

303-866-9399

December 23, 2002

Mattie C. Condray
Senior Assistant General Counsel
Office of Legal Affairs
Legal Services Corporation
750 1st St., N.E., Suite 1110
Washington, D.C. 20002-4250

Re: Comments on Proposed Regulation
45 C.F.R. Part 1611- Financial
Eligibility

Dear Ms. Condray:

Colorado Legal Services (CLS) submits the following comments on the Legal Services Corporation's proposed revisions to its Regulation on Financial Eligibility, 45 C.F.R. 1611 published in the Federal Register on November 22, 2002. CLS appreciates the efforts of the Corporation to simplify and clarify the Regulation and wishes to comment specifically on only a few of the proposed revisions and to respond to the specific questions presented by LSC in the Notice of Proposed Rulemaking (NPRM).

It was a privilege to represent the National Legal Aid and Defender Association in the Negotiated Rulemaking Process which resulted in the draft Regulation. It is quite remarkable that, with the exception of a very few significant issues and a couple of provisions on which LSC has requested input, a consensus was reached on virtually all issues. The degree to which consensus was reached speaks well of the openness and integrity of the LSC staff who engaged in the process.

The proposed revisions to Part 1611 simplify and clarify the current Regulation. If adopted the proposed revisions will serve to reduce administrative burdens on the recipients of LSC funding and will increase the likelihood compliance with the Regulation. A Regulation that is simple and

more understandable than is the current regulation will increase the ability of recipients of LSC funds to uniformly and consistently implement and comply with its terms.

CLS supports the elimination of the requirement for retainer agreements contained in current Regulation. The requirement for retainers is not found in the Legal Services Corporation Act and while the use of a retainer agreement may be good practice or even the best practice it should not be required by the Regulation and thus made a matter of regulatory compliance. Whether or not a retainer is used in a specific case and with a given client should be left to the discretion of the local program based on State rules of professional conduct and local program policy.

CLS also supports the silence of the proposed revisions to the Regulation on the scope and meaning of Section 509(h) of the LSC Appropriations Act. The issue is best dealt with elsewhere and CLS supports LSC's current draft of the Regulation which does not address the issue of access to eligibility records and client names.

CLS fully supports the provisions of the proposed Regulation on Group Representation. The increased flexibility provided to programs to represent groups who cannot afford private counsel, if the group has its principle function or activity the delivery of services to eligible persons in the community or has as its principle function or activity the furtherance of interesting of eligible persons in the community, will enhance the efficient and effective delivery of services in critical areas of client legal need including housing, nutrition, public assistance, education and community economic development among others.

In response to specific questions raised by LSC in the NPRM, CLS supports the proposed definition of assets which eliminates the confusing distinction between liquid and non-liquid assets and the listing of additional assets that should be considered in determining eligibility. CLS believes, however, that "income" should be defined as net income without the inclusion of mandatory payroll taxes. An increasing number of clients are working people. The disposable income of applicants for services from which to hire counsel is substantially reduced by payroll taxes that must be withheld from an employee's paycheck. The definition of "income" should be revised to reflect net income rather than gross income. CLS, therefore, urges LSC to adopt a revision to the definition of "income." CLS also recommends that the list of "assets" be illustrative rather than exhaustive and limiting so that programs may be allowed the discretion to adopt policies that include additional exclusions or exemptions from assets if so determined.

The proposed revisions to the Regulation eliminate the requirement that a program make a determination of income and assets if the applicant for service's income is derived solely from a

government program for low-income individuals or families. This is a welcome and most helpful revision. The revision will simplify eligibility determinations without running a significant risk that financially ineligible applicants will be qualified for or receive services.

CLS supports the inclusion of current taxes as a "fixed debt" although it would be preferable if payroll taxes were excluded from income altogether. In any event there should be no distinction between unpaid past taxes and current tax obligations and liabilities. It is preferable that payroll taxes be treated as a deduction from income but alternatively payroll taxes should certainly be included as a fixed obligation. The treatment of rent as a fixed obligation as are mortgage payments under the current Regulation is an appropriate and important change. Utility costs, frequently a major expense of the elderly, in particular, should be included as a fixed debt and obligation even though there may be fluctuations in time and amount for these expenses. Whether utility costs vary from month to month, are averaged based on state law or policy, they nonetheless are debts which greatly affect an individual's ability to secure legal counsel and should be considered a fixed debt or an allowable exclusion from current income.

CLS appreciates the elimination of the current requirement that eligibility forms and procedures be approved by LSC and the revisions in the draft Regulation allowing a recipient to rely on the financial eligibility determination made by another LSC recipient.

We appreciate LSC's serious consideration of these comments and most strongly support the revisions to the eligibility requirements for Group Representation. CLS looks forward to the adoption of the simplified, revised and improved Regulation on Financial Eligibility.

If you have any questions concerning these comments, or if CLS or I may be of any other assistance in your deliberations, please let me know at your convenience.

Respectfully,

Jonathan D. Asher
Executive Director

JDA/sm