



interactive dialogue

Modern Cooperative Governance in Today's Economy

**Mike Droke, Partner, Industry Group Co-Chair, Food,
Beverages & Agriculture**

**NSAC Far West Chapter Meeting
June 8, 2023**



Speaker



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Dorsey & Whitney



600

Lawyers
Firm Wide

70+

Practice Areas

6

Industry
specialty
groups,
including Food
& Ag

21

Global Offices

About Our Cooperative Practice

- **We are well versed in the unique needs of clients in the cooperatives industry including:**
 - Formation and organization
 - Voting rights and governance
 - Regulatory matters
 - Project development and finance
 - Mergers and acquisitions
 - Antitrust/Capper Volstead Act and tax issues
 - Licensing agreements
 - Contract disputes
 - Product liability

Why pick this topic?

- **Financial stresses outside direct operational control**
 - Inflation
 - Trade with China
 - Inputs availability and cost
 - Tax benefits (199A(g))
- **Consolidation of members, competitors, customers**
- **Customer pressure for ESG, DEI information**
- **Executive/GM level turnover**
- **Leads to member questions and importance of maintaining good board governance**

Legal Foundations of Governance

- **Statute where incorporated**
- **Articles of Incorporation**
- **Bylaws, both statutory requirements and create a contractual right/duty**
- **Membership agreements**
- **Internal policies regarding governance**

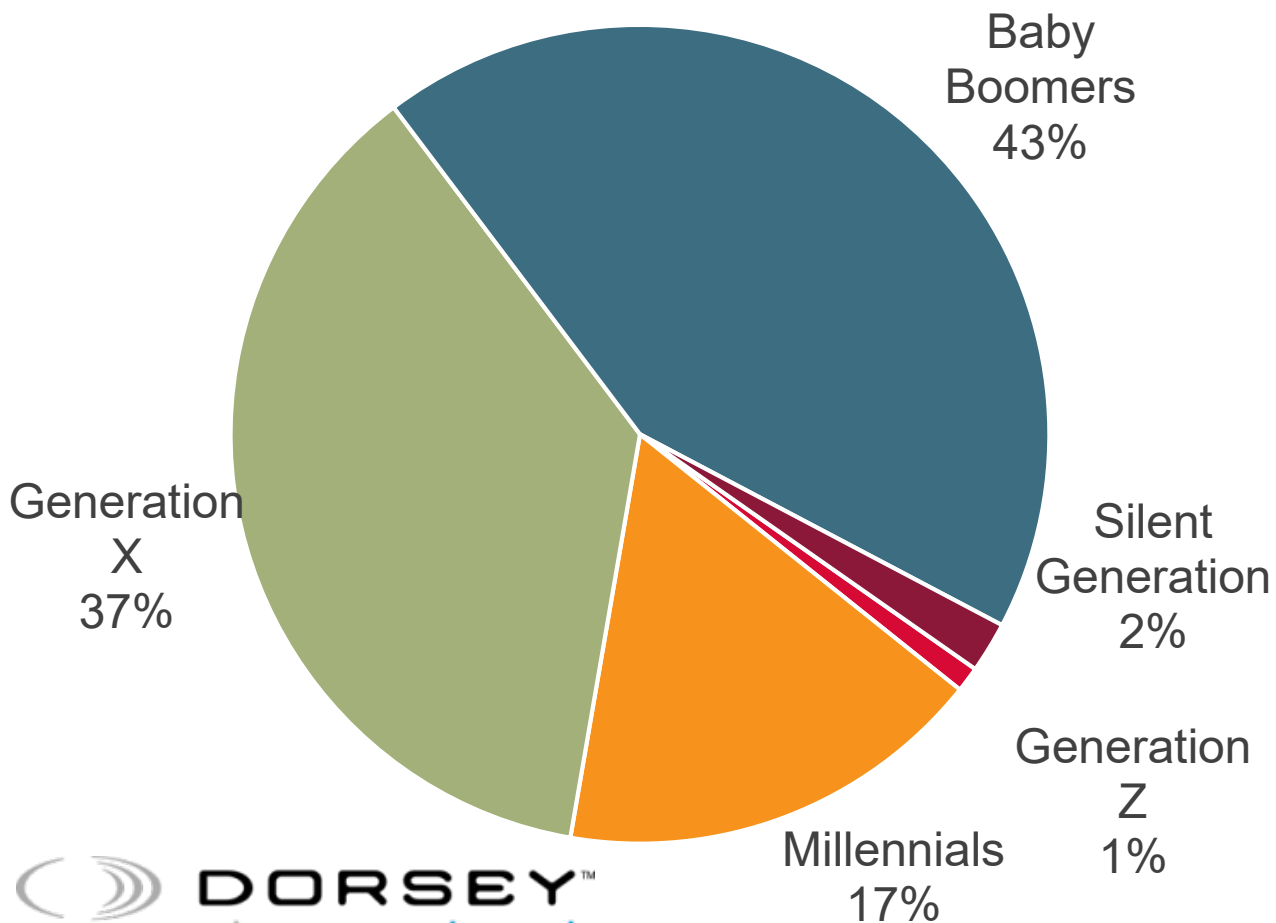
Key Takeaway: Board Size and Composition

- Average: 11 board members (8.5 overall)
- Range: 4 – 30 board members
- On average, hybrid co-ops have larger boards than primary co-ops (16 vs. 10 directors)
- 58% require member approval to change the size or composition of the board
- Ag co-ops reported the most change over the last 5 years in the # of people allowed to serve on the board
 - 11% increased in size
 - 27% decreased in size

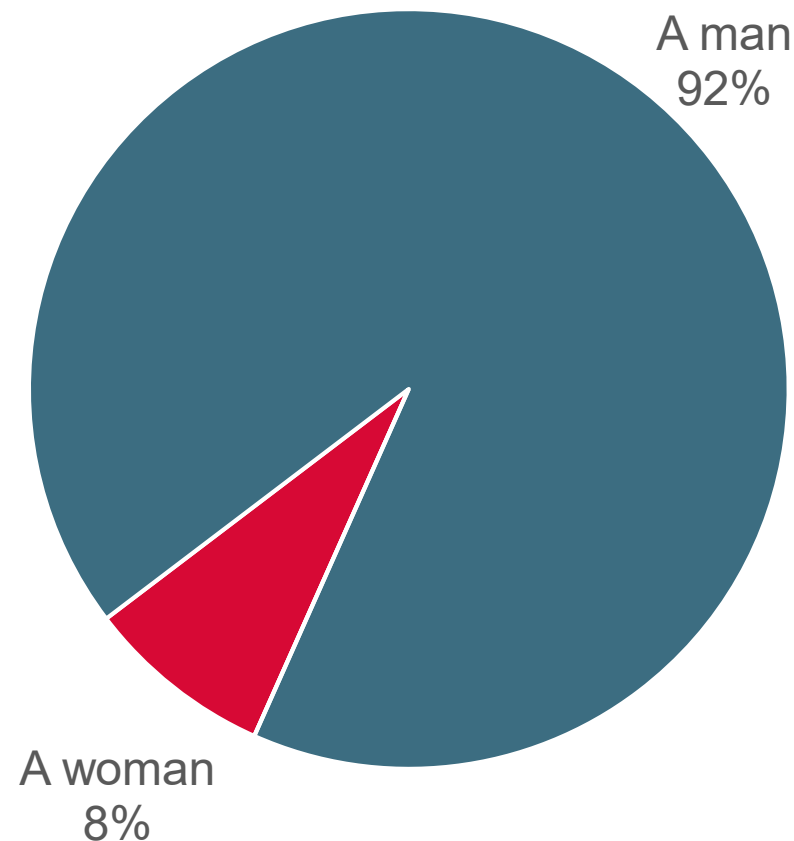


BOARD COMPOSITION: AGE & GENDER

Age composition of average participating ag co-op board

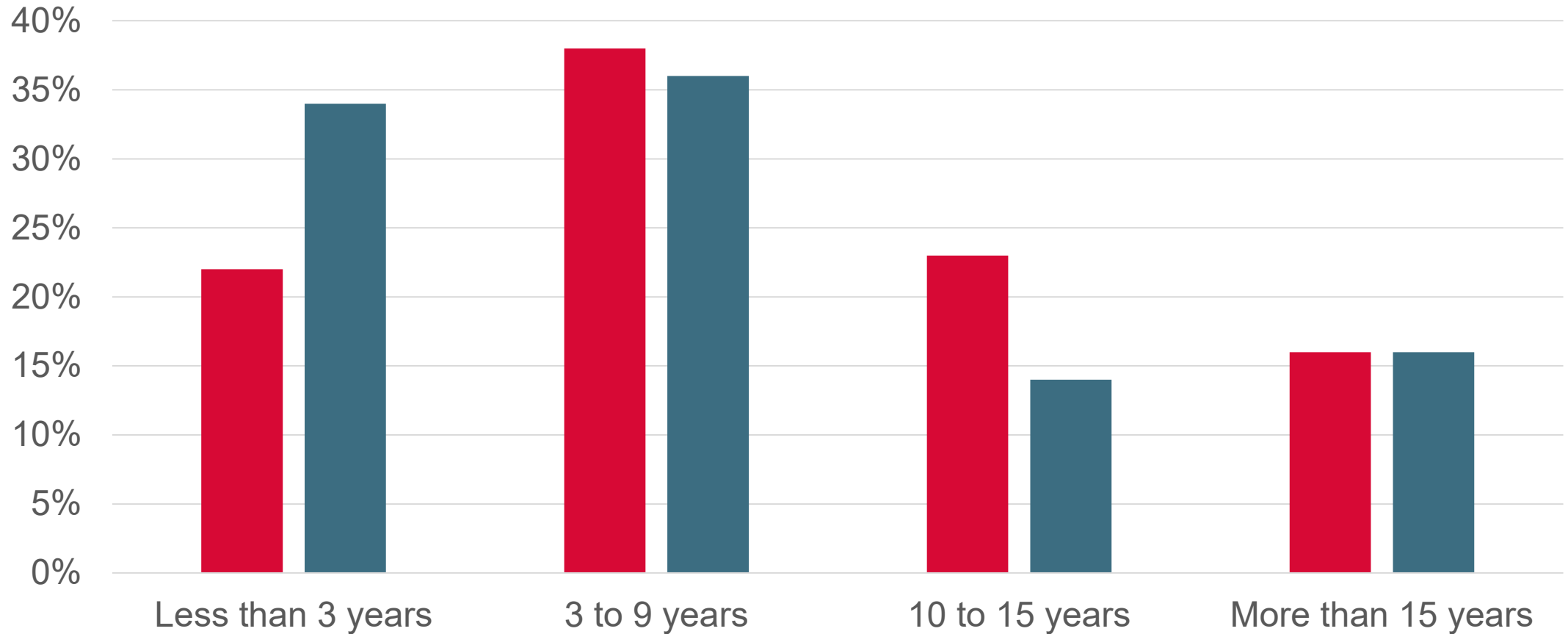


On average, share of participating ag co-op boards whose directors identify as ...



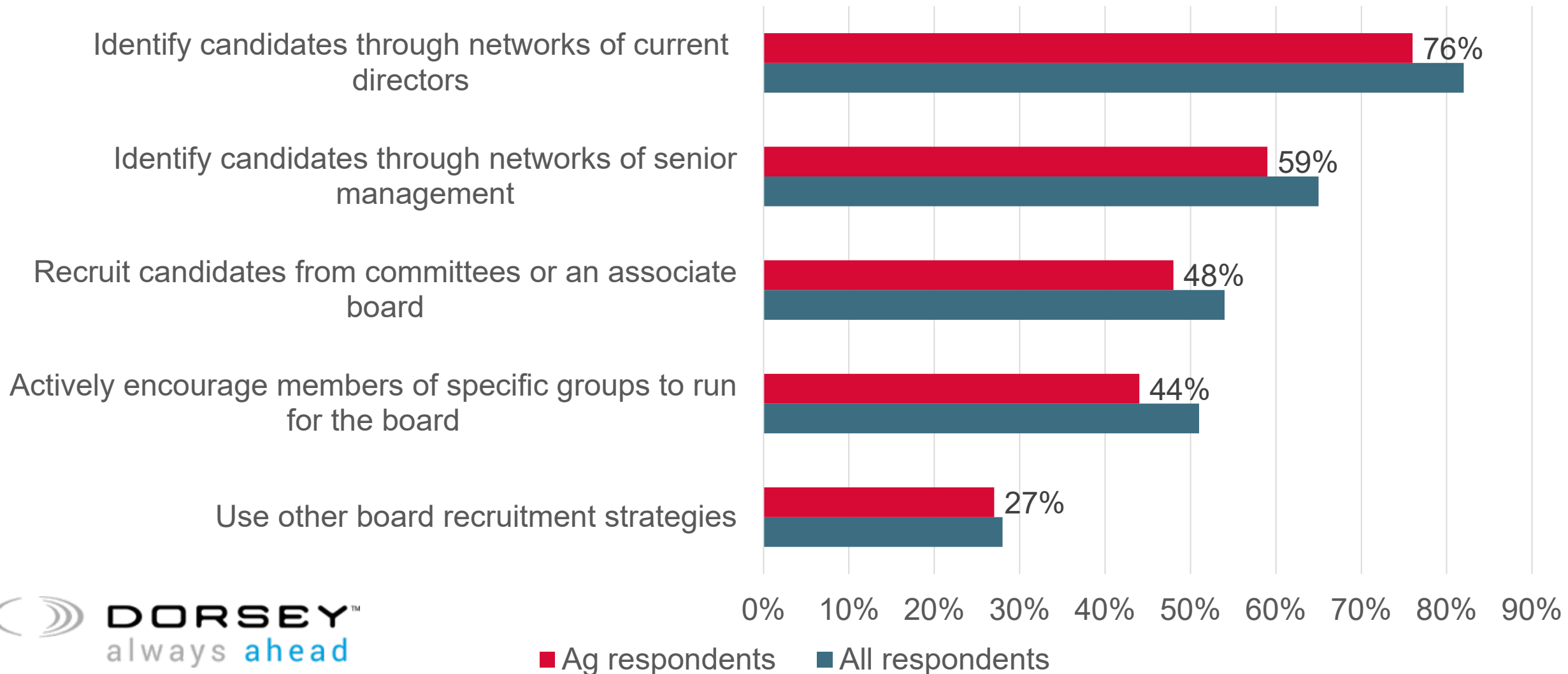
BOARD COMPOSITION: TENURE

On average, share of participating cooperative boards whose directors have served ...



Key Takeaway: Expertise and Recruitment

Share of participating cooperatives that ...



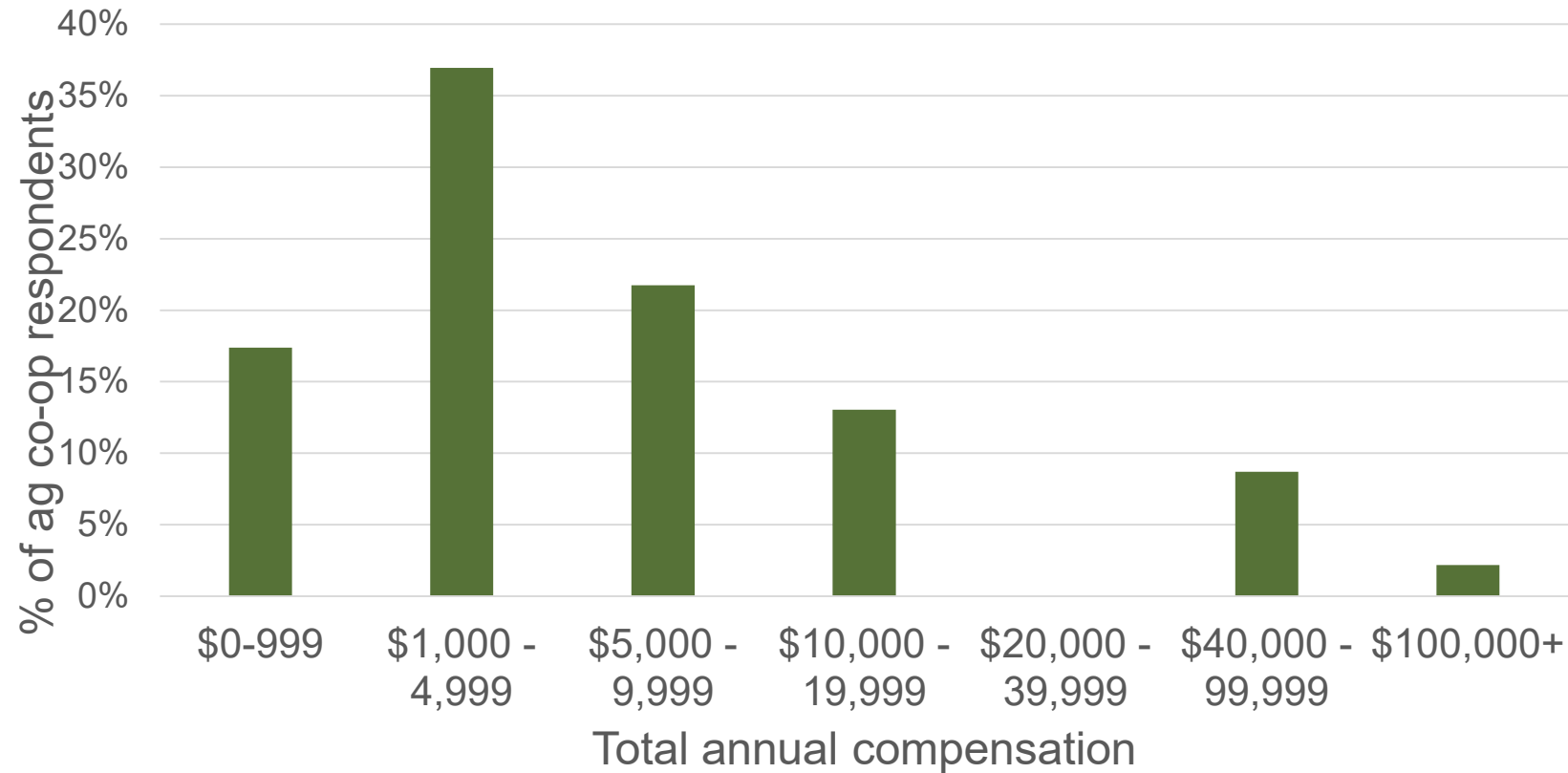
Key Takeaway: Outside Directors

Nearly one-third of participating ag co-ops allow outside directors to serve on the board compared to 17 percent overall.

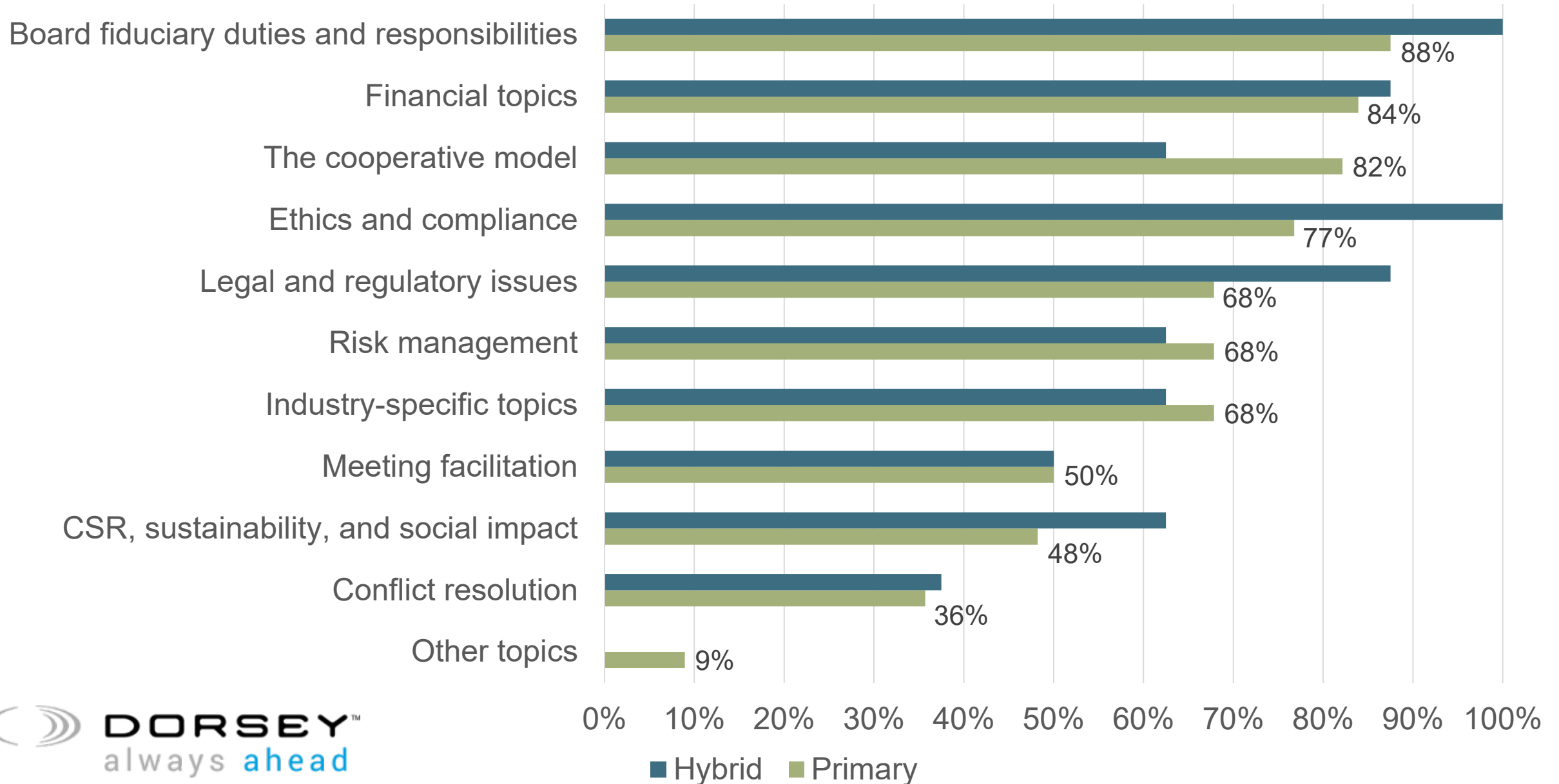
- Of those that allow outside directors, 70 percent actually had outside directors serving on the board at the time they completed the 2021 CGRI survey.
- On average, outside directors occupied two seats and made up 16 percent of these boards.
- All farm credit cooperatives in our data allow outside directors.
- Respondents with larger memberships are more likely to allow outside directors.

Key Takeaway: Board Compensation

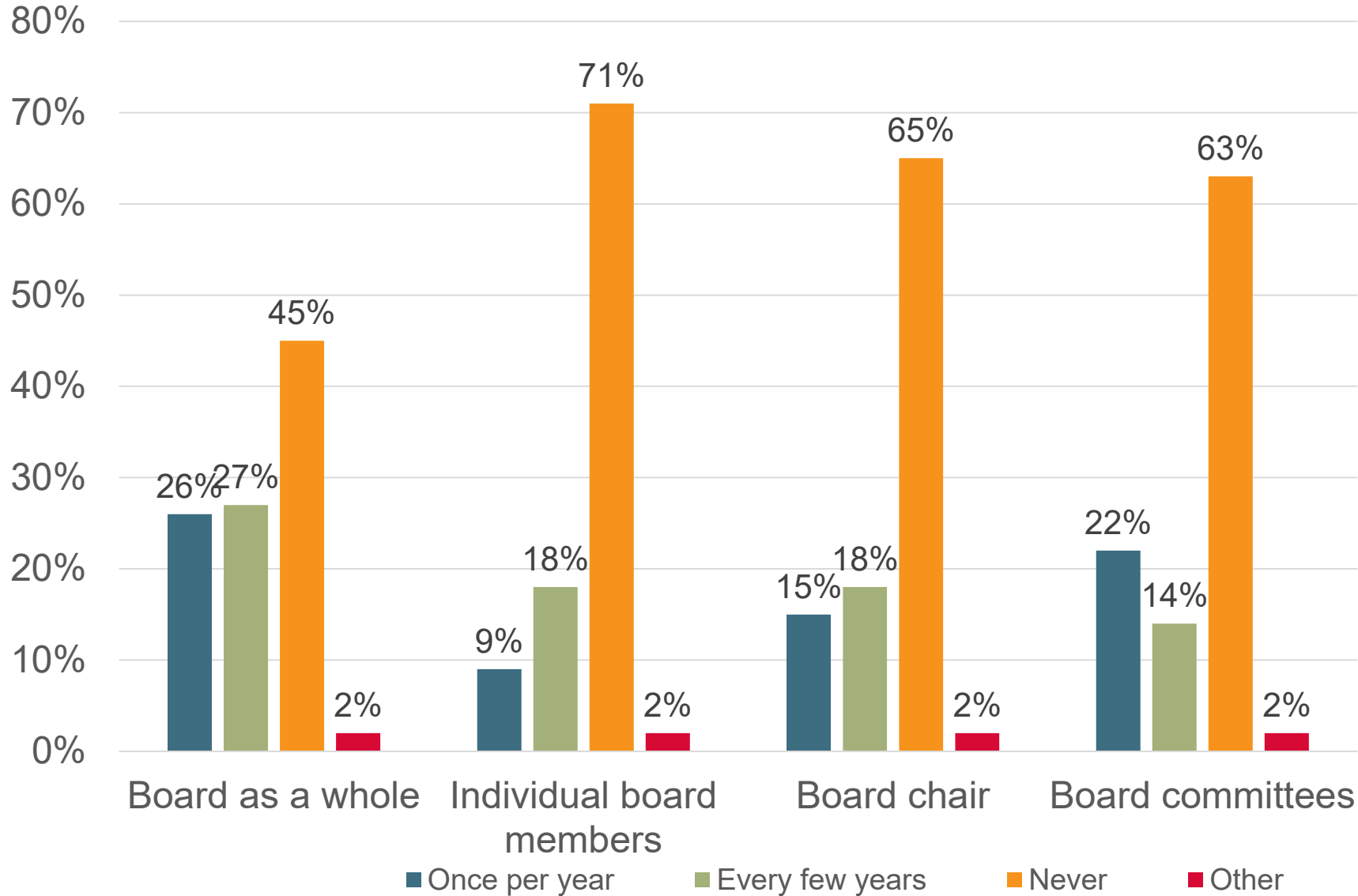
Total Annual Compensation for Non-Officer Directors of Participating Ag Co-ops



Key Takeaway: Board Training

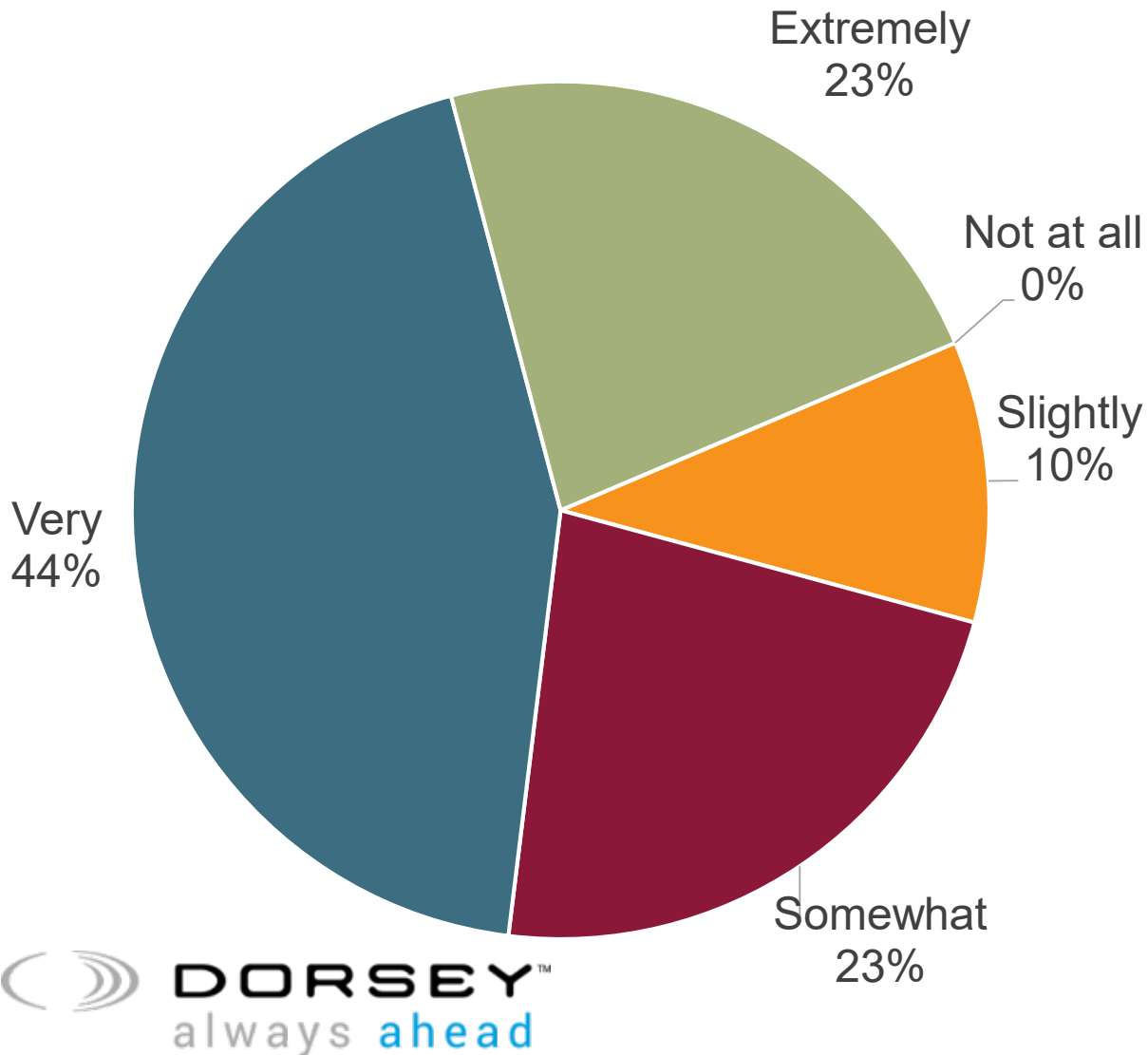


Trend: Evaluations



*“We do **director evaluations** where we **evaluate each other**, which can be tough. You want to be honest, but you don't want to hurt feelings either...What we are trying to do is collect those results then...pick out where we all evaluated each other sort of weak in a certain area then we are trying to bring in presenters or speakers who can focus on that area of weakness.” – Board Chair*

RISK FACTOR: How well does the board understand its role in relation to management?



*"The board can give input on the strategy [but] it's really driven by management and approved and vetted by the board...We don't get to spend five days a week submerged in the co-op business, where management really does. So, in disagreement with what I've been trained to believe, I'm going to say **strategy is really management driven at its core.**"*

—Board Chair

*"Is the role of a board to lead or to steward? I believe the **role of the board is to steward.** It is not an appropriate use of board resources to decide what the strategy of an organization is. The purpose of the board is to hire a CEO who decides the strategy, and then at times the board can decide if a given strategy maps to the objectives of the organization."* —Board Chair

Key Takeaway: Loss Allocations

- **Annual operating losses are typically treated as “patronage” and allocated on that basis**
 - Might be required for pooled co-ops
- **Disproportionate impact on current-term members if losses are caused by prior decisions**
- **Retain some Board discretion to allocate losses across years or to inactive members if permitted**
- **Consult with tax and legal counsel**
- **Timing is key – recommend you revise this before the year in which loss is incurred**

Key Takeaway: Base Capital Plan

- **Plan of minimum base capital to retain**
- **Separate from requirements in loan agreements, called “covenants”**
- **Forces Board to consider what they will do if/when fluctuations occur**

Legal Steps To Update Your Bylaws

- **Understand which changes require bylaw amendment (e.g., term limits do, but recruitment efforts do not)**
- **Organizing Statute and/or Articles of Incorporation may set requirements for quorum, percentage, etc.**
- **Bylaws may set minimum requirements for amendment**
- **Plan for member communications, even if no vote is required**
- **Review periodically and change when times are good, but anticipate downturns**

Five Things You Can Do Today To Improve Your Organization

1. Regularly review your bylaws, membership agreements and policies, and update as needed
2. Thoughtfully prioritize meeting topics to keep the board focused on the issues that matter the most
3. Deploy diverse board development strategies and clearly delegate authority for recruitment and onboarding
4. Whether through training or engaging outside directors, actively cultivate your Board's expertise and business acumen
5. Culture eats strategy for breakfast – so ignore social and personal dynamics at your peril

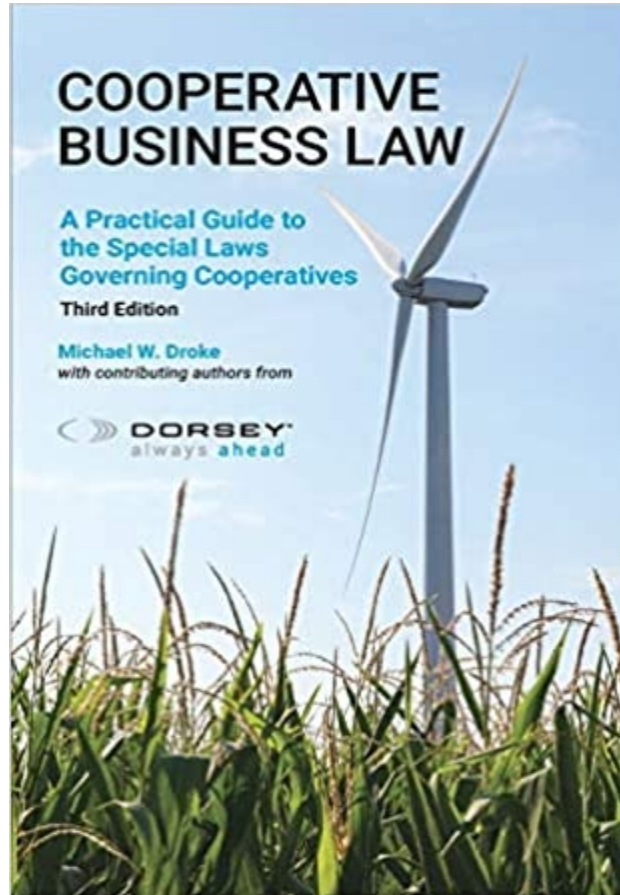


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Questions?



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Mike started his career as a client, not a lawyer. He represented the same company where he worked in management, thus “walking both sides of the street.” As a lawyer, Mike had devoted his practice to practical, results-oriented advice and litigation representation in situations where the law, facts or business risks are ambiguous.

Mike’s practice is devoted to the areas of employment law, agriculture and cooperative law, and in the food and agriculture industries. He has litigated employment and labor issues across Washington and California and advised across the United States. Throughout his career, a substantial part of Mike’s practice has been representing agriculture and food-based companies. He acts as outside general counsel in that industry, handles corporate governance, and manages complicated domestic and international transactions.

On the business side, Mike developed Dorsey’s LegalMine Document Review Solution from concept to operation. He has also held leadership roles as Office Head for Seattle (where he negotiated a large office move, and the office was named one of Washington’s Best Workplaces) and as co-head of the Labor & Employment and other practice groups.

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