



Sent by e-mail to: lscrulemaking@lsc.gov

October 5, 2018

Stefanie K. Davis
Assistant General Counsel
Legal Services Corporation
3333 K Street NW
Washington, D.C. 20007

Re: Notice of Proposed Rulemaking, 45 C.F.R. 1607, Governing Bodies

This letter is submitted in response to the Legal Services Corporation's (LSC) Notice of Proposed Rulemaking (NPRM) and request for public comments regarding proposed revisions to the regulation on governing bodies, 45 C.F.R. 1607. As a membership association representing civil legal aid organizations, including more than 115 LSC grantees, as well as clients of these organizations, NLADA has consulted with both our civil legal aid and client constituencies regarding this NPRM. These comments are submitted by NLADA in support of the proposed changes, and they are submitted in coordination with NLADA's Regulations and Policy Committee as well as NLADA's Client Council.

NLADA is the oldest national nonprofit organization committed to the excellency in the delivery of legal services to people who cannot afford to pay for a lawyer. We represent hundreds of civil legal aid programs across the country. Notably, NLADA also has, as part of our governing bodies, a Client Council, which is comprised of client representatives. We have long supported and consistently advocated for meaningful client involvement in the activities of civil legal aid generally and LSC grantees specifically. Such involvement acts not only as an important marker of accountability, but a critical opportunity to strengthen ties between LSC grantees and the communities they serve, helping LSC grantees receive feedback to improve the important services they offer.

We appreciate LSC adopting a flexible approach on the issue of recruiting, retaining, and appointing high quality client-eligible board members. This allows grantees to meet the unique and varied needs of their service areas in a way that maximizes the quantity and quality of client involvement on their governing bodies. We highlight below the areas of the NPRM that would be particularly beneficial to grantees, their client communities, and other stakeholders.

1. **PROPOSED CHANGE 1:** Changing the Definition of “Eligible Client Member” in 1607.2(c) to allow client-eligible members who improve their financial position to serve consecutive terms on a recipient’s governing body.

NLADA supports this change as written. LSC has proposed to change 1607.2(c) as follows:

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

This proposed change would leave the text of the rule silent on when or how often the financial eligibility of a client-eligible board member must be assessed after their initial appointment. This silence would permit LSC recipients, if they wished, to adopt new policies as it relates to client-eligible board members. Specifically, they could allow client-eligible board members who improved their financial situation and were no longer financially eligible to not only serve out a current term, but remain as a client-eligible board member for additional consecutive terms.

NLADA is in support of this change. Both LSC grantees and clients have expressed to NLADA a feeling that the current rule is too restrictive and too rigid. Going back to the first iteration of 45 C.F.R. 1607 in 1976, the stated intention of the regulation was to ensure that grantees and their lawyers would be “accountable, through the governing body, to the clients they serve.”¹ A 1983 amendment to 1607 would later assert that these goals did not require client board members to actually be current or past clients.² Instead, the concerns, then and now, have rightly focused not on whether such board members are or have been actual clients of the grantee, but on whether they are individuals who are representative of the client community and in a position to understand the struggles of the grantee’s current clients. The goal and hope has always been that a grantee’s board would have members that do not simply come from client communities, but members who also truly understand their communities and can give voice to their most pressing needs.

We believe that these goals can continue to be met, and perhaps even better met, with the proposed changes to 1607. Many client-eligible board members feel that an improvement in their financial situation does not erase their understanding of what it means to live in poverty or their connection to the communities in which they have always lived. Grantees, meanwhile, have lamented that quality client-eligible board members, members who bring a valuable perspective and an intense passion to their service, are forced out because of improvements, sometimes very small ones, in their financial situation. Grantees have also found the current rule difficult in terms of investing resources to train board members who may only be able to serve one term when a board that reflects a mix of more experienced and newer members can help ensure continuity and consistency in mission and activities.

¹ 41 Fed. Reg. 25899 (June 23, 1976)

² 48 Fed. Reg. 1971 (January 17, 1983)

One concern shared by both clients and NLADA is the issue of how MANY consecutive terms a client-eligible board member may serve once they are no longer financially eligible. Essentially, the question becomes, “how long removed from the experiences of poverty can an individual be and still remain as a representative voice of the client community?” NLADA believes this is an important concern, but we still support the rule as written for several reasons. First, the current rule does not require grantees to reappoint client-eligible members who no longer meet the financial eligibility requirements of 1611; it merely allows them the discretion to do so if they believe a reappointment is appropriate. More importantly, this question requires an answer that is context specific to an individual, the community, and other factors that lend themselves more to a case-by-case determination than a broad one-size-fits-all rule. This proposed rule change may cause a need for grantees to perform additional analyses on whether or not their reappointed client-eligible board members are *still* representative of the client community. Nevertheless, NLADA believes that grantees, under LSC oversight, are in the best position to make those individualized assessments on a program-by-program or even board member-by-board member basis to ensure alignment in theory and practice with the stated goals and spirit of 1607.

For the reasons stated above, NLADA supports this change without any modification.

2. **PROPOSED CHANGE 2:** Eliminating the requirement, in 1607.3(c), that client-eligible members must be selected by “a variety of appropriate groups designated by the recipient”

NLADA supports this proposed revision as well. This change will allow grantees the flexibility to form the most effective appointment procedures that work best for their program and their unique service area.

This proposed revision, like the one discussed above, does not require that grantees change their policies. Grantees may still use the procedure required by the existing 1607.3(c). They would, however, also be free to adopt their own unique appointment procedures to best help them find, recruit, and appoint client-eligible board members. As stated in the rule, the goal of these procedures would still be to appoint client-eligible board members that reasonably reflect the diversity of the client population in their service area.

Currently, grantees who come in direct contact with high quality client-eligible board candidates may be required to pass up an opportunity to recruit such an individual if they are unable to seek out a community organization who is willing to nominate the individual. This new rule allows grantees to eliminate pro forma procedures and develop sensible and individualized policies around board member recruitment.

Many grantees, and rural grantees in particular, have further lamented that the combination of the current rule and a lack of active community groups in their service area has made the recruitment of client-eligible board members especially difficult. The new rule’s flexibility ensures that grantees can seek out high quality board candidates in a greater number of settings, maximizing their options. Additionally, the proposed rule’s requirement that grantees are still required to “solicit recommendations from groups in a manner that reflects, to the extent possible, the variety of interests with the client community,” ensures that community groups will still have an

important role to play in this process. The only change is that grantees no longer must be limited to those groups as the only option.

As we felt with Proposed Change 1, NLADA believes again that grantees are in the best position to make these individualized assessments on a program-by-program basis to ensure alignment in theory and practice with the stated goals and spirit of 1607.

For the reasons stated above, NLADA supports this change without any modification.

Thank you again the opportunity to present comments regarding these important changes to the regulation on governing bodies.

Sincerely,

Christopher Buerger, Counsel, Civil Legal Services

Regina Kelly, Chair, Client Council

Maria Thomas-Jones, Chair, Civil Council Regulations and Policies Committee

Don Saunders, Vice President, Civil Legal Services

National Legal Aid and Defender Association