

COMMUNITY SERVICES BLOCK GRANT



Trainning
ools
for
**NONPROFIT
BOARDS**

GOVERNANCE

**Tripartite Board Composition
and Selection**

CAPLAW

Community Action Program Legal Services, Inc.

Introduction

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

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

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

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

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

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

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

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

TIP The tip text will be here

EXAMPLE

NOTE:

Part III. Low-Income Representative Sector

Learning Objectives for Part III

- 3.1 Know low-income representative composition requirements
- 3.2 Improve low-income representative selection
- 3.3 Understand low-income representative bylaws provision

All Materials Needed for Part III

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

- Federal CSBG Act section setting forth tripartite board composition and selection requirements, 42 U.S.C. § 9910*
- State CSBG statutes/regulations, if any exist
- Low-income Representative True & False Quiz**
- U.S. Department of Health and Human Services (HHS) Federal Office of Community Services (OCS) Information Memorandum (IM) 82*
- CAA's current democratic selection process which, may be included in the excerpt from the CAA bylaws addressing board composition and selection or which may be contained in a separate written document approved by the board
- Sample Low-Income Representative Bylaws Language*
- Low-income Representative Bylaws Provisions Questionnaire**
- Excerpt from the CSBG grant agreement with the state setting forth tripartite board composition and selection requirements, if applicable
- Excerpt from the CAA articles of incorporation (and/or articles of amendment) addressing board composition and selection, if such provisions exist
- Full CAA bylaws with section(s) addressing board composition and selection highlighted for easy reference

NOTE: REG VS. STATUTE

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

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

PowerPoint for Part III

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

Facilitator Task

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

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

3.1 Know Low-Income Representative Composition Requirements

Facilitator Task

Ask one board member to read to the board from the handout containing the tripartite board composition provision in the federal CSBG Act setting forth the low-income representative requirement for nonprofit (private) CAAs. The requirement is also listed below.

Section 9910(a)(2)(B) sets forth the low-income representative composition requirement which is as follows:

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

...

(B)(i) not fewer than 1/3 of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and (ii) each representative of low-income individuals and families selected to represent a specific neighborhood within a community under clause (i) resides in the neighborhood represented by the member

Facilitator Task

You and the board members should either individually or in groups take the **Low-Income Representative True and False Quiz**. After taking the Quiz but before discussing the answers, ask the board members to read and highlight the sections of Information Memorandum (IM) 82 that specifically pertain to low-income representative composition and selection.

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

3.1 Know Low-Income Representative Composition Requirements

Answers to the Low-Income Representative True & False Quiz

1. To meet the democratic selection requirement the CAA may have another board or council made-up predominately of low-income individuals select an elected officer on that board or council to serve as a low-income representative.

True or False

OCS advises CAAs in IM 82 that every effort should be made to ensure that board members representing low-income individuals and families are selected on the basis of some form of democratic procedure either directly through election, public forum, or, if not possible, through a similar democratic process such as election to a position of responsibility in another significant service or community group predominately made-up of low-income individuals such as a school PTA, a faith-based leadership group; or an advisory board/governing council to another low-income service provider.

2. If a CAA is facing difficulty filling the low-income representative sector, it may elect to the board individuals who provide services or support to low-income residents.

True or False

Low-income people in the community served by the CAA must have input at some point in the selection process. For this reason, low-income sector board members should not simply be chosen by the CAA's executive director or tripartite board, nor should they be staff of another low-income service provider chosen by the executive director or board of that other organization (unless low-income people make up a majority of that board and that board selects the CAA board member).

3. By serving on a CAA board, low-income representatives provide those currently living in the service area with a strong voice in the CAA's governance and direction.

True or False

IM 82 explains that the implicit intent of low-income representative requirement is to ensure that those who currently live in areas served by the CAA are represented so that they have a strong voice in CAA governance and direction of the CAA and are able to convey to those they represent the presence and significance of community action in their lives.

4. Low-income representatives must be low-income themselves.

True or False

No requirement exists that low-income representatives be low-income themselves. However, as noted by the prior question, the intent of the low-income representative requirement is to represent the voice of the low-income people served because they will most likely know best what their needs are. Thus, it is important for CAAs to have as many low-income individuals as possible serve as low-income representative board members.

5. Low-income representatives of a nonprofit CAA must reside in the specific neighborhood they are representing if the bylaws require them to do so.

True or False

For nonprofit CAAs, there is no general residency requirement for low-income representatives. However, the federal CSBG Act requires low-income representatives

3.1 Know Low-Income Representative Composition Requirements

to live in a specific neighborhood if they were selected to represent that neighborhood. Thus, if a CAA's bylaws require low-income representatives to represent a specific neighborhood or geographic area, then the representatives must reside in those designated neighborhoods or areas.

Facilitator Task

Ask board members either individually or in groups, to compare the federal CSBG Act low-income representative requirement with any low-income representative requirement in the state CSBG statutes or regulations, if any exist. Have the board members identify and discuss the differences between the federal and state requirements, if any such differences exist.

3.2 Improve Low-Income Representative Selection

One of the trickiest aspects of the low-income representative selection requirements is establishing a democratic selection process that the low-income community willingly participates in and that results in an accurate representation of the community served. The following exercise is intended to help all board members think creatively about the democratic selection process when filling current or potential board vacancies. A similar exercise is available for each sector of the board in each Part. The board may conduct all three exercises separately or at the same time

Facilitator Task

Designate one board member to locate and read to all board members the CAA's current democratic selection process. Designate another board member to read aloud the section in IM 82 referring to the democratic selection process that the board highlighted for learning objective one of this part. Then, ask each board member to write down on a piece of paper at least one alternative way to conduct the democratic selection process that differs from the CAA's current process. The differences could be variations of the current process and do not necessarily need to be a whole new process.

Have each board member read his/her response and note the response on a whiteboard, easel with a notepad or a piece of paper. As each response is read, categorize similar responses together. Once the responses have been gathered and similar ones placed together, read the responses again and poll the board members on their top two or three choices. After the top two to three choices are determined, assess the pros and cons of each choice either as a full board or in groups. If this process is conducted in groups, be sure to reconvene the full board to discuss the individual group results. Rank the choices and consider adding to, revising and/or updating your CAA's current procedures.

TIP If few or no board members are able to think of different ways to conduct the democratic selection process, consider assigning board members the task of researching how other CAAs in your state conduct the process. Also, consider asking the state association to maintain an ongoing list of options for conducting the democratic selection process that all CAA boards can contribute to on a regular basis, such as annually or biannually.

Here are a few examples of democratic selection procedures for obtaining low-income representatives:

- Ask CAA staff to assist with finding potential low-income representatives by identifying clients who have shown leadership potential while participating in CAA programs or who have performed well in the CAA programs. Staff could inform the client of the opportunity to participate on the CAA board and direct the client to the executive director for more information about this opportunity. The executive director could explain the democratic selection process to the client and consider inviting

3.2 Improve Low-Income Representative Selection

the client to a board meeting. The board governance committee and/or executive director could also meet individually with the client to describe the responsibilities of CAA board members. If the client is interested in serving on the board, he/she could request to be added as a candidate in the next democratic selection process;

- Conduct an election where ballots are cast by CAA clients and/or by other low-income people in the CAA's service area (ballots may be cast, for example, at designated polling place(s) in the service area, at the CAA's offices, at the offices of other organizations providing services to low-income people or via the Internet);
- Take a vote at a community meeting of low-income people (attendance may be improved if the meeting serves to not only select low-income representatives but also to address a topic of interest to low-income people in the community);
- Designate community groups composed predominantly of and representing low-income people in the service area (for example, a Head Start policy council, low-income housing tenant association, or the board of a federally-qualified community health center) to elect members from within their group to the CAA's board or whose boards will choose someone from among their elected officers/board members to serve on the CAA's board.

3.3 Understand Low-Income Representative Bylaws Provision

Facilitator Task

Provide board members with the **Sample Low-Income Representative Bylaws Language** handout and ask them either individually or in groups to compare it to CAA's current bylaws.

Ask yourself and the board members to distribute copies of the **Low-Income Representative Bylaws Questionnaire** and/or refer to the PowerPoint. These questions may be used to determine if the CAA's current bylaws provision(s) need to be revised.

TIP If board composition and selection provisions are included in the CAA's articles, CAPLAW recommends that those be removed unless such provisions are required to be included by your state's laws.

Sample Bylaws Language

Low-income representative composition language:

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

Low-income representative selection language:

Low-Income Sector Directors. The board shall adopt and implement written democratic selection procedures for Low-Income Sector Directors, which it may revise from time to time. Such procedures may include, either alone or in combination: (1) election by ballots cast by the corporation's clients and/or by other low-income people in the corporation's service area; (2) selection at a community meeting in a low-income neighborhood in the corporation's service area and/or on a topic of interest to low-income people and publicized to low-income people in the corporation's service area; and/or (3) designation by organizations in the corporation's service area composed of a majority of low-income people (Low-Income Organizations).

3.3 Understand Low-Income Representative Bylaws Provision

Answers to the Low-Income Representative Bylaws Questionnaire

Do the bylaws state that the CAA will use a democratic selection procedure for selecting low-income representative board members?

The bylaws should state that the CAA will use a democratic selection procedure for selecting low-income representative board members. However, in general, the bylaws may, but do not need to, describe the procedure used; instead this procedure may be described in a separate document approved by the board. It is important to note that some states' CSBG laws, regulations or other guidance require CAA bylaws to include the details of the democratic selection procedure in the bylaws.

TIP Check your state CSBG statutes, regulations and policies, if any exist, to determine if the CAA is required to detail in the bylaws its democratic selection procedure.

Do the bylaws set terms for low-income representative board members?

The federal CSBG Act does not include requirements addressing board terms and term lengths. According to Information Memorandum (IM) 82 the implicit intent of the federal CSBG Act democratic selection procedure is to assure that those who currently live in areas served by the CAA are represented. Implementing terms helps to assure that those low-income representatives serving on the board accurately reflect the needs of the current community served by the CAA. Additionally, many state nonprofit corporation laws will set a default term (for example, one year) if a nonprofit's bylaws fail to establish a term and the state CSBG laws may require them.

NOTE: TERM VS. TERM LIMIT

A board **term** is the length of time a board member serves on a board and a **term limit** establishes the number of times that a board member can serve on the board. For example, a CAA may state in its bylaws that board members serve 3 year terms and may serve no more than two consecutive 3 year terms. Capping the number of terms a board member serves is a **term limit**. Some CAAs enable board members to serve after term limits have been met as long as the board member remains off the board for a certain period of time, e.g., for at least a one-year absence.

Do the bylaws require the board to vote to seat democratically elected low-income representatives?

For low-income representatives, the board's vote to seat an elected representative would only ensure that the representative met the residency requirement, if one exists, and that no other federal or state law prevents the representative from sitting on the board. In addition, under some states' nonprofit corporation laws, board members appointed by individuals or entities other than the nonprofit's board of directors can only be removed by the individual or entity that appointed them; however, if the board votes on the election of all board members, it retains the power to remove them.

3.3 Understand Low-Income Representative Bylaws Provision

Facilitator Task

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

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

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