

**Standing Committee on  
Legal Aid and Indigent  
Defendants**

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Mattie C. Condray  
Senior Assistant General Counsel  
Legal Services Corporation  
750 First St. NE  
Washington, DC 20002-4250

RE: 45 CFR Part 1611

Dear Ms. Condray:

The American Bar Association, by its Standing Committee on Legal Aid and Indigent Defendants, submits these comments in response to the proposal to amend 45 CFR Part 1611, "Financial Eligibility."

We believe that the proposed amended rule will be a significant improvement over the current rule. It appropriately vests local programs with additional flexibility and discretion in determining whether a particular applicant for service is eligible for LSC-funded assistance. It significantly and appropriately expands the circumstances under which recipients may provide legal assistance to group clients. The ABA strongly supports the proposed rule, and, with the additional revisions offered below, urges LSC to adopt it as a final rule.

Unnecessary Administrative Requirement

We support the proposed rule's elimination of a requirement that LSC recipients execute retainer agreements with clients. While in some circumstances retainer agreements may be desirable, a broad requirement for such agreements in all cases is unnecessary and burdensome. Each recipient program's process of memorializing relationships with clients should be consistent with local rules of professional responsibility, but need not be the subject of regulation. We are particularly supportive of the elimination of any requirements of use of retainer agreement by private lawyers operating within a private attorney involvement program. Burdensome and unnecessary administrative requirements of that nature make it difficult to recruit private lawyers to provide pro bono service, and should be avoided wherever possible.

Access to Client Records

The ABA also strongly supports the decision made during the negotiated rulemaking process that this rule should not incorporate provisions relating to auditor access to eligibility records and client information. The language of the relevant legislation pertaining to these issues raises extremely complex issues which will be more appropriately addressed through a separate process.

Group Representation

The ABA also strongly supports the proposed rule's treatment of group representation and urges that LSC retain the provisions as currently proposed in Section 1611.8. Often, the most effective and cost-efficient way to address the common needs of eligible clients is through representation of an appropriate group that is seeking to address those common needs. Community economic development and similar strategies can provide eligible clients with the

assistance they need to climb out of poverty and become productive members of the community. Because it is often impractical to assess and document the financial eligibility of every member of a group (or even the majority of the group), a rule that requires proof of such eligibility would effectively prohibit most group representation – thus denying to LSC recipients a powerful tool for improving communities and the lives of eligible clients. Therefore, we believe that the approach articulated in the proposed rule is most appropriate, and offers adequate safeguards against the misuse of funds for representation of groups that could afford to retain private counsel.

#### Issues Concerning Calculation of Income

Sections 1611.2 - 1611.5 include a number of provisions pertaining to calculations of an applicant's income by recipients. In general, we believe that LSC should permit recipients' broad discretion in assessing each client's financial situation. Specifically, we believe that the proposed rule should be further revised so that:

- Recipients are permitted to define "income" as income net of payroll taxes. (See 1611.2)
- Recipients are permitted discretion in determining which assets may be excluded from consideration in determining asset ceilings; the list of such assets included in the regulation should be illustrative rather than exhaustive. (See 1611.3)
- Recipients are permitted to include basic utilities within the category of fixed debts and obligations that may be considered as exceptions to the income ceiling. (See 1611.5) A rule that might permit some types of voluntarily incurred fixed debts to be considered as exceptions, but excludes basic utilities, would only serve to reward people who have carelessly incurred debt while punishing those struggling to pay the unavoidable basic costs of living. Furthermore, for some people utilities will be included in their rent (which can be treated as an exception), while for others utilities will be separate – thus causing differential treatment of similarly-situated applicants depending only upon how their housing expenses are structured.

Each of these proposed further revisions would slightly expand the number of individuals that LSC recipients may serve, but would be most appropriate in view of the overall objectives of the Legal Services Corporation. The additional services that these further revisions would permit would flow to clients who are on the borderline of poverty – individuals who are in the workforce, and who are seeking to become productive members of their communities. It would be fully consistent with LSC's core mission and strategies to seek every opportunity to serve this segment of the population.

We appreciate the opportunity to provide these comments, and would be happy to provide additional clarification or analysis if such is required.

Sincerely,



L. Jonathan Ross  
Committee Chair

cc: Alfred P. Carlton, ABA President