

## OFFICE OF LEGAL AFFAIRS

### ADVISORY OPINION AO-2014-004

**SUBJECT:** Method to Determine Compliance With Governing Body Composition Requirements Under 45 C.F.R. 1607

**DATE:** April 17, 2014

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#### QUESTION PRESENTED

To assess whether a recipient's governing body is in compliance with the percentage composition requirements set forth in 45 C.F.R. 1607, should the percentage requirements be applied to the number of members prescribed in the bylaws or to the number of positions actually filled on the governing body at the time of the computation? For example, if the bylaws of a recipient's governing body provide for 25 members, but the body currently has 24 members, should the body's compliance be measured based on the 25 members authorized under the bylaws, or on the 24 members currently serving?

#### BRIEF ANSWER

There is no statutory or regulatory requirement that a governing body's compliance with the percentage composition requirements be determined by application of the percentages to the number of members prescribed in the bylaws. Accordingly, compliance with Part 1607's composition requirements for recipients' governing bodies may be calculated by applying the percentage requirements to the number of positions actually filled at the time of the analysis, so long as that number is not below the number of members required to satisfy quorum requirements set forth in recipients' bylaws.

#### ANALYSIS

In making grants or entering into contracts for legal assistance,



governing body, the McCollum Amendment complements that requirement by mandating how most of that majority is to be selected.

Part 1607 of LSC's regulations implements the requirements imposed on recipients' governing bodies by the LSC Act and the McCollum Amendment. As an initial matter, section 1607.2(d) defines the term "governing body" as "the board of directors or other body with authority to govern the activities of a recipient..." The composition requirements for recipients' governing bodies are stated in section 1607.3, which provides:

- (a) A recipient shall be incorporated in a State in which it provides legal assistance and shall have a governing body which reasonably reflects the interests of the eligible clients in the area served and which consists of members, each of whom is supportive of the purposes of the Act and has an interest in, and knowledge of the delivery of quality legal services to the poor.
- (b) At least sixty percent (60%) of a governing body shall be attorney members...
- (c) At least one-third of the members of a recipient's governing body shall be eligible clients when appointed...
- (d) The remaining members of a governing body may be appointed by the recipient's governing body or selected in a manner 4(e o)-4(d)0 Tw 5.5p4ddd a m/TT2 1 Tf 0 Tc 0 Tw 1.1a Tw 0 -

falling short of full membership. *See*

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