

## § 1611.2

resource limitations. The part also seeks to ensure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

### § 1611.2 Definitions.

*Governmental program for the poor* means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

*Income* means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit.

*Total cash receipts* include money wages and salaries before any deduction, but do not include food or rent in lieu of wages; income from self-employment after deductions for business or farm expenses; regular payments from public assistance; social security; unemployment and worker's compensation; strike benefits from union funds; veterans benefits; training stipends; alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or from estates and trusts. They do not include money withdrawn from a bank, tax refunds, gifts, compensation and/or one-time insurance payments for injuries sustained, and non-cash benefits.

### § 1611.3 Maximum income level.

(a) Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the Act.

(b) Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125 percent) of the current official Federal Poverty Income Guidelines. The maximum annual income levels are set forth in Appendix A.

(c) Before establishing its maximum income level, a recipient shall consider relevant factors including:

(1) Cost-of-living in the locality;

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(2) The number of clients who can be served by the resources of the recipient;

(3) The population who would be eligible at and below alternative income levels; and

(4) The availability and cost of legal services provided by the private bar in the area.

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

(e) This part does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established here, if the assistance provided the client is supported by funds from a source other than the Corporation.

### § 1611.4 Authorized exceptions.

(a) A person whose gross income exceeds the maximum income level established by a recipient but does not exceed 150 percent of the national eligibility level (125% of poverty) may be provided legal assistance under the Act if:

(1) The person's circumstances require that eligibility should be allowed on the basis of one or more of the factors set forth in § 1611.5(b)(1); or

(2) The person is seeking legal assistance to secure benefits provided by a governmental program for the poor.

(b) In the event that a recipient determines to serve a person whose gross income exceeds 125% of poverty, that decision shall be documented and included in the client's file. The recipient shall keep such other records as will provide information to the Corporation as to the number of clients so served and the factual bases for the decisions made.

### § 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. By January 30, 1984, and annually thereafter, guidelines shall be reviewed and appropriate adjustments made.

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(b) In addition to gross income, a recipient shall consider the other relevant factors listed in paragraphs (b)(1) and (b)(2) of this section before determining whether a person is eligible to receive legal assistance.

(1) Factors which shall be used in the determination of the eligibility of clients over the maximum income level shall include:

(A) Current income prospects, taking into account seasonal variations in income;

(B) Medical expenses, and in exceptional instances, with the prior, written approval of the project director based on written documentation received by the recipient and available for review by the Corporation, if a person's gross income is primarily committed to medical or nursing home expenses, a person may be served even if that person's gross income exceeds 150 percent of the national eligibility level;

(C) Fixed debts and obligations, including unpaid Federal, state and local taxes from prior years;

(D) Child care, transportation, and other expenses necessary for employment;

(E) Expenses associated with age or physical infirmity of resident family members; and

(F) Other significant factors related to financial inability to afford legal assistance.

(2) Factors which shall be used in the determination of the eligibility of clients under the maximum income level shall include:

(A) Current income prospects, taking into account seasonal variations in income;

(B) The availability of private legal representation at a low cost with respect to the particular matter in which assistance is sought;

(C) The consequences for the individual if legal assistance is denied;

(D) The existence of assets, including both liquid and nonliquid, which are available to the applicant and are in excess of the asset ceiling set by the recipient pursuant to § 1611.6;

(E) Other significant factors related to financial inability to afford legal assistance, which may include evidence of a prior administrative or judicial de-

termination that the person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment.

(3)(A) If a recipient tentatively determines to serve a client over the maximum income level on the basis of factors listed in § 1611.5(b)(1), the factors listed in § 1611.5(b)(2) shall also be used before reaching a final determination.

(B) If a recipient tentatively determines not to serve a client under the maximum income level on the basis of factors listed in § 1611.5(b)(2), the factors listed in § 1611.5(b)(1) must also be used before reaching a final determination.

(c) A recipient may provide legal assistance to a group, corporation, or association if it is primarily composed of persons eligible for legal assistance under the Act and if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

### § 1611.6 Asset ceilings.

(a) By January 30, 1984, and annually thereafter, the governing body of the recipient shall establish and transmit to the Corporation guidelines incorporating specific and reasonable asset ceilings, including both liquid and non-liquid assets, to be utilized in determining eligibility for services. The guidelines shall consider the economy of the service area and the relative cost-of-living of low-income persons so as to ensure the availability of services to those in the greatest economic and legal need.

(b) The guidelines shall be consistent with the recipient's priorities established in accordance with 45 CFR 1620 and special consideration shall be given to the legal needs of the elderly, institutionalized, and handicapped.

(c) Assets considered shall include all liquid and non-liquid assets of all persons who are resident members of a family unit, except that a recipient may exclude the principal residence of a client. The guidelines shall take into account impediments to an individual's access to assets of the family unit or household.

(d) Reasonable equity value in work-related equipment which is essential to the employment or self-employment of