

111TH CONGRESS
1ST SESSION

H. R. 3764

To amend the Legal Services Corporation Act to meet special needs of eligible clients, provide for technology grants, improve corporate practices of the Legal Services Corporation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 8, 2009

Mr. SCOTT of Virginia (for himself, Mr. CONYERS, Mr. COHEN, Mr. WATT, Mr. DELAHUNT, Ms. LINDA T. SÁNCHEZ of California, and Mr. JOHNSON of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Legal Services Corporation Act to meet special needs of eligible clients, provide for technology grants, improve corporate practices of the Legal Services Corporation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Civil Access to Justice
5 Act of 2009”.

6 SEC. 2. FINDINGS.

7 Congress finds the following:

1 (1) It is crucial to provide equal access to the
2 system of justice in the United States for all individ-
3 uals, regardless of economic status.

4 (2) The Legal Services Corporation provides
5 high quality civil legal assistance for persons who
6 would otherwise be unable to afford legal assistance,
7 and there is a need to continue the present vital
8 legal services program.

9 (3) The amount of Federal resources made
10 available to the Legal Services Corporation has been
11 inadequate to provide individuals with the legal as-
12 sistance that they need. Over half of all people who
13 have applied for assistance from local programs
14 funded through the Legal Services Corporation have
15 been turned away in recent years. In many States,
16 over 80 percent of individuals who need legal assist-
17 ance do not receive the help they need.

18 (4) Congress must adequately fund Legal Serv-
19 ices Corporation programs to preserve the strength
20 of the programs.

21 (5) Providing legal assistance to those who face
22 an economic barrier to adequate legal counsel serves
23 justice and assists in improving opportunities for
24 low-income persons.

1 (6) The availability of legal services has re-
2 affirmed the faith of many people of the United
3 States in a government of laws.

4 (7) To preserve its strength, the legal services
5 program must be kept free from the influence of po-
6 litical pressures.

7 (8) Attorneys providing legal assistance must
8 have full freedom to protect the best interests of
9 their clients in keeping with the applicable rules of
10 professional responsibility and the high standards of
11 the legal profession.

12 **SEC. 3. AMENDMENTS TO STATEMENT OF FINDINGS AND**
13 **DECLARATION OF PURPOSE.**

14 Section 1001 of the Legal Services Corporation Act
15 (42 U.S.C. 2996) is amended—

16 (1) by striking “1001.” and inserting
17 “1001.(a)”;

18 (2) in paragraph (3), by striking “Act” and in-
19 serting “title”;

20 (3) in paragraph (6), by striking “Code of Pro-
21 fessional Responsibility, the Canons of Ethics,” and
22 inserting “applicable rules of professional responsi-
23 bility”; and

24 (4) by inserting at the end the following:
25 “(b) Congress finds the following:

1 “(1) Participation of private lawyers in pro-
2 viding legal assistance to those unable to afford such
3 assistance significantly enhances the overall system
4 for providing legal services to the poor, and the
5 Legal Services Corporation should continue to pro-
6 mote and support pro bono services and other forms
7 of private bar involvement through its policies and
8 regulations.”.

9 “(2) The highest court of each State should en-
10 courage pro bono service by lawyers by adopting as-
11 pirational guidelines, such as the American Bar As-
12 sociation Model Rule of Professional Conduct 6.1,
13 ‘Voluntary Pro Bono Publico Services’, and by
14 adopting mandatory reporting of voluntary pro bono
15 service.”.

16 **SEC. 4. DEFINITIONS.**

17 Section 1002 of the Legal Services Corporation Act
18 (42 U.S.C. 2996a) is amended—

19 (1) by striking paragraph (7) and inserting the
20 following:

21 “(7) ‘staff attorney’ means an attorney who—
22 “(A) is employed by a recipient organized
23 in whole or in part for the provision of legal as-
24 sistance to eligible clients under this title; or

1 “(B) receives more than one-half of the at-
2 torney’s annual professional salary from the
3 proceeds of a grant, contract, or other financial
4 assistance from the Corporation to such recipi-
5 ent;”;

6 (2) in paragraph (8), by striking “the Trust
7 Territory of the Pacific Islands, and any other terri-
8 tory or possession of the United States” and insert-
9 ing “the Commonwealth of the Northern Mariana
10 Islands, the Republic of the Marshall Islands, the
11 Federated States of Micronesia, and the Republic of
12 Palau;”; and

13 (3) by adding at the end the following:

14 “(9) ‘individual in poverty’ means an individual
15 who is a member of a family (of 1 or more mem-
16 bers) with an income at or below the poverty line;
17 and

18 “(10) ‘poverty line’ means the poverty line (as
19 defined by the Office of Management and Budget,
20 and revised annually in accordance with section
21 673(2) of the Community Services Block Grant Act
22 (42 U.S.C. 9902(2)), applicable to a family of the
23 size involved.”.

1 **SEC. 5. GOVERNING BODY.**

2 Section 1004 of the Legal Services Corporation Act
3 (42 U.S.C. 2996c) is amended—

4 (1) in subsection (a), in the third sentence—

5 (A) by striking “Effective with respect to
6 appointments made after the date of enactment
7 of the Legal Services Corporation Act Amend-
8 ments of 1977 but not later than July 31,
9 1978, the” and inserting “The”;

10 (B) by striking “and” after “shall be ap-
11 pointed so as to include eligible clients,”; and

12 (C) by inserting “, and to include at least
13 1 individual with financial or audit experience”
14 before the period; and

15 (2) in subsection (b)—

16 (A) by striking “, except that five of the
17 members first appointed, as designated by the
18 President at the time of appointment, shall
19 serve for a term of two years”; and

20 (B) by striking the third and fourth sen-
21 tences;

22 (3) in subsection (d), by striking “President
23 shall select from among the voting members of the
24 board a chairman, who shall serve for a term of
25 three years. Thereafter the”;

26 (4) by striking subsection (f);

1 (5) by redesignating subsections (g) and (h) as
2 (f) and (g), respectively; and

3 (6) in subsection (f), as redesignated by this
4 section, by striking “, of any executive committee of
5 the Board, and of any advisory council established in
6 connection with this title” and inserting “or of any
7 committee of the Board”.

8 **SEC. 6. OFFICERS AND EMPLOYEES.**

9 (a) ELIMINATION OF PERSONAL PRONOUN.—Section
10 1005(b)(1) of the Legal Services Corporation Act (42
11 U.S.C. 2996d(b)(1)) is amended by striking “as he” and
12 inserting “as the president of the Corporation”.

13 (b) MAXIMUM PAY.—Section 1005(d) of the Legal
14 Services Corporation Act (42 U.S.C. 2996d(d)) is amend-
15 ed—

16 (1) by striking “level V” and inserting “level
17 III”; and

18 (2) by striking “5316” and inserting “5314”.

19 **SEC. 7. IMPROVEMENTS OF LEGAL SERVICES CORPORA-**
20 **TION CORPORATE GOVERNANCE AND INTER-**
21 **NAL PRACTICES.**

22 Section 1006 of the Legal Services Corporation Act
23 (42 U.S.C. 2996e) is amended—

24 (1) in subsection (a)—

1 (A) in paragraph (2), by inserting “, sub-
2 ject to subsection (g)” before the semicolon;
3 and

4 (B) in paragraph (3)(A), by striking “ex-
5 cept that broad general legal or policy research
6 unrelated to representation of eligible clients
7 may not be undertaken by grant or contract.”;
8 (2) in subsection (b)—

9 (A) in paragraph (3), by striking “as es-
10 tablished in the Canons of Ethics and the Code
11 of Professional Responsibility of the American
12 Bar Association” and inserting “as established
13 in the applicable rules of professional responsi-
14 bility or other laws of the State or other juris-
15 diction where the attorney practices law”; and

16 (B) in paragraph (5), by striking the last
17 sentence; and

18 (3) by adding at the end the following:

19 “(g)(1) The Corporation shall establish a protocol for
20 the receipt of donations under subsection (a)(2).

21 “(2) In order for the Corporation to use any Federal
22 funds for representational activities of the Corporation,
23 not including non-representational activities that primarily
24 involve Corporation staff, the appropriations Act through
25 which the funds are made available shall specifically per-

1 mit the use of the funds for such activities. Any solicita-
2 tion of a donation of funds for expenses for which Federal
3 funds may not be used under this title shall be approved
4 in advance by the Board. In addition, a budget for the
5 use of such donated funds shall be approved by the Board,
6 before the Corporation incurs such an expense.

7 “(3) The Corporation may not advance Federal
8 funds, in anticipation of receiving a donation under sub-
9 section (a)(2), to pay for an expense.

10 “(h)(1) The Board shall establish and maintain an
11 audit committee, a finance committee, and a governance
12 and performance review committee.

13 “(2) The Corporation shall establish and implement
14 a continuity of operations plan, to prepare for disasters
15 and emergencies.

16 “(3) The Corporation shall—

17 “(A) establish an adequate internal control
18 structure and procedures for financial reporting; and

19 “(B) not later than 1 year after the date of en-
20 actment of the Civil Access to Justice Act of 2009,
21 and annually thereafter, conduct an assessment of
22 the effectiveness of the internal control structure
23 and procedures.

24 “(i)(1) The Corporation shall adopt comprehensive
25 training standards and develop appropriate training mate-

1 rials to ensure that recipients are able to provide com-
2 prehensive and appropriate training for executive direc-
3 tors, supervisors, and attorneys employed by recipients
4 and board members of recipients. Such training standards
5 and materials shall address training concerning—

6 “(A) restrictions applicable to the activities of
7 attorneys employed by the recipient involved; and
8 “(B) appropriate use of Federal funds.

9 “(2) In developing training standards and materials
10 for the training described in paragraph (1), the Corpora-
11 tion—

12 “(A) is encouraged to address training con-
13 cerning the representation of victims of domestic vio-
14 lence; and

15 “(B) may coordinate activities with the Amer-
16 ican Bar Association Commission on Domestic Vio-
17 lence.

18 “(3) The Corporation shall provide financial assist-
19 ance, in such amounts as the Corporation may determine
20 to be appropriate, to recipients, to enable the recipients
21 to provide the training described in paragraph (1).”.

22 **SEC. 8. PILOT LOAN REPAYMENT ASSISTANCE PROGRAM.**

23 Section 1006 of the Legal Services Corporation Act,
24 as amended by section 7, is further amended by adding
25 at the end the following:

1 “(j)(1) The Corporation shall promote recruitment
2 and retention of highly qualified staff members for all re-
3 cipients, through the Pilot Loan Repayment Assistance
4 Program established by the Corporation in 2005 or other
5 programs, as the Corporation determines to be appro-
6 priate.

7 “(2) If funds are appropriated for any such staff re-
8 cruitment and retention program for each of the 5 full
9 fiscal years following the date of enactment of the Civil
10 Access to Justice Act of 2009, in the fifth year, the Cor-
11 poration shall submit to Congress a report on the impact
12 of such program on the recruitment and retention of high-
13 ly qualified staff for recipients.

14 “(3) Nothing in paragraph (2) prevents the Corpora-
15 tion from continuing such recruitment and retention pro-
16 grams for longer than 5 years, if such program is effective
17 in the recruitment and retention of highly qualified staff
18 and funds are appropriated for such program.”.

19 **SEC. 9. PROHIBITED USE OF FUNDS.**

20 Section 1006 of the Legal Services Corporation Act,
21 as amended by section 8, is further amended by adding
22 at the end the following:

23 “(k)(A) No prohibited purposes provision shall be
24 considered to cover recipient funds from any source other
25 than the Corporation, except as provided in paragraph (3).

1 “(B) No prohibited purposes provision shall be con-
2 sidered to cover Federal funds awarded under this title,
3 except as provided in this title.

4 “(2)(A) In this subsection, the term ‘prohibited pur-
5 poses provision’ means a provision of this title, or any
6 other Federal law, that contains text stating that funds
7 of a recipient may not be expended for a purpose prohib-
8 ited by this title or another Federal law.

9 “(B) The term includes any Federal law that incor-
10 porates by reference a provision that contains text de-
11 scribed in subparagraph (A) and is a provision of—

12 “(i) the Departments of Commerce, Justice,
13 and State, the Judiciary, and Related Agencies Ap-
14 propriations Act, 1998;

15 “(ii) the Departments of Commerce, Justice,
16 and State, the Judiciary, and Related Agencies Ap-
17 propriations Act, 1996; or

18 “(iii) another Federal law.

19 “(3) No non-Federal funds may be used by a recipi-
20 ent to participate in any litigation with respect to abor-
21 tion.”.

22 **SEC. 10. CONSTRUCTION.**

23 Section 1006 of the Legal Services Corporation Act,
24 as amended by section 9, is further amended by adding
25 at the end the following:

1 “(l) No provision of law, other than an amendment
2 to this title, shall be considered to supersede or modify
3 this title unless the provision refers specifically to this sub-
4 section.”.

5 **SEC. 11. GRANTS AND CONTRACTS.**

6 Section 1007 of the Legal Services Corporation Act
7 (42 U.S.C. 2996f) is amended—

8 (1) in subsection (a)—

9 (A) in paragraph (2)—

10 (i) in subparagraph (A), by striking
11 “and with the Governors of the several
12 States”;

13 (ii) in subparagraph (B)—

14 (I) in clause (i), by striking “liquid”;
15 and

16 (II) in clause (iv), by striking “, which may include evidence of a prior
17 determination that such individual’s
18 lack of income results from refusal or
19 unwillingness, without good cause, to
20 seek or accept an employment situation; and” and inserting a semicolon;

23 (B) by striking paragraphs (8) and (9);

24 (C) by redesignating paragraphs (10) and

25 (11) as (9) and (10), respectively;

1 (D) by inserting after paragraph (7) the
2 following:

3 “(8) ensure that funds appropriated under this
4 title for basic field programs shall be distributed on
5 the basis of a system of competitive bidding, in ac-
6 cordance with Legal Services Corporation regula-
7 tions, and shall be allocated so as to provide—

8 “(A) except as provided in subparagraphs
9 (B) and (C), an equal figure per individual in
10 poverty for all geographic areas, as determined
11 on the basis of the most recent decennial census
12 of population conducted pursuant to section
13 141 of title 13, United States Code (or, in the
14 case of the Republic of Palau, the Federated
15 States of Micronesia, the Republic of the Mar-
16 shall Islands, the Commonwealth of the North-
17 ern Mariana Islands, Alaska, Hawaii, and the
18 United States Virgin Islands, on the basis of
19 the adjusted population counts historically used
20 as the basis for such determinations);

21 “(B) an additional amount for Native
22 American communities that received assistance
23 under the Legal Services Corporation Act for
24 fiscal year 2009, so that the proportion of the
25 funds appropriated to the Legal Services Cor-

1 poration for basic field programs for fiscal year
2 2010 that is received by the Native American
3 communities shall be not less than the propor-
4 tion of such funds appropriated for fiscal year
5 2009 that was received by the Native American
6 communities; and

7 “(C) an amount for representation of mi-
8 grant and seasonal farm workers.”; and

9 (E) in paragraph (9), as redesignated by
10 this subsection, by striking “the Canons of Eth-
11 ics and Code of Professional Responsibility of
12 the American Bar Association” and inserting
13 “applicable rules of professional responsibility”;
14 (2) in subsection (b)—

15 (A) by striking paragraph (8) and insert-
16 ing the following:

17 “(8) to participate in any litigation with respect
18 to abortion;”;

19 (B) in paragraph (10), by striking “or”
20 after the semicolon;

21 (C) in paragraph (11), by striking the pe-
22 riod at the end and inserting a semicolon; and

23 (D) by adding at the end the following:

24 “(12) to provide legal assistance with respect to
25 litigation relating to prison conditions on behalf of

1 any individual who is incarcerated in a Federal,
2 State, or local prison, except that nothing in this
3 paragraph prohibits the use of funds made available
4 by the Corporation for litigation related to an incar-
5 cerated individual's ability to reenter society success-
6 fully;

7 “(13) to provide legal assistance with respect to
8 the defense of an individual in a proceeding to evict
9 such individual from a public housing project if—

10 “(A) the individual has been convicted in a
11 criminal proceeding with the illegal sale or dis-
12 tribution of a controlled substance; and

13 “(B) the eviction proceeding is brought by
14 a public housing agency because the illegal drug
15 activity of the individual threatens the health
16 and safety of another tenant residing in the
17 public housing project or an employee of the
18 public housing agency; or

19 “(14) to provide legal assistance for, or on be-
20 half of an alien, unless the alien—

21 “(A) is present in the United States and
22 the alien—

23 “(i) is described in subparagraph (A),
24 (B), (C), (D), (E), or (F) of section
25 504(a)(11) of the Departments of Com-

7 “(ii) is lawfully present as a result of
8 withholding of deportation pursuant to
9 former section 243(h) of the Immigration
10 and Nationality Act, withholding or restric-
11 tion of removal pursuant to section
12 241(b)(3) of the Immigration and Nation-
13 ality Act (8 U.S.C. 1231(b)(3)), or with-
14 holding of removal under the Convention
15 Against Torture pursuant to the regulation
16 of the Secretary of Homeland Security
17 codified on the date of the enactment of
18 the Civil Access to Justice Act of 2009 at
19 8 C.F.R. 208.16(c) and the regulation of
20 the Attorney General codified on such date
21 at 8 C.F.R. 1208.16(c);

22 “(iii)(I) has been battered or sub-
23 jected to extreme cruelty or was a victim
24 of sexual assault or trafficking in the
25 United States; or

1 “(II) qualifies for nonimmigrant sta-
2 tus described in section 101(a)(15)(U) of
3 the Immigration and Nationality Act (8
4 U.S.C. 1101(a)(15)(U));

5 “(iv) has a child present in the United
6 States who, without the active participa-
7 tion of the alien—

8 “(I) has been battered or sub-
9 jected to extreme cruelty or was a vic-
10 tim of sexual assault or trafficking in
11 the United States; or

12 “(II) qualifies for nonimmigrant
13 status described in section
14 101(a)(15)(U) of the Immigration and
15 Nationality Act;

16 “(v) has been a victim of trafficking
17 or is a family member of such a victim and
18 is eligible for protection and assistance
19 under section 107 of the Trafficking Vic-
20 tims Protection Act of 2000 (22 U.S.C.
21 7105);

22 “(vi) is an evacuee from, or victim of,
23 a major disaster or an emergency des-
24 ignated by the President pursuant to the
25 Robert T. Stafford Disaster Relief and

1 Emergency Assistance Act (42 U.S.C.
2 5121 et seq.) or by an appropriate State or
3 local official, and the alien's need for legal
4 assistance from the Corporation is related
5 to the alien's status as such an evacuee or
6 victim;

7 “(vii)(I) has been declared dependent
8 on a juvenile court located in a State or
9 has been legally committed to, or placed
10 under the custody of, an agency or depart-
11 ment of a State by such a court; and

12 “(II) has been deemed eligible by such
13 a court for long-term foster care due to
14 abuse, neglect, or abandonment;

15 “(viii) is under 18 years of age, is un-
16 accompanied by a parent or legal guardian,
17 and is in the custody of the Secretary of
18 Homeland Security or Health and Human
19 Services; or

20 “(ix) is authorized to work in the
21 United States or is otherwise lawfully
22 present in the United States;

23 “(B) is a member of a cross-border Indian
24 Tribe who is—

- 1 “(i) an American Indian born in Can-
2 ada referred to in section 289 of the Immi-
3 gration and Nationality Act (8 U.S.C.
4 1359); or
5 “(ii) a member of the Texas Band of
6 Kickapoo Indians referred to in the Texas
7 Band of Kickapoo Act (25 U.S.C. 1300b–
8 11 et seq.);
9 “(C) is—
10 “(i) indigent; and
11 “(ii) seeking relief under the Conven-
12 tion on the Civil Aspects of International
13 Child Abduction, done at The Hague on
14 October 25, 1980, pursuant to the Interna-
15 tional Child Abduction Remedies Act
16 (42 U.S.C. 11601 et seq.); or
17 “(D) is a citizen of—
18 “(i) the Commonwealth of the North-
19 ern Mariana Islands;
20 “(ii) the Federated States of Micro-
21 nesia;
22 “(iii) the Republic of the Marshall Is-
23 lands; or
24 “(iv) the Republic of Palau.”;

1 (3) by striking subsection (c) and inserting the
2 following:

3 “(c) In making grants or entering into contracts for
4 legal assistance, the Corporation—

5 “(1) shall ensure that any recipient organized
6 solely for the purpose of providing legal assistance to
7 eligible clients is governed by a body (referred to in
8 this subsection as a ‘board’) at least 50 percent of
9 which consists of attorneys who are members of the
10 bar of a State in which the legal assistance is to be
11 provided (except that the Corporation may grant,
12 pursuant to regulations issued by the Corporation, a
13 waiver of such requirement for recipients which, be-
14 cause of the population the recipients serve, are un-
15 able to comply with such requirement);

16 “(2) shall ensure that any attorney, while serv-
17 ing on such board, shall not receive compensation
18 from a recipient for such service;

19 “(3) shall ensure that at least one-third of a re-
20 cipient’s governing body consists of individuals who
21 are, when selected, eligible clients who also may be
22 representatives of associations or organizations of el-
23 igible clients; and

24 “(4) shall ensure that at least 1 board member
25 is designated as a liaison to the bar association of

1 the State described in paragraph (1) for pro bono
2 promotion and coordination.”;

3 (4) in subsection (d), by adding at the end the
4 following: “The Corporation shall ensure that the
5 monitoring and evaluation activities described in this
6 subsection are carried out in a manner that is con-
7 sistent with the applicable rules of professional re-
8 sponsibility for the jurisdiction in which the recipient
9 is being monitored, and shall take reasonable steps
10 to avoid imposing undue burden or expense on the
11 recipient.”;

12 (5) by striking subsections (g) and (h); and

13 (6) by adding at the end the following:

14 “(h) The Corporation shall require all attorneys and
15 paralegals employed by a recipient to maintain records of
16 time spent on each case or matter supported in whole or
17 in part with funds provided under this title.”.

18 **SEC. 12. TECHNOLOGY GRANTS.**

19 Section 1007 of the Legal Services Corporation Act
20 (42 U.S.C. 2996f), as amended by section 12, is further
21 amended—

22 (1) by redesignating subsections (c) through (f)
23 as subsections (d) through (g), respectively; and

24 (2) by inserting after subsection (b) the fol-
25 lowing:

1 “(c) In making a grant or entering into a contract
2 under this section, the Corporation may provide that a
3 portion of the funds provided under the grant or contract
4 may be used to acquire and develop information tech-
5 nology to promote full access to high-quality, efficient legal
6 representation and materials for self-representation.”.

7 **SEC. 13. AUDITS.**

8 Section 1009 of the Legal Services Corporation Act
9 (42 U.S.C. 2996h) is amended—

10 (1) by striking subsection (c) and inserting the
11 following:

12 “(c) The Corporation shall require an audit of each
13 recipient in accordance with generally accepted auditing
14 standards and shall require that the recipient prepare a
15 report that includes—

16 “(1) the financial statements of the recipient,
17 including an unbiased presentation of the recipient’s
18 financial position and the results of the recipient’s
19 financial operations, in accordance with generally ac-
20 cepted accounting principles; and

21 “(2) a description of internal control systems of
22 the recipient that provide reasonable assurance that
23 the recipient is managing funds, from all sources, in
24 compliance with Federal law.”; and

9 SEC. 14. FINANCING.

10 Section 1010 of the Legal Services Corporation Act
11 (42 U.S.C. 2996i) is amended—

18 (2) in subsection (c)—

(B) by striking “but any funds so received for the provision of legal assistance shall not be expended by recipients for any purpose prohib-

1 ited by this title, except that this” and inserting
2 “This”;

3 (C) by striking “or” after “to prevent re-
4 cipients from receiving other public funds” and
5 inserting “, private funds,”; and

6 (D) by inserting after “(including founda-
7 tion funds benefitting Indians or Indian
8 tribes)” the following: “, or any other funds re-
9 ceived from a source other than the Corpora-
10 tion”; and

11 (3) by adding at the end the following:

12 “(e) For purposes of other programs that have Fed-
13 eral funds matching requirements, funds received by a re-
14 cipient from the Corporation shall not be considered to
15 be Federal funds for the purpose of determining whether
16 those funds may be used as non-Federal matching funds.”

