

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT REPORT. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Social Services Commission

REPORT CITATION: 10 NCAC 97

RECOMMENDED ACTION:

Approve, but note staff's comment

X Change the agency determination following public comment

COMMENT:

The agency has changed the classification of eight rules since publication. The following rules were published as "necessary **with** substantive public interest":

- | | |
|-----------------------|-----------------------|
| 1. 10A NCAC 97B .0401 | 5. 10A NCAC 97C .0106 |
| 2. 10A NCAC 97B .0402 | 6. 10A NCAC 97C .0108 |
| 3. 10A NCAC 97B .0403 | 7. 10A NCAC 97C .0109 |
| 4. 10A NCAC 97C .0104 | 8. 10A NCAC 97C .0111 |

The agency determination following public comment was "necessary **without** substantive public interest." The initial classification for the above-identified rules reflected that the agency would be readopting these rules. The change after the comment period to reflect that the agency not be taking additional actions on these rules changes the expectations of the regulated public. It is staff's recommendation that the classification of the above-identified rules be reclassified as published, to "necessary **with** substantive public interest."

The agency received two comments.

Comment for 10A NCAC 97C .0109:

Division of Social Services	97C .0109	REQUIREMENTS/GOVERNING BODIES OF PRIVATE GRANT RECIPIENTS	The tripartite board requirement severely limits the agency's fundraising ability due to the inability to choose appropriate board members. I understand and agree that the low-income should be involved, but this requirement ties the hands of the agency.	The tripartite board requirements of the NC Administrative Code are consistent with what is required by 42 USC 9910 Section 678B (b) to be considered an eligible entity for Community Services Block Grant Funding
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Abigail M. Hammond
Commission Counsel

The agency had initially classified 10A NCAC 97C .0109 as “necessary with substantive public interest.” Since publication the classification was changed to “necessary without substantive public interest.” It is staff’s recommendation to reclassify this Rule as published, as “necessary with substantive public interest.” If 10A NCAC 97C .0109 is reclassified to “necessary with substantive public interest,” then there is no need to consider the public comment.

Attached to this staff opinion is the text of 10A NCAC 97C .0109, which states the following:

10A NCAC 97C .0109 REQUIREMENTS/GOVERNING BODIES OF PRIVATE GRANT RECIPIENTS

- (a) Each eligible private grant recipient must have a board of directors consisting of at least 15 members and not more than 51 members.
- (b) The board of directors of private grant recipients shall be constituted so as to assure that:
 - (1) one-third of the members of the board are elected public officials, currently holding office, or their representatives, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board of appointive public officials may be counted in meeting such one-third requirement;
 - (2) at least one-third of the members are persons chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served; and

A review of 42 US Code 9910 reflects the following language:

§9910. Tripartite boards

(a) Private nonprofit entities

(1) Board

In order for a private, nonprofit entity to be considered to be an eligible entity for purposes of section 9902(1) of this title, the entity shall administer the community services block grant program through a tripartite board described in paragraph (2) that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities.

(2) Selection and composition of board

The members of the board referred to in paragraph (1) shall be selected by the entity and the board shall be composed so as to assure that-

- (A) 1/3 of the members of the board are elected public officials, holding office on the date of selection, or their representatives, except that if the number of such elected officials reasonably available and willing to serve on the board is less than 1/3 of the membership of the board, membership on the board of appointive public officials or their representatives may be counted in meeting such 1/3 requirement;
- (B)(i) not fewer than 1/3 of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and

Based upon the requirements set forth in the US Code, the agency is unable to address the comment for this Rule.

Comment for 10A NCAC 97C .0204:

Division of Social Services	97C .0204	AGENCY STRATEGY FOR ELIMINATING POVERTY	If NC is going to limit the way the CSBG grant can be used; i.e. Self-Sufficiency programs, how can the agency be expected to address all the causes of poverty that are identified? If the funds were more flexible, more could be done to address those issues.	Comment not relative to content of 97C .0204. (NC does not limit CSBG grants to Self-Sufficiency programs)
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Attached to this staff opinion is the text of 10A NCAC 97C .0204, which does not address the issue of “self-sufficiency.” This term is only found in 10A NCAC 97C .0105, which is attached for your review. Staff finds that the comment for 10A NCAC 97C .0204 does not have merit and this Rule should remain classified as “necessary without substantive public interest.”

Recommendation:

Staff recommends that the classification of the following rules be reclassified as published, to “necessary **with** substantive public interest”:

- | | |
|-----------------------|-----------------------|
| 1. 10A NCAC 97B .0401 | 5. 10A NCAC 97C .0106 |
| 2. 10A NCAC 97B .0402 | 6. 10A NCAC 97C .0108 |
| 3. 10A NCAC 97B .0403 | 7. 10A NCAC 97C .0109 |
| 4. 10A NCAC 97C .0104 | 8. 10A NCAC 97C .0111 |

If 10A NCAC 97C .0109 is reclassified to “necessary with substantive public interest,” staff recommends that there is no need for the Commission to review the merit of the comment.

For 10A NCAC 97C .0204, staff recommends finding that the comment does not address this Rule and therefore lacks merit. Staff does not recommend changing the classification of this Rule.

Statutory standard for review:

§ 150B-21.3A. Periodic review and expiration of existing rules.

- (a) Definitions. - For purposes of this section, the following definitions apply:
- ...
- (5) Public comment. - Means written comments objecting to the rule, in whole or in part, received by an agency from any member of the public, including an association or other organization representing the regulated community or other members of the public.
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- (c) Review Process. - Each agency subject to this Article shall conduct a review of the agency's existing rules at least once every 10 years in accordance with the following process:
- ...
- (2) Step 2: The Commission shall review the reports received from the agencies pursuant to subdivision (1) of this subsection. **If a public comment relates to a rule that the agency determined to be necessary and without substantive public interest or unnecessary, the Commission shall determine whether the public comment has merit and, if so, designate the rule as necessary with substantive public interest.** For purposes of this subsection, a public comment has merit if it addresses the specific substance of the rule and relates to any of the standards for review by the Commission set forth in G.S. 150B-21.9(a).

10A NCAC 97C .0109 REQUIREMENTS/GOVERNING BODIES OF PRIVATE GRANT RECIPIENTS

- (a) Each eligible private grant recipient must have a board of directors consisting of at least 15 members and not more than 51 members.
- (b) The board of directors of private grant recipients shall be constituted so as to assure that:
- (1) one-third of the members of the board are elected public officials, currently holding office, or their representatives, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board of appointive public officials may be counted in meeting such one-third requirement;
 - (2) at least one-third of the members are persons chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served; and
 - (3) the remainder of the members are officials or members of business, industry, labor, religious, welfare, education, or other major groups and interests in the community.
- (c) All committees of the board of directors of private grant recipients shall fairly reflect the composition of the board.
- (d) In addition to the general powers granted under its state charter, the board of directors of the private grant recipients must possess the following specific powers:
- (1) to appoint the executive director of the agency;
 - (2) to determine major personnel, organization, fiscal, and program policies;
 - (3) to determine overall program plans and priorities for the agency, including provisions for evaluating progress;
 - (4) to make final approval of all program proposals and budgets;
 - (5) to enforce compliance with all conditions of the Office's grants; and
 - (6) to oversee the extent and the quality of the participation of the poor in the program of the agency.

History Note: Authority G.S. 143B-276; 143B-277; 143-323(d); 143B-10; 42 U.S.C. 9901-12;
Eff. December 1, 1983;
Amended Eff. February 1, 1985; October 1, 1984.

42 USC 9910: Tripartite boards

Text contains laws through Pub. L. 113-271, except Pub. L. 113-235

From Title 42-THE PUBLIC HEALTH AND WELFARE

CHAPTER 106-COMMUNITY SERVICES BLOCK GRANT PROGRAM

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§9910. Tripartite boards**(a) Private nonprofit entities****(1) Board**

In order for a private, nonprofit entity to be considered to be an eligible entity for purposes of section 9902(1) of this title, the entity shall administer the community services block grant program through a tripartite board described in paragraph (2) that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities.

(2) Selection and composition of board

The members of the board referred to in paragraph (1) shall be selected by the entity and the board shall be composed so as to assure that-

(A) 1/3 of the members of the board are elected public officials, holding office on the date of selection, or their representatives, except that if the number of such elected officials reasonably available and willing to serve on the board is less than 1/3 of the membership of the board, membership on the board of appointive public officials or their representatives may be counted in meeting such 1/3 requirement;

(B)(i) not fewer than 1/3 of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and

(ii) each representative of low-income individuals and families selected to represent a specific neighborhood within a community under clause (i) resides in the neighborhood represented by the member; and

(C) the remainder of the members are officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(b) Public organizations

In order for a public organization to be considered to be an eligible entity for purposes of section 9902(1) of this title, the entity shall administer the community services block grant program through-

(1) a tripartite board, which shall have members selected by the organization and shall be composed so as to assure that not fewer than 1/3 of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members-

(A) are representative of low-income individuals and families in the neighborhood served;

(B) reside in the neighborhood served; and

(C) are able to participate actively in the development, planning, implementation, and evaluation of programs funded under this chapter; or

(2) another mechanism specified by the State to assure decisionmaking and participation by low-income individuals in the development, planning, implementation, and evaluation of programs funded under this chapter.

(Pub. L. 97-35, title VI, §676B, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2740 .)

PRIOR PROVISIONS

Prior sections 9910 and 9910a were omitted in the general amendment of this chapter by Pub. L. 105-285.

Section 9910, Pub. L. 97-35, title VI, §681, Aug. 13, 1981, 95 Stat. 518 ; Pub. L. 98-558, title II, §204, Oct. 30, 1984, 98 Stat. 2886 ; Pub. L. 99-425, title IV, §405(a), (b), Sept. 30, 1986, 100 Stat. 969 , 970; Pub. L. 101-501, title IV, §§405, 407(b), Nov. 3, 1990, 104 Stat. 1252 , 1255; Pub. L. 103-171,

§7(a), Dec. 2, 1993, 107 Stat. 1993 ; Pub. L. 103–252, title II, §203, May 18, 1994, 108 Stat. 654 , related to the discretionary authority of the Secretary.

Section 9910a, Pub. L. 97–35, title VI, §681A, as added Pub. L. 98–558, title II, §206, Oct. 30, 1984, 98 Stat. 2886 ; amended Pub. L. 99–425, title IV, §406, Sept. 30, 1986, 100 Stat. 970 ; Pub. L. 101–501, title IV, §§401(b), 406, Nov. 3, 1990, 104 Stat. 1251 , 1253; Pub. L. 103–171, §7(c)(4), Dec. 2, 1993, 107 Stat. 1994 ; Pub. L. 103–252, title II, §204, May 18, 1994, 108 Stat. 655 , related to community food and nutrition.

A prior section 9910b, Pub. L. 99–425, title IV, §408, Sept. 30, 1986, 100 Stat. 972 , as amended, which related to demonstration partnership agreements addressing needs of poor, was transferred to section 9925 of this title.

A prior section 9910c, Pub. L. 97–35, title VI, §682, as added Pub. L. 103–252, title II, §205(2), May 18, 1994, 108 Stat. 655 ; amended Pub. L. 105–244, title I, §102(a)(13)(I), Oct. 7, 1998, 112 Stat. 1621 , related to national or regional programs designed to provide instructional activities for low-income youth, prior to the general amendment of this chapter by Pub. L. 105–285.

A prior section 9910d, Pub. L. 100–485, title V, §505, Oct. 13, 1988, 102 Stat. 2404 , as amended, which related to demonstration partnership agreements addressing needs of poor, was transferred to section 9926 of this title.

10A NCAC 97C .0204 AGENCY STRATEGY FOR ELIMINATING POVERTY

The Agency Strategy for Eliminating Poverty is the agency's statement of the poverty-related problems within the community and its overall plan of action to eliminate or have a measurable and potentially major impact on one or more of the poverty causes. It sets forth the goals and strategy. The Agency Strategy for Eliminating Poverty shall:

- (1) describe the poverty cause in the community with appropriate statistical data (and sources);
- (2) rank the poverty causes;
- (3) analyze the resources used in current and past efforts to solve each problem; and the resources that are needed and can be utilized effectively to eliminate or have a major impact on the poverty cause;
- (4) formulate the goals with at least one for each poverty cause; and
- (5) describe for each goal alternative strategies and the strategy which was selected.

History Note: Authority G.S. 143B-10; 143B-276; 143B-277; 143-323(d);
Eff. December 1, 1983.

10A NCAC 97C .0105 ELIGIBLE ACTIVITIES

Activities funded under this Subchapter may include only those projects which:

- (1) provide a range of services and activities having a measurable and potentially major impact on the causes of poverty in the state's communities, or those areas of the state's communities, where poverty is a particularly acute problem;
- (2) provide activities designed to assist low-income participants, including the elderly poor:
 - (a) to secure and retain meaningful employment;
 - (b) to attain an adequate education;
 - (c) to obtain and maintain adequate housing and a suitable living environment;
 - (d) to make better use of available income;
 - (e) to obtain emergency assistance through loans or grants to meet immediate and urgent individual and family needs, including the need for health services, nutritious food, housing, and employment-related assistance;
 - (f) to remove obstacles and solve problems which block the achievement of self-sufficiency;
 - (g) to achieve greater participation in the affairs of the community; and
 - (h) to make more effective use of other programs related to the purposes of the CSBG;
- (3) provide, on an emergency basis for the provision of such supplies and services, nutritious foodstuffs, and related services, as may be necessary to counteract conditions of starvation and malnutrition among the poor;
- (4) to coordinate and establish linkages between governmental and other social services programs to assure the effective delivery of such services to low-income individuals; and
- (5) to encourage the use of entities in the private sector of the community if efforts to eliminate poverty.
- (6) to assist unemployed and disadvantaged individuals through Community Food and Nutrition initiatives:
 - (a) to coordinate existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income populations;
 - (b) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate new programs in underserved or unserved areas; and
 - (c) to develop innovative approaches at the state and local level to meet the nutrition needs of low-income people.

History Note: Authority 143-323(d); 143B-10; 143B-276; 143B-277; 42 U.S.C. 9901-12; Eff. December 1, 1983; Temporary Amendment Eff. May 5, 1987 for a Period of 120 Days to Expire on September 1, 1987; Temporary Amendment Eff. August 24, 1987 for a Period of 68 Days to Expire on November 1, 1987; Amended Eff. November 1, 1987.