

prior interpretations. Unless noted below, these minor revisions do not make any substantive change in the rule and are not described in detail.

The Committee recognizes that Congress may consider legislation that would amend the LSC Act and reauthorize appropriations for the Corporation. Whenever Congress does pass a new LSC Act, the Corporation's regulations will be revisited and revised accordingly.

The Corporation is extending the customary 30-day comment period to 60 days.

Section Analysis

Authority

This section has been revised to include a reference to Sec. 1006(b)(3) of the LSC Act, 42 U.S.C. 2996e(b)(3). This provision states that the Corporation shall not interfere with any attorney in carrying out the attorney's professional responsibilities to a client or abrogate the authority of a State or other jurisdiction to enforce the standards of professional responsibility applicable to attorneys in that jurisdiction.

Section 1611.1 Purpose

The purpose section was revised to clarify that it is intended to deal with financial and other factors that may be used to determine eligibility for LSC-funded legal services. In addition, the Committee removed the language in the current regulation that gives preference to those least able to obtain legal assistance. Although the original LSC Act contained language indicating some priority for those who were poorest, that language was deleted when the Act was reauthorized in 1977. There is nothing in the current Act that requires a program to give preference to those "least able to obtain legal assistance" and the Committee felt that it should not be a part of the statement of purpose for the regulation.

Section 1611.2 Definitions

Section 1611.2(a) "Applicable Rules of Professional Responsibility"

This new definition was added to make it clear that the references in the regulation are intended to refer to the rules of ethics and professional responsibility applicable to attorneys in the jurisdiction where the recipient either provides legal services or maintains its records. If more than one jurisdiction is involved and there is a difference in the rules of disclosure between the jurisdictions, the Committee wished the Commentary to make clear that, in the Corporation's view, the rule that was more protective

of client confidentiality should govern the disclosure of information to the Corporation. It recognized, however, that the applicable law governing conflict of laws may differ from that view and would control. The Corporation seeks comments regarding any conflict of laws issues that might arise. The new definition is consistent with section 1006(b)(3) of the Act that states that LSC cannot abrogate the authority of the pertinent jurisdiction to enforce the applicable rules.

Section 1611.2(b) "Assets"

This new definition was intended to give programs some guidance as to what needs to be included in a program's consideration of an applicant's assets, but leaves substantial discretion to the recipient to come up with a description of assets that meets local concerns and conditions. This is a minimal definition that includes only liquid resources, but local programs may include non-liquid assets, as are included under the current requirement, if they decide that inclusion is appropriate. LSC added the regulatory requirement for consideration of non-liquid assets when it revised part 1611 in 1983, but the LSC Act, section 1007(a)(2)(B)(i), only requires that recipients take into account liquid assets.

The proposed definition requires inclusion of only those liquid assets or other resources that are "readily convertible to cash, which are currently and actually available to the applicant and which could be used to hire private counsel." Thus, assets that are in the applicant's name, but are being held in trust until the applicant reaches a certain age or status need not be considered. Similarly, assets that are controlled by a guardian or conservator need not be considered, although income from the trust that is distributed by the guardian or conservator to the applicant should be included in total cash receipts. A recipient could make a case-by-case determination of whether resources that could be sold, pawned or mortgaged should be considered to be resources that are "readily convertible to cash" or whether an individual should be required to borrow against a pension or other asset.

Section 1611.2(c) "Governmental program for low-income individuals or families"

The Committee changed the term that is used in the regulation from "governmental program for the poor" although the definition remains unchanged.

Section 1611.2(d) "Income"

The Committee revised this definition to include total cash receipts of a "household" as an alternative to "family unit," and to permit programs to choose to use whichever term is more appropriate for the individual or local circumstances. Income is reviewed on an annual basis, rather than at a particular point in time because the Federal Poverty Guidelines, upon which the maximum income levels are based, are stated in terms of annual income. Thus, if an applicant for services currently has a low-wage job, but was unemployed with no other income for several months, income should be adjusted to take account of overall income over the prior year. Similarly, if an applicant's income is sporadic, as with temporary or day workers, income should be estimated on an annual basis, rather than on income for the current week or month. The Committee requests comments from the public on any additional guidance that may be needed by field programs in applying this definition.

Section 1611.2(e) "Total Cash Receipts"

The Committee revised this definition by removing much of the detailed information contained in the current definition and adding general language that describes the kind of resources that should be considered as part of income. The Committee felt that by including the detail in the regulation itself, the language could be viewed as a rigid framework for compliance that did not permit consideration of other possible income sources or the particular circumstances of the individual applicant. The new definition makes it clear that "total cash receipts" means money received by and currently available to an applicant for services. Thus, it would not include food or rent in lieu of wages, rent subsidies, food stamps, health insurance premiums paid by an employer, Medicaid payments to a health care provider, or other non-cash benefits or payments made to a third party on behalf of the applicant, over which the applicant has no control. The revised language refers to "net income from self-employment" rather than specifying the deductions. Finally, the revised language refers to "other regular or recurring sources of financial support that are actually available to the applicant." These would include such things as social security, public or private pension payments; regular insurance or annuity payments; unemployment or worker's compensation payments; strike benefits