

Pursuant to Section 1008(e) of the Act, the Corporation hereby affords notice and publishes for comment the following proposed regulations concerning eligibility for legal assistance. Public comment will be received by the Corporation at its headquarters office, Suite 700, 733 15th Street, NW., Washington, D.C. 20005 on or before July 12, 1976. Comments must be in writing and may be accompanied by a memorandum or brief in support thereof. Comments received may be seen at the above offices during business hours Monday through Friday.

Final regulations will be issued by the Corporation after review and consideration of public comments received pursuant to this notice.

Part 1611 is added in proposed form as set forth below:

PART 1611—ELIGIBILITY

Sec.	
1611.1	Purpose.
1611.2	Definition.
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1611.8	Priorities.

AUTHORITY: Section 1007(a)(2); 42 U.S.C. 2996(a)(2).

§ 1611.1 Purpose.

This part is designed to insure that a recipient will determine eligibility according to criteria that give preference to the legal needs of those least able to obtain legal assistance, and still afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. The Part also seeks to insure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

§ 1611.2 Definition.

"Income" means actual current gross annual income of all persons who are members of, and contribute to, the support of a family unit.

§ 1611.3 Maximum income level.

(a) Every recipient shall establish a maximum income level for persons receiving legal assistance under the Act. Unless specifically authorized by the Corporation, the income level chosen shall not deviate more than twenty-five percent (25%) from the maximum income level established periodically by the Corporation, which shall be the official poverty threshold, as defined by the Office of Management and Budget, and modified, when necessary, by the percentage change in the National Consumer Price Index, published by the Bureau of Labor Statistics, for the period since the last OMB definition. The maximum income level chosen by a recipient shall take into account the following factors:

- (1) Cost-of-living in the locality;
- (2) The population at and below alternative income levels in the geographic area served by the recipient; and
- (3) The number of clients that can be served by the resources of the recipient.

(b) Unless authorized by § 1611.4, no person whose income exceeds the maximum income level established by a recipient shall be eligible for legal assistance under the Act.

§ 1611.4 Authorized exceptions.

A person whose income exceeds the maximum income level established by a recipient pursuant to § 1611.3 may not be provided legal assistance under the Act unless:

(a) The person's circumstances require that an exception be made on the basis of one or more of the factors set forth in § 1611.5(b); or

(b) The person is seeking legal assistance to obtain or prevent the loss of benefits provided by a governmental program for the poor; or

(c) The person's income is derived, in major part, from benefits provided by governmental programs for the poor.

§ 1611.5 Determination of eligibility.

(a) The governing body of a recipient shall adopt guidelines, consistent with these regulations, for determining the eligibility of persons seeking legal assistance under the Act. At least once a year, guidelines shall be reviewed and appropriate adjustments made.

(b) In addition to annual income, a recipient shall consider other relevant factors indicating that legal assistance should be denied, or that an exception should be made pursuant to § 1611.4(c). Factors considered shall include:

- (1) Seasonal variations in income;
- (2) Liquid net assets;
- (3) Fixed debts and obligations, medical expenses, child care expenses necessary for employment;
- (4) Age or physical infirmity of family members;
- (5) Other factors related to financial inability to afford legal assistance; and
- (6) Priorities adopted by the governing body.

(c) Evidence of a prior administrative or judicial determination that a person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment, shall disqualify the person from receiving legal assistance under the Act. This paragraph does not bar provision of legal assistance to an otherwise eligible person who seeks representation in order to challenge the prior determination.

(d) A recipient may provide legal assistance to a group or association if:

- (1) The group is primarily composed of persons eligible for legal assistance under the Act, or
- (2) The primary purpose of the group is to represent the interests of persons in the community unable to afford legal assistance, and
- (3) The group provides information showing that it lacks, and has no practical means of obtaining funds to retain private counsel.¹

¹ The original draft of the eligibility regulation contained the additional requirement that, for a recipient to provide legal assistance to a group or association:

§ 1611.6 Manner of determining eligibility.

(a) A recipient shall adopt a simple form and procedure for obtaining from a potential client, in a manner that promotes the development of trust between attorney and client, eligibility information required by its guidelines and by the Corporation. The form and procedure adopted shall be subject to approval by the Corporation, and eligibility information shall be preserved, in a manner that protects confidentiality, for audit by the Corporation.

(b) If there is substantial reason to doubt the accuracy of eligibility information, a recipient shall make appropriate inquiry to verify it, in a manner consistent with an attorney-client relationship.

§ 1611.7 Change in circumstances.

If an eligible client becomes ineligible through a change in circumstances, a recipient shall discontinue representation if the change in circumstances is sufficiently stable for the client to obtain private legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibilities.

§ 1611.8 Priorities.

To insure that the legal needs of persons least able to afford legal assistance are given preference, a recipient shall adopt procedures for establishing priorities in the allocation of its resources. The following factors shall be among those considered in establishing priorities:

- (a) The resources of the recipient;
- (b) The size of the financially eligible population in the geographic area served by the recipient;
- (c) The availability of another source of legal assistance in a particular category of cases or matters;
- (d) The urgency of particular legal problems of the clients of the recipient; and
- (e) The general effect of the resolution of a particular category of cases or matters on persons least able to afford legal assistance in the community served.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 76-16964 Filed 6-10-76; 8:45 am]

[45 CFR Part 1613]

RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 376, 42 U.S.C. 2996-2996i ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal pro-

"two members or representatives of the group [must] establish their own eligibility by furnishing the information required by the form referred to in § 1611.6(a)." Although this requirement was deleted at the request of the Board of Directors, the Corporation invites comment on the advisability of including such a requirement.

ceedings or matters to persons financially unable to afford legal assistance. Section 1007(b)(1) of the Act restricts the use of Corporation funds in criminal proceedings.

Pursuant to Section 1008(e) of the Act, the Corporation hereby affords notice and publishes for comment the following proposed regulations concerning restrictions on legal assistance with respect to criminal proceedings. Public comment will be received by the Corporation at its headquarters office, Suite 700, 733 15th Street, NW., Washington, D.C. 20005 on or before July 12, 1976. Comments must be in writing and may be accompanied by a memorandum or brief in support thereof. Comments received may be seen at the above offices during business hours Monday through Friday.

Final regulations will be issued by the Corporation after review and consideration of public comments received pursuant to this notice.

Part 1613 is added in proposed form as set forth below:

PART 1613—RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

Sec.

1613.1 Purpose.

1613.2 Definition.

1613.3 Prohibition.

1613.4 Authorized representation.

AUTHORITY: Section 1007(b)(1); 42 U.S.C. 2996f(b)(1).

§ 1613.1 Purpose.

This Part is designed to insure that Corporation funds will not be used to provide legal assistance with respect to criminal proceedings unless such assistance is required as part of an attorney's responsibilities as a member of the Bar.

§ 1613.2 Definition.

"Criminal proceeding" means the adversary judicial process initiated by a formal complaint, information, or indictment charging a person with an offense punishable by death, imprisonment, or a jail sentence, but does not include a misdemeanor or lesser offense tried in an Indian tribal court.

§ 1613.3 Prohibition.

Corporation funds shall not be used to provide legal assistance with respect to a criminal proceeding, unless authorized by § 1613.4.

§ 1613.4 Authorized representation.

Legal assistance may be provided with respect to a criminal proceeding

(a) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters; or

(b) When professional responsibility requires continued representation of a juvenile pursuant to § 1614.6.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 76-16966 Filed 6-10-76; 8:45 am.]

[45 CFR Part 1614]

RESTRICTIONS ON LEGAL ASSISTANCE TO JUVENILES

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996f ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(b)(4) of the Act restricts the use of Corporation funds in the representation of juveniles.

Pursuant to section 1008(e) of the Act, the Corporation hereby affords notice and publishes for comment the following proposed regulations concerning restrictions on legal assistance to juveniles. Public comment will be received by the Corporation at its headquarters office, Suite 700, 733 15th Street, NW., Washington, D.C. 20005 on or before July 12, 1976. Comments must be in writing and may be accompanied by a memorandum or brief in support thereof. Comments received may be seen at the above offices during business hours Monday through Friday.

Final regulations will be issued by the Corporation after review and consideration of public comments received pursuant to this notice.

Part 1614 is added in proposed form as set forth below:

PART 1614—RESTRICTIONS ON LEGAL ASSISTANCE TO JUVENILES

Sec.

1614.1 Purpose.

1614.2 Definitions.

1614.3 Restrictions.

1614.4 Request of a parent, guardian, or court.

1614.5 Representation without request of a parent, guardian, or court.

1614.6 Continuity of representation.

AUTHORITY: Section 1007(b)(4); 42 U.S.C. 2996f(b)(4).

§ 1614.1 Purpose.

This part is designed to prevent improper interference in parent-child relationships, while permitting legal assistance when it is necessary to protect essential rights of a juvenile.

§ 1614.2 Definitions.

As used in this part,

(a) "Guardian" means a person or institution lawfully appointed to protect the interests of a juvenile.

(b) "Institution" means any facility, public or private, providing a juvenile with shelter, care, education or other services.

(c) "Juvenile" means any person less than 18 years of age who is not emancipated under applicable law.

§ 1614.3 Restrictions.

(a) Corporation funds shall not be used to provide legal assistance to a juvenile, unless authorized by this part.

(b) Legal assistance shall not be provided in criminal proceedings, as defined in § 1613.2, unless required as part of an attorney's professional responsibilities, as provided for in § 1613.4 or § 1614.6.

(c) Legal assistance may be provided with respect to a case, matter, or proceeding in which a juvenile has a legal right to appointed counsel:

(1) Pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(2) At the request of a court if reasonable compensation is provided to the recipient furnishing assistance; or

(3) At the request of the juvenile, or a parent or guardian of the juvenile, if no other counsel can be obtained.

§ 1614.4 Request of a parent, guardian, or court.

Subject to § 1614.3, legal assistance may be provided to a juvenile

(a) When the written request of a parent or guardian of the juvenile is received; or

(b) At the request of an official or agent of a court of competent jurisdiction.

§ 1614.5 Representation without request of a parent, guardian, or court.

Subject to § 1614.3, legal assistance may be provided to a juvenile without a request from a parent, guardian, or court in

(a) Cases, proceedings, or matters

(1) Involving child abuse or neglect;

(2) To determine legal custody or guardianship of a juvenile;

(3) In which a court has jurisdiction by reason of a juvenile's alleged need for supervision and control, including but not limited to proceedings formally designated for persons in need of supervision (PINS) under state law; or

(4) Involving the initiation, continuation, or conditions of institutionalization of a juvenile; and

(b) When no judicial action is commenced against the parent or non-institutional guardian of the juvenile, legal assistance may be provided

(1) To secure or prevent the loss of benefits or services, or

(2) To prevent the imposition of services against the will of the juvenile.

§ 1614.6 Continuity of representation.

If a criminal proceeding, as defined in § 1613.2, arises out of a case, proceeding, or matter with respect to which a juvenile has received assistance authorized by this Part, an attorney should make a good faith effort, consistent with professional responsibility, to obtain approval of the court to withdraw from representation in the criminal proceed-