



## **45 CFR Part 1607**

### **Governing Bodies**

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Legal Services Corporation's (LSC) FY 2024 appropriation enacted on March 9, 2024, included language that lowered the proportion of attorneys required to serve on the governing bodies of LSC grant recipients from 60% to 33%, and eliminated the requirement that bar associations appoint the majority of attorneys. LSC is revising its regulation pertaining to recipient governing bodies to be consistent with this directive from Congress.

**DATES:** Comments must be received by LSC by 11:59 pm Eastern on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

The LSC Act of 1974 requires grant recipients to have governing bodies composed of at least 60% attorneys. 42 U.S.C. 2996f(c). LSC adopted part 1607 and the 60% requirement in 1976. 41 FR 25899, June 23, 1976. Subsequently, LSC's fiscal year (FY) 1983 appropriation included a requirement that a majority of each recipient's governing body be composed of attorneys appointed by state or local bar associations, also known as the "McCollum Amendment". Public Law 97-276, 96 Stat. 1186. LSC revised part 1607 in 1983 to implement the McCollum Amendment. 48 FR 1971, Jan. 17, 1983. The McCollum Amendment currently appears in § 502(2)(b)(ii) of LSC's FY 1996

appropriation, which is incorporated through § 502 of LSC's FY 1998 appropriation, as referenced in all LSC appropriations from 1998 through 2024. *See, e.g.*, Public Law 104-134, 110 Stat. 1321; Public Law 105-119, 111 Stat. 2440; Public Law 118-42.

LSC's FY 2024 appropriation changed the minimum attorney percentage to 33% and eliminated the McCollum Amendment requirement. The Administrative Provision of this appropriation reiterates the incorporation of prior appropriations' restrictions by reference. It also includes language stating that for purposes of applying the board composition requirements described in LSC's FY 1998 appropriation, the requirements would be satisfied if at least 33% of a grant recipient's board were composed of attorneys licensed in the state in which legal assistance is to be provided. Finally, it includes language stating that the McCollum Amendment does not apply. Public Law 118-42, Div. C, Title IV, 141 (2024) (emphasis in original). LSC is proposing to revise § 1607.3 of its regulations to reflect this change.

LSC proposes to make the following changes to incorporate the statutory changes and to reorganize § 1607.3 for ease of reference. First, LSC proposes to delete § 1607.3(b)(1) in its entirety and replace it with a new paragraph (b)(1) stating that a recipient's governing body must be composed of at least 33% attorneys. By doing so, LSC will remove the language implementing the McCollum Amendment. LSC also proposes to redesignate existing paragraphs (b)(2) and (3) as (b)(1)(i) and (ii), respectively.

Second, LSC proposes to reorganize the section by relocating the categories of governing body members currently located in paragraphs (c) and (d) to paragraphs (b)(2) and (3), respectively, and placing the processes for appointments into paragraphs under each category. LSC believes that restructuring § 1607.3 in this way will make it easier for readers to understand the categories of membership on LSC recipients' governing bodies and the considerations recipients use to recruit and select members.

Third, LSC proposes to redesignate paragraphs (f), (g), and (h) as (c), (d), and (e).

Finally, LSC proposes to revise redesignated paragraph (e) paragraph to reflect the statutory change and allow recipient staff to recommend candidates to their governing bodies. LSC believes this change would empower recipient staff to identify and propose, clients, attorneys, or other community members with relevant expertise for appointment to their respective governing bodies.

On April 2, 2024, the Committee voted to recommend that the Board authorize LSC to open rulemaking on part 1607 and authorize publication of this NPRM in the *Federal Register* for notice and comment. On April 8, 2024, the Board accepted the Committee's recommendation and voted to approve publication of this NPRM.

#### **List of Subjects in 45 CFR Part 1607**

Grant program—law, Legal services.

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

#### **PART 1607—GOVERNING BODIES**

1. The authority citation for part 1607 is revised to read as follows:

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

2. Amend § 1607.3 by:

a. Revising paragraph (b);

b. Removing paragraphs (c) through (e);

c. Redesignating paragraphs (f) through (h) as paragraphs (c) through (e),

respectively; and

d. Revising newly redesignated paragraph (e).

The revisions read as follows.

#### **§ 1607.3 Composition.**

\* \* \* \* \*

(b) A recipient's governing body must be composed of:

(1) At least 33% attorneys.

(i) Attorney members may be selected by the recipient's governing body or may be selected by other organizations designated by the recipient which have an interest in the delivery of legal services to the poor.

(ii) Selections shall be made to ensure that the attorney members reasonably reflect the diversity of the legal community and the population of the areas served by the recipient, including race, ethnicity, gender, and other similar factors.

(2) At least one-third eligible client members who are eligible client members when initially selected by the recipient.

(i) Recipients 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.

(ii) 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.

(3) Other members selected by the recipients' governing body or in another manner described in the recipient's bylaws or policies. Recipients must appoint or select members so that the governing body as a whole reasonably reflects the diversity of the areas served by the recipient, including race, ethnicity, gender, and other similar factors.

(i) Recipients should consider recruiting and selecting members possessing fiscal or nonprofit governance expertise or other skills necessary to effectively govern the recipient's operations.

(ii) Members of a governing body shall not be dominated by persons serving as the representatives of a single association, group or organization, except that eligible client members may be selected from client organizations that are composed of coalitions of numerous smaller or regionally based client groups.

\* \* \* \* \*

(e) Recipient staff may recommend candidates for governing body membership to its governing body and other appointing groups and should consult with the appointing organizations to ensure that:

(1) Appointees meet the criteria for board membership set out in this part, including financial eligibility for persons appointed as eligible clients, bar admittance requirements for attorney board members, and the general requirements that all members be supportive of the purposes of the Act and have an interest in and knowledge of the delivery of legal services to the poor;

(2) The particular categories of board membership and the board as a whole meet the diversity requirements described in paragraphs (b)(1)(ii), (b)(2)(ii), and (b)(3)(ii) of this section;

(3) Appointees do not have actual and significant individual or institutional conflicts of interest with the recipient or the recipient's client community that could reasonably be expected to influence their ability to exercise independent judgment as members of the recipient's governing body.

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Dated: April 8, 2024.

**Stefanie Davis,**

*Deputy General Counsel,*

*Legal Services Corporation.*

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