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June 21, 2000

SENT VIA FACSIMILE AT (504)529-1008,
WITH HARD COPY TO FOLLOW IN MAIL

Mark Moreau
Executive Director
New Orleans Legal Assistance Corporation
144 Elk Place, Suite 1000
New Orleans, Louisiana 70112-2635

Re: Definition of Family Unit for 1611 Client Eligibility Purposes
External Opinion

Dear Mr. Moreau:

This letter is in response to your letter to Victor Fortuno dated May 12, 2000. In that letter you inquired whether cohabiting couples without biological children must be counted as separate family units under 45 CFR § 1611.2 for income eligibility determinations, or whether recipient programs have the discretion to treat them as one family unit.

We have reviewed prior Office of Legal Affairs ("OLA") (formerly Office of General Counsel) opinions and discussed this question with other LSC staff. The LSC Act and regulations do not directly address this issue. Nevertheless, from time to time our office has offered guidance to recipients on specific family unit scenarios. Through this letter I hope to clarify that Corporation policy is to defer to recipients' determinations of what constitutes a family unit based on the needs and circumstances of the local indigent population, and the nature of the local program. As such, you have the discretion in this situation to treat a cohabiting couple as one family unit based on your evaluation of these factors.

Issue Presented

What constitutes a "family unit" for purposes of determining client eligibility under 45 C.F.R. 1611?

Summary

Neither the LSC Act nor the LSC regulations define "family unit" for client eligibility purposes. The Corporation will defer to recipient determinations on this issue, within reason. Recipients may consider living arrangements, familial

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relationships, legal responsibility, financial responsibility or family unit definitions used by government benefits agencies, amongst other factors, in making such decisions.

Analysis

The attached letter of January 8, 1991, from Victor Fortuno (then Deputy General Counsel) sets forth the relevant analysis of the definition of "family unit" in §1611 and the Department of Health and Human Services ("HHS") poverty guidelines.[1] In brief, the LSC Act and regulations do not define "family unit." HHS uses a strict familial relation definition for the poverty guidelines, but it makes clear that this definition is for HHS purposes only. The HHS definition is not appropriate for LSC use and has not been followed by LSC in the past.[2]

The social service agencies from which many recipient clients receive benefits apply varying definitions of "family unit" or "household." The Social Security Administration and the food stamp program both look to the question of legal responsibility to define a family unit. Related adults living together but not legally responsible for each other are generally treated as separate households. For food stamps purposes, adults living together become a single household if they purchase and prepare food together, regardless of their familial relation. Local public assistance programs often have similar definitions and may vary state to state.

After consultation with Mr. Fortuno, now the General Counsel, we have determined that absent a definition in the regulations, the meaning of "family unit" is left to recipient discretion, within reason. Generally a family unit should reflect the ability of a group of people to operate as one financial unit. Nevertheless, sharing housing, even between family members, does not always indicate that a group of people are acting as one household. Local economic and social factors may lead extended families sharing housing in some areas to operate as one family unit while in other areas they operate as multiple family units. As per Mr. Fortunuo's January 8, 1991, letter, resource availability is an additional factor to consider in determining client eligibility under these circumstances.

Conclusion

Under the circumstances described in your letter, two adults cohabiting with each other, you have the discretion to treat them as one family unit based on your evaluation of their circumstances, resources and needs. Furthermore, we recommend

[1] None of the applicable regulations have changed since that date.

[2] On January 5, 1993, OLA issued an opinion indicating that the Corporation used the HHS definition of family unit. This opinion was apparently prepared without reference to prior OLA opinions or Corporation practice. As such, it is incorrect and not to be followed.

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that your program adopt a policy for determining what constitutes a family unit in shared living situations. This policy should be part of your §1611.5 guidelines for determining the eligibility of potential clients. Client files should indicate when a special determination of family unit size is made (i.e. whenever the size of the family unit is determined to be different that the number of people sharing living space.) You may want to consult with Pat Hanrahan, Program Counsel for your area, if you have further questions about this. The Office of Legal Affairs can review any situation that presents a difficult question.

For further guidance, the following table lists prior OLA/OGC opinions on this question:

DATE	OLA DETERMINATION
May 12, 1993	Disabled adult is a separate family unit from her mother and step father with whom she lives because the parents resources are not available to her.
January 8, 1991	Adult renting a room from her uncle at a reduced rate is a separate family unit from him, although rent reduction might be imputed income to the client.
January 22, 1986	Adult living with parent during adult's divorce could be a separate family unit from parent.
October 31, 1985	Adults continuing to share housing after ending a "pair-bonded" relationship could be separate family units.
August 4, 1980	Disabled minors are not separate family units from their parents with whom they live.

Please contact me if you have any further questions.

Very truly yours,

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