

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 II. Public Official Sector

Learning Objectives for Part II

- 2.1 Know public official composition requirements
- 2.2 Improve public official selection
- 2.3 Understand public official bylaws provision

All Materials Needed for Part II

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

- Federal CSBG Act section setting forth tripartite board composition and selection requirements, 42 U.S.C. § 9910*
- Public Official Key Components Questionnaire**
- State CSBG statutes/regulations, if any exist
- U.S. Department of Health and Human Services (HHS) Federal Office of Community Services (OCS) Information Memorandum (IM) 82*
- Public Official Common Questions Questionnaire**
- CAPLAW Board Composition and Selection Matrix**
- List of CAA's current programs
- Current CAA's community needs assessment
- Current CAA's strategic plan
- Public Official Bylaws Provisions Questionnaire**
- Sample Public Official Bylaws Language*
- 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 II

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 each of the handouts to one or more individual board member(s) to read in depth so that they are prepared to help lead discussions on those handouts.

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.

2.1 Know Public Official Composition Requirements

Facilitator Task

Ask one board member to read the public official sector tripartite board requirement for nonprofit CAAs from the handout containing the tripartite board composition provision in the federal CSBG Act. The requirement is also listed below.

Section 9910(a)(2)(A) sets forth the public official 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 –

(A) 1/3 of the members of the board are elected public officials, holding office on the date of selection, or their representatives, except that if the number of such elected officials reasonably available and willing to serve on the board is less than 1/3 of the membership of the board, membership on the board of appointive public officials or their representatives may be counted in meeting such 1/3 requirement.

Facilitator Task

Ask board members, either individually or in groups, to break down into segments the language in the federal CSBG Act setting forth the public official sector requirement. The board members may do so by creating a brief bulleted list of the key components of the requirement.

A tool to help board members identify the key components of the public official sector requirement is the **Public Official Key Components Questionnaire** included as one of the handouts. The facilitator should either ask the board the questions in the questionnaire, distribute copies of the questionnaire and/or refer to the PowerPoint.

If either a whiteboard or easel with a large note pad is available, designate a board member to write down the key components as they are identified by the board members.

2.1 Know Public Official Composition Requirements

Answers to the Public Official Key Components Questionnaire

What portion of the board is comprised of public official board members?

1/3 of the members of the board.

What type of public official should the board first try to identify as a potential board member?

One that is elected to a public office.

When must the public official be in the office to which she or he is elected to be in compliance with the public official requirement?

Must be holding public office on the date of selection to the tripartite board.

What if an elected public official is unable to attend board meetings?

The elected public official may select a representative to serve in his or her place as a member of the tripartite board.

What if there are not enough elected public officials reasonably available to serve?

The CAA may ask an appointed official to serve.

What if an appointed official is unable to attend board meetings?

The appointed official may select a representative to serve in his or her place as a member of the tripartite board.

2.1 Know Public Official Composition Requirements

Facilitator Task

Ask board members either individually or in groups to compare the federal CSBG Act public official sector requirement with any public official sector requirement in the state CSBG statutes or regulations, if they exist. Have the board members identify and discuss the differences between the federal and state requirements, if any exist.

Ask the board members to read and highlight the sections of IM 82 discussing public official sector board composition and selection requirements.

Once the comparisons are complete, ask yourself and the board members the questions below, distribute copies of the **Public Official Common Questions Questionnaire**, and/or refer to the PowerPoint to ensure everyone understands how to best comply with the requirements. Encourage board members to discuss their answers to the questions and, if the answers differ from the ones written below, read the answers below and discuss them.

Answers to the Public Official Common Questions Questionnaire

Why does the CSBG Act require public officials to serve on the board?

The overarching purposes for having public officials serve on tripartite boards are to facilitate awareness of and action on issues facing low-income people in the community by local and state governments and to foster close coordination and partnership between local and state governments and CAAs in addressing those issues.

Does the current federal CSBG Act authorize the CAA board to select public official board members or does the authority lie with the chief elected local official(s) in the area served?

The current federal CSBG Act does not require public official sector board members be chosen by chief elected local official(s); in fact, the CSBG Act specifies that the **CAA is to select the board**. The predecessor to

NOTE: EOA LANGUAGE

Some state CSBG laws and/or regulations still use the Economic Opportunity Act of 1964 (EOA) language which gives the chief elected local official(s) the authority to select public official board members. CAPLAW's view is that the state laws that still require selection by chief elected local officials are inconsistent with the federal CSBG Act. Some states whose laws still contain this requirement do not enforce it, while others do. If your state is one that enforces the chief elected official requirement and your CAA does not want to follow that requirement, your CAA may dispute, and possibly litigate, the issue with the state.

2.1 Know Public Official Composition Requirements

the federal CSBG Act, the Economic Opportunity Act of 1964 (EOA), had required that the public official sector board members be designated by the chief elected official(s) in the area served. However, this language was removed when the EOA was repealed and the federal CSBG Act was enacted 1981.

Is the CAA required to select local county commissioners/supervisors or city councilors as public official board members?

The federal CSBG Act does not identify which public officials ought to serve on the tripartite board. Rather, the language of the federal CSBG Act indicates that the decision of which public officials should be selected to serve on a CAA's board is to be made by the tripartite board. The board should make this decision based on its determination of which public official(s) will best meet the CAA's needs.

Is an elected public official required to be in office to continue serving on the board? In other words, if, while the elected public official is serving on the board, his or her term in public office ends and he/she is not reelected or chooses not to run for public office again, must the public official step down from the tripartite board?

The federal CSBG Act only requires that a public official be holding office on the date of selection to the tripartite board. There is no prohibition in the federal CSBG Act preventing a public official from continuing to serve the remainder of his or her term as a director even if it extends past his or her term of public office. However, the federal Office of Community Services (OCS) recommends in non-binding guidance issued in IM 82 that elected officials serve on boards only while they are in office. Moreover, state CSBG laws/regulations may require that public officials be "currently holding office." If your state requires that public official directors be currently holding public office while serving on the CAA board, this requirement should be specified in the CAA bylaws.

May a representative appointed by a public official continue to serve on the board even if the public official who designated him or her is no longer holding office?

Again, the federal CSBG Act does not directly answer this question. However, OCS IM 82 interprets the CSBG Act language regarding public officials holding office on the date of selection as requiring individuals designated by elected or appointed officials to serve only while their principals are in office or be re-designated by a public official still in office.

When a public official designates a representative to serve in his/her place, who is seated on the board and who votes?

The individual who the representative has chosen, not the public official, serves as the board member and votes at the board meetings.

Do any requirements exist regarding the type of representative a public official may appoint to serve in his or her place?

No. It is within the public official's discretion to choose the representative who will serve in his or her place.

TIP CAPLAW recommends that the board develop a process for the public official to follow when designating a representative which may include the board providing the public official with recommendations of possible representatives the public official may consider designating to serve in his/her place.

2.2 Improve Public Official Selection

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

Facilitator Task

Ask board members either individually or in groups to identify the current public official board members and the office that they are either elected or appointed to fill. If the public official has designated a representative to serve in his or her place, list the representative and the public official designator. Also, ask the board members to briefly review the current community needs assessment, strategic plan and list of CAA programs. The board should then discuss the current and future needs of the CAA and make a list of the attributes they are looking for in prospective public official board members. Consider using a board matrix available in the handouts to help track the attributes important to the board.

Ask board members to then make a list of elected and appointed public officials in your service area. This list may include judges, law enforcement professionals, superintendent of schools, school committee members, etc. The board should determine if the attributes identified match up with characteristics of potential public official sector board members. Making this assessment may require assigning board members to research and/or meet with those public officials identified and report back to the board. Once prospective public official board members are determined to be a good fit, make a list which may be used to fill future vacancies on the board. Also, consider inviting these prospective board members to board meetings or asking them to sit on an advisory board, if your CAA has created one. The advisory board would not make decisions or vote on resolutions but may make recommendations to the board and help fill vacancies.

2.3 Understand Public Official Bylaws Provision

Facilitator Task

Ask yourself and the board members the following questions, distribute copies of the **Public Official Bylaws Provisions Questionnaire**, and/or refer to the PowerPoint to determine if your current bylaws provision(s) may 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.

Ask board members either individually or in groups to compare the language in the **Sample Public Official Bylaws Language** handout (and also pasted below) to the CAA's current bylaws language. Board members should note the differences and discuss them. Board members should discuss why the language may differ and, whether it would be beneficial to revise the existing bylaws language.

Sample Bylaws Provisions

Sample bylaws public official board member composition language:

One-third of the directors shall be elected public officials, holding office on the date of selection, or their representatives, except that if the number of such elected officials reasonably available and willing to serve on the board is less than one-third of the membership of the board, appointive public officials or their representatives may be counted in meeting such one-third requirement (Public Sector Directors).

Sample bylaws public official board members selection language:

Public Sector Directors. The board of directors shall select elected public officials to serve as Public Sector Directors. If the number of elected officials reasonably available and willing to serve on the board is less than one-third of the board, the board may select appointed public officials to serve. If a public official selected by the board of directors cannot serve him- or herself, s/he may designate a representative, subject to approval of the corporation's board, to serve as a Public Sector Director; the representative may, but need not be, a public official. Should a public official fail, within the period specified by the corporation's board, to accept the seat him- or herself or to designate a representative to serve, the corporation's board shall select another public official to fill the seat or to appoint a representative, subject to approval of the corporation's board, to fill the seat.

2.3 Understand Public Official Bylaws Provision

Answers to the Public Official Bylaws Provisions Questionnaire

Do the bylaws establish a procedure for selecting or appointing public official board members?

- If yes, what is the procedure? How was it developed? Does it comply with the requirements for public official board members set forth in the federal CSBG Act and/or state CSBG statutes and regulations (if any exist)?
- If no, how has the board been conducting the selection of public official board members? Is the procedure used compliant with the requirements for public official board members set forth in the federal CSBG Act and/or state CSBG statutes and regulations (if any exist)?

Do the bylaws establish terms for public official board members?

The federal CSBG Act does not include requirements addressing tripartite board terms. Because public official board members must be holding office on the date of selection, establishing terms that public official board members are to serve helps to ensure that public official board members are in office for most of the time they are serving on the board. Moreover, many state nonprofit corporation acts set a default term (for example, one year) if a nonprofit's bylaws fail to establish a term. In some cases, public official board members will have shorter terms than board members from the other sectors of the board to correspond with their terms in public office. CAPLAW recommends addressing terms for all board members in a separate section of the bylaws addressing terms and, if desired by the board, term limits. For sample term and term limits language see **CAPLAW's Bylaws Toolkit** available for purchase on CAPLAW's website, www.capl原因.org.

Do the bylaws specify the public official who must be selected (i.e., they state that the current county commissioners/supervisors or city councilors representing a particular service area will always be selected to fill the public official board member seat, etc.)?

CAPLAW recommends not designating specific public officials in the bylaws. By not specifying public officials, the board will have more flexibility throughout the selection process and will not run the risk of having to seat an individual on its board who may neither meet the needs of the CAA nor further the CAA's best interest.

NOTE: STATE CSBG LAWS

Some state CSBG laws include specific information that CAAs must include in their bylaws. If a CAPLAW recommendation differs from the state requirement, the CAA should either comply with the requirement or contact CAPLAW.

Do the bylaws give the authority to a third party to choose the public official board member to sit on the board (e.g., county commissioners/supervisors of each county served appoint a representative to the board)?

CAPLAW recommends not giving authority to a third party to choose public officials to sit on the board but rather ensure that the board has the final say on who will be seated and that the bylaws remain flexible as to who the CAA might choose to serve as a public official on its board. If the CAA prefers to have a third party, such as the board of county commissioners, appoint someone to its board, the CAA should either ask for recommendations from the third party (rather than have the third party choose someone on the CAA's behalf) or make any appointment by a third party subject to final approval by the board. This is consistent with the federal CSBG Act (42 U.S.C. § 9910), which specifies that the CAA itself selects its tripartite board members (subject to the requirement that low-income board members be chosen through a democratic selection process). In addition, under some states' nonprofit corporation laws, board members appointed

2.3 Understand Public Official Bylaws Provision

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

TIP The bylaws should specify that, if a public official chooses a representative to serve as a board member, that person, and not the public official, is the board member and votes at the board meetings.

Do the bylaws require the board to vote to seat a representative appointed by a public official to serve in his or her place?

CAPLAW recommends drafting the bylaws to make representatives of public officials subject to approval by the CAA's board. The board would also vote to seat the representative designated by the public official. By doing so, the board maintains control over its board members and ensures that board members meet the needs of the CAA.

Facilitator Task

After finishing Part II, 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 II 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.