not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

E-Government Act of 2002 (44 U.S.C. 3504)

Section 206 of the E-Government Act requires agencies, to the extent practicable, to ensure that all information about that agency required to be published in the **Federal Register** is also published on a publicly accessible website. All information about the NEA required to be published in the **Federal Register** may be accessed at *www.arts.gov.* This Act also requires agencies to accept public comments on their rules ''by electronic means.'' See heading ''Public Participation'' for directions on electronic submission of public comments on this final rule.

Finally, the E-Government Act requires, to the extent practicable, that agencies ensure that a publicly accessible Federal Government website contains electronic dockets for rulemakings under the Administrative Procedure Act of 1946 (5 U.S.C. 551 *et seq.*). Under this Act, an electronic docket consists of all submissions under section 553(c) of title 5, United States Code; and all other materials that by agency rule or practice are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically. The website *https://www.regulations.gov* contains electronic dockets for the NEA's rulemakings under the Administrative Procedure Act of 1946.

Plain Writing Act of 2010 (5 U.S.C. 301)

Under this Act, the term ''plain writing'' means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience. To ensure that this final rule has been written in plain and clear language so that it can be used and understood by the public, the NEA has modeled the language of this final rule on the Federal Plain Language Guidelines.

Public Participation (Executive Order 13563)

The NEA encourages public participation by ensuring its documentation is understandable by the general public, and has written this final rule in compliance with Executive Order 13563 by ensuring its accessibility, consistency, simplicity of language, and overall comprehensibility.

List of Subjects in 45 CFR Parts 1149 and 1158

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Lobbying, Penalties.

For the reasons stated in the preamble, the NEA amends 45 CFR chapter XI, subchapter B, as follows:

PART 1149—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

■ 1. The authority citation for part 1149 continues to read as follows:

Authority: 5 U.S.C. App. 8G(a)(2); 20 U.S.C. 959; 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812.

■ 2. Revise § 1149.9(a)(1) to read as follows:

§ 1149.9 What civil penalties and assessments may I be subjected to?

(a) * * *

(1) A civil penalty of not more than $11,462 for each false, fictitious or fraudulent statement or claim; and

* * * * *

PART 1158—NEW RESTRICTIONS ON LOBBYING

■ 3. The authority citation for part 1158 continues to read as follows:

Authority: 20 U.S.C. 959; 28 U.S.C. 2461; 31 U.S.C. 1352.

§ 1158.400 [Amended]

■ 4. Amend § 1158.400(a), (b), and (e) by:

■ a. Removing ''$19,639'' and adding in its place ''$20,134'' each place it appears.

■ b. Removing ''$196,387'' and adding in its place ''$201,340'' each place it appears.

Appendix A to Part 1158 [Amended]

■ 5. Amend appendix A to part 1158 by:

■ a. Removing ''$19,639'' and adding in its place ''$20,134'' each place it appears.

■ b. Removing ''$196,387'' and adding in its place ''$201,340'' each place it appears.

Dated: January 30, 2019.

Gregory Gendron,

Director of Administrative Services.

[FR Doc. 2019–00843 Filed 2–1–19; 8:45 am]

BILLING CODE P

LEGAL SERVICES CORPORATION

45 CFR Part 1607

Governing Bodies

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (LSC) is adopting a final rule amending its regulation related to recipient governing bodies. This final rule changes two requirements and gives increased flexibility to recipient governing bodies in how they recruit, appoint, and retain client-eligible members. First, LSC is revising the definition of the term *eligible client* to remove the requirement that a client-eligible board member be financially eligible at the time of reappointment to a governing body. Second, LSC is eliminating the requirement that client-eligible members be appointed by outside groups. The final rule gives each recipient governing body the discretion to continue applying these provisions if it wishes but eliminates the requirement to do so.

DATES: This final rule is effective on February 4, 2019.

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 Section 1007(c) of the LSC Act. Public Law 95–222, 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.'' 91 Stat. 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 narrowed 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), Public Law 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 clarify 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 Section 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 the difficulty or inability 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 were that some client governing body members were not truly representative of the population eligible for LSC-funded legal services and that the rule required more than Section 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 (NLADA) annual conference. Recipients and their clients communicated that the two provisions discussed above present obstacles to recruiting and retaining qualified client-eligible members.

LSC added rulemaking on part 1607 to its annual rulemaking agenda in April 2017. On April 8, 2018, the Operations and Regulations Committee (''Committee'') of the Board voted to recommend that the Board authorize rulemaking on part 1607. The Board voted to authorize rulemaking on April 10, 2018. On July 25, 2018, the Committee voted to recommend that the Board approve publication of an NPRM in the **Federal Register** for public comment. On July 26, 2018, the Board accepted the Committee's recommendation and voted to approve publication of the NPRM. LSC published the NPRM in the **Federal Register** on August 6, 2018. 83 FR 38270, Aug. 6, 2018. The comment period remained open for sixty days and closed on October 5, 2018.

On January 17, 2019, the Committee voted to recommend that the Board adopt this final rule and approve its publication in the **Federal Register**. On January 18, 2019, the Board voted to adopt and publish this final rule.

Materials regarding this rulemaking are available in the open rulemaking section of LSC's website at *http://www.lsc.gov/about-lsc/laws-regulations-guidance/rulemaking.* After the effective date of the rule, those materials will appear in the closed rulemaking section at *http://www.lsc.gov/about-lsc/laws-regulations-guidance/rulemaking/closed-rulemaking.*

II. Section-by-Section Discussion of Proposed Changes and Comments

LSC received 91 timely comments during the public comment period—74 from individual client-eligible board members of recipients; 5 from other individual recipient non-client board members; 4 from LSC recipients' executive directors; 2 from entire recipient boards of directors; and 6 from others, including NLADA. An overwhelming majority of the comments favored the proposed changes.

§ 1607.1 Purpose

LSC proposed no changes to this section. LSC received no comments on this section.

§ 1607.2 Definitions

LSC proposed 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.'' This change will allow, but not require, recipient governing bodies to permit client-eligible members who improve their financial position to serve consecutive terms on a recipient's governing body.

LSC received 91 comments on the proposed change to this section. Seventy-six commenters agreed with the change, 10 commenters disagreed with the change, and 5 commenters discussed the change but did not express overall support or disagreement.

Comments: Executive directors, client-eligible board members, other individual board members of recipients, and entire recipient boards of directors who favored the change described how difficult the eligibility requirement makes it for recipient boards to recruit and retain quality board members. One executive director stressed that this is particularly true for recipients located in rural areas. Of recruiting, a client-eligible board member commented that recipient boards struggle to find client-eligible community members to serve

because it costs money to get to meetings and events, when ''this money could be spent on bread and milk.'' In discussing the difficulties of retention, an executive director described losing an impressive client-eligible board member who had represented a large rural area and was an active committee member because ''[h]er job promotion at a nonprofit serving homeless individuals disqualified her for continued service on the board.'' A second executive director wrote:

> [G]iven the complexity of LSC restrictions and the responsibilities of a Board for nonprofit management, new income eligible clients and lawyers alike, face a steep learning curve. Allowing for continued participation on the Board by formerly income eligible clients will allow them to learn and provide increasingly important support to their programs.

A client-eligible board member explained that good client-eligible representatives ''share information with and connect people to Legal Aid for help who otherwise would not have known what to do'' and argued that good representatives should ''get to stay on the board, regardless of income, as long as the person has lived in poverty.''

NLADA summarized the sentiments expressed in many client-eligible board member comments about the enduring experience of poverty: ''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 connections to the communities in which they have always lived.'' Client-eligible board members and many other stakeholders expressed the perversity of ''forcing out'' a client-eligible board member for improving their financial circumstance. One client-board member wrote that graduation from eligible to non-eligible financial status should be celebrated rather than punished. Another commented that the requirement makes clients feel as though making financial gain is wrong. A third stated that client members ''should not be penalized for trying to improve their life'' or better their ''financial health.''

Moreover, commenters emphasized that client-eligible board members' financial improvements are often modest. An administrative assistant employed by a recipient explained that

> [i]f a single client board member's monthly income rises to $1,400, they are technically no longer client-eligible, but that extra $135 is not going to change much of anything. They still would not be able to afford a private attorney. They are still going to be in the same situation[.]

Just one client-eligible board member expressed the contrary sentiment that only a person currently living in poverty ''can understand, explain, and propose ways to overcome issues'' facing low-income individuals.

Client-eligible board members, executive directors, and entire recipient boards of directors alike approved of increasing the flexibility for recipient governing boards to decide whether to appoint a client-eligible board member to an additional term without reassessing the member's financial eligibility. A recipient commented that ''such a decision should be made with no bias as to income.'' Another wrote, ''we would be troubled to lose such a member for a second term solely based on improved financial circumstances.'' In describing the importance of increased flexibility, an executive director wrote about his current board chairperson—a client-eligible board member—stating that management and other board members encouraged and supported the board chairperson in earning a higher education degree, which will likely lead to increased income. The executive director commented how unfortunate it would be if this member's success resulted in ineligibility to continue serving on the board.

Of the ten commenters opposed to the change, all were client-eligible board members. Three thought the proposed change limited the number of opportunities for other client-eligible members of the community to serve on boards. One stressed that LSC's focus should be to ensure clients are ''represented well'' on grantee boards and argued that the proposed change supported a recent phenomenon of client voices being pushed out of board discussions. A second wrote that ''people of privilege in positions of relative power without oversight would be emboldened to exclude client board members'' and that ''the LSC program and community program should'' jointly decide whether to retain ''members who improve their financial situation[s].'' A third expressed concern that ''[i]f a board member does not qualify for services, the board member cannot give first-hand input'' on ''whether their Legal Aid programs' system is working or needs to be changed.''

NLADA and a few client-eligible board members expressed concern about how many consecutive terms a client-eligible board member may serve once they are no longer financially eligible. Those who expressed this concern still supported the rule as written—to give discretion to grantees to decide when reappointment is appropriate.

Response: LSC adopts the proposed rule as final without changes. More than 83 percent of commenters favored applying the financial eligibility requirement for client-eligible board members to the initial appointment only, and not to subsequent, consecutive terms. LSC carefully considered the concerns submitted by the commenters who opposed the change. But the totality of the comments support LSC's conclusion that providing recipients with increased flexibility to retain high-quality client-eligible members—regardless of income—for additional consecutive terms is more likely to result in good representation of and for the client community than the current version of the rule. The rule is also 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 . . . .'' Where the current requirement of demonstrating financial eligibility at the time of appointment to each term of office has worked well for a recipient, the final rule allows the recipient to continue applying that requirement. On the other hand, the rule permits the recipient to reappoint a client-eligible board member to a successive term even if their income exceeds the financial eligibility income limit.

§ 1607.3 Composition

LSC proposed to eliminate the § 1607.3(c) requirement that client-eligible members be appointed by groups. The final rule will require recipients to ''solicit recommendations from groups in a manner that reflects, to the extent possible, the variety of interests within the client community . . . .''

LSC received 91 comments on the proposed change to this section. Eighty-one commenters agreed with the change, 5 commenters disagreed with the change, and 5 commenters wrote about the change but did not express overall support or disagreement.

Comments: Many commenters who favored the change approved giving recipient governing bodies the flexibility to ''recruit and keep the absolute best and most qualified client-eligible board members'' in the way that each body sees fit. An administrative assistant working for a recipient described the current procedure:

> From an administrative perspective, it has been extremely difficult getting organizations to refer clients for our board. The last three referrals we received were willing and

otherwise suitable, but over-income. And many organizations put-off or have ignored our requests altogether because it is time-consuming. Our client board member turnover rate has been high and participation low because many organization referrals have been forced, and/or not well-considered.

A board described a conflict it routinely experiences—that ''[t]he appointing organizations themselves are often in search of well qualified members of their own constituencies to serve on their boards.'' Moreover, a client-eligible board member, other board member, executive director, and NLADA each wrote that for rural programs, meeting this requirement is particularly difficult— ''nearly impossible.''

All types of stakeholders commented that many client-eligible community members are interested in serving on boards. One executive director described meeting clients and client-eligible community members who expressed their interest in board service but explained that the current appointment procedure stands in the way: ''[W]e must then work to identify a potential sponsoring organization in their own community, with mixed success[. W]e have lost strong contributors to the Board because of our inability to achieve a match, given the limited staff time and resources that can be devoted to this requirement.'' NLADA thinks the proposed rule will solve this problem:

> 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. [T]he 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.

NLADA favors the change.

Of the five commenters opposed to the change, all were client-eligible board members. In discussing board member and client-board member dynamics, a commenter explained that client-eligible board members rely on appointing organizations to ensure their concerns are heard by the attorney board members. For recipients who do not have a community program to appoint board members, the commenter proposed that ''client members from adjacent communities be nominated and allowed to attend.'' A second stressed that the change would result in tribal organizations going unrepresented on boards: ''[B]oard members selected by regional agencies to serve on the legal services board represent multiple chapter houses. These . . . chapter houses are communities that are heard and present solutions to [tribal leadership]. There is no cultural sensitivity in this matter from Anglo board members.'' A third wrote that if the change was implemented, ''community organizations should have the first opportunity to fill the position'' before recipients.

Response: LSC adopts the proposed rule as final without changes. More than 89 percent of comments favored eliminating the requirement that client-eligible board members be appointed by groups. Based on the substance of the comments, LSC concludes that the benefits to recipients that are likely to flow from their governing boards' increased flexibility to recruit and appoint client eligible members—as described by executive director, client-eligible board members, and other board members—outweigh the potential harms described. Also, 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.

Where the current procedure of having outside organizations appoint client-eligible board members works well for a recipient, the final rule allows the recipient to continue using the procedure. Where the current procedure does not work well, LSC intends that this change makes it easier for recipients to recruit and appoint client-eligible board members. This final rule gives the recipient governing body the authority and flexibility to implement an appointment procedure that takes its local circumstances into account.

§ 1607.4 Functions of a Governing Body

LSC proposed no changes to this section. LSC received no comments on this section.

§ 1607.5 Compensation

LSC proposed no changes to this section. LSC received no comments on this section.

§ 1607.6 Waiver

LSC proposed no changes to this section. LSC received no comments on this section.

List of Subjects in 45 CFR Part 1607

Grant program—law, Legal services.

For the reasons discussed in the preamble, the Legal Services Corporation amends 42 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 § 1607.2 by revising paragraph (c) 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

* * * * *

■ 3. Amend § 1607.3 by revising paragraph (c) to read as follows:

§ 1607.3 Composition.

* * * * *

(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.

* * * * *

Dated: January 30, 2019.

Stefanie Davis,

Assistant General Counsel.

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