

Question 1: Regarding the HI board members, must the president of University of HI and Bishop Museum be board members, or may they designate an alternate person employed by the UH or Bishop Museum?

The statutory language is clear that the Presidents of UH and the Bishop Museum must be members of any governing board for grants made with respect to Native Hawaiian arts and culture. This intent is made clear when contrasted with Congress' reference to OHA, which only requires a representative of that office instead of a specific official. Congress could have framed UH and the Bishop Museum's participation in the same manner but chose to be more specific. A well-known canon of statutory construction instructs us to give meaning to the difference in wording between these sections, especially where Congress has demonstrated that it knew how to write this section more flexibly and still did not do so.

That said, it is common practice for board members at all types of institutions to be named to that board but send representatives in their stead. I think the most important part for satisfying this statutory requirement is that the Presidents are included as members in the Board's official membership, not that they necessarily attend every meeting themselves, if at all.

Question 2: Regarding the AK board members, does there need to be one person from each ethnicity on the board?

No, ethnicity is not a determining factor for this governing board. The language you highlighted below for the AK board notes that members must "represent the Eskimo, Indian, and Aleut cultures of Alaska" (emphasis added).

The use of the term "represent" is distinct from the language in other sections for both the AK boards and HI boards, which describe specific types of individuals to "include" in the membership. We must give distinct meanings to Congress's distinct terms, and here, the term "represent" refers more generally to the make-up of the board, as opposed to individual members. Again, if Congress wanted to require individual representatives of Eskimo, Indian, and Aleut cultures, it could have used language more similar to all the other sections that dictated which individuals must be included.

Note also that the focus is not on ethnicity, but culture. This is consistent with the government's sovereign relationship to these groups, which is not based on race/ethnicity (despite any correlation), but upon political status and culture. The overall makeup of the board membership must represent all three of these cultures, but that does not necessarily mean that there must be at least three individual members, one each from each culture. Nor does it mean that all three cultures have to be represented exactly the same. For example, it's likely sufficient to have more Aleut representation for Aleut-specific projects. In fact, circumstances may exist where individual members can validly represent multiple cultures. Thus, I think there is a fair amount flexibility here, if needed, depending on the circumstances, so long as each of these cultures is justifiably represented to a reasonable degree by appropriate membership in the specific circumstance.