

TO: Mattie Condray, Office of Legal Affairs
FROM: Aleta Doerr, Legal Aid Services of Oregon
RE: Comments on Proposed Part 1611 (Financial Eligibility)
DATE: December 20, 2002

Title and Purpose (§1611.1)

We support these revisions.

Section 1611.2 - Definitions

The expansion and revisions of this section will make this regulation much easier to understand and apply. We support the revisions to this section, particularly the inclusion of “applicant,” and the change in the definition of “assets”- both the removal of the liquid, non-liquid distinction and the clarity regarding availability of assets. We agree, however, with the Working Group that income should be defined as not including payroll taxes.

Section 1611.3 - Financial Eligibility Policies

This new section, which incorporates requirements from other parts of the regulation, is much clearer than the current version. We also support the new provisions, particularly a program’s ability to determine that an applicant is eligible based on the applicant’s eligibility for another benefits program.

We also support the change for annual review of the policies to every three years. A triennial review of financial eligibility policies would be consistent with the review of other policies, as required in the current LSC Grant Assurances.

Section 1611.4 - Financial Eligibility for Legal Assistance

We support the revisions and the additions to this section, particularly the provision that permits a determination of financial eligibility because the applicant’s income is derived solely from a low-income governmental program, provided that the recipient’s board has determined that the program’s income standards are at or below 125% of the Federal Poverty guidelines and that the program has an asset test.

Section 1611.5 - Authorized Exceptions to the Annual Income Ceiling.

We support both changes to the types of authorized exceptions, particularly the ability to represent applicants who have been receiving government benefits for low-income individuals and families and who request legal assistance to maintain those benefits.

We also support the change in the description, as well as the explanation in the Supplementary Information, regarding “fixed debts and obligations.” We agree that taxes, including payroll taxes, should be considered as a factor in determining exceptions to the annual income ceiling. We also agree that both rent and mortgages should be treated as fixed obligations.

Section 1611.6 - Manner of Determining Eligibility

We strongly support the elimination of the current requirement to obtain prior approval of intake forms. We also feel that allowing recipients to rely on eligibility determinations made by other recipients will make it easier to refer cases for both in-house and pro bono representation.

Section 1611.7 - Change in Financial Eligibility Status

The proposed rule addresses the situation of later discovered or disclosed information of a client's financial ineligibility. It is helpful to specifically include these circumstances in the regulation and we support this change.

Section 1611.8 - Representation of Groups

Group representation is often the most efficient, effective way to address problems facing the low-income community. Non-profit organizations, such as domestic violence programs and housing development organizations, provide benefits that will assist both current and future clients in ways that effectively address needs of the client community. A requirement that these groups can only receive legal services assistance if group members consist primarily of low-income clients, imposes unnecessary limits to the specific organizations that can get legal representation, regardless of the value of their work to the low-income community. We strongly support the expansion of the categories of groups that recipients may represent with LSC funds.

Retainer Agreements

We strongly support the exclusion of requiring retainer agreements under the regulations. We feel that treating the execution of a retainer agreement as an LSC compliance issue, rather than a standard of practice issue, has resulted in some instances of confusion in our program. We feel that our program will make better use of retainer agreements when their requirement is viewed from an client-based, ethics perspective.

General Comments on the Proposed 1611

The proposed changes represent a substantial improvement in this regulation, which, over the years, we have sometimes found confusing and hard to implement. The changes also appropriately reflect current realities, including changes in governmental benefits programs, and the administrative burdens of some parts of the current version of this regulation. We greatly appreciate the detailed and thoughtful work of the working group in reviewing this regulation and in proposing changes.