



7050-01

LEGAL SERVICES CORPORATION

45 CFR Part 1607

Governing Bodies

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises the Legal Services Corporation (LSC or Corporation) regulation regarding recipient governing bodies. LSC is proposing two revisions to give recipient governing bodies flexibility in how they recruit, appoint, and retain client eligible members while remaining faithful to the LSC Act's requirement to appoint client-eligible board members who may also represent associations or organizations of eligible clients. First, LSC proposes to revise the definition of the term *eligible client* to remove the requirement that a client-eligible board member must be financially eligible "at the time of appointment to each term of office" (emphasis added). Second, LSC proposes to eliminate the requirement that client-eligible members be appointed by outside groups.

DATES: Comments must be submitted by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: lscrulemaking@lsc.gov. Include "Comments on Revisions to Part 1607" in the subject line of the message.
- Fax: (202) 337-6519.

- Mail: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Part 1607 Rulemaking.
- Hand Delivery/Courier: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Part 1607 Rulemaking.

Instructions: Electronic submissions are preferred via email with attachments in Acrobat PDF format. LSC will not consider written comments sent to any other address or received after the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295-1563 (phone), (202) 337-6519 (fax), or sdavis@lsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background.

In December 1977, Congress amended § 1007(c) of the LSC Act. Pub. L. 95-222, § 11, 91 Stat. 1619. Through the amendment, Congress directed LSC to fund only those organizations whose governing bodies consisted of “one-third . . . persons who are, when selected, eligible clients who may also be representatives of associations or organizations of eligible clients.” *Id.* at 1622. LSC published a notice of proposed rulemaking (NPRM) to implement the new requirement in May 1978. In that NPRM, LSC proposed to define “eligible client” as an “individual eligible to receive legal assistance under the LSC Act.” 43 FR 21902, May 22, 1978. The proposed definition was narrower than the LSC Act’s definition of the term “[e]ligible client,” which the Act defines as “any person financially unable to afford legal assistance.” Sec. 1002(3), Pub. L. 88-452, title X; 42 U.S.C. 2996a(3). LSC also proposed to adopt a requirement that eligible client members “be selected from, or designated by, a variety of appropriate groups

including, but not limited to, client and neighborhood associations and organizations.” *Id.* This language reflected LSC’s “attempt to insure that programs will be accountable to the communities that they serve.” On July 28, 1978, LSC adopted the proposed rule without change. 43 FR 32772, July 28, 1978.

The provisions governing the appointment of client-eligible members to recipient governing bodies remained unchanged for 16 years. In 1994, LSC proposed to revise Part 1607 in two relevant ways. First, LSC proposed to amend the regulation to reflect its interpretation of the statutory language requiring one-third of a recipient governing body’s members to be “persons who are, when selected, eligible clients”:

[T]he language has been revised to make it clear that client board members must be eligible at the time of their appointment to each term of office. Thus, a client member who is financially eligible for services when first appointed to a recipient’s board may not be reappointed to a second or subsequent term if, at the time of reappointment, the client board member is no longer financially eligible for LSC-funded services.

59 FR 30885, 30886, June 16, 1994. The second proposed revision “would codify the current LSC interpretation of the language to require that client board members be selected by client groups that have been designated by the recipient.” *Id.* at 30886-87.

In a final rule published on December 19, 1994, LSC adopted both proposed changes. LSC revised the proposed definition of “eligible client” to make clear that the member had to be financially eligible “to receive legal assistance under the Act and part 1611” of LSC’s regulations. 59 FR 65249-50, Dec. 19, 1994. In so doing, LSC rejected comments recommending that LSC expand the definition to include individuals whose income exceeds LSC’s financial eligibility limit, but who are eligible to receive non-LSC-funded legal assistance from a recipient. LSC limited the definition to individuals who were financially eligible for LSC-

funded legal assistance because it “wished to insure that the focus of the legal services program remains on the indigent population.” *Id.* at 65250. As it did in 1978, LSC adopted a narrower definition of the term “eligible client” than the one provided in § 1002 of the LSC Act.

With respect to LSC’s proposal to require that client-eligible members be appointed by organizations or associations, LSC received comments both in support of and opposing the requirement. In the preamble to the final rule, LSC explained that favorable comments “supported the clarification and the policy choice that it represented.” *Id.* at 65251. LSC provided more detailed explanations of the comments in opposition. One basis for opposition was that it would be difficult or impossible for some recipients to comply with the requirement because “often there are no organized client groups within the service area and, even when there are, it is not necessarily true that client groups speak for the client community.” *Id.* at 65251. The other was that “recipients often come into contact with program clients or other financially eligible individuals who would make good client board members but who, for one reason or another, are not involved with any client group.” *Id.* LSC adopted the language from the NPRM without change.

In 2015, LSC Board Member Julie Reiskin provided Management with a memorandum detailing concerns clients had expressed to her. The primary concerns expressed in the memorandum were that some client governing body members were not truly representative of the population eligible for LSC-funded legal services and that the rule was more prescriptive than § 1007(c) of the LSC Act, which states that client-eligible members (1) must be eligible when selected; and (2) may be representatives of associations or organizations of eligible clients. 42 U.S.C. 2996f(c). Following up on this memorandum, in 2017, the Office of Legal Affairs (OLA) participated in Board Member Reiskin’s and President Sandman’s client-listening session

at the National Legal Aid and Defender Association’s annual conference. Recipients and their clients communicated that two provisions in Part 1607 present obstacles to recruiting and retaining qualified client-eligible members: the definition of “eligible client” and the requirement that outside organizations appoint client-eligible members.

LSC takes seriously the client community’s concerns and believes regulatory action is justified for two reasons. First, LSC believes that the current rule interprets § 1007(c) too restrictively. Second, LSC believes that recipients should have discretion to establish board member appointment procedures that maximize their ability to recruit qualified client-eligible board members.

On April 23, 2017, the Committee approved Management’s proposed 2017-2018 rulemaking, which included revising part 1607 as a Tier 2 rulemaking item. On April 8, 2018, the Committee voted to recommend that the Board authorize rulemaking on part 1607. On April 10, 2018, the Board authorized LSC to begin rulemaking. On July 25, 2018, the Committee voted to recommend that the Board authorize publication of this NPRM in the Federal Register for notice and comment. On July 26, 2018, the Board accepted the Committee’s recommendation and voted to approve publication of this NPRM.

II. Proposed Changes.

§ 1607.1 Purpose.

LSC proposes to make no changes to this section.

§ 1607.2 Definitions.

LSC proposes to remove the requirement that a board member be financially eligible “at the time of appointment to *each term of office* to the recipient’s governing body” to allow client-eligible members who improve their financial position to serve

consecutive terms on a recipient's governing body (emphasis added). Under this interpretation, the member's eligibility status would be evaluated upon first appointment and at any subsequent appointment following a gap in service on the recipient's governing body, but not upon reappointment to consecutive terms of service. This is not intended to require the recipient to reappoint the client-eligible member to another term; it merely permits the recipient to do so. Thus, for example, if a client-eligible board member's income increases negligibly, but nonetheless sufficiently to exceed the applicable financial eligibility income ceiling, the recipient would have the discretion and flexibility to reappoint that client-eligible board member to a successive term. This is consistent with the statutory language of Section 1007(c) of the LSC Act that "at least one-third of [the recipient's governing body] consists of persons who are, *when selected*, eligible clients..." (emphasis added).

§ 1607.3 Composition.

LSC proposes to eliminate the § 1607.3(c) requirement that client-eligible members be appointed by groups. Unlike the requirement that the majority of attorney members of recipient governing bodies be appointed by state, county, or local bar associations, LSC's governing statutes do not require client-eligible members to be appointed by groups. LSC believes that each recipient governing body should have the authority and flexibility to implement an appointment procedure that takes into account its unique client population, including associations and organizations of client-eligible people. Under LSC's proposal, recipients may choose to continue using the procedure required by existing § 1607.3(c), but will no longer be required to have outside organizations appoint client-eligible members to the recipients' governing bodies.

§ 1607.4 *Functions of a governing body.*

LSC proposes to make no changes to this section.

§ 1607.5 *Compensation.*

LSC proposes to make no changes to this section.

§ 1607.6 *Waiver.*

LSC proposes to make no changes to this section.

List of Subjects in 45 CFR Part 1607

Grant programs – law, Legal services.

For the reasons set forth in the preamble, the Legal Services Corporation proposes to amend 45 CFR part 1607 as follows:

PART 1607 – GOVERNING BODIES

1. Revise the authority citation for part 1607 to read as follows:

AUTHORITY: 42 U.S.C. 2996g(e).

2. Revise paragraph (c) of § 1607.2 to read as follows:

§ 1607.2 Definitions.

* * * * *

(c) *Eligible client member* means a board member who is financially eligible to receive legal assistance under the Act and part 1611 of this chapter, without regard to whether the person actually has received or is receiving legal assistance at that time. Eligibility of client members must be determined by the recipient or, if the recipient so chooses, by the nominating organization(s) or group(s) in accordance with written policies adopted by the recipient.

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3. Revise paragraph (c) of § 1607.3 to read as follows:

§ 1607.3 Composition.

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(c) At least one-third of the members of a recipient's governing body must be eligible client members when initially appointed by the recipient. The recipient must solicit recommendations for eligible client members from a variety of appropriate groups designated by the recipient that may include, but are not limited to, client and neighborhood associations and community-based organizations that advocate for or deliver services or resources to the client community served by the recipient. Recipients should solicit recommendations from groups in a manner that reflects, to the extent possible, the variety of interests within the client community, and eligible client members should be selected so that they reasonably reflect the diversity of the eligible client population served by the recipient, including race, gender, ethnicity and other similar factors.

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Dated: August 1, 2018.

Stefanie Davis

Assistant General Counsel.

[FR Doc. 2018-16765 Filed: 8/3/2018 8:45 am; Publication Date: 8/6/2018]