

## Program Letter 15-2

**TO:** All Executive Directors

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**DATE:** February 23, 2015

**SUBJ:** Fiduciary Duties of Members of Recipient's Governing Body

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LSC is issuing this Program Letter to provide guidance to recipients on the fiduciary duties of all board members of a recipient's governing body. LSC has become aware that there are questions as to fiduciary duties and to whom they are owed.

### *What are the fiduciary duties of the members of a recipient's governing body?*

When an individual is selected to serve as a member of a recipient's governing body, he or she joins a board that makes decisions for the recipient as a group. Even though board members act as a group, each individual board member owes certain fiduciary duties to the recipient. Fiduciary duties apply equally to attorney members, eligible client members, and other non-attorney members of a recipient's governing body. There are two primary fiduciary duties: the duty of care and the duty of loyalty.

#### **Duty of Care**

The duty of care focuses on the manner in which decisions are made. It requires a board member to act in a reasonable and informed manner when making decisions affecting the recipient. Each member must act in good faith, with the degree of care that an ordinary prudent person would exercise under similar circumstances, and in a manner that is in the recipient's best interest. Thus, for example, a board member should prepare for, attend and participate in board meetings, be familiar with the bylaws and other governing documents of the recipient, and review budgets, financial statements and operating reports to ensure that the recipient is performing in accordance with its mission and applicable statutes and regulations.

#### **Duty of Loyalty**

The duty of loyalty focuses on a board member's motives, purposes, or goals when making decisions concerning the recipient. The duty of loyalty requires each board member to put the recipient's interest before his or her own interests. Board members must avoid even the appearance of having divided loyalties. This is especially true for board members who have been appointed to a recipient's board by an outside group. ***The duty of loyalty for every board member runs to the recipient and not to an outside group that appoints board members.*** The board member must make decisions in the best interest of the recipient and not to further a

competing professional or personal interest that conflicts with the recipient's best interest. If a board member has a conflict of interest in any particular matter, the board member must disclose that conflict for resolution under the recipient's conflicts policy, consistent with LSC's requirements and other applicable laws and requirements.

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Recipients should consider providing guidance to their governing body members concerning best practices. A sample of such guidance is appended as Attachment A.

## **Attachment A to Program Letter 15-2**

### **Sample Guidance to Members of a Recipient's Governing Body**

Members of the Governing Body should:

#### **Participation**

1. Read and abide by the recipient's bylaws.
2. Be informed about the recipient's mission, policies, and activities.
3. Prepare for, attend and participate in board meetings, board trainings, and planning sessions.
4. Participate in program strategic planning, policy making, and oversight.
5. Participate on one or more board committees.
6. Assist in fundraising for the program.
7. Be informed of legal issues affecting the client community and means to address them.

#### **Governance**

1. Support the recipient's mission and oversee that it is carried out and meets the needs of the community that it serves.
2. Oversee that the recipient conducts its business in compliance with federal and state law, its bylaws, and its funding requirements.
3. Review minutes, annual audit reports, budgets, case reports, and other operational reports.
4. Review monitoring and evaluation reports from funders.
5. Monitor finances and spending.
6. Participate in strategic and resource development plans.
7. Assist with resource development activities.
6. Oversee personnel policies.
7. Participate in the selection of the executive director and annually evaluate that person's performance.
8. Act as a resource for the organization in any areas of expertise.
9. Assist in establishing and maintaining relations with other stakeholders

#### **Professional and Ethical Standards**

1. Maintain the confidentiality of information designated as confidential.
2. Support the outcome of decisions, even when not in agreement.
3. Identify conflicts of interest, and potential conflicts of interest, disclose any such conflicts to the board, and abstain from voting when appropriate.
4. Maintain open lines of communication with the executive director.