



OFFICE OF LEGAL AFFAIRS

Advisory Opinion

Advisory Opinion # AO-2014-007

**Subject:** Financial Eligibility Requirements for Eligible Client Members of a Recipient Governing Body Established by LSC Act and Regulations

**Date:** November 11, 2014

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QUESTION PRESENTED

To be eligible to serve as an “eligible client member” of the governing body of an LSC funding recipient, must a candidate meet LSC financial eligibility requirements, or is it sufficient to meet the eligibility requirements of other funding sources for the recipient?

BRIEF ANSWER

An individual must meet financial eligibility requirements set forth in the LSC Act (the Act) and 45 C.F.R. Part 1611 to be eligible for appointment as an eligible client member on a recipient’s governing body. Meeting eligibility requirements for a recipient’s other funding sources is not sufficient to meet the requirements prescribed by the Act and LSC’s regulations (unless the other funding source’s requirements are the same or more stringent than the LSC requirements).

AUTHORITY

The Legal Services Corporation Act prescribes the composition of a recipient’s governing body. Section 1007 of the Act requires that 60% of a recipient’s governing body be attorneys who are members of the state bar where legal assistance will be provided and at least one-third must be eligible clients. 42 U.S.C. § 2996f(c). The eligible client members must be eligible for legal assistance “when selected” for the recipient’s board. *Id.* The statute also states that the eligible clients may also be “representatives of associations or organizations of eligible clients.” *Id.*

45 C.F.R. § 1607 implements the Act’s requirements regarding governing board composition. The regulation makes clear that an “eligible client member” must meet the financial eligibility requirements *established by the Act and by LSC’s regulations* by defining the term as a “board member who is financially *eligible to receive legal assistance under the Act and part 1611 . . .* at the time of appointment of each term of office” to the recipient’s board. *Id.* § 1607.2(c) (emphasis added). The regulation also states that “[a]t least one-third of the members

of the recipient's governing body shall be eligible clients when appointed." *Id.* § 1607.3(c). Eligible client members must be appointed by "appropriate groups designated by the recipient . . ." *Id.* In order to be appointed to a board, appointee must meet all required criteria, "including financial eligibility for persons appointed as eligible clients . . ." *Id.* § 1607.3(h)(1).

#### ANALYSIS

Under the plain language of LSC's regulations, it is not enough that a potential eligible client member meet the eligibility requirements of a non-LSC funding source; a potential eligible client member *must meet the eligibility requirements established by the Act and by LSC's regulations* in order to be counted as an eligible client member. 45 C.F.R. § 1607.2(c).<sup>1</sup> Prior opinions of the Office of Legal Affairs have made clear that Part 1607 "does not provide discretion to permit the appointment of financially ineligible client board members, including in situations where the client nominee is eligible for LSC services under a statute which does not permit a determination of financial eligibility."<sup>2</sup> An individual who does not meet LSC's financial eligibility requirements and is not an attorney could be appointed to a recipient's governing body's remaining seats after attorney members and eligible client members have been appointed.<sup>3</sup>

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<sup>1</sup> See EX-2001-07-11 (July 11, 2001) (opining that an individual cannot be "an eligible client member for purposes of a recipient governing body unless he or she is financially qualified under 45 C.F.R. 1611"), EX-2001-1011 (Oct. 11, 2001) (stating that eligible client members must meet LSC financial eligibility requirements at the time of appointment), and EX-2006-1001 (Oct. 1, 2006) (reaffirming the position taken in EX- 2001-1011).

<sup>2</sup> EX-2001-1011 (discussing whether a senior represented with Older Americans Act (OAA) funds is an "eligible client member" within the meaning of § 1607 when the recipient of the OAA funds was not permitted to use a means test to determine client eligibility). See also EX-2006-1001 (stating that an "individual who is over income for LSC services, but who is eligible for services from [recipient's] program from other funding sources," cannot qualify as an eligible client board member).

<sup>3</sup> See EX- 2001-07-11 (encouraging recipients to appoint otherwise qualified individuals to a recipient governing bodies in positions that remain after the required seats are filled) and EX-2006-1001 (explaining that an otherwise qualified individual can be appointed to a board but not as eligible client member).