



The Roles and Responsibilities of Public CAA Boards

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Tripartite boards of public Community Action Agencies (CAAs) face unique challenges in overseeing programs funded by the Community Services Block Grant (CSBG) and other sources. While their relationship with local government provides lines of communication to individuals with authority and influence in the community, the boards' powers are subject to what the local government has delegated to them. These dynamics can create some very confusing and often frustrating situations. This resource is intended to help address some of the most frequently asked questions about a tripartite board's role and responsibilities that we receive from public CAAs.

TABLE OF CONTENTS

1.	How are public CAAs structured?	1
2.	What are the responsibilities of a public CAA's tripartite board, and should a public CAA refer to its board as "advisory" or "administering"?	2
3.	Should a public CAA refer to its board as "advisory" or "administering"?	2
4.	How does a public CAA's tripartite board exercise decision-making authority over the CAA?	3
5.	What fiduciary duties do public CAA tripartite board members owe to their CAA?	3
6.	Can public CAA board members vote by proxy?	4
7.	What board composition requirements apply to public CAA tripartite boards?	4
8.	May a CAA have a tripartite board that is not divided into equal parts, i.e., into thirds?	5
9.	Who selects the board members of the tripartite board?	5
10.	Are all public CAA tripartite board meetings open to the public?	6

1. How are public CAAs structured?

Understanding how their public CAA is structured can help tripartite board members navigate the board's role in administering CSBG and other funding streams. Public CAAs are created under and generally governed by local branches of government, but depending on the state, their structures vary widely. The most traditional form is a public CAA operated as a division or department of local government, such as a county or city. One example of

a public CAA that has this form is the Montgomery County Community Action Agency (MCCAA) in Maryland. MCCAA, which is profiled in CAPLAW's case study, [The Power of a Tripartite Board](#), and is a division of the county's Department of Health and Human Services.

Public CAAs may also be created by other means, such as pursuant to a state statute or local ordinance. They also may be administered by multiple departments or jurisdictions, either as an interdepartmental office or a newly established entity with quasi-governmental powers. Examples of public CAAs created by state statute include (1) Human Resource Agencies that operate under Tennessee's Human Resource Agency Act¹; and (2) CAAs created under California's Joint Exercise of Powers Act, which allows two or more public agencies to create a separate legal entity pursuant to a Joint Powers Authority to provide certain public services². Even if a public CAA's daily operations are mostly separate from the local government or governments that created it, the entity is still controlled by the government(s). Thus, though structures vary, all public CAAs share the common thread of being controlled and managed by one or more local governments.

2. What are the responsibilities of a public CAA's tripartite board?

The federal CSBG Act specifically requires the tripartite board of a public CAA to "participate actively in the development, planning, implementation and evaluation" of CSBG-funded programs.³ The board's responsibilities are often further defined by the government or laws that created the public CAA and are laid out in the tripartite board's governing documents, which often take the form of bylaws.

Furthermore, Office of Community Services (OCS) CSBG Information Memorandum (IM) 82 does not distinguish between the responsibilities of nonprofit CAA and public CAA tripartite boards, requiring both to take responsibility for oversight and governance of CAAs.

The tripartite board also plays an important role in leading a public CAA's compliance with the CSBG Organizational Standards. Many of the concepts and directives in IM 82 are reflected in the CSBG Organizational Standards, which require the tripartite board to be involved in matters such as:

- Reviewing the CAA's mission statement;
- Participating in strategic planning and the community needs assessment;
- Receiving strategic, organizational, and programmatic updates;
- Receiving financial and audit reports; and
- Participating in the CSBG budget process, as allowed by local government procedures.

3. Should a public CAA refer to its board as "advisory" or "administering"?

No federal CSBG requirement exists which requires a public CAA board to be referred to as either "advisory" or "administering." The term "administering" is found in Section 9910(b) of the federal CSBG Act, which states that a public CAA "administers" the CSBG program through a tripartite board and that the low-income representatives on the board must actively participate in the development, planning, implementation, and evaluation of the CSBG program. OCS references the above language from the federal CSBG Act in IM 82, and also refers to a public CAA board as "advisory." Some state CSBG laws and/or local ordinances specify how public CAA boards will be referenced.

CAPLAW generally refers to a public CAA board as an administering one because doing so reflects the language in the federal CSBG Act and also emphasizes the active role that a public CAA board, and in particular the low-income representatives on the board, should play in overseeing the CSBG program. Some public CAAs will refer to their boards as “advisory” because that is how their local government refers to all boards that work closely with the county/city departments/divisions or because IM 82 uses that term. Regardless of the way the public CAA board is referenced, it is clear that the board, and in particular the low-income representatives, must actively participate in the development, planning, implementation, and evaluation of the CSBG program.

4. How does a public CAA’s tripartite board exercise decision-making authority over the CAA?

Tripartite boards of public CAAs can exercise decision-making authority to the extent permitted by the local governing officials. A delegation of such authority is often found in the public CAA’s bylaws, charter, a delineation of powers agreement, or enabling legislation specifying actions the board may take. In situations where a tripartite board’s ability to act on behalf of a public CAA is limited, the board should be charged with providing recommendations and advice on matters specific to the CAA’s programs. For example, a public CAA’s tripartite board may be authorized by its charter to review the Executive Director’s performance and provide recommendations to the Board of Supervisors (i.e., local governing officials) regarding the Executive Director’s compensation, but the local branch of government may retain the ultimate power to set the annual compensation of, and terminate, the Executive Director.

If a public CAA’s charter, bylaws, or delegation of authority documentation is silent with respect to the tripartite board’s authority to make decisions in certain areas, the board should consider whether a particular decision directly relates to the provision of services funded by CSBG. A public CAA’s tripartite board should have direct oversight over programs and services supported with CSBG funds, as the federal CSBG Act requires such active participation in the program’s development, planning, implementation, and evaluation.

Regardless of the scope of authority formally granted, there are many ways in which public CAA boards can effect change and exert influence on their agencies and communities without exercising direct decision-making power. These include building relationships with community members and government representatives, as well as consistently participating in local government affairs and advocating on behalf of low-income people. The [CAPLAW case study](#) on MCCA describes how the agency’s board has fulfilled its role in an impactful way despite having limited formal decision-making authority. Members of the board understand the vital role they play in fulfilling the purpose of the CAA, and they embrace that role.

5. What fiduciary duties do public CAA tripartite board members owe to their CAA?

The fiduciary duties of care and loyalty owed by board members to a nonprofit CAA usually come from state nonprofit corporation statutes. Since public CAAs are not subject to such laws, whether a public CAA’s tripartite board members owe any fiduciary duties to their CAA depends on the laws creating and governing the public CAA. Many local laws hold public entity board members to a similar standard by imposing fiduciary duties in some form.

Fiduciary duties may also be required under a public CAA's charter, bylaws, or delegation of authority documentation.

While public CAA board members are not necessarily obligated to act in accordance with nonprofit board fiduciary duties, the duty of care and duty of loyalty are both still useful, informative frameworks for how public CAA board members should conduct themselves in their capacity as board members to help achieve beneficial outcomes for their CAAs.

The duty of care is a standard of **diligence**; that is, board members should exercise **diligence and deliberation**. Assessing whether board members have fulfilled their duty of care involves asking questions such as, “Was the decision based on facts that were developed through an orderly process, or did the board just do what felt right at the time of the decision?” The **duty of care** is evaluated from a **reasonable person standard**—a board member should exercise the care that an ordinarily prudent person would exercise under similar circumstances. Attending board meetings, reading board materials, and asking hard questions are all activities that suggest a board member is meeting their duty of care.

The **duty of loyalty** is a standard of faithfulness—a board member gives **undivided allegiance** to the public CAA and its mission when making decisions affecting the CAA. This means that a board member should not use information obtained as a board member for personal gain (or self-dealing), and instead must act in the best interests of the public CAA. Board members should disclose and avoid conflicts of interest and recuse themselves from any decisions that might result in personal benefit.

6. Can public CAA board members vote by proxy?

Voting by proxy is a method of voting whereby a board member designates another person to cast a vote on the board member's behalf, usually because the board member is unable to attend the board meeting. Unlike nonprofit CAA board members, public CAA board members are often permitted to vote by proxy, though they should check their state and local laws, including their state's open meetings laws, to see if restrictions on proxy voting apply. Even if the applicable laws permit voting by proxy, CAPLAW encourages public CAAs to limit its use, as board members need to keep informed of the CAA's ongoing issues and exercise reasonable care when making decisions on behalf of the CAA. Even if public CAA tripartite board members are not formally subject to a fiduciary duty of care (see [Question 4](#) above), it is difficult for a board member to make informed decisions and consider the best interests of the CAA without the information and opportunity for discussion provided by regular attendance at board meetings. Limiting the use of proxies will help board members stay fully engaged in the planning, development, implementation, and evaluation of the CSBG program, as required by the federal CSBG Act.

7. What board composition requirements apply to public CAA boards?

The federal CSBG Act requires that a public CAA administer its CSBG programs through a tripartite board or “another mechanism specified by the state to assure decision-making and participation by low-income individuals in the development, planning, implementation, and evaluation of” CSBG programs.⁴ This means that a state can decide, through legislation, regulations, or policies, to provide some other mechanism or form to the boards of public CAAs within the state. Note, however, that the form taken must still assure that low-income individuals play a role in decisions about the CSBG programs at the CAA.

However, most public CAAs have tripartite boards and, if no alternative mechanism is established by the state, then the federal CSBG Act requires a public CAA to use the tripartite structure, which must be composed of:

- At least one third **democratically-selected** representatives of the low-income community **residing in the area served by the CAA**;
- One-third local elected officials (or their representatives); and
- The remaining members from major groups and interests in the community.⁵

Note that democratically-selected members of public CAA tripartite boards must reside in the service area, in contrast to those in the same sector on private CAA boards.

Under CSBG Organizational Standard 5.2, public CAAs must have a written democratic selection procedure, or rely on the alternative mechanism specified by the state. Public CAAs should also make sure that their board is compliant with additional requirements imposed by state CSBG statutes and regulations, such as term limits for certain categories of board members.

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

The federal CSBG Act does not require that each of the three parts of the tripartite board be equal to 1/3 of the total. Rather, section 9910 of the federal CSBG Act requires that a CAA's tripartite board be composed of **1/3** elected public officials (or appointed, if no elected one is available or willing to serve); **no fewer than 1/3** democratically elected representatives of the low-income individuals and families from the community served; and **the remainder** from major groups and interests in the community served. Thus, so long as 1/3 of the board are elected public officials (or appointed, if necessary), the Act allows for more than 1/3 of the board to be comprised of low-income representatives. Increasing the share of low-income representatives would decrease the number of private sector board members.

It is important to note that some states require in their state CSBG laws and/or policies that each sector of the board be exactly 1/3 of the total, rather than adopt the federal CSBG Act language. CAAs should check applicable state laws and regulations, as well as their grant agreement, to see if any such governance requirements are applicable.

9. Who selects the board members of the tripartite board?

The federal CSBG Act requires that the tripartite board be selected by the "organization." For a public CAA employing a tripartite board structure, the decision-making body of the organization is the local governing body (for example, the city council or board of county commissioners), unless that body has delegated the responsibility of selecting board members to the tripartite board itself. If the governing body retains the authority to choose the board, then the tripartite board can, and should, make recommendations to the governing officials. One way for a public CAA board to be involved in the selection of board members is to establish a board committee charged with overseeing these tasks. This committee is often referred to as the board governance committee and may perform several tasks including maintaining a list of potential board members that it reviews and updates regularly.

Unless an alternative to the tripartite structure has been established by the state, public CAAs with a tripartite board must use a democratic selection process to select low-income sector board members, regardless of the extent to which the decision-making body delegates the responsibility for selecting board members. Public CAAs with the authority to do so should consider voting to seat the democratically elected low-income sector representatives to retain the authority to remove them if such removal is necessary under board policies. In voting to seat the members, the board should respect the democratic selection process by only voting against seating a democratically elected board member if they are disqualified from board service, such as in the case of a conflict of interest.

10. Are all public CAA tripartite board meetings open to the public?

Not necessarily. While public CAA boards are bound by state open meetings laws with respect to board meetings, the obligations that come with holding an open meeting under those laws vary from state to state and may or may not obligate the CAA to allow members of the community to attend. They may also require a certain degree of advance notice and the publication of meeting minutes after the meeting. Public CAA board members may also be precluded from engaging in practices such as participating in board meetings via phone or teleconference and acting by written consent in lieu of holding a meeting. The CAPLAW case study [Leadership During Crisis](#), featuring the Northern Kentucky Community Action Commission, offers a more detailed discussion of how a state's open meetings law may impact a board's operations.

ENDNOTES

¹ TN Code §13-26-101 *et seq.*

² Cal. Govt. Code § 6500 *et seq.*

³ 42 U.S.C. § 9910 (b)(1)(C).

⁴ 42 U.S.C. § 9910 (b)(2).

⁵ 42 U.S.C. § 9910 (b)(1).

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