



**Executive Director's Office
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June 24, 2005

Ms. Mattie C. Condray
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Office of Legal Affairs
Legal Services Corporation
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Dear Ms. Condray:

Neighborhood Legal Services of Los Angeles County (NLS-LA) welcomes the opportunity to comment on the proposed regulatory changes to the financial eligibility and group representation sections of Part 1611 of the Legal Services Corporation's (LSC's) regulations. The proposed regulations were re-published in the Federal Register on May 24, 2005.

The revised regulations are a definite improvement over the current rules and will assist programs to effectively and efficiently meet legal needs of our clients. LSC has recognized that the critical needs of the poor are often different throughout the country by providing programs with the flexibility to respond to the local economic realities in low-income communities. In sum, we strongly recommend that LSC adopt the new regulations.

Below are our specific comments to many of the most critical components of the new regulations:

I. FINANCIAL ELIGIBILITY

A. Definitions

NLS-LA supports the elimination of the terms "liquid" and "non-liquid" in favor of the simpler concept of whether assets are "readily convertible into cash" contained in § 1611.2(c). In many circumstances, such as divorce cases, clients cannot obtain what might be a "liquid" asset until the proceedings are resolved and therefore those assets are not available to hire a private attorney. Similarly, the new definition clarifies that the assets must both be quickly convertible into cash and within the applicant's control. That formulation more accurately reflects our clients' real world experiences than the previous categories of liquid and non-liquid assets.

We also agree that changing the definition of income in § 1611.2(f) to refer to the income of the "household" instead of "family unit" is a step in the right direction. "Household" is a simpler, commonly used term that also provides local program flexibility. Many of our clients live in overcrowded conditions, often with other families or with adult children who completely support themselves and their own children. Having the flexibility to define "household" in terms of how clients support themselves and their families is an important change that again reflects the reality of how poor individuals and families actually live.

We also support the new definitions of counsel and advise and brief service as those new definitions clarify the differences between those two categories of assistance. 1611.2(f)

B. Financial Eligibility Policies

NLS-LA endorses many of the provisions in the "Financial Eligibility Policies" (Section 1611.3) section. Specifically, we agree with LSC that requiring Boards of Directors to review financial eligibility policies every three years instead of annually will be sufficient to ensure adequate oversight while making the process itself more meaningful.

The most vital change to this section is in the protections it provides to victims of domestic violence. NLS-LA, as a long time leader in providing help to violence victims, strongly supports the revision that allows programs to consider only the income and assets of the individual applicant victim and, in turn exclude assets and income jointly held by the applicant and the abuser. Sadly, many victims of domestic violence are also economic victims whose legal rights to jointly held assets are thwarted by their abusers. Denying poor violence victims legal help because their abusers control their finances only adds to the abuse. The new regulations will make it easier for violence victims to obtain the help they and their children need from LSC programs.

C. Asset Limitations

The increased flexibility in defining excludable assets is also a significant improvement. This is a great example of where new local flexibility will allow programs to develop fair rules that reflect the economic realities of these communities. For example, NLS-LA believes that a computer should be an exempt asset. Today, in urban L.A., computers have become the basic mode of access to community services, government information, access to court, etc. As a result, the current "digital divide" has made it even more difficult for the poor to participate in daily community life. Moreover, computers are also increasingly critical to meet the educational needs of both children and adults and are fast becoming a critical component in any search for employment or job training opportunities. Families should not risk being denied legal services because they have struggled to help themselves by acquiring a basic computer.

D. Income Limitations

1. Flexibility

NLS-LA agrees that LSC should allow programs to decide for themselves which, if any, of the authorized income exceptions they will adopt. Although the effects of poverty are harsh throughout the country, the factors facing low-income families differ in various areas. In large northeastern cities, automobiles may not be critical, but a families' need to pay for heat is. In comparison, here in Southern California, heating the home may not be as critical as in the northeast, but having an automobile or two may be vital for low-income families, especially the working poor.

2. Net Income

We support the Working Group's proposal to review net income rather than gross income when calculating income eligibility. Doing so simply reflects the reality of our clients' lives. They have extremely limited funds available to meet their basic daily needs. For example, a study by the California Budget Project shows that a worker earning minimum wage has to work 99 hours per week just to afford the fair market rent for a two-bedroom apartment. Allowing programs to examine net instead of gross wages in determining income levels is sound public policy.

3. Increase to 200%

NLS-LA agrees that changing the exception level from 187.5% of the poverty level to 200 % of poverty is an appropriate and much needed change. The 200% formulation is simpler and easier for the community to understand and for programs to implement. In fact, NLS-LA regularly uses the 200% figure in discussing eligibility in community forums throughout our service area.

4. Rent

NLS-LA also favors the proposed changes to the fixed debts and obligations exception to section 1611.5. We agree that rents should be treated similar to mortgage payments. In Southern California, we are currently experiencing dramatic increases in rents outside of rent-controlled properties in Los Angeles County. More than twenty-five percent of all renters in Los Angeles County pay more than 50% of their household's income for rent and those percentages are constantly rising as housing prices rise much faster than incomes.

5. Utilities

In addition, we believe that there are several important reasons why fairness and equity require that utility payments be treated as a fixed cost or obligation. First, a house or apartment without water, electricity, heat, or in the Southwest deserts, air conditioning, does not provide appropriate, habitable shelter. Second, for many tenants utilities are already included in their rent payments. Thus, if utilities are not included as fixed debts, some tenants will be eligible for legal services simply by the fortuity of whether their landlords have opted to include these costs in their rent. Third, many elderly families, especially those on fixed incomes, who may have paid off their mortgages, still need to pay utilities to survive.

6. Maintain Benefits

We strongly agree with the proposed change to allow LSC recipients to represent clients who have been receiving government benefits and seek legal assistance to maintain those benefits. Federal law has already defined these individuals as being so poor they need financial and medical assistance. It is only reasonable that those same poor people should also have access to the legal services necessary to obtain and maintain those critical benefits.

7. Referrals

Finally, NLS-LA welcomes the clarification on referrals set forth in § 1611.6. As the LSC analysis points out, it is currently common practice for programs to rely upon the financial eligibility analysis of a referring legal services program. However, clearly stating this procedure in the regulations can only assist programs in the smooth referrals of low-income families and individuals to appropriate service providers.

II. GROUP REPRESENTATION

NLS-LA strongly supports LSC's goal, in Section 1611.6 of the proposed regulations, of providing programs with the flexibility to assist additional categories of group clients that serve low-income individuals and families. One of the hallmarks of NLS-LA is our connection to and

collaboration with local community based organizations that understand the needs of the low-income communities they serve.

Aside from the problems with primary activity provisions, NLS-LA endorses the proposed changes regarding group client eligibility. In the past 10 years, NLS-LA has helped well over a hundred group clients to become fully functioning, self-sustaining non-profits. The groups, in turn, have assisted countless hundreds of eligible clients in an array of legal matters ranging from opening up a bank account to leaving an abusive spouse. Our work with group clients enables us to maximize the number of people that we assist and ensures that we provide a diverse array of services to our client community. This is vital because our clients inevitably need assistance with matters beyond the single legal problem that led them to our office. Thus, our representation of groups is key to our overall mission of helping low-income people work their way out of poverty. We therefore are strongly supportive of the goal of the proposed regulations and believe that, aside from the provisions cited above, the proposed regulations are well drafted to implement that goal.

The ability to represent group clients substantially benefits both NLS-LA and the client community that we serve. From a program perspective, the ability to represent group clients allows us to leverage our limited resources in ways that maximize both the scope of our services and the number of potential clients that we are able to assist. As a result, NLS-LA is better able to fulfill its goal of providing high-quality legal assistance to as many eligible clients as possible. From the community's perspective, group client representation serves a vital community need, since non-profit organizations often provide crucial social and supportive services for individuals and families. For example, we have worked with a child-care organization of home-based child care providers to help its members comply with laws and regulations, thereby enabling these low-income providers to maintain gainful employment while providing a much-needed service to our clients. Thus, NLS-LA was able to target our services and impact a much higher number of client-eligible child-care providers than we could have done by providing assistance to providers on an individual basis, one at a time.

While we actively encourage client organizations to include low-income people in their governing body, this is not always feasible for every organization, depending on its size, structure, and mission. The flexibility afforded by the proposed regulations would properly shift the eligibility focus from the membership of an organization to an examination of its intended beneficiaries. This shift will enable us to assist a greater diversity of organizations, while preserving our focus on maximizing the number of clients we are able to help.

However, NLS-LA disagrees with the additional proposed new requirement for groups eligible under §1611.6(b)(1)(ii) that the legal assistance provided relate solely to the primary activity of the group. NLS-LA believes that this additional requirement is problematic in several respects. The requirement that the legal assistance provided be related to the group's primary activity will give rise to confusion among recipient programs and to the public. Many groups provide a variety of services to their clientele, making it difficult to determine which service constitutes a

"primary activity." Moreover, this requirement unnecessarily limits the scope of services that can be provided to a group client. For example, a non-profit organization that provides homeless supportive services may desperately need our assistance on an employment law matter. While that matter may not meet the proposed standard of relating to the "primary activity" of the organization, it certainly bears directly on the group's ability to continue its primary activity of homeless services delivery. In such a case, NLS-LA should be able to assist the group. Thus, we agree LSC not to include the primary activity standard in the final regulations.

III. Retainer Agreements

NLS-LA supports LSC's proposed changes to Section 1611.9, concerning retainer agreements. We specifically agree that retainer agreements should only be required in extended service cases, and not in counsel and advice and brief service cases. We also agree that LSC should not always have to approve changes in retainer agreements, since flexibility may be needed to respond to lawyers' ever-evolving ethical responsibilities, which often vary from state to state.

CONCLUSION

We appreciate all of the time and effort that went into formulating these recommendations and enthusiastically support the work of those we have outlined above.

We also thank the Corporation for the opportunity to submit our comments to the proposed regulatory changes and for your consideration of these comments. If you have any questions, or would like any further clarification, please contact Bob Graziano of our office at (818) 834-7584.

Sincerely,

Neal S. Dudovitz
Executive Director

cc: Yvonne Mariajimenez, Deputy Director
Robert Graziano
Linda Perle, CLASP