



Bylaws Toolkit

for Community Action Agencies

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Introduction

An organization's bylaws serve as the operating manual for its board of directors and set forth the rules that govern the way the board oversees the organization. This Toolkit aims to guide Community Action Agencies (CAAs) in understanding, reviewing, and where necessary revising, their existing bylaws. Well-drafted bylaws establish how a board manages itself, including how it selects directors, meets, votes, and delegates its authority to others. Bylaws offer necessary direction and structure for boards to fulfill their fiduciary duties and responsibilities to their organizations. For CAAs, bylaws also include targeted provisions that boost community engagement and participation with tripartite boards to help organizations achieve better outcomes in their service areas.

Bylaws can cause confusion and frustration for a CAA when board members do not fully comprehend the complex mix of federal and state laws that apply to CAA boards and inform their bylaws. Further, differing interpretations of bylaws provisions or misunderstood and even outdated language can lead to conflict at the board level and non-compliance with legal requirements. Bylaws can quickly transition from important to critical when a board action is challenged, since the outcomes often depend on whether a board acted pursuant to its bylaws. Carefully crafted bylaws that set forth procedures in clear provisions help boards take valid action, making the board less vulnerable when legal challenges arise.

State laws require nonprofit CAAs to adopt bylaws. Corresponding requirements in the local laws that govern public CAAs do not always exist since they are part of the local government; however, a form of bylaws or similar governing document is typically needed for tripartite boards of public CAAs to operate effectively. Thus, many of the principles discussed in this resource also apply to public CAAs and the Toolkit notes when and how the information presented may differ for a public CAA.

Approach to Review

Bylaws are a working, living set of rules that establish the framework under which a board operates. A CAA board should regularly review and update its bylaws to reflect evolving legal requirements and organizational experiences. Broadly, a CAA board must approach its bylaws review with an understanding of applicable laws and how they may have changed. The board must also understand the practical application of its own bylaws and inform its review with its own experience with the bylaws. For example, it should understand what provisions in the bylaws have caused confusion in the past, where rigid or overly prescribed bylaws requirements posed compliance challenges, and how organizational circumstances have evolved and may warrant bylaws updates. The decisions the board makes while reviewing and updating bylaws will directly affect how the board will identify, address, and resolve organizational and operational matters going forward.

Since reviewing bylaws is an extensive process, many boards assign the task to a board committee, either the governance committee or an ad hoc one. The committee works with the executive director (this Toolkit generally refers to a CAA's primary executive position as executive director, but some CAAs use the title chief executive officer instead) and legal counsel to ensure organizational practices and applicable laws are reviewed and incorporated. An attorney working with a nonprofit CAA should possess experience in state nonprofit corporation laws, which often set default rules or required minimums for board operations. The committee discusses questions and revisions with the CAA's attorney to understand legal implications and prepare proposed edits accordingly. Once the committee completes its review, it submits the proposed revisions to the full board for review by each member. At a meeting of the full board, members discuss, as needed, the proposed updates and may invite the attorney who assisted with the review to explain legal issues and address questions. The full board then votes to approve or reject the revisions.

pursuant to an amendment and/or restatement process, which is typically set forth in the bylaws and, for nonprofit CAAs, must comply with applicable state nonprofit corporate laws.

This Toolkit serves as a guide for board committees, staff, outside legal counsel, and others tasked with reviewing a CAA's bylaws, especially with respect to the federal grant laws applicable to CAAs. The first part introduces the legal context with “Governing Laws and Guidance” that inform bylaws, as well as the types of “Governing Documents” that CAAs must consult and potentially revise when conducting a review. The remainder of the Toolkit provides a section-by-section review of the bylaws by laying out sample language for common provisions, providing drafting tips, and explaining key legal requirements and considerations. While the bylaws provisions in the Toolkit are largely based on requirements applicable to nonprofits, they establish a governing framework that may also help a public CAA tripartite board operate more effectively. A board should consult with local counsel before individualizing and adopting any sample language for its bylaws, including the template language in this Toolkit's drafting tips.

The format of these drafting tips includes bracketed text in bolded italics that is explanatory of the options a CAA will need to consider related to the applicable provision. As such, these drafting tips are not intended to be copied wholesale into a CAA's bylaws, but considered carefully with the assistance of an attorney, and the bracketed text replaced or removed. When using language from these drafting tips, CAAs must be sure to make defined terms such as “Organization” or the CAA's name consistent with its own bylaws. Public CAAs that use the sample bylaws language should change references to “director” to “board member.”

Governing Laws and Guidance

When drafting, reviewing, or amending bylaws and other governing documents, CAAs must understand the applicable laws and how they impact the way boards of directors function.

State Corporate Law

A state's corporate laws establish and govern a nonprofit corporation. In most states, there is a law specific to nonprofits that is referred to as the “Nonprofit Corpo—ration Act”; however, in others, one corporate law governs both for-profit and nonprofit entities alike. In a few states, the law applicable to nonprofits is not readily apparent because its title does not actually include the term “nonprofit”; a number of states use the term “nonstock” instead. A nonprofit CAA that is not familiar with its state nonprofit corporation law should consult a state law attorney who is. In this Toolkit, we will refer to the state corporate laws that govern nonprofits as the “Nonprofit Corporation Act(s)” or the “Act(s).”

While the content of Nonprofit Corporation Acts varies widely and can range from prescriptive to suggestive, they generally set forth the framework for nonprofit bylaws by establishing minimum requirements for board operations and default provisions that will govern if not addressed or specified in the bylaws. For example, an Act may state that a board member's term shall be one year unless the bylaws specify another term length. We generally recommend that bylaws not include specific state law references, e.g., titles or citations, to minimize the need to update bylaws when laws change. In certain instances, however, a general reference to a state law may be preferable and more efficient than including specific or detailed procedures required by state law. This Toolkit includes suggestions where that may be the case.

An Act may include specific prohibitions that boards must ensure are not contradicted by the bylaws to protect the organization from legal challenges. For example, if the Nonprofit Corporation Act provides that a nonprofit organization's board members may not vote by proxy (i.e., may not appoint someone else to

vote for them at a meeting they are unable to attend) and an organization's bylaws allow board members to vote by proxy, the bylaws provision is illegal and could lead to challenges of board actions taken pursuant to it.

A Nonprofit Corporation Act often also directs nonprofits to include specific information in other governing documents, such as their articles of incorporation, and requires nonprofits to follow certain procedures in filing those documents. The Secretary of State's office usually oversees nonprofit corporate filings while the Attorney General's Office typically oversees compliance with state charity law.

IRS Tax-Exempt Organization Law

Nonprofit CAAs are recognized as tax-exempt at the federal level under section 501(c)(3) of the U.S. Internal Revenue Code (IRC). To obtain and maintain this status, the nonprofit must be organized and operated exclusively for charitable purposes, not for any private benefit or interest. The IRC includes requirements that address how an organization applies for, receives, and maintains its tax-exempt status, including provisions an organization must include in its governing documents, especially its articles of incorporation.

Funding Source Laws and Guidance

Nonprofit and public CAAs, as recipients of multiple government awards, must consider the statutes, regulations, and guidance that govern those awards when updating bylaws, as they sometimes contain requirements applicable to boards of directors. Noncompliance with funding source requirements may result in a loss of funding.

The most common funding source law applicable to CAAs is the federal Community Services Block Grant (CSBG) Act. All CAAs receive CSBG funding and as a result must comply with the requirements of the federal CSBG Act. The federal CSBG Act requires that each CAA have a tripartite board. Because of the tripartite structure, CAAs must include provisions in their bylaws not typically found in other nonprofits' bylaws. When drafting or revising their bylaws, CAAs should review the CSBG Act's tripartite board requirements, which can be found at 42 United States Code (U.S.C.) section (§) 9910.

Many states enact state CSBG statutes and regulations that impact provisions of CAA bylaws. A CAA must consider state-specific CSBG laws, regulations and relevant state guidance (referred to as "CSBG laws" in this Toolkit) with any review of governing documents. While state laws cannot conflict with federal laws, they can add specificity or additional requirements where federal law is silent. This is especially true in the CSBG context, since CSBG is block grant funding and states have discretion in the administration of the funding.

The Office of Community Services (OCS), the federal office that oversees CSBG funding, provides guidance on the federal CSBG Act's board requirements and recommendations on how CAAs can meet those requirements in Information Memorandum (IM) 82. In this Toolkit, we will point out OCS's recommendations when pertinent. Note that IMs are not law or binding authority for CAAs or state CSBG offices, so if recommendations in IMs conflict with state CSBG laws, the state law will control.

Furthermore, the 2016 federal Appropriations Act required all states to adopt, at a minimum, the CSBG Organizational Standards as set forth in OCS IM 138, or similar standards, and monitor CAAs on compliance with them. The CSBG Organizational Standards include certain requirements regarding a CAA's bylaws. CSBG Organizational Standard 5.1 requires a CAA's tripartite board to be structured in compliance with the federal CSBG Act. CSBG Organizational Standard 5.3 requires that the tripartite

board of a nonprofit CAA review its bylaws with the help of an attorney at least every five years. CSBG Organizational Standard 5.5 requires a CAA to address board meetings, quorum, and vacancies in its bylaws (or, in the case of a public CAA, its governing documents).

Other funding sources with notable governance requirements that could impact the bylaws are Head Start and Housing and Urban Development (HUD), both of which are discussed more fully where applicable in this Toolkit.

Local Laws

Local laws and ordinances govern public CAAs and dictate whether public CAA tripartite boards must adopt bylaws or some other form of governing document to establish a framework for board operations. Even if the local laws are silent, we recommend that a public CAA adopt a form of bylaws or similar governing document for its tripartite board that, at a minimum, addresses board composition, authority, and operations.

Governing Documents

When a CAA board reviews its bylaws, it must also review the organization's other governing documents and policies to ensure consistent operations. Legal challenges may arise if an organization takes an action that does not align with certain governing documents. Other governing documents may also more accurately reflect the CAA's day-to-day operations, which can help inform the revisions a CAA needs to make to its bylaws.

Articles of Incorporation

A nonprofit CAA's review of its bylaws should begin with its current articles of incorporation (which some states call a "certificate of incorporation" or "articles of organization"), since the articles formally establish the corporation under state law and will always take precedence over the bylaws. The corporation should ensure that the review includes any subsequent amendments to or restatements of the articles (this Toolkit refers to these documents collectively as the "articles of incorporation" or the "articles").

A nonprofit corporation is created when it files its articles of incorporation with the appropriate state office, typically the Secretary of State's Office. State Nonprofit Corporation Acts and the IRC (which applies when an organization seeks tax-exempt status) specify what a nonprofit corporation include in its articles of incorporation: typically, the corporation's full name, a general statement regarding its charitable purposes, a provision limiting its corporate powers and activities to those the IRC allows a 501(c)(3) organization to engage in, a provision requiring its remaining assets to be distributed for charitable purposes upon dissolution, and the name and address of its initial registered agent and incorporator(s). Some states' Nonprofit Corporation Acts also require the inclusion of the names and addresses of the original board members and officers.

Public CAAs do not have articles of incorporation because they are generally formed under a state statute or by an existing arm of the local government. Instead, a public CAA should look to its formative documents, such as a charter or memorandum of understanding with the local government, and ensure any changes to its bylaws align with those documents.

Board Resolutions

In some cases, boards may specify governance policies or procedures by resolution rather than in the bylaws. A board resolution is a written document that reflects a decision made and action taken by the board. While the bylaws outline the organization's general governing procedures, board resolutions typically set forth actions taken in accordance with those procedures.

Using resolutions for temporary or detailed board processes can give the board flexibility to change its approaches without needing to amend the bylaws. For example, boards that perform work through board committees often adopt board committee charters by resolution. These documents govern the makeup and detail the scope, roles, and responsibilities of board committees. Including these details in committee charters rather than the bylaws affords boards greater flexibility to update committees to respond to evolving challenges and needs.

Organizing resolutions in a way that provides a chronological report of prior interpretations of the bylaws or policies helps the board avoid inconsistency with future actions, including revisions to bylaws. Maintaining a separately indexed chronological record of the resolutions and the initial date of adoption will also eliminate the need to review all board meeting minutes to identify an applicable resolution. Even if resolutions are maintained separately, the board minutes should always reflect any resolution passed at a meeting and indicate if the meeting was appropriately noticed with a quorum present and the vote by which the resolution was passed (for example, unanimous, majority of the board members present, or majority of the board members in office).

Although resolutions interpret and supplement the bylaws, a resolution that conflicts with a provision in the bylaws is invalid.

Policies and Committee Charters

A board may adopt policies that add further details about its composition, governance, and operations, and by doing so help the organization maintain flexible and concise bylaws. Since updating or amending policies is easier than updating bylaws or articles of incorporation, policies are an effective and timely way to address many board matters. For example, a board manual may detail board member roles and responsibilities, reimbursement of expenses, and organization-wide policies related to board and board member responsibilities and how the board conducts itself (e.g., whistleblower and conflict of interest policies).

Parliamentary Procedure

The bylaws do not, and should not, address every possible procedural question that may arise. Rather, organizations develop their own formal or informal procedures to handle most of the situations that come up during board meetings. It is best not to specify these procedures in the bylaws. External parliamentary authorities may serve as a useful guide in situations where conflicts arise at a meeting and neither the bylaws nor any informal board policy provide an adequate solution. One such authority is *Robert's Rules of Order*; however, these are detailed and complex rules meant for large parliamentary bodies. For example, a board may find that some rules proposed by resources like *Robert's Rules of Order* inhibit its ability to have robust discussion because meeting time is consumed with adhering to procedural requirements. Contrary to what many people assume, CAA board meetings need not be conducted in accordance with *Robert's Rules* and, in fact, CAPLAW does not recommend doing so. Instead, we suggest that CAA boards adopt by resolution an agreed upon set of simple procedural rules for the conduct of board meetings.

Articles of Incorporation Provisions

A corporation's* review of its articles of incorporation begins with identifying the original articles of incorporation and any amendments to or restatements to them (this Toolkit refers to these documents collectively as the "articles of incorporation" or the "articles"). To confirm that the corporation has a complete copy of its current articles, it should contact the appropriate state authority (usually the corporations division of the Secretary of State's Office). Types of documents that may be included are the original articles of incorporation, articles of amendment, restated articles of incorporation, and articles of merger.

Changes to the articles of incorporation, which must be filed with the state, are usually more difficult to make than changes to the bylaws. Therefore, boards should include in the articles only information required by or necessary under the state Nonprofit Corporation Act and IRC and should avoid including details about the corporation's operations. This section describes the key provisions required by most state Nonprofit Corporation Acts. When known, the Toolkit identifies variations in the laws, but each CAA will need to work with an attorney in its state to determine the correct approach to take when reviewing and revising its articles.

Name

State Nonprofit Corporation Acts require the articles to include the exact legal name of the corporation, including correct capitalization and punctuation. Whatever appears in the articles is the official name of the corporation. Any corporation that wants to alter its legal name must amend its articles. A corporation "doing business as" another name (d/b/a) typically files a separate document with a state or local official to operate under that fictitious name, but since the legal name of the corporation remains the same, it does not need to amend its articles.

Statement of Purpose

State Nonprofit Corporation Acts require the articles to include a statement of purpose, a brief statement about why the corporation exists. Under the IRC, the articles of a section 501(c)(3) organization must specify that the organization is organized and operated exclusively for certain charitable purposes. We recommend including purposes language only in the articles and not in the bylaws to avoid inconsistencies between the two documents. The Internal Revenue Service (IRS) and state charity regulators will look to the statement of purpose in a corporation's articles—and not in its bylaws—to determine the scope of the corporation's charitable purposes.

A CAA's current programs must fall within the parameters of the statement of purpose. A CAA that adopts a broad statement of purpose will not need to amend its articles every time it adds a new program or activity.

As a nonprofit corporation changes, its focus may also change. If the corporation develops a revised strategic plan, expands its mission, adds a new program, or changes the region in which it primarily conducts its activities, the corporation should review the articles to determine if the proposed change goes beyond the scope of the statement of purpose. If so, the CAA must take formal legal action to amend the statement of purpose in its articles of incorporation, file that amendment with the appropriate state authority, and pay any associated fees. For example, though not required, some CAAs include a

* The Articles of Incorporation Provisions section uses the term "corporation" instead of "organization," since these are general requirements applicable to corporations. For nonprofit CAAs, the terms corporation and organization are interchangeable, but for public CAAs, which are divisions or departments of their local governments, the term corporation does not apply.

geographic area in their statement of purpose to indicate the area they serve. Doing so is generally not recommended because the CAA will need to amend their geographic scope if their work changes. Articles that are silent as to the geographic area of the corporation allow for greater flexibility to expand into other areas.

If a CAA's statement of purpose in its articles references outdated laws, like the Economic Opportunity Act of 1964 (which was repealed in 1981 and replaced by the federal CSBG Act), the CAA should amend its articles to delete those references.

Purposes. The corporation is organized and shall be operated exclusively for charitable and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as now in effect or as hereafter amended, (the "Internal Revenue Code" or the "Code") or the corresponding provision of any future United States internal revenue law. Specifically, the corporation's purposes are to *[the following is an example of broad purposes language for a CAA]* reduce poverty, revitalize low-income communities, and empower individuals and families with low-incomes to become self-sufficient by: creating economic, educational and other opportunities for, and providing a range of services to, families and individuals with low-incomes; mobilizing resources directed to the elimination of poverty; and educating the public on issues of poverty and community revitalization.

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Corporate Powers

A nonprofit corporation (including a nonprofit CAA) derives its corporate powers from its state's Nonprofit Corporation Act, which lists the powers a nonprofit corporation may exercise in furtherance of its corporate purposes. Examples of these powers include the power to own property, enter into contracts, and sue another party. The Nonprofit Corporation Acts of most states do not require nonprofits to list all their powers in the articles to exercise those powers. Rather, a broad statement of the corporation's powers in the articles will suffice. Some states, however, require nonprofit corporations to list certain corporate powers in the articles to exercise those powers. Further, all 501(c)(3) nonprofit corporations must limit their corporate powers to those that the IRC allows 501(c)(3) organizations to engage in. Articles should state that the corporation cannot engage in activities prohibited under the sections of the IRC that govern 501(c)(3) organizations and those permitted to receive tax deductible contributions under IRC section 170(c)(2).

Corporate Powers. The corporation is authorized to do everything necessary, proper, advisable, or convenient for, or in connection with, the accomplishment of the charitable and educational purposes stated in these articles of incorporation and to exercise any powers conferred upon corporations organized pursuant to the provisions of *[insert name of your state's Nonprofit Corporation Act]* as now in effect, or as hereafter amended, provided that such activities and powers are lawfully carried on and exercised by a corporation incorporated under the *[insert name of your state's Nonprofit Corporation Act]* and exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Notwithstanding any other provision of these articles of incorporation, the corporation shall not carry on any activities prohibited under section 501(c)(3) of the Internal Revenue Code, which exempts the corporations from federal taxes, or under section 170(c)(2) of the Internal Revenue Code, which permits the corporation to receive deductible contributions, or the corresponding provisions of any future United States internal revenue law.

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Duration

If a state's Nonprofit Corporation Act requires the articles to specify the duration of the corporation's existence, a CAA should specify that it exists in perpetuity if the state law allows for a limitless duration (which most state Nonprofit Corporation Acts do). Placing limits on a CAA's duration can raise continuity questions about the corporation's existence and ability to continue to serve its community. Limits also require a CAA to update and amend its articles as it approaches the end of its duration.

Members

Articles typically address if a corporation has “members,” and if so, if there are one or more classes of “members.” The term “member” has many meanings for most corporations, including supporters and donors of the corporation's programs (e.g., when a nonprofit corporation tells potential donors that they can become “members” by donating to it), recipients of the corporation's services, or individuals who serve on the corporation's board of directors. However, under a state Nonprofit Corporation Act, the term “member” has a very specific meaning: a “member” of a corporation is typically a person or entity designated as having certain rights under state law and the corporation's articles and bylaws. For the sake of clarity, we recommend calling donors and supporters by another name, such as “friends” or “supporters” of the corporation.

This Toolkit limits the standalone term “member” to those individuals with rights under a state Nonprofit Corporation Act. Due to the board composition requirements imposed on a CAA by the funding it receives, it is unlikely that a CAA would be able to have “members” as defined under its state corporate laws. Thus, CAAs should think very carefully before arbitrarily creating one or more classes of members with actual membership rights since, under state corporate laws, such individuals or organizations are entitled to significant procedural rights and the designation requires the nonprofit corporation to comply with potentially onerous notice and meeting procedures. Under most state laws, a nonprofit corporation may opt to give no or very limited voting power to members. Under this model, a nonprofit corporation would technically have “members,” but the board of directors would hold the voting power. To avoid confusion, CAAs should refer to board members as “directors” or “board members” rather than “members” in the bylaws.

(For a nonmember corporation)

Members. The corporation shall have no members. All rights which would otherwise vest in the members shall vest in the board of directors and the board of directors shall take any action or vote with the same percentage of the board of directors that any law, rule, regulation, or *[insert name of your state's Nonprofit Corporation Act]* requires or permits members to take.

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501(c)(3) Provisions

The IRS requires 501(c)(3) corporations, including nonprofit CAAs, to include specific language in the articles that addresses certain prohibited and permitted activities, and the treatment of assets upon liquidation or dissolution of the corporation. Among other things, this language helps to ensure that the corporation serves exclusively charitable purposes, that its assets are permanently dedicated to those purposes and that private individuals do not receive excessive or improper benefits from the corporation. For example, when assets of a nonprofit corporation are liquidated, the corporation cannot give the proceeds to anyone its wants, since it originally received those assets to further its charitable purpose.

Section 501(c)(3) Requirements.

No part of the assets of the corporation and no part of any net earnings of the corporation shall be divided among or inure to the benefit of any officer or director of the corporation or any private individual or be appropriated for any purposes other than the purposes of the corporation as set forth in these articles, except that the corporation is authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in **[Article #]**.

No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

Upon the dissolution of the corporation, after payment of all liabilities, the corporation shall distribute all its remaining assets for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or corresponding section of any future United States internal revenue law, or shall distribute its assets to the federal government, or to a state or local government for a public purpose.

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Amendment Procedures

Articles may specify the procedures required to amend them, including the vote needed to do so, consistent with the state Nonprofit Corporation Act. Many states require at least a majority of directors “in office” (the number of filled/non-vacant board seats and not just “present” at a meeting where a quorum is present) to approve an articles amendment. In some cases, state law may require that notice of the meeting specify that a purpose of the meeting is to consider the amendment and to include a copy or summary of the amendment. These requirements should be included in the amendment provision, along with any requirements the CAA may choose to include about number of days’ notice required.

Amendments to the articles become official only after a CAA adopts them in accordance with the state Nonprofit Corporation Act and files them with the appropriate state authority (usually the Secretary of State). The IRS also requires a 501(c)(3) corporation to notify it of significant changes to its articles and bylaws in the governance section of its Form 990 and provide summaries of the significant changes in Schedule O. Examples of significant changes include changes to the exempt purpose or mission; the number, composition, qualifications, authority, or duties of the corporation’s voting members; and provisions to amend the organizing documents. Note that the IRS only requires a nonprofit corporation to actually submit revised versions of articles and bylaws when the revisions include changes to the corporation’s name. In addition, some state charity regulators require charities (including nonprofit CAAs) to submit copies of revised articles and bylaws.

Other Provisions

As previously noted, if provisions in the articles conflict with the bylaws, the language in the articles will control. For this reason, a CAA should only include additional provisions in its articles as required by or necessary under the state Nonprofit Corporation Act and address any other information about board operations and composition (e.g., board size, composition and selection, officers, etc.) in the bylaws.

Bylaws Provisions

Like a review of the articles of incorporation, a bylaws review begins with identifying the most recently amended (or amended and restated) version of the document. Because boards must approve changes to bylaws, a CAA can usually track down the current version by reviewing board minutes and resolutions. Unlike articles, state Nonprofit Corporation Acts typically do not require a nonprofit corporation to file its bylaws with the state for them to become effective. This makes the document easier to update and change but not necessarily easier to locate. Some funding sources, such as the state office that facilitates CSBG funding, may require recipients to submit amended bylaws and, if so, may have a CAA's most recent version on file.

The state Nonprofit Corporation Act and applicable local laws vary as to the provisions a nonprofit corporation is required to include in its bylaws. This Toolkit provides language and considerations for the more common provisions. A CAA may add additional provisions as necessary to address the distinctive way it operates. This Toolkit identifies variations in the laws when known, but each CAA must work with an attorney in its state to determine the correct approach to take for its bylaws.

Note that several sections of this Toolkit discuss referencing a nonprofit CAA's articles of incorporation in the bylaws rather than including specific information to avoid future inconsistencies (see, for example, the "Name" section below). A CAA that does this in its bylaws should, at first mention of its articles of incorporation, include language stating that all references to the articles refer to the most recently amended and adopted version of the articles of incorporation.

Name

A nonprofit CAA is not required to include its name in the bylaws. If a CAA includes a section on name in the bylaws, referencing the articles rather than restating the CAA's name avoids future inconsistencies between the articles and the bylaws, and potential legal issues resulting from those inconsistencies. The organization* would then note that thereafter, the bylaws refer to the CAA simply as "the Organization" or "the CAA."

If the CAA is public and not a nonprofit corporation, it may refer to its name in the bylaws or reference its founding documents that include its legal name in the same way a nonprofit CAA would reference its articles.

Name. The corporation's name is as stated in its articles of incorporation (hereinafter referred to as the "Organization"). All references in these bylaws to the articles of incorporation refer to the articles of incorporation of the Organization, as amended, and in effect from time to time.

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Office/Principal Place of Business

The bylaws should omit any reference to the CAA's office or principal place of business, unless such information is required by state law. Doing so will limit the need for the CAA to amend its bylaws if it moves its main office. Additionally, references to a specific service area in the bylaws could unnecessarily restrict a CAA's ability to expand its programs and services and should be avoided if possible.

* The Bylaws Provisions section mainly uses the term "organization" instead of "corporation," since it includes information relevant to both private and public CAAs. For nonprofit CAAs, the terms corporation and organization are interchangeable, but public CAAs, which are divisions or departments of their local governments, are not corporations.

Statement of Purpose

A CAA's bylaws should simply refer to the purposes stated in the articles of incorporation. As discussed above, a private nonprofit CAA is required to include a statement of purpose in its articles and that statement (rather than a statement of purpose in its bylaws) establishes the scope of the CAA's mission and activities. If a purpose or mission statement is in the bylaws or in a stand-alone document, the statement must not conflict with or go beyond the general scope of the purposes set forth in the articles.

A public CAA may include a statement of purpose in its bylaws as permitted by the local ordinances and/or state laws pursuant to which the public CAA was established.

Purposes. The Organization's purposes are as stated in its articles of incorporation.

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Authority of the Board of Directors

The board of directors of a nonprofit CAA is technically the nonprofit corporation and in charge of the organization. The bylaws should include a general statement of the board's power and authority as set forth in the state Nonprofit Corporation Act. However, to maintain flexibility and avoid regular amendments to its bylaws, a CAA should not include a detailed listing of the board's responsibilities in its bylaws unless a funding source specifically requires it. A CAA may decide to include a list of the board's responsibilities in a separate document approved by the board and simply add a general reference to funding source requirements in the bylaws. A CAA could include in its bylaws the general CSBG and Head Start requirement that board members "fully participate in the development, planning, implementation, and evaluation" of the work funded under those laws.

Public CAA Take. Local governments delegate authority to public CAA tripartite boards through a variety of means, including local ordinances, delegation of authority agreements, or similar documents. These ordinances and agreements typically detail the division of responsibilities between the governing body for the city or county (e.g., the board of selectman or county commissioners) and the public CAA tripartite board. The degree of authority delegated to a tripartite board varies. While a public CAA tripartite board may possess decision-making authority over CSBG funding, oftentimes its role is limited to advising the local government on CSBG-related decisions. Thus, if a public CAA includes an "authority of the board" provision in its bylaws or board operational documents, it should ensure that the language used remains consistent with the authority actually granted to it, i.e., reflects the language in the ordinances and/or agreements that established the authority.

Authority and Responsibility of the Board of Directors. All corporate powers shall be exercised by or under the authority of, and the activities, property and affairs of the Organization managed by or under the supervision of, its board of directors. All directors shall fully participate in the development, planning, implementation, and evaluation of the programs offered by the Organization, including in its service of individuals and families with low incomes.

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Number of Directors

Bylaws must indicate how many board members serve on the board; however, the actual number may vary by CAA. Some state Nonprofit Corporation Acts or state CSBG laws require bylaws to specify the exact number of directors to serve on the board. Other states allow the bylaws to simply indicate a range

of directors. A range offers the board greater flexibility to add directors with needed skills, experience, or qualifications when interest in board service is high, or reduce the board's size if it is struggling to recruit directors. Setting forth a fairly generous range allows the board to build capacity while avoiding repeated amendments to the bylaws each time the number of board members is expanded or contracted. Rather, board members will vote at the annual meeting to set the number of board members in office for that year, typically the CAA's fiscal year, within the range established by the bylaws. Bylaws should ensure that any action to reduce the number of board members does not result in a current board member's term ending prior to its scheduled expiration.

Because the federal CSBG Act requires that exactly one-third of a CAA tripartite board consist of elected or appointed public officials or their representatives, CAA bylaws should specify that the number of directors be divisible by three. When board language establishes a range, numbers at the bottom and top of that range should also be divisible by three. For example, between 15 and 24.

Multiple factors and strategies inform the board size an organization chooses. An organization may opt for a large board to increase its visibility and presence in the community and boost capacity to oversee, govern, and advocate for the CAA. Another may find large boards unwieldy and prefer a smaller number of board members to take ownership over a larger portion of board responsibilities. Those with smaller boards may also not have the capacity to devote additional resources, time, and expense to recruit, orient, and train larger numbers of board members, especially CAAs serving rural or larger geographic areas. Additional issues that may arise with larger boards include ease of board member engagement, attendance at meetings and meeting the quorum requirements necessary to conduct business.

One alternative to a large board for a nonprofit CAA is to create an advisory body or similar group consisting of prominent individuals or experts on technical issues. These groups can have non-voting advisory status and provide information and advice to the board of directors. An advisory body can also help the organization in its fundraising campaigns and can serve as a recruitment source for potential directors. Because the individuals who are members of advisory bodies are not voting directors, they are not counted for quorum purposes and are not expected to attend the board meetings. If a CAA includes an advisory body in its bylaws, it should make clear the difference between individuals on this body and directors by using different terms to refer to each.

Number of Directors. The board of directors shall be composed of such number of directors, not fewer than *[for example, fifteen (15)]* and not more than *[for example, twenty-four (24)]*, as determined by the board from time to time. The board may by resolution, from time to time, increase or decrease the number of directors within that range, provided that the number of directors is always divisible by three and no decrease shall have the effect of shortening the term of any incumbent director.

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Composition of Directors

CAA bylaws must include a section on board composition since the federal CSBG Act, and possibly other laws and funding source rules, contain specific requirements for a tripartite board's structure.

Tripartite Board Structure Generally. Including a general statement in the bylaws reiterating the tripartite board composition requirements of the federal CSBG Act will reinforce for current and future board members this key criterion for maintaining CSBG funding. The federal CSBG Act requires that a CAA board consist of exactly one-third elected or appointed public officials, or their representatives (the "public

sector”), at least one-third democratically selected representatives of the individuals and families with low incomes served by the CAA (the “low-income sector”), and the remainder made up of representatives of major groups and interests in the community served (the “private sector”).¹

The federal CSBG Act does not dictate the terminology a CAA uses to refer to the different sectors of the tripartite board. Unless state laws or guidance indicate otherwise, terminology used to refer to the different sectors is within the CAA’s discretion. While this Toolkit uses the term “low-income sector,” for example, some CAAs may use a different term such as “client sector,” “consumer sector,” or “community sector.” Whichever term a CAA uses, it should do so consistently throughout its bylaws to avoid confusion.

Public CAA Take. The tripartite board requirements for public CAAs differ slightly from those for nonprofit CAAs in a few notable ways. For a public tripartite board, Low-Income Sector Board Members must reside in the neighborhood served by the organization. The federal CSBG Act also specifically reiterates that the Low-Income Sector Board Members must be able to participate actively in the development, planning, implementation, and evaluation of the CAA’s CSBG-funded programs. This added emphasis establishes individuals and families served by the public CAA as a critical component in the governance of the entity, especially in cases where the tripartite board is not authorized to take actions on behalf of the CAA but rather makes recommendations for consideration by the local governing officials.

While public CAAs typically use the tripartite board structure, the federal CSBG Act allows a **state** to specify “another mechanism,” instead of a tripartite board, to assure decision-making and participation by individuals with low incomes in the development, planning, implementation, and evaluation of the CSBG programs. A public CAA in a state that has specified another mechanism will need to determine, in consultation with the state, how best to establish rules for that mechanism’s governance and operations, which may or may not include the adoption of bylaws.

(For use by nonprofit CAAs)

Tripartite Board Structure.

One-third of the directors are elected public officials, holding office on the date of selection *[Whether a public official must hold office for the duration of their term varies from state to state; see “Public Sector Director Selection” under “Selection of Directors” below]*, or their representatives. If elected officials are not reasonably available and willing to serve, appointed public officials, or their representatives, can count in meeting the one-third requirement (Public Sector Directors);

At least one-third of the directors are chosen in accordance with democratic selection procedures adequate to assure that these members are representative of individuals and families with low incomes in the neighborhood(s) served (Low-Income Sector Directors); and

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

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¹ See 42 U.S.C. § 9910.

(For use by public CAAs)

Tripartite Board Structure.

One-third of the tripartite board members are elected public officials, holding office on the date of selection, *[Whether a public official must hold office for the duration of their term varies from state to state; see “Public Sector Director Selection” under “Selection of Directors” below]*, or their representatives. If elected officials are not reasonably available and willing to serve, appointed public officials, or their representatives, can count in meeting the one-third requirement (Public Sector Board Members);

At least one-third of the tripartite board members are chosen in accordance with democratic selection procedures adequate to assure that these members are representative of individuals and families with low incomes in the neighborhood(s) served; reside in the neighborhood(s) served; and can participate actively in the development, planning, implementation, and evaluation of the corporation’s CSBG programs (Low-Income Sector Board Members); and

The remainder of the board members are officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served (Private Sector Board Members).

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Head Start Board Composition Requirements. CAAs that offer Head Start programs must also comply with board composition requirements contained in the Head Start Act.² Inclusion of these requirements in the bylaws, while not required, is recommended to help board members maintain compliance with them. The requirements dictate a specific governance structure and terminology. For example, Head Start laws refer to the statutorily-required advisory body with governance responsibilities relating specifically to the program as the “Policy Council” and to the board of directors with governance responsibilities for the entire organization as the “governing body” or “governing board.” Regardless of the terms a CAA uses to establish its governance structure, it should be mindful of maintaining a clear distinction between different bodies to minimize confusion and maintain consistency.

(For use by CAAs with Head Start programs)

Head Start Board Composition Requirements. The board of directors must include: at least one director with a background and expertise in fiscal management or accounting; at least one director with a background and expertise in early childhood education and development; and at least one director who is a licensed attorney familiar with issues that come before the governing body. However, if board members with the qualifications listed in the prior sentence are not available to serve, the board shall use a consultant, or another individual with relevant expertise and the required qualifications, to work directly with the board.

Other directors shall reflect the community served and include parents of children who are currently, or were formerly, enrolled in Head Start programs and individuals who possess expertise in education, business administration, or community affairs.

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² See 42 U.S.C. § 9837(c)(1).

Other Board Composition Requirements. Depending on the sources of funding a CAA receives, it may need to specify other board composition requirements in its bylaws. For example, a CAA may receive funding from the U.S. Department of Housing and Urban Development (HUD) to serve as a Community Housing Development Organization (CHDO). CHDOs have specific board composition requirements under HUD laws.

Ex Officio Directors. Organizations may designate certain individuals who, because of their position in the organization, automatically become a director. Bylaws often refer to these individuals as “*ex officio*” directors (In Latin, *ex officio* means “by virtue of the office.”). The term “*ex officio*” does not necessarily confer voting rights, but under some state Nonprofit Corporation Acts, an *ex officio* director automatically has voting rights. To eliminate confusion and avoid controversy as to voting and quorum requirements, the bylaws should specify an *ex officio* director’s voting or non-voting status.

For example, an executive director position may include serving as an *ex officio* director on the board. However, because an executive director already exercises significant control over the management of the organization, and the board oversees and evaluates that individual, some organizations prefer to limit their authority on the board, and many do not include them on the board at all. Laws that prohibit compensating board members, such as those in the Head Start Act and in some state Nonprofit Corporation Acts, further restrict an executive director from serving on the board (see “Compensation of Directors” below). Many CAAs also do not give their executive directors a seat on the board given the potential conflict of issues that may arise and the specific tripartite board composition and selection requirements.

Emeritus Status Board Members. Some organizations may want to retain former directors as volunteers or advisors to the board given their experience with and institutional knowledge of the organization and its board. If a board decides to grant emeritus advisor status, bylaws should include how the status is granted and revoked. CAAs should determine and include in the bylaws if and how an emeritus advisor may participate in discussions at board meetings and the extent to which they can access information. Boards must not count an emeritus advisor toward a quorum; nor should they have any voting rights or other powers, duties, rights, or responsibilities of a director.

Selection of Directors

CAAs differ on the level of detail to include in the bylaws about specific board member selection procedures. Some prefer to only include board composition requirements and place selection procedures in other governance documents approved by the board. As a result, these CAAs can more easily update or change selection procedures because they are not bound by the bylaws amendment process. This approach also affords boards greater flexibility to adjust selection procedures in response to evolving board recruitment and selection efforts, especially the democratic selection procedures for the low-income sector of the board. Conversely, some CAA boards prefer to include selection procedures in the bylaws or are required by state CSBG laws to include such procedures in their bylaws. Selection procedures outlined in the bylaws can promote consistency and stability by eliminating uncertainty when it comes time to recruit and select directors.

Regardless of the approach to selection procedures in the bylaws, CAAs should include general language in the bylaws to retain control over the seating and removal of board members. The full board should vote to seat each nominee, including those nominees selected via a democratic selection process as required by the federal CSBG Act. Under some state Nonprofit Corporation Acts, where a board member is designated or appointed by a third party, only that party may remove the board member they designated or appointed. Requiring the board to vote to seat the nominee means that the board – and

not the third party – made the final decision to choose the board member and can therefore remove the board member. However, to ensure compliance with the federal CSBG Act, a board would only exercise its right to remove a democratically selected member for an objective reason that would prohibit any individual from serving on the board. For example, individuals typically not eligible to serve on a tripartite board include those barred from working with federal grants or who fail to meet required funding source criteria. This approach to board composition enables the board to better manage its members while also maintaining compliance with the federal CSBG Act, particularly the democratic selection requirement.³

Selection Generally. After each prospective director is selected to serve on the board through the appropriate selection process for the sector in which they propose to serve and meets the qualifications set by the board from time to time for service as a director, the board of directors shall vote on whether to seat them on the board.

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Public Sector Director Selection. The federal CSBG Act does not dictate a process by which an elected public official is selected. Unless state law specifies a process, CAA boards may establish one in the bylaws. A CAA may choose to specify in its bylaws the types of elected or appointed public officials that the board must elect. For example, some bylaws may require that the elected holder of a specific public office in the community, such as a city councilperson or mayor, automatically serves in the board's public sector, or selects a representative to serve. While this approach can promote sustained engagement and interest by local, elected public officials in the CAA, it can alternatively limit the board's flexibility in selecting directors who align with the CAA's mission and who will enable the board to meet the CAA's current and future needs. For maximum flexibility, we recommend not specifying in the bylaws particular office holders entitled to hold public sector board seats.

CAA bylaws should state that representatives of elected or appointed public officials may serve as Public Sector Directors. Bylaws should generally reference "representatives" rather than specifying the type of representative who may serve in place of a public official. Additionally, a CAA board is not required to automatically accept the public official's choice of representative. As noted above, the bylaws should generally include language to retain control over the seating and removal of board members by requiring the full board to vote to seat each nominee, including those nominees selected as representatives of a public official. The bylaws should also require the public official to accept the seat or designate a representative to serve within a certain time period specified by the board, and if they fail to do so, allow the CAA board to select another public official to serve. This provides boards with more options and flexibility to select directors who best meet the current needs of the CAA in a timely manner (See CAPLAW's [Working with an Elected Public Official's Representative of the Tripartite Board](#) which addresses issues such as representatives serving as proxies).

Further, CAAs sometimes confuse this requirement and reserve a board seat for a representative chosen by a public body, such as a city council, rather than individual public officials. With respect to nonprofit CAAs, the federal CSBG Act requires that Public Sector Directors be elected public officials, holding office on the date of selection, or their representatives. This language indicates that a public sector seat is to be held by an individual public office holder or that person's designated representative. Therefore, we recommend not including language in the bylaws that authorizes a public body to select a representative to serve as a public sector board member.

³ See 42 U.S.C. § 9910.

According to the federal CSBG Act, the elected public official must hold office on the date of selection to the CAA board. Federal law is silent on whether an elected public official may continue to serve the remainder of their term as a board member when it extends past their public office term. OCS, in IM 82, recommends that elected public officials or their designees serve on the tripartite board only while the public official is in public office. Some state CSBG laws even require public officials to be “currently holding office,” which means these Public Sector Directors must hold public office for the entirety of their CAA board member term. CAAs in these states should reflect this requirement in the bylaws.

Some CAA bylaws retain language from when the Economic Opportunity Act of 1964 (the CSBG Act’s predecessor) required the chief elected official(s) in the area served (e.g., the mayor) to designate Public Sector Directors. Indeed, some state CSBG laws still require this. However, the current federal CSBG Act does not include this requirement. Rather, the CSBG Act specifies that a CAA must select the board. As such, we contend that the state laws that still require selection by chief elected officials are inconsistent with the federal CSBG Act and are therefore invalid. Some states whose laws still contain this requirement do not enforce it, while others do. If a state enforces the chief elected official requirement, a CAA may choose to contest this issue with the state (as at least one CAA has done with success).

Public Sector Directors. The board 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 board may select appointed public officials to serve. An elected or appointed official may designate a representative to serve in their place, subject to board approval. The representative does not need to be elected or appointed. If a public official fails, within the period specified by the board at the time of the request, to accept the seat or designate a representative, the board shall either select another public official to fill the seat or to appoint a representative, subject to approval of the board, to fill the seat.

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Low-Income Sector Director Selection. CAA bylaws must ensure that Low-Income Sector Directors are selected by the community served via a democratic selection process, so that those currently living in the CAA’s service area play a key role in how the CAA is governed and fulfills its mission. The federal CSBG Act does not provide any recommended or required types of democratic selection procedure. Unless state CSBG laws specify such procedures, a CAA board can determine what process to adopt. In so doing, it must ensure that selection results from some form of democratic procedure that captures the voice of the current residents in the area(s) served (See CAPLAW’s [Raising the Low-Income Voice: Case Studies in Democratic Selection Procedures](#) for examples of ways CAAs meet the democratic selection procedures requirement).

The individuals elected to serve as Low-Income Sector Directors are not required to have low incomes themselves, however, IM 82 recommends that most, if not all, Low-Income Sector Directors on a CAA’s board be either low-income or reside in the community served. For nonprofit CAAs, only if Low-Income Sector Directors are selected to represent specific neighborhoods within a community are they required to live there. This means that under the federal CSBG Act a residency requirement only exists if it is included in the bylaws. However, for public CAAs, Low-Income Sector Directors must reside in the neighborhood served. The federal CSBG Act does not define the neighborhood served such that, presumably, it could encompass the CAA’s entire service area or a portion thereof.

In general, the bylaws may, but do not need to, describe the democratic selection procedures used for Low-Income Sector Directors. Instead, these procedures may be described in a separate document. We

recommend including these procedures in a separate document, since including them in the bylaws make them more difficult to change. However, some states' CSBG laws, regulations, or policies require CAA bylaws to include the details of the democratic selection procedures.

IM 82 provides examples of democratic selection procedures for Low-Income Sector Directors which include (1) direct elections and (2) micro-democratic selection procedures. Direct election procedures may include processes such as: election by ballots cast by the CAA's clients and/or by other people with low incomes in the CAA's service area at designated polling place(s), at the CAA's offices, or via the Internet; and voting at a community meeting of people with low incomes, which could be held not simply to select Low-Income Sector Directors but also to address a topic of interest to people with low incomes. Micro-democratic selection processes involve the designation of community bodies composed predominantly of and representing people with low incomes in the service area, such as a Head Start policy council, low-income housing tenant association, or the board of a community health center. These bodies would elect one of their members to serve as a low-income representative or choose someone from among their elected officers/board members to serve on the CAA's board.

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 Organization's clients and/or by people with low incomes in the Organization's service area; (2) selection at a community meeting in a low-income neighborhood in the Organization's service area and/or on a topic of interest to people with low incomes and publicized to people with low incomes in the Organization's service area; and/or (3) designation by organizations in the Organization's service area composed of a majority of people with low-incomes.

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Private Sector Director Selection. CAA bylaws should reflect the flexibility that exists in selecting Private Sector Directors so that a board can base selection decisions largely on the types of knowledge, skills, and experience it needs. Private Sector Directors may be officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served. Though called the "private sector," it may include both private and public sector groups, individuals and interests.

To fully capitalize on the flexibility afforded to this sector, CAA boards should avoid placing restrictions on Private Sector Director selection in the bylaws. Boards can retain control over selecting directors to fill all or at least some of the Private Sector Director seats, rather than delegating the selection to other organizations. If a CAA board delegates authority to another organization to designate a Private Sector Director, the CAA should ensure that the bylaws require the CAA board to approve that designee (See "Selection of Directors" discussing retaining authority to remove board members). To minimize the impact of vacancies when the CAA works with community organizations to fill private sector seats, the bylaws may require the organization to designate a director within a certain time period and, if the organization fails to do so, allow the CAA board to select another designating organization or individual director. Another way to help the board think more strategically about its composition and boost board capacity is to not limit Private Sector Directors to specific officials or leaders in the community. Maintaining greater control over this sector allows CAA boards to select individuals involved with community groups and interests that will be good partners for the CAA and its programs, and who possess the skills, experience, and resources (e.g., people with financial expertise, fundraising skills and contacts, etc.) that the CAA needs.

(For use where the board itself selects Private Sector Directors)

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.

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(For use where the board may also choose Private Sector Directors through community organizations)

Private Sector Directors. The board shall either or both: (a) 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; or (b) select one or more organizations representing such groups and interests in the Organization's service area (Private Sector Organizations) to designate, from among their officials or members, individuals to serve on the Organization's board of directors. Where the board selects organization(s) to designate individuals to serve as Private Sector Directors, each such organization shall be entitled to designate one individual, subject to approval of the Organization's board, to serve as a Private Sector Director. Should such an organization fail, within the period specified by the Organization's board at the time of request, to designate an individual to serve as a Private Sector Director, the Organization's board shall select another organization to designate such an individual or select the individual itself.

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Petitions for Board Representation

Under the federal CSBG Act, states must require CAAs to establish procedures for an individual with a low income, a community organization, a religious organization, or a representative of individuals with low incomes to petition the CAA for adequate representation when the organization or individual believes that such representation is inadequate.⁴ Absent state laws or guidance establishing specific petition procedures, a CAA can develop its own.

Petitions for Board Representation. An individual with a low income, a community organization, a religious organization, or a representative of individuals with low incomes that consider its organization or individuals with low incomes to be inadequately represented on the board may submit a petition for representation to the board. The petition must be signed by at least **[we recommend around 15-20]** individuals, unless the **[president/chair]** determines that it is appropriate to waive this requirement in a particular case. A written statement of the board's action on the petition shall be provided to the petitioning individual or group (and, if required by law, regulation, or government funding source policy, a copy of the statement shall be sent to the appropriate government organization(s)). The board shall decide if additional representation is needed and take any actions necessary to add that representation while ensuring that the board's composition meets the requirements of the federal Community Services Block Grant Act, the federal Head Start Act **[include reference to Head Start Act only if your CAA is a Head Start grantee]**, and any other applicable laws or regulations.

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⁴ 42 U.S.C. § 9908(b)(10).

Directors' Terms and Term Limits

Terms. Bylaws should specify the term for which board members serve. If they do not, terms of nonprofit CAA board members will default to what state Nonprofit Corporation Acts provide, typically a one-year term of office. A CAA should incorporate any state nonprofit corporation or CSBG law requirements on board member terms in the bylaws. Absent state nonprofit corporation or CSBG law requirements on director terms, CAA boards can decide what terms work best for their organizations and include them in the bylaws. A common term length is three-years. Alternatively, some organizations prefer longer terms of four or five years to preserve institutional knowledge or minimize what can be costly and time-consuming board recruitment.

Whatever number of years a board chooses, bylaws should make director terms consistent across tripartite sectors (when not required otherwise by state CSBG laws). Managing and tracking different term lengths for board members in different sectors can be time-consuming and may make board recruitment more challenging. As described above under “Selection of Directors,” state CSBG laws may contain specific requirements for Public Sector Director terms, including that Public Sector Directors only serve on a CAA board while they (or their appointing officials) hold public office. Unless required by a state’s CSBG laws, the term of an elected public official does not need to automatically align with the official’s public office term. Rather, a CAA can give elected public officials a specific term length (such as three years), which can end early if the official loses their elected office.

Organizations may use staggered terms for their directors, meaning only a certain portion of the board will be up for election in any given year. Some state Nonprofit Corporation Acts may even require it. Using staggered terms ensures that there is never a board composed entirely of new members. Staggered terms allow for the more seamless transfer of institutional knowledge between long-serving and new board members, especially as it pertains to CSBG-specific requirements such as the tripartite board requirements. To maintain flexibility around the process, CAA boards should not include details on how they stagger terms in the bylaws. This information should be detailed in a separate document approved by the board which can include details such as the number of classes, or groups, of directors and how the election of such groups will be staggered so as not to occur at the same time.

Terms of Office. Each director shall serve for a *[example: three-year]* term, or until they sooner die, resign, are removed, or become disqualified. A public official shall serve as a Public Sector Director only while they continue to hold public office, subject to the *[example: three-year]* term length described above *[for CAAs where the state CSBG Act requires Public Sector Directors to be currently holding office]*. A representative of a public official shall serve as a Public Sector Director only while the public official whom they represent continues to hold public office, subject to the *[example: three-year]* term length described above *[for CAAs where the state CSBG Act requires Public Sector Directors to be currently holding office]*. *[For CAAs that permit organizations to designate Private Sector or Low-Income Directors]* An individual designated by an organization to serve as a Private Sector Director or a Low-Income Sector Director shall so serve only while they are associated with the organization that designated them. Directors may serve consecutive terms.

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Term Limits. CAAs should specify in the bylaws whether term limits apply to directors. Term limits restrict the number of consecutive terms a director may serve. Although state Nonprofit Corporation Acts do not generally require term limits, state CSBG laws sometimes do; therefore, CAAs should check their state's law on this point. Absent state law requirements, CAAs can decide if they want to limit the number of consecutive terms that an individual may serve on the board and include those limits in the bylaws.

Typical advantages of term limits (and terms) include: ensuring a variety of new perspectives on the board; helping an organization expand its base of contacts for fundraising and other purposes; educating a larger sector of the community about the organization and its programs; preventing a concentration of power among a small group of long-time leaders; and providing a diplomatic way to get problem or ineffective board members off the board. The disadvantages may include: the loss of board members with specific expertise regarding the organization's programs; the loss of institutional memory; and a lack of qualified board members who truly support the organization and its programs.

One option for CAAs seeking to balance the advantages and disadvantages of term limits is to impose term limits that allow for board members to rejoin the board. Bylaws may include a provision that requires directors to roll off the board after consecutive terms and wait a specified period of time (often a year) before becoming eligible to serve again as a CAA board member.

Term Limits. No director shall serve for more than *[example: three]* consecutive terms without at least a *[example: 12-month]* absence from the board.

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Removal of Directors

Generally, for nonprofit CAAs, if the bylaws do not specify the board's authority to remove board members, the state Nonprofit Corporation Act will dictate when and how a board may do so. To maintain control of who serves on the board and ensure that board members meet their duties to the CAA, the board should include removal provisions in its bylaws. State Nonprofit Corporation Acts require board members to meet fiduciary duties of care and loyalty. These duties obligate directors to work diligently and stay informed as board members, adhere to the purpose and mission of the organization, avoid any conflicts of interest, and follow any other specific rules or policies set by the board. A failure to meet any of these duties may be grounds for removal from the board. While these laws do not apply to public CAA board members, they can serve as helpful guiding principles that set expectations for public CAA tripartite board members.

Under some states' Nonprofit Corporation Acts, board members appointed by individuals or entities other than the board can only be removed by the person or entity that appointed them; however, if the board votes to seat all board members, it retains the power to remove them.

Removal for Failure to Attend Meetings. To encourage attendance at board meetings, some bylaws provide that the board can remove a director if he or she misses a specified number of meetings (or a specified number of consecutive meetings). Such provisions reinforce a board member's responsibility to, at a minimum, participate in meetings, contribute to the discussion regarding issues, ask questions, and deliberate the viewpoints of others to adequately meet their duty of care to the organization.

Bylaws provisions sometimes refer to "excused" versus "unexcused" absences. Without careful drafting, this distinction can lead to a dispute about what constitutes an excused absence; moreover, excused absences may hinder the board's ability to function as much as unexcused absences. Therefore, many organizations treat all absences the same. Some organizations specify that a set number of absences from board meetings may constitute grounds for removal, whereas others *require* removal in that situation.

Some Nonprofit Corporation Acts only allow for automatic removal of board members for failure to attend a specified number of meetings if the bylaws include language to this effect. Boards should weigh the pros and cons of providing a level of process prior to removing a board member for missing meetings. While some due process may help maintain relationships in the community; depending on the level of process and the issues that led to the absences, the process could result in contentious, unproductive interactions. If due process is provided, it may be as simple as sending a notice of the removal which includes the date it takes effect and opportunities to rejoin the board, if such exist. A more involved process may provide the board member with an opportunity to speak with the board chair, a committee or the full board.

Removal of a Board Member for Cause. Boards should consider whether to require removal of board members “for cause” or to permit removal “without cause.” Allowing removal without cause can help avoid a legal claim for reinstatement by the person removed, diminish internal discord regarding the removal, and help avert possible claims of character defamation. On the other hand, a removal without cause provision could make it easier for a board to oust a board member for political reasons or for espousing differing opinions or perspectives, which in turn could compromise board member engagement by inhibiting those with dissenting views from voicing their opinions at board meetings.

A removal for cause provision that details what “causes” are grounds for removal adds clarity to the process. It may encourage openness and increased engagement among board members, since they better understand what will and will not result in removal. Conversely, removal for cause makes removal more difficult by narrowing the reasons for which a board member may be removed and requires the board to identify a reason for removal. It likely involves a process to determine whether cause for removal exists, which could be lengthy and disruptive to board functioning and cohesion. What is more, a board member removed for cause may dispute that determination and pursue legal action against the board.

A nonprofit CAA should ensure that the removal process specified in the bylaws – whether with or without cause –complies with its state’s Nonprofit Corporation Act, which may specify the necessary notice and vote and whether the director proposed to be removed is entitled to an opportunity to be heard. For example, in some states, a board may only remove a director by a super-majority (for example, a majority of the directors in office, rather than a majority of directors at a meeting at which a quorum is present). Organizations may choose to use a super-majority, even when not required to do so, to help temper the use of removal for political or arbitrary reasons.

(For removal for incapacity/cause)

Removal of Directors.

1. Grounds for Removal.

(a) Incapacity. The board may remove a director if the board determines the director is incapacitated or otherwise unable to carry out the duties of their 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 Organization; violations of the Organization’s articles of incorporation, bylaws, conflict of interest policy, board resolutions, or other policies; absence from **[example: three (3)]** or more consecutive board meetings; 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 Organization.

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2. Removal Procedures. The board shall provide all directors, including the director proposed to be removed, with at least *[check state Nonprofit Corporation Act 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 Act to determine the minimum vote required]* directors is required to remove the director.

(For removal with or without cause)

Removal of Directors. A director may be removed from office with or without cause by the vote of *[check your state's Nonprofit Corporation Act to determine the minimum vote required]* directors. The board shall provide all directors, including the director proposed to be removed, with at least *[check state Nonprofit Corporation Act 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.

Resignation of Directors

CAA bylaws should include language on how a board member may resign that is consistent with the state's Nonprofit Corporation Act.

Resignation of Directors. A director may resign by delivering their written resignation to the *[president/chair]*, the secretary, or to a meeting of the directors. The resignation is effective upon receipt unless specified to be effective at some other time. If a director serves as an officer, their resignation as a director will also constitute resignation from their officer position.

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Vacancies

A vacancy occurs when a director leaves the board prior to the end of their term in office. Due to the tripartite structure of the board, CAAs must include provisions in the bylaws that address how the board will fill vacancies in each sector of the board. In general, a CAA should fill a board vacancy using the process that it used to select the director who originally held the seat. For example, if the board itself chose Public and Private Sector Directors originally, it should choose replacements to fill vacancies in those sectors. However, when the bylaws require a public official or private sector organization to appoint a director, the CAA should seek a replacement appointment from the public official or private sector organization in the event of a vacancy. CAAs should fill vacancies in the low-income sector using the same selection process originally used to fill the seat, or by filling the vacancy with an alternate (for example, a runner-up in an election), if one was selected originally. Bylaws must also consider state CSBG laws, if applicable, as some include requirements for how CAAs fill vacancies. For example, a state CSBG law may require a CAA to fill a vacant Low-Income Sector Director seat via the same democratic selection procedure used to select the prior member, or via a vote of the remaining Low-Income Sector Directors, who select a replacement for the remainder of the term.⁵

⁵ See 760 Code of Massachusetts Regulations 29.06(5)(e).

Bylaws should indicate that vacancies are filled in a timely manner. States may differ in what they consider “timely,” but given the unique composition and selection requirements that apply to CAA boards, it may take three to six months before a CAA board identifies, interviews, and selects an appropriate candidate. CAAs experiencing difficulty filling vacancies should communicate openly with their state office about the challenges and their ongoing efforts.

The bylaws should also specify how long the replacement director will serve. For example, will the replacement director serve the remainder of the prior director’s term, or their own full term? The former may be less disruptive, especially if a CAA staggers its director terms and wants to remain on that schedule. The latter may be more advantageous for boards that experience difficulty with director recruitment and engagement since the replacement director serves for a full term. Similarly, if the CAA has term limits, it must determine how to count a replacement’s partial term of office toward any applicable term limits. Some CAAs may decide to consider the partial term a full term for purposes of term limits, others may not.

Vacancies. The board shall take steps to fill vacant seats in a timely manner. Unless otherwise set forth in this section, any vacancies in a sector shall be filled using the process originally used to fill the seat.

When a vacancy occurs in a public sector board seat held by a representative of a public official, the board shall request that the public official either take the seat themselves or name another representative, subject to approval by the board, to serve as a replacement director. If the public official fails to take the seat themselves or to name another representative within the period specified by the board at the time of request, the board shall select another public official to serve as a replacement director themselves or to appoint a representative, subject to board approval, to serve.

Vacancies in the low-income sector shall be filled using the same democratic process originally used to fill the seat. ***[subject to state CSBG laws and guidance, CAAs may consider including additional ways to fill a vacancy in this sector, such as by a vote of the remaining Low-Income Sector Directors, who select a replacement for the remainder of the term.]***

When a vacancy occurs in a seat held by an individual designated by a Private Sector Organization, the board shall ask the Private Sector Organization that designated that individual to designate another individual, subject to approval by the Organization’s board, to fill the vacancy. Should that Private Sector Organization fail, within the period specified by the Organization’s board at the time of request, to designate an individual to fill the vacancy, the Organization’s board shall select another Private Sector Organization to designate an individual, subject to approval of the Organization’s board, to fill the vacancy.

Each successor in any sector shall hold office for the remainder of their predecessor’s term. ***[If your CAA has term limits for directors, the bylaws should specify whether a successor holding office for the remainder of a predecessor’s term counts toward the term limit.]***

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Time and Place of Meetings

The bylaws should state how the board of directors will conduct its meetings and provide notice of them to directors. Some state CSBG laws may specify the number of regular meetings a CAA must hold per year. It is generally expected that boards of nonprofit corporations will hold at least one meeting per year at which they elect directors and officers; some state Nonprofit Corporation Acts may require this. Regardless of any requirement, all CAAs should require more than one meeting annually because meetings establish the main forum for discussion and decision-making by the board.

The bylaws should provide for the board to hold both regular and special meetings and should specify procedures for setting the date, time and place and providing notice of each type of meeting. Building flexibility into the bylaws with respect to meetings, including when and how they may be called, can help the board continue to function and fulfill its duties when unexpected situations arise, such as natural disasters. (See CAPLAW's [Weatherproofing CAA Bylaws: Preparing for Emergency Governance](#)).

State open meetings laws (OMLs) apply to public CAA tripartite boards; in some states, nonprofit CAA board meetings are also subject to open meeting requirements (whether under the OML or state CSBG law). Where such requirements apply, a CAA must make its board meetings open to the public, and may only exclude the public under certain circumstances. (See CAPLAW's [Open Meetings Law State-by-State Guide](#)). Where a CAA's board meetings are subject to open meeting requirements, its bylaws should, at a minimum, include a provision stating that meetings of the board will comply with those requirements.

Annual Meeting. The board shall hold its annual meeting during the month of *[insert month]* each year, subject to postponement by the board, on such date and at such time and place as the board may determine. The purposes of the annual meeting are to elect officers, select directors, and transact such other business as may come before the meeting. If the annual meeting is postponed, a 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.

Regular Meetings. The board shall hold regular meetings at least *[insert number]* times per year on such dates and at such times and places as the board may determine.

Special Meetings. Special meetings of the board may be held at such time and place designated by the *[president/chair]* or *[check state Nonprofit Corporation Act to see if it specifies a proportion of directors who can call a special meeting]*.

[If state open meetings laws or other open meeting requirements apply] **Public Meetings.** The board shall hold board meetings in compliance with state open meetings law requirements.

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Notice

For nonprofit CAAs, the bylaws should include notice for upcoming meetings that complies with the requirements of their state's Nonprofit Corporation Act. If the bylaws are silent as to notice, then the state Nonprofit Corporation Act automatically dictates the required notice procedures that an organization must follow. To ensure flexibility as to the notice process, an organization should, if permitted under the Act to do so, establish in the bylaws a notice period (not less than a statutory minimum) and the methods for providing notice.

The method by which notices are given and the time periods within which they are to be issued may vary based on factors such as state law, an organization's capacity, the type of meeting, and the actions to be taken at a meeting. Organizations may generally choose among different methods for issuing meeting notices to board members, including first-class mail, email, fax, telephone, or in person, provided that the organization follows any procedures required by state law. The time period within which notice is to be given often varies depending on the method used. For example, the notice period for first-class mail may be longer than that required for telephone. The notice period may also depend on whether the meeting is a regular or special one. Also, an organization may choose to require longer notice periods for certain significant actions, such as removal of a director, amendment of articles or bylaws, or dissolution of the organization.

As noted above, open meetings laws apply to public CAAs and, in some states, open meeting requirements may also apply to nonprofit CAAs, whether under the OML or state CSBG law. These requirements typically specify how, and what type, of board meeting notice a covered entity must provide to the public. Bylaws for CAAs subject to open meeting requirements should include a provision stating that notice of board meetings (and, if required under the applicable open meeting requirements, committees of the board) will comply with applicable open meetings law.

Some state CSBG and/or OML laws may require that the notice include an agenda listing items to be discussed at the meeting and may limit discussion at the meeting to those items. State Nonprofit Corporation Acts generally do not require meeting notices to include agendas. However, a state Act may require certain proposed board actions – such as removal of a director or officer or amendment of the articles of incorporation or bylaws – to be listed as a purpose of the meeting in the notice of the meeting at which they will be considered.

Most state Nonprofit Corporation Acts allow board members to waive notice. This means that, even if a CAA fails to provide the required notice, the board of directors may still hold the meeting and conduct business if all of the directors either sign a statement that waives notice or attend the meeting without objecting to a lack of notice. A waiver provision in the bylaws is recommended to avoid disputes about whether the CAA provided adequate notice for board meetings. CAAs subject to OMLs should note that the public notice required by these laws usually cannot be waived. If a CAA subject to OML requirements fails to provide notice of a meeting to the public or provides it improperly, actions taken at that meeting can be challenged.

Notice. The board shall provide each director written notice of the time, date, and location of each meeting of the board by *[specify means permitted by state law – for example, mail addressed to such director at such director's address as it appears on the records of the organization, email, facsimile, or other means of electronic transmission]* at least *[insert number]* days before regular meetings and at least *[insert number]* days before special meetings. Whenever notice of a meeting is required, the board is not required to give such notice to a director if a written waiver of notice, executed by a director (or their duly authorized attorney) is provided to *[designate who needs to receive the notice (e.g., a board officer, the board chair and/or the executive director/chief executive officer)]* before or after the meeting, is filed with the records of the meeting. The board is also not required to give such notice to any director who attends the meeting without protesting the lack of notice to them before or at the beginning of the meeting.

[If state open meeting requirements apply] **Notice to the Public.** The board shall comply with applicable state law requirements when providing notice to the public of any meetings covered by those requirements.

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Remote Participation

Bylaws should address a board's ability (or inability) to meet remotely. Most state Nonprofit Corporation Acts permit board meetings to be held remotely, by telephone conference call, video, or some other means by which each participant can hear one another or hear and see one another. Nonprofit CAAs subject to state open meetings laws and public CAAs should ensure that remote meetings are permissible under their state open meeting requirements. Some open meeting laws specifically prohibit any type of meeting where the participants are not all in-person at the same location; while others allow for remote participation so long as certain criteria are met. For example, under some laws, meetings may be held remotely so long as members of the public attending the meeting can hear those speaking on the telephone or hear and see those participating via video. Consider also that while some state CSBG laws require nonprofit CAA meetings to be open to the public, they may not necessarily subject CAAs to the state's open meeting laws.

Remote Participation. Meetings of the board of directors or any committee designated thereby may be held by means of telephone conference or other communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at the meeting ***[(for use if an OML or other state requirements for open meetings applies);*** provided, however, that members of the public attending the meeting must also be able to hear all persons participating in the meeting.]

[If state open meetings laws apply] Remote Participation. The board shall comply with state open meetings law requirements for remote participation of directors in board meetings ***[and committee meetings]***, and remote access by the public to board meetings ***[and committee meetings]***.

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Quorum and Voting Policies

Bylaws must indicate the quorum and voting requirements a board must meet to take valid action. Most state Nonprofit Corporation Acts provide that unless the bylaws state otherwise, a majority of the voting directors in office constitute a quorum. A quorum is typically measured against the total number of voting directors in office, rather than a specific number such as "seven directors shall constitute a quorum," or a vague designation, such as "those members attending constitute a quorum."

State Nonprofit Corporation Acts also generally provide a minimum percentage of directors in attendance at a meeting that the organization must use to set a quorum. One-third of the directors in office is often the lowest number permitted by state Acts, and generally the lowest advisable number. However, note that setting the quorum below a majority of the directors in office can result in a small portion of the directors taking action that will bind the entire organization.

The bylaws should also set forth the voting requirements for board actions. In general, state Nonprofit Corporation Acts provide that, unless the bylaws state otherwise, a valid board action will require the affirmative vote of a majority of a quorum. For example, on a board of nine directors, in which a quorum is defined as a majority of those in office, a valid quorum would consist of attendance at the meeting by five directors. Three of those five would need to vote in favor of an action for it to pass. Thus, even with this normal quorum requirement, a small number of the total directors could decide matters at a meeting.

A CAA should not allow a minority of the total directors to decide important organizational actions. State Nonprofit Corporation Acts often require that important issues such as the removal of directors, the amendment of the articles of incorporation, amendment of bylaws, or substantial transactions involving the organization's resources receive approval by a "super majority"; even when a super majority is not required by law, an organization may choose to require it for such issues. While a "super majority" may consist of any number more than a simple majority of 50% + 1 of the board members at a meeting at which a quorum is present, typical super majorities for this purpose tend to be a majority or two-thirds of the directors in office.

One issue of confusion, particularly for CAAs, is whether board members can vote by proxy or use alternates. Voting by proxy means that a board member delegates voting authority to another person to vote in the board member's absence. Designating an alternate means that the director designates someone to serve in their place at a board meeting. Very few state Nonprofit Corporation Acts allow for alternates or proxy voting by board members of a nonprofit corporation. (Some state CSBG laws permit the use of alternates by CAA board members. However, even if they do, a nonprofit CAA should determine whether alternates are permitted under state nonprofit corporation law.) Rather, most states require that directors vote in person (or via remote means where allowed), since directors of nonprofit corporations have a fiduciary duty to exercise reasonable care when making decisions on behalf of the organization. This duty entails considering information and participating in discussions that typically only occur at board meetings.

Even if state laws allow proxies and/or alternates, an individual director's fiduciary duties are not transferable. The director, not an alternate or proxy, remains bound by their duties to the organization. Further, an alternate likely does not possess the same level of understanding and knowledge about the CAA and its activities to make informed decisions in the interests of the organization as compared to a director. Thus, for nonprofit CAAs, permitting directors to designate alternates or proxies in the bylaws is not advisable.

For public CAAs, applicable state and local laws will often permit the use of alternates and proxies for public CAA tripartite boards. However, similar to use of alternates and proxies with nonprofit CAAs, limiting or prohibiting the use of alternates and proxies can help board members be fully engaged in the planning, development, implementation and evaluation of the CSBG program, as required by the federal CSBG Act.

Note also that alternates and proxies are different from representatives chosen by elected public officials to serve as Public Sector Directors, or representatives chosen from organizations to serve as Private Sector Directors. These representatives are themselves board members of the CAA, and owe the same fiduciary duties for the CAA as all directors.

Quorum. At all meetings of the board of directors a quorum shall equal a majority of the directors in office.

Voting and Action by the Board. Unless the articles of incorporation, these bylaws, or applicable law require a greater number, the act of a majority of the directors at any meeting at which a quorum is present is an act of the board. Each director with voting rights shall have one vote (provided that they are not prohibited from voting on a particular matter due to a conflict of interest). Votes by proxy and the use of alternates are prohibited.

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Executive Sessions

Executive sessions are closed meetings – or portions of a meeting – in which the board convenes privately to discuss sensitive and confidential issues. Generally, only board members attend executive sessions with no staff present. However, in some cases, the executive director or a professional advisor, such as an attorney or accountant, may be asked to join. For example, it is common at the end of the auditor's presentation for the board to go into executive session without the executive director or other staff present to enable the auditor to raise any concerns about management with the board. Some organizations hold executive sessions at the end of every regularly scheduled board meeting. However, CAAs that are subject to open meeting requirements should check applicable state law to determine the circumstances in which executive session is permitted. For more information on executive sessions, see [Section 1: Making Board Meetings Matter of CAPLAW's Tools for Top-Notch CAAs: A Practical Approach to Governance and Financial Excellence](#). It is not necessary to include a provision on executive session in the bylaws.

Board Action Without a Meeting

Bylaws should address whether the board may take action absent a meeting. Most state Nonprofit Corporation Acts permit boards to take action without a meeting so long as all board members unanimously agree in writing to take such action. Even if one director opposes the action or fails to submit a written consent, the matter cannot pass. The rationale behind requiring unanimous approval is to ensure boards meet their fiduciary duties by not taking actions absent a meeting during which debate and deliberation would normally occur. When taking action by written consent, the action typically is effective upon receipt of the last board member's signature unless a later date is specified by the consent. The board must retain each director's written consent with the minutes of its board meetings.

CAAs subject to open meetings requirements are usually prohibited by such laws from taking action by written consent.

Action without a Meeting. A board of directors may take any action without a meeting if a consent in writing setting forth the action so taken is signed by all directors of the Organization 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 consents shall be filed with the minutes of the board of directors.

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Officers and Agents

Officers. Bylaws should provide the specific titles of the organization's primary officers, together with their duties and guidelines for their service. Most state Nonprofit Corporation Acts require that the board of a nonprofit corporation have a president, secretary, and treasurer, together with any other officer positions that the board may wish to create, such as vice president, assistant treasurer or assistant secretary. Note that these are officers of the organization, not of the board. In some cases, CAAs have a chair of the board. Where a nonprofit CAA has a board chair and its state's Nonprofit Corporation Act requires a president, if the board wants the chair to serve as President, the bylaws should specify that the chair serves as the president for purposes of the state's Act. The fact that someone is designated as board chair does not automatically mean they will be considered president for purposes of the Act. Alternatively, the bylaws may specify that the executive director (or chief executive officer) serves as president.

In most states, officers are not required to be directors. The bylaws should therefore specify whether officers must be directors. While CAA officers are often chosen from among the directors, some boards may, for example, want a staff person or outside counsel to serve as the secretary or assistant secretary.

State Nonprofit Corporation Acts or state CSBG laws may address whether a board member may hold two separate offices at the same time. For example, some state laws prohibit the same person from serving simultaneously as president and secretary, because the secretary is often required to sign documents attesting to the signature of the president. Bylaws should include limitations of this kind, whether required by law or simply desired by the board.

Bylaws should address other aspects of officer service, including their election, duties, terms of service (typically the board elects officers to serve annual terms), removal, resignation, and how to fill vacancies. If the executive director/chief executive officer or board chair serves as the president *ex officio* for purposes of the Nonprofit Corporation Act, these other aspects of officer service will not apply to the president.

Officers. The officers shall consist of the *[board chair]*, *[board vice chair]*, *[president]*, *[vice president]*, treasurer, and secretary (the “Primary Officers”) and such other officers, if any, as the board of directors may determine from time to time. No individual shall hold more than one office at the same time.

Duties of Officers. The duties and powers of the Primary Officers are as follows:

[If the board chair is designated as president for purposes of the state Nonprofit Corporation Act, then a CAA does not need a separate section for President. Alternatively, if the board chair does not serve as president and the Nonprofit Corporation Act requires one, then the CAA will need both the board chair and president sections]

Board Chair and Vice Chair. The board may elect a board chair from among the directors. Except as otherwise provided in these bylaws or by the board from time to time, the board chair shall preside at all meetings of the board of directors. *[If the CAA’s executive director/CEO does not serve as president:* The board chair shall serve *ex officio* as the Organization’s president for purposes of the *[name of or citation to state Nonprofit Corporation Act]*.] The board, in its discretion, may also elect one or more board vice chairs (who must be directors). The board vice chair (or, if there is more than one, the most senior vice chair) shall preside at meetings of the board at which the board chair is not present. Each of the board chair and vice chair(s) shall perform such other duties and have such other powers as the board may determine from time to time.

President. *[If there is no chair and the president is a board member:* The board shall elect a president from among the directors. Except as otherwise provided in these bylaws or by the board from time to time, the president shall preside at all meetings of the board of directors. The president shall perform such other duties and have such other powers as the board may determine from time to time.] *[If the CAA’s executive director/CEO serves as president:* The *[executive director/chief executive officer]* shall serve *ex officio* as the Organization’s president for purposes of the *[name of or citation to state Nonprofit Corporation Act]*.]

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Secretary. The secretary shall record and maintain (or see to the recording and maintenance of) records of all votes and minutes of all proceedings of the board of directors in paper or electronic records kept for that purpose. The secretary shall give, or cause to be given, notice of all meetings of the board. Where not inconsistent with law or these bylaws, the secretary may designate another individual to assist in performing these duties, so long as the secretary oversees the notices and minutes prepared and distributed by that designee. The secretary is authorized to certify or otherwise authenticate corporate documents and signatures. The secretary shall perform such other duties and have such other powers as the directors shall determine from time to time. If the secretary or the secretary's designee is absent from any meeting of the board of directors, the assistant secretary (if any), or, if there is no assistant secretary, a temporary secretary chosen at the meeting, shall exercise the duties of the secretary at the meeting.

Treasurer. The treasurer shall: (1) oversee the Organization's financial condition and financial management practices, subject to the supervision of the board; (2) keep the directors up to date on the financial condition of the Organization (including ensuring that financial statements and other appropriate financial reports are made available to the board of directors on a regular basis); and (3) perform such other duties and have such other powers as the board of directors may determine from time to time.

Other Officers. The board shall establish such other officer positions and the duties and powers of each by resolution or policy of the board of directors.

Delegation of Duties. An officer may delegate the specific duties set forth above to another individual or receive assistance from another individual in performing such duties, so long as the officer retains oversight and review of the work of the other individual and the records and documents prepared and distributed by that individual.

Election. The board of directors shall elect the Primary Officers each year at the board's annual meeting. If any or all of the Primary Officers are not elected at the annual meeting, the board may elect the Primary Officer(s) at a subsequent board meeting. The board may elect other officers from time to time. ***[If the executive director/chief executive officer or board chair serves as the president:*** Election of the president is not required because *[title]* serves *ex officio* as the president].

Term of Office. Each Primary Officer shall hold office until the next annual meeting and until their successor is elected and qualified or until they sooner die, resign, are removed, or become disqualified. Each other officer shall hold office until the next annual meeting unless a shorter period is specified by the terms of their election or appointment, or until they sooner die, resign, are removed, or become disqualified. ***[If the executive director/chief executive officer or board chair serves as the president:*** A term of office for the president is not required because *[title]* serves *ex officio* as the president]. ***[If your CAA wants to include a term limit for officers, describe it here.]***

Removal of Officers. Any officer may be removed from office with or without cause by the vote of *[check your state's Nonprofit Corporation Act to determine the minimum vote required for removal of officers]* directors, provided that notice specifying the removal as a purpose of the meeting is given to all directors that at least *[check state Nonprofit Corporation Act on whether there is a required notice period; specify number of days]* days prior to the meeting at which the removal is to be considered. *[If the executive director/chief executive officer or board chair serves as the president:* These removal provisions do not apply to the office of president because *[title]* serves *ex officio* as the president.*]*

Resignation of Officers. An officer may resign by delivering their written resignation to the *[president/chair]*, the secretary, or to a meeting of the directors. The resignation is effective upon receipt unless specified to be effective at some other time. Where an officer is also a director, their resignation as an officer does not constitute their resignation as a director unless the resignation so states. *[If the executive director/chief executive officer or board chair serves as the president:* These resignation provisions do not apply to the office of president because *[title]* serves *ex officio* as the president.*]*

Vacancies. The board shall promptly fill vacancies in the Primary Officer positions, and may fill vacancies in other officer positions, either at a regular meeting or at a special meeting called for that purpose. Each successor shall hold office for the remainder of their predecessor's term. *[If a CAA has term limits for officers, the bylaws should specify whether terms as a replacement count toward the term limit.]*

Executive Director/CEO. Whether the bylaws include a description of the position of the organization's primary executive is within the board's discretion. Typically, bylaws refer to this position as the executive director or chief executive officer (CEO) or, in some cases, president and CEO. Often bylaws include a brief reference to this position—much briefer than the specific duties set forth in a separate job description. However, it can be helpful to outline the board's oversight responsibilities of the executive director. Since some CAA and executive director relationships are governed by employment contract, it can also be helpful to include language that notes that removal of the executive director does not limit any rights they might have under their contract, and that absent an employment contract, appointment of the executive director alone does not create contract rights. Because of the tripartite board composition and funding sources conflict of interest rules, CAAs do not usually permit their executive directors to occupy a seat on the board. (see "Composition of Directors: Ex Officio Directors" above).

[Executive Director/Chief Executive Officer/President & Chief Executive Officer]. The board of directors shall appoint and employ *[a/an insert title]*, for such compensation and on such terms and conditions of employment as are established by the board. The *[title]*, subject to the board's supervision, shall: (1) serve as the Organization's *[president and]* chief executive officer and manage the day-to-day affairs of the Organization; (2) implement goals and policies established by the board; and (3) report on and advise the board and its committees concerning the affairs and activities of the Organization. The *[title]* is empowered to hire, supervise, and terminate the Organization's other employees in accordance with personnel policies established by the

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board. The *[title]* shall perform such other duties and have such other powers as the board may determine from time to time. The board shall evaluate the *[title]* and set their compensation on an annual basis. The *[title]* may (and where required by the board or one of its committees, shall) attend meetings of the board and its committees unless excluded (1) by the board entering into an executive session; (2) by a majority vote of the board or committee at a meeting at which a quorum is present or (3) by a policy established by the board. The *[title]* may resign by delivering their written resignation to the *[president/chair]*, the secretary, or to a meeting of the directors. The resignation is effective upon receipt unless specified to be effective at some other time. ***[If the executive director/CEO is also the president: Resignation as the [title] also constitutes resignation as president.]*** The board may remove the *[title]* at any time with or without cause by the vote of ***[if the executive director/CEO is also the president, check your state's Nonprofit Corporation Act to determine the minimum vote required for removal of officers]*** directors, provided that notice specifying the removal as a purpose of the meeting is given to all directors that at least ***[if the executive director/CEO is also the president, check your state's Nonprofit Corporation Act on whether there is a required notice period for removal of officers]***; [specify number of days] days prior to the meeting at which the removal is to be considered. Removal shall be without prejudice to the *[title]*'s contract rights, if any, and the appointment of the executive director shall not itself create contract rights.

Agents. The bylaws can outline the board's authority to appoint other agents of the organization. An agent is a person, or sometimes another organization, that is authorized to act for or on behalf of, or to represent the organization. Examples of agents include attorneys, investment managers, real estate agents. Because agents may have the ability to act for and, in some cases, bind the organization, the board should think carefully before designating agents and ensure their duties and authority is clear. One way that this is done is to have written agreements with any agents and include a description of their authority in that agreement.

Agents. The board of directors may appoint agents who shall have such authority and shall perform such duties as the board may prescribe. The board may remove any such agent at any time with or without cause. Removal without cause shall be without prejudice to such person's contract rights, if any, and the appointment of such person shall not itself create contract rights.

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Board Committees and Advisory Bodies

Board Committees

Boards must balance their use of committees, which are critical to effective board operations, with their fiduciary duties. Committees allow the board to efficiently address specific issues and provide guidance to the full board without burdening all board members with initial research needed to properly address matters. However, excessive reliance on committees can lead to disengagement by board members, unnecessarily complicate decisions, or splinter decision-making authority among a small portion of the overall board of directors. Boards must keep a check on committee use and power to avoid circumventing the full board and its essential oversight, governance, and fiduciary functions. Depending too heavily on committees can not only lead to bad decisions and outcomes, it could also invite liability issues for the board.

Boards should carefully consider committee structure and the powers delegated to committees. As to the composition of committees, CAAs must consider whether board committees need to reflect the tripartite structure of the full board. In the interest of adhering to the intent of the federal CSBG Act to promote maximum participation of people with low incomes in the administration and planning of the CAA's programs, CAAs should maintain the tripartite structure in any committees with substantial board authority, such as an executive committee, or at least require that any such committees consist of at least one-third Low-Income Sector Directors.

Bylaws should specify how the board establishes committees and appoints their members. State Nonprofit Corporation Acts may include language about committee selection that will control unless the bylaws specify otherwise. A board may require officers to serve on certain committees. (e.g., a Treasurer on the Finance Committee). Some boards grant authority to the board chair to appoint committee members, while others subject committee assignments to board approval; it is important to check state nonprofit corporation law to determine whether board approval is required when appointing committee members. Some boards may prefer to have directors volunteer to serve on committees, although the board or board chair should maintain some level of control over committee appointments to ensure each committee is fully staffed, and that committee work is fairly distributed amongst directors.

The bylaws should establish the authority that the board can delegate to committees. Almost all state Nonprofit Corporation Acts set limits on that authority. Specifically, the Acts provide that no committee of the board will have the authority 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.

CAA bylaws should also specify the procedures by which committees operate. These procedures such as when committees meet, the notice required for such meetings, what vote is required to take action by a committee with authority to do so, etc., will typically mirror the procedures followed by the full board. If a board is subject to the open meetings requirements, it is important to check whether and to what extent those requirements apply to committees.

Committees generally consist of either those that are ongoing, referred to as "standing" committees; or those that are established for a temporary purpose by a resolution of the board, referred to as an "ad hoc" committee. If the bylaws list standing committees, the bylaws should clarify whether the board has delegated any of its powers to the committee or whether the committee's role is simply to provide advice and make recommendations to the board. An organization may choose to include a very broad statement of a standing committee's authority in the bylaws and clarify the details of the committee's powers and duties in a committee charter consistent with the broad statement in the bylaws. For an ad hoc committee, the board should outline the extent of the committee's authority in a committee charter. The board should adopt committee charters by resolution.

One common standing committee, especially for organizations with large boards, is an executive committee. If the executive committee is given the authority to act on behalf of the full board, it may do so between regular board meetings. Executive committees empowered to exercise the powers of the board must be composed exclusively of board members. Typically, the members of the executive committee will include the primary officers of the organization, and may include other board members as well (especially if the bylaws require the executive committee to reflect the tripartite composition of the full board). The bylaws should identify how the board selects executive committee members.

If a CAA wants the executive committee to act on behalf of the full board, it *cannot* include language

in its bylaws specifying that the executive committee's actions are "subject to ratification by the board." Ratification is the formal confirmation by the board of the executive committee's actions. Making executive committee actions subject to board ratification means that an act of the executive committee will *not* bind the CAA unless and until the board ratifies it. However, this defeats the purpose of an executive committee that is intended to act on items that require attention between board meetings. Moreover, requiring executive committee action to be ratified by the board may result in potential liability for the corporation if the executive committee authorizes an action – particularly one involving a third party (such as signing a contract) – that cannot be undone, the action is taken (for example, the contract is signed) before the full board ratifies it, and a third party relies on that action. Even if the board later votes *not* to ratify that action, the corporation may still be bound by it. Instead, bylaws should specify either that the executive committee is authorized to act on behalf of the board in between board meetings and then report back to the board on its actions or that the executive committee is an advisory body that makes recommendations to the full board.

Some organizations create other standing committees in the bylaws such as a: finance/audit committee; governance (sometimes called board development) committee; personnel committee; or a program committee. Boards should think carefully about the time and effort required to manage and facilitate standing committees before establishing too many of them in the bylaws. For this reason and to maintain flexibility to act as issues arise, some organizations list only the executive committee in the bylaws and establish other standing and ad hoc committees by resolution as necessary.

An audit committee or a finance committee with audit responsibilities is an essential standing committee due for purposes of maintaining accountability with funding sources and the community served. It is advisable for this committee to consist of "independent" members (those who do not receive any payment from or transact any business with the organization). The audit committee typically selects the auditor; oversees the audit process; approves any non-audit services provided by the auditor; oversees internal controls, conflict of interest, and whistleblower policies; and ensures that any concerns raised in the auditor's report are addressed and resolved. An audit committee either makes recommendations to the full board for action or acts with authority delegated to it by the board.

Because board leadership is critical to the health of an organization and CAAs face a myriad of board composition requirements, a governance/nominating committee is another important standing committee to have. Such a committee is responsible for the overall care and feeding of the board (i.e., board member recruitment, orientation, training, and evaluation). The committee would oversee the democratic selection process, recommend candidates for public and private sector board seats, work to fill board vacancies when they arise, develop written job descriptions/expectations for board members, assign existing board members to mentor new board members, coordinate orientation for new board members and training for all board members, coordinate the board's periodic evaluation of itself and of individual board members, and spearhead periodic review of the CAA's articles of incorporation and bylaws. Committee charters will often include a robust and detailed list of the committee's responsibilities.

Some CAA boards establish a personnel committee as a standing committee to review and make recommendations to the full board on matters such as the organization's personnel policies (including, as applicable, compliance with funding source directives on such policies), employee benefits package and compensation schedule. It is important that such a committee not serve as an appeal panel for employee grievances, as doing so can subject committee members, the board and the organization to potential liability.

The Drafting Tips below include sample bylaws language for Committees Generally, as well as descriptions of Standing Committees. While some CAAs list or describe standing committees in bylaws, adopting committee charters can more flexibly establish and fully describe these standing committees. This language can be used as part of those committee charters.

Committees Generally.

The board may establish one or more committees (standing and/or ad hoc) and may delegate to any such committee or committees any or all of its powers, except the power to ***[check your state's Nonprofit Corporation Act regarding which powers cannot be delegated to committees]***. Any committee to which the powers of the directors are delegated shall consist solely of directors and shall, to the extent possible, reflect the tripartite composition as set forth in ***[Article ___, Section ___]*** of these bylaws. The board ***[president/chair]*** shall appoint committee members who are then subject to board approval. Committee members shall serve at the pleasure of the board. ***[Specify whether board chair appoints committee chairs or whether committees themselves do.]***

Unless the directors otherwise designate, committees shall conduct their affairs in the same manner as is provided in these bylaws for the conduct of the affairs of the board of directors and may set the date and time of their meetings. Each committee other than the executive committee is subject to the supervision of the full board.

Standing Committees.

Executive Committee. The executive committee is composed of ***[specify the number of executive committee members, and criteria and process for their selection if it differs from the general language above (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 in the intervals between meetings of the board, except the following powers: ***[specify powers your state's Nonprofit Corporation Act prohibits committees from exercising and (if applicable) any other powers the organization does not want committees to exercise]***. 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.

Finance Committee. The finance committee is composed of ***[specify number and composition of finance committee members (the Treasurer is typically a member)]***. The finance committee shall:

- (1) oversee the conduct and integrity of the Organization's financial management and reporting;
- (2) oversee preparation of, review, and ensure full board review of the Organization's financial statements;
- (3) work with management to prepare the Organization's annual budget for review and approval by the full board;
- (4) review and make recommendations to the full board on the Organization's financial policies;
- (5) oversee the administration, collection, and disbursement of the Organization's financial resources; and
- (6) make recommendations to the full board regarding significant financial decisions.

In addition, the finance committee shall have such other powers and perform such other duties as the board may specify from time to time.

Audit Committee. ***[Can be part of or separate from the finance committee.]*** The audit committee is composed of ***[specify number and composition of audit committee members]***. The audit committee shall assist the board of directors in fulfilling its oversight responsibilities by: (1) overseeing and advising the full Board on selection of the organization's independent auditor; (2)

overseeing the annual independent audit process, including, but not limited to, communicating with the auditor and receiving and reviewing all reports and management letters from the auditor and advising the board on its response to those reports and letters; (3) assessing, overseeing, and making recommendations to the full board on the Organization's overall systems of internal control and risk management, including compliance with applicable policies and procedures; and (4) assessing, monitoring and advising the full board regarding the Organization's compliance with legal and regulatory requirements and ethical standards. In addition, the audit committee shall have such other powers and perform such other duties as the board may specify from time to time.

Governance/Nominating Committee. The governance committee is composed of *[specify number and composition of governance committee members]*. The governance committee shall: (1) oversee board member recruitment, orientation, and training; (2) coordinate the board's periodic evaluation process of itself and the Organization's governance structure, policies and procedures; (3) coordinate periodic review of the Organization'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.

Personnel Committee. The personnel committee shall: (1) periodically review the Organization's personnel policies and procedures and implementation thereof, and report findings and recommendations for policy and procedures changes to the board; (2) periodically review the Organization's compensation schedule and implementation thereof, recommend any changes to the board; (3) review and make recommendations to the board regarding the Organization's employee benefits package; and (4) receive information from the Organization's staff and attorneys on legal proceedings involving the Organization's employees and make recommendations and reports to the board or executive director on those matters. In addition, the personnel committee shall have such other powers and perform such other duties as the board may specify from time to time.

Advisory Bodies

An advisory body is often a group of individuals who are not board members and do not have authority to act on behalf of the board but rather support the board of directors and executive director in key ways. Boards may voluntarily convene an advisory body or funding sources may direct boards to adopt and maintain such a body. For example, CAA boards may convene a client advisory body to promote leadership within the community and more broadly capture the voices of those who receive services and benefits. CAAs with Head Start funding are required by the Head Start Act to maintain a policy council, which is an advisory body with specific programmatic responsibilities.

Advisory Bodies. The board of directors may at any time and from time to time establish one or more advisory bodies not having or exercising the authority of the board and determine how members of such advisory bodies are selected. An advisory body may or may not have directors as members, as the board determines. Advisory bodies may not act on behalf of the Organization or bind it to any actions or obligations, but may make recommendations to the board, the officers or the executive director.

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Fiscal Year

Though typically not required by federal or state law, bylaws may include a provision that addresses the CAA's fiscal year. CAA boards should avoid including specifics on the organization's fiscal year in the bylaws. Instead, they can provide greater flexibility by noting that the board will set the fiscal via board resolution.

Fiscal Year. The board of directors will set the fiscal year of the Organization by resolution and may change it from time to time by further resolution.

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Conflicts of Interest

The bylaws should require the board to develop and implement a conflict of interest policy. Officers and directors have a fiduciary duty of loyalty to the CAA, meaning that they must act in the best interests of the organization and avoid or properly address situations where a board member's personal (typically financial) interest(s) actually or potentially conflict with organizational interests. Some state Nonprofit Corporation Acts specify the procedure that an organization must follow to approve an action in which a board member has a conflict of interest. This often includes the interested director disclosing the conflict and recusing themselves from any decision involving the conflict. Additionally, a majority of state Nonprofit Corporation Acts prohibit the organization from providing any loans to or guarantees on behalf of officers or directors.

Various laws and funding source requirements address conflicts of interest. CSBG Organizational Standard 5.6 requires each nonprofit CAA director to have signed a conflict of interest policy within the past two years, and each public CAA director to have signed a conflict of interest policy or comparable local government document within the past two years. Head Start grantees must also implement conflict of interest policies.⁶ The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards prohibits those with a real or apparent conflict of interest from participating in the selection, award, or administration of a contract supported by a Federal award.⁷ Under the federal criminal code, if a director is an officer or employee of the federal government, they are also prohibited from acting as an agent or attorney for the CAA in dealings (for example, contracts) with the federal government.⁸ For nonprofit CAAs, the IRS Form 990 asks whether the organization has a conflict interest policy and, if so, how the policy is implemented.

CAAs should draft and adopt a separate, detailed conflict of interest policy outside of the bylaws that establishes procedures for identifying potential conflicts of interest and determining if a particular transaction that could involve a conflict is in the organization's best interests. This policy should include procedures for disclosing conflicts of interest and submitting disclosure forms, including the timing of when and how often board members and senior employees will be tasked with completing those forms.

While conflict of interest policies will include details about how to identify, disclose, and address conflicts of interest, the bylaws still must take into account requirements related to conflicts of interest. CAAs should address conflict of interest requirements that impact board selection and composition in the bylaws, such as the Head Start Act's prohibition on the immediate family members of board members being employed by the organization.⁹ Some CAAs also include prohibitions in the bylaws on former

⁶ 42 U.S.C. § 9837(c)(1)(E)(iv)(X).

⁷ 2 C.F.R. § 200.318(c)(1).

⁸ 18 U.S.C. § 205(a).

⁹ 42 U.S.C. § 9837(c)(1)(C)(iii).

employees serving as directors, as their judgment as directors could be clouded by their personal history with the CAA; having a former employee on the board could be particularly problematic if they were terminated from their job involuntarily or resigned under fraught circumstances. If a CAA wants to address this practice, it should include a requirement in the bylaws that former employees not be employed by the CAA for a reasonable period (e.g., one year) before joining the board. Similarly, to avoid allegations of undue favoritism toward board members in CAA hiring decisions, some CAAs require that board members be off the board for a reasonable period (e.g. one year, or possibly six months) before being eligible to be hired by the CAA.

Conflicts of Interest.

The board of directors shall adopt and implement a conflict of interest policy covering the Organization's directors, officers, and such employees and other persons as may be specified in the policy, subject to the articles of incorporation, bylaws, and any applicable law.

[Required for CAAs with Head Start programs:] Directors of the Organization may not have a financial conflict of interest with the Organization or its delegate agencies, be employees of the Organization, or be the immediate family member of any employees of the Organization or its delegates. For this purpose, the term "immediate family member" means: a spouse, parents and grandparents, children and grandchildren, brothers and sisters, mother-in-law and father-in-law, brothers-in-law and sisters-in-law, daughters-in-law and sons-in-law, and adopted and step-family members.

Directors who are federal employees are prohibited from serving in any capacity that would require them to act as an agent of or attorney for the Organization in its dealings with any federal government departments or agencies.

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Compensation of Directors

The bylaws should specify whether a director receives compensation and/or reimbursement for expenses. Most CAA directors serve as unpaid volunteers, unlike for-profit boards, which frequently compensate directors for board service. CAAs typically reimburse expenses that their directors incur while performing services as board members.

Some state laws restrict the compensation that a CAA may provide to directors. Some states prohibit director compensation, while other states (as well as the federal Volunteer Protection Act) limit the immunity from liability provided to volunteer directors if they receive compensation. Even when states laws allow reasonable director compensation, in practice, charitable organizations rarely compensate their directors. CSBG IM 82 recommends that directors not receive financial gain from their board service. Moreover, the Head Start Act explicitly prohibits Head Start grantees from compensating their board members.

(For CAAs with Head Start programs)

Compensation of Directors. Directors may not receive compensation for serving on the Organization's board of directors or for providing services to the Organization. However, they may receive reimbursement (or advances, in the case of Low-Income Sector Directors) from the Organization for reasonable and documented expenses incurred while performing services as directors or officers. To the extent the Organization makes any such reimbursements or advances, it shall do so only in accordance with financial policies established from time to time by the board.

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(For CAAs without Head Start programs)

Compensation of Directors. No director shall receive any compensation from the Organization for services rendered as a director. Nothing contained herein shall preclude any director from serving the Organization in any other capacity and receiving reasonable compensation for personal services rendered to the Organization that are necessary to carry out one or more of the purposes of the Organization; provided, however, that before the Organization obligates itself to pay such compensation, the board must review the compensation in accordance with the procedures set forth in the Organization's conflict of interest policy and determine that the compensation is reasonable, in the best interests of the Organization, and consistent with the Organization's conflict of interest policy and any applicable laws, regulations, or government policies. The Organization's directors may receive reimbursement (or advances, in the case of Low-Income Sector Directors) from the Organization for reasonable and documented expenses incurred while performing services as directors or officers. To the extent the Organization makes any such reimbursements or advances, it shall do so only in accordance with financial policies established from time to time by the board.

Execution of Instruments

Authorized CAA representatives must sign many contracts, checks, and other documents in the course of their duties for the CAA. Bylaws typically address who has the authority to execute these "instruments" on behalf of the CAA. The individuals typically designated with such authority consist of officers and executives of the organization. Some bylaws will include the titles of those who are authorized signatories of the organization, such as the executive director. Other bylaws allow the board to authorize via a resolution individuals not listed in the bylaws to sign certain documents. In addition to positions with signatory authority listed in the bylaws, some boards also pass a resolution annually that specifically authorizes the individual who holds that position to sign documents such as checks, contracts, etc.; especially if such designation is necessary for bank signatory authority, loans, and grants.

This provision does not detail the circumstances under which the board must vote to approve contracts executed on behalf of the CAA. Rather, the board should ensure that the organizational policies address when board approval is required before the executive director, or an officer, can sign on behalf of the organization. Often organizations will use designated thresholds to indicate the need for board approval. For example, a board resolution could authorize the executive director to sign all contracts under a certain dollar threshold. Any contracts exceeding that amount would require board approval.

Execution of Instruments. All contracts, deeds, leases, bonds, notes, checks, and other instruments authorized to be executed by an officer of the Organization on its behalf shall be signed by the president or the treasurer except as the board may generally or in particular cases otherwise determine. Unless authorized by the board of directors herein or via a resolution, no officer, employee, or agent shall have any power or authority to bind the Organization by any contract or agreement, or to pledge its credit, or to render it liable for any purpose or for any amount.

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Electronic Documents and Signatures

It is a good idea to clarify in the bylaws that electronic documents and signatures are acceptable and that when the bylaws use the terms “written” or “in writing” to refer to documents, those terms include documents in electronic form.

“Written” and “In Writing” and Signatures. The words “written” or “in writing” as used in these bylaws mean: (a) in paper form or (b) in the form of a document that is stored in an electronic or other medium, that is retrievable in perceivable form and that may be reproduced in paper form. Whenever these bylaws require or permit a signature, the signature may be a manual, facsimile, conformed or electronic signature. “Electronic signature” means an electronic symbol or process attached to, or logically associated with, a document and executed or adopted by a person with the intent to sign the document, as specified in the *[Name of State]* Uniform Electronic Transactions Act. Any notice, consent or other action to be provided or taken in “written form” may be given: by hand; by mail; by messenger or delivery service; or by any electronic transmission that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be reproduced in paper form by the recipient.

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Indemnification of Directors and Officers

Indemnification is the payment or reimbursement by the organization to a director or officer for legal expenses, such as judgments, costs, and attorneys’ fees incurred as a result of service provided to the organization by the director or officer. Nonprofit CAA bylaws may provide different levels of indemnification for directors and officers of the organization. Most state Nonprofit Corporation Acts include statutes that either require or allow an organization to provide some protection for directors and officers in defending litigation associated with actions taken during their service for the organization.

Some states require that, for an organization to indemnify directors, officers and others, its articles of incorporation or bylaws must include a provision authorizing the organization to provide indemnification. When drafting such a provision, the CAA may want to include limitations on the indemnification that can be granted, and many state laws specifically limit the circumstances in which a nonprofit corporation can provide indemnification. Generally, indemnification is not available if a director or officer breaches their fiduciary duty to the organization, acts in bad faith, or commits a criminal act.

Bylaws should include a section authorizing indemnification and setting forth the conditions for indemnification, regardless of whether state law requires such a provision. A written indemnification provision encourages individuals to serve on the board by providing a level of comfort that they will not incur unnecessary legal expenses due to their service to the organization. The organization also should consider whether it has adequate insurance to cover its indemnification obligations. It should discuss with

its insurance provider whether its existing insurance policies cover its current activities and the acts or omissions of individuals whom it may indemnify.

Due to state law differences and organizational preferences associated with indemnification, this Toolkit does not include sample language. Rather, an organization should work closely with an attorney in its state to draft its indemnification provision.

Bonding

Some CAA bylaws include a provision describing which individuals affiliated with the CAA may be bonded. Bonding is a practice in which a corporate entity pays a premium to a bonding company for a financial guarantee on a corporate officer, employee, director, etc. The bond guarantees a certain payment to the corporation if the bonded individual's bad acts lead to financial loss for the corporate entity. CAAs may seek this type of security on officers or directors who handle or have access to the organization's funding, as it helps provide a degree of financial security for the CAA. In many instances, insurance coverage, such as employment practices liability insurance or "D&O" (directors and officers) policies, replace the need for bonding, which is often costly.

Bonding. The board of directors may require officers of the Organization charged with handling of funds, and any other officer, director, employee or agent, to be bonded for performance of their duties in such amount and by such bonding company registered in the *[insert name of your state]* as shall be satisfactory to the board.

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Amending the Bylaws

Since an organization must operate within the limits of its bylaws, the bylaws should include a process by which the bylaws may be amended to revise or remove provisions that are inconvenient, outdated, or unwanted. For example, boards should formally amend bylaws to address provisions that no longer reflect the ways in which the board operates. For a nonprofit CAA, the specific procedure for amending the bylaws will depend on its state Nonprofit Corporation Act.

Notice of the meeting at which the board will consider bylaws amendments generally must include a statement indicating that one of the purposes of the meeting is to amend the bylaws. Some states require that the organization provide the specific language of the amendment in the notice document.

The proportion of directors needed to approve a bylaws amendment may also vary by state. Many states' laws require a super-majority vote, as opposed to a simple majority of the board members at a meeting at which a quorum is present. Even if not required by state law, a board may wish to adopt a super-majority vote, such as a majority of the directors in office, to amend the bylaws. Requiring a higher percentage helps prevent hasty amendments or amendments by a small minority of the voting body.

Amendment of Bylaws. The directors may alter, amend, or repeal these bylaws at any meeting of the directors by *[check your state's Nonprofit Corporation Act for the proportion of directors that must approve bylaws amendments]*. The board must provide notice of the meeting to the directors at least *[check state law on whether there is a required notice period; specify number of days]* before the date of the meeting and must state that one of the purposes of the meeting is to amend the bylaws. *[If your state's Nonprofit Corporation Act requires that the notice include specific language of the amendment, the bylaws should specify that the notice must include the text of the proposed alteration, amendment, or repeal.]*

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This Toolkit contains general information and is not intended as legal advice. If you need legal advice on your organization's articles of incorporation and/or bylaws, consult a lawyer who is licensed in your state and is familiar with your state's Nonprofit Corporation Act and other applicable laws.

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