute required information to board members prior to a meeting. Utilizing an online platform or email, where allowed, could help limit any potential disruption caused by an emergency. When CAAs are subject to open meetings laws, they should ensure that any electronic notice used complies with those requirements. For example, if a CAA is subject to state open meetings laws and wants to provide public notice through its website, a social media platform or news site, it must ensure that those laws allow for notice to be provided in those ways.

<sup>12</sup> Any CAA that uses this language should ensure that “emergency” is defined in the bylaws and limited in scope. A definition that is too broad could cause confusion about when an emergency exists, and uncertainty over the authority of the board to extend terms under this provision.

<sup>13</sup> CAAs should check applicable state laws to determine if written consent must be unanimous or if action may be taken, absent a meeting, with less than unanimous written consent.

<sup>14</sup> Each CAA will need to determine what directors and officers it wants to grant this authority to.

<sup>15</sup> CAAs should consult state law to determine if restrictions exist on the use of electronic signatures. In addition, CAAs should ensure that any electronic signature technology used is secure and complies with organizational privacy/confidentiality policies.