

MATTIE CONDRAY

From: Dennis Groenenboom [dgoenenboom@iowalaw.org]
Sent: Thursday, June 23, 2005 5:41 PM
To: MATTIE CONDRAY
Subject: Comments on 45 CFR Part 1611 - Financial Eligibility

Dear Ms. Condray:

These comments are being submitted on behalf of Iowa Legal Aid. Iowa Legal Aid is the sole recipient of Legal Services Corporation (LSC) funds in the state of Iowa and provides civil legal assistance in all 99 of Iowa's counties. As a statewide legal aid organization, Iowa Legal Aid serves clients in urban, rural, and suburban settings. Services are provided to clients by staff in ten regional offices, through a hotline, outreach/circuit riding, telephone and walk-in intakes, extensive community legal education materials and web-based materials.

Iowa Legal Aid appreciates the opportunity to make comments on these proposed regulations. Overall, the proposed regulations give LSC funded programs greater discretion to set eligibility standards reflecting the needs of the client population in the service area as well as recognizing what resources a program has available to represent low-income persons. For those reasons, we are supportive of most of the changes and make the following comments on the regulations:

Section 1611.1 – Purpose

Iowa Legal Aid is supportive of the change in this section. The language change clarifies that this section does not create an entitlement to legal services, but involves the financial screening of an applicant for services and that meeting financial eligibility guidelines does not mandate that a program provide services.

Section 1611.2 – Definition

The proposed rules incorporate definitions of “advice and counsel” “brief service” and “extended service.” Inclusion of these definitions will help clarify when a retainer is needed. As the proposed definitions track the requirements of CSR reporting requirements, the inclusion of these definitions will not require Iowa Legal Aid to alter its practices.

Iowa Legal Aid supports the change in the wording of the definition of “asset.” The distinction between liquid and non-liquid assets was not useful in determining eligibility. The proposed asset definition, which includes only assets that can be converted into cash and can be used by the applicant, is clearer language than the prior definition.

Iowa Legal Aid does not believe that the definition of income should be

wages minus mandatory payroll taxes (net income). There are many different types of mandatory withholdings from income other than taxes, including child support, garnishments, etc., that are not deducted at this stage of the eligibility process. Taxes should be considered in the exception provided in 1611.5.

Section 1611.3 – Financial Eligibility Policies

Iowa Legal Aid supports the proposed changes which consolidate requirements that were found in different sections of prior rules and clarify the responsibility of programs to evaluate financial eligibility. In particular, Iowa Legal Aid supports the proposals to change the current annual review of financial eligibility to a triennial review process and the provision limiting the calculation of domestic abuse victims assets to those owned by the victim.

Iowa Legal Aid also supports the proposed rules that recipients would no longer be required to submit their asset guidelines to LSC and that recipients may permit waivers of assets under more flexible standards than the current rule.

Iowa Legal Aid urges LSC to adopt a list of assets that is illustrative and not exclusive. The decision as to what assets should be counted for eligibility is best determined by each program's Board of Directors based on local considerations. For example, the proposed regulation lists as exempt vehicles required for work. For people who are elderly or disabled who do not work, but need a vehicle, this proposed rule could create a hardship. Other examples of assets that Iowa Legal Aid does not believe should be counted are burial trust accounts, assets resulting from the award of Social Security, SSI, Veteran or other government programs and judicial awards for actual damages. These assets are not included in the proposed list of exempt assets. If LSC opts to provide an exhaustive list of excluded assets, these items of asset should be listed.

Section 1611.4 – Financial Eligibility for Legal Services

Iowa Legal Aid supports the proposed changes in this section. The proposed rule permits a recipient to determine whether an applicant is eligible for service, without making an independent determination of income and assets, if the applicant's income is drawn solely from a governmental program for low-income individuals or families, provided a recipient's governing body has determined that the program has asset test and income standards that are at or below 125% of federal poverty level. This change will help simplify and speed the intake process for applicants while still ensuring that applicants who receive service are low-income.

Section 1611.5 – Authorized Exception to Annual Income

Iowa Legal Aid supports the proposed revisions to this section. Under the proposed rule a recipient may provide legal assistance where an applicant has been receiving governmental benefits for low-income individuals and families and seeks legal assistance to maintain those benefits, regardless of income. This new provision will permit Iowa Legal Aid to assist clients who work but whose income is supplemented by public benefits to retain their benefits even if the total income exceeds LSC limits. Many of Iowa Legal Aid's clients who receive governmental benefits work and this change in the exception policy will allow Iowa Legal Aid the flexibility to provide assistance in selected cases so that clients can maintain needed benefits, such as Medicaid, while working. Iowa Legal Aid supports allowing an authorized exception where the applicant's income is primarily devoted to medical or nursing home expenses, which is similar to the current regulation. Iowa Legal Aid would request that this rule be amended to allow field programs to give intake staff the authority to make this determination rather than the Executive Director or designee.

Currently the regulations allow recipients to serve applicants above 125% of poverty, but not to exceed 187.5% of the federal poverty level. The proposed rule would raise the amount to 200% of the federal poverty level. This change would make the calculation much simpler and slightly expand the pool of applicants that would be eligible. This change in rules would allow local programs to determine who can be served, based on local conditions and resources. While it is unlikely that Iowa Legal Aid would expand eligibility to the maximum, given current resources, Iowa Legal Aid is supportive of changes that provide field programs greater flexibility in setting guidelines for financial eligibility.

Under Section 1611.5 (a)(4)(vi), the proposed rule eliminates the reference to past taxes in the fixed debts and obligations section. The proposed rule uses the word "current taxes." The proposed rule does not define current taxes or give specific examples. Iowa Legal Aid requests that additional examples be provided to provide guidance to programs. It is unclear if current taxes would include payroll taxes. If LSC does not include payroll taxes as excluded from income, then we would urge that the definition of "current taxes" include payroll taxes. Iowa Legal Aid would also suggest that other taxes, such as property taxes, special assessments or any other debt imposed by a taxing authority be included as "current taxes." The definition should also include taxes owed to the Internal Revenue Services or the state for past income taxes.

The proposed rule treats rental payments the same as mortgage payments. Both would be treated as fixed obligations that may be considered when determining whether or not to serve an applicant whose income exceeds recipient's annual income ceiling, but is below 200% of poverty. We believe that treating rent and mortgage payments similarly is appropriate since there is no difference in the impact of those payments

on a household's disposable income.

A number of field programs have urged LSC to consider basic utility costs as fixed debts and obligations that can be considered when determining whether to make an exception to the income ceiling. Iowa Legal Aid recommends that the regulations provide the flexibility to local programs to make that determination. While it is true that basic utility costs could be considered as daily living expenses, there are times when utility costs have increased dramatically due to price increases and extremely cold weather. By allowing programs to grant exceptions on a case-by-case basis for utility charges, field programs could respond appropriately to local conditions.

Section 1611.6 – Representation of Groups

This section broadens the circumstances under which recipients can represent groups. Iowa Legal Aid supports this change. Allowing a program to represent a group when that group's primary activity is delivery of services to eligible persons in the community, is a very sensible change. In many cases, this may have a significant benefit to the client community. The new rule would allow field programs to provide assistance to newly formed domestic violence coalitions, or other organizations that help low-income persons. Many of these organizations may not be comprised of low-income people, but their primary focus is to assist clients who are at or below the poverty guidelines and, if they cannot afford legal assistance from the private bar, a field program may be able to provide significant assistance.

Section 1611.7 – Manner of Determining Eligibility

Iowa Legal Aid supports the elimination of the requirement that eligibility forms and procedures be approved by LSC. Iowa Legal Aid also supports the proposed change that permits a recipient to rely on an eligibility determination made by another LSC recipient. We believe that both of those changes will lessen administrative burdens on programs without adversely impacting compliance with LSC requirements.

Section 1611.8 – Change in Financial Eligibility Status

Iowa Legal Aid also supports the changes to this section. The proposed rule recognizes that clients may have a change in eligibility status and that programs, consistent with professional responsibilities, may need to continue to represent clients. It also recognizes that programs may learn after beginning representation that the client was never financially eligible, however, the proposed rule allows continued representation consistent with professional responsibility to clients who do not meet LSC financial eligibility guidelines.

Section 1611.9 – Retainer Agreement

Iowa Legal Aid believes that the use of retainer agreements is a matter of good practice, but favors the proposal to give programs more flexibility in determining when they should be used. The proposed rule makes clear that retainer agreements are only required in extended service cases. The current rule was ambiguous as to whether retainer agreements were required in brief service cases. The proposed provision makes clear that no written retainer agreement is required for PAI cases. While it is likely that Iowa Legal Aid will continue to use retainer agreements in most PAI cases, there are instances where retainers cannot be obtained, so we support eliminating this requirement and believe it will assist in obtaining representation of additional low-income Iowans through the private bar. Iowa Legal Aid supports the proposed elimination of the requirement that LSC approve retainer agreements. We believe that it should not be a matter of regulation and should be up to each program to determine when and how retainers should be utilized. If LSC is going to continue to require this regulation, we believe that the proposed rule is better than the current rule and would support it.

Iowa Legal Aid concurs with LSC's decision to not include language in this rule pertaining to access to eligibility records and client names. Iowa Legal Aid believes that Section 509(h) of the LSC Appropriations Act, which gives LSC auditors and monitors access to records, is sufficient.

Iowa Legal Aid appreciates the opportunity to comment on the proposed regulations on financial eligibility.

Sincerely,

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