



January 25, 2002

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**RE: Requested Waiver of Income Eligibility Guidelines for
'Nine-Eleven Legal Team', Opinion Number EX-2002-1001**

Dear Mr. Greenfield:

Your recent inquiry to Legal Services Corporation ("LSC") Program Counsel John Eidleman has been referred to me for response. In your inquiry, you indicated that your office recently created a new program called "The Nine-Eleven Legal Team," the purpose of which is to provide civil legal assistance to victims of the September 11th terrorist attack on the Pentagon. The persons eligible for services under this program will include persons injured in the attack, family members of those injured or killed, and employees of local hotels, restaurants and businesses who have lost their jobs as a direct result of the attack. You indicated that your office is working in conjunction with the United Way, the Red Cross, and other area non-profits assisting victims of September 11th. In anticipation that some victims will not meet your program's income eligibility requirements, your state funder, the Legal Services Corporation of Virginia ("LSCV"), has agreed to waive its income and resource requirements for applicants who are victims of the terrorist attack, and you have inquired whether LSC would be similarly willing to waive the financial eligibility requirements of Part 1611.

The regulations that govern LSC grant funds are promulgated pursuant to Congressional directives, as specified in the legislation that created LSC (i.e. the LSC Act) and annual appropriations acts. Accordingly, the threshold question in this circumstance is not whether LSC is *willing* to waive income eligibility requirements, but whether LSC has the discretion to waive said requirements under its legislative framework.

LSC's financial eligibility regulation, 45 C.F.R. Part 1611, which enumerates financial eligibility requirements for grantees, implements underlying statutory provisions of the LSC Act which limit the use of LSC resources to those who would otherwise be unable to afford adequate legal counsel.¹ Part 1611 generally requires that grantees establish maximum income levels pursuant to which they can evaluate applicants for financial eligibility, and section 1611.3(b) prohibits those maximum income levels from exceeding one hundred and twenty-five percent (125%) of the current, official Federal Poverty Income Guidelines.² Section 1611.4(a) creates exceptions to this rule where an applicant's gross income exceeds the maximum income level established by a grantee but does not exceed 150 percent of the national eligibility level (125% of poverty), and 1) his or her disposable income is substantially reduced by expenses such as medical bills, child care expenses, fixed debts, or other factors listed in §1611.5(b)(1), or 2) the applicant is seeking legal assistance to secure governmental benefits for the indigent. These are the only exceptions contained in the regulation. Part 1611 does not contain an exception exempting entire categories of persons, such as victims of terrorist attacks or natural disasters, from the requirement of financial eligibility, nor does it provide grantees with discretion to waive the general requirement under unusual circumstances. Additionally, The LSC Act does not provide LSC with discretion to waive the requirement of financial eligibility.³

Although the LSC Regulations contain one 'emergency exception' provision, located at 45 CFR § 1620.4, that section only provides an emergency exception for the *types of cases and matters* to which grantees commit their time and resources, rather than an exception to *income eligibility* requirements in emergency circumstances. I am attaching a recent opinion issued to Coastal Bend Legal Services which discusses this 'emergency exception' more thoroughly.

¹ See, e.g., 42 U.S.C. §§ 2996, 2996b, and 2996f(a)(2).

² Section 1611.3(e) specifies that this requirement "does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established . . . , if the assistance provided the client is supported by funds from a source other than the Corporation."

³ In contrast, Congress *has* given LSC discretion to permit deviation from grantee requirements in some other circumstances. Section 1007(c) of the LSC Act, for example, requires that 60% of grantee board members be attorneys, but it also provides that "the Corporation . . . may grant . . . such a waiver for recipients which, because of the nature of the population they serve, are unable to comply with such requirement." The presence of discretionary authority to waive grantee requirements in some sections of the LSC Act suggests that the absence of discretionary authority to waive financial eligibility requirements is not an oversight.

I hope that this information fully responds to your inquiry. While LSC understands, shares and commends your desire to assist members of your community who have been, or will be, affected by the recent terrorist attacks, LSC does not have discretion to waive the general financial eligibility requirements for applicants for free legal services. If you have additional questions or would like to further discuss these issues, please feel free to contact me directly at (202)336-8871.

Sincerely,

Dawn M. Browning
Assistant General Counsel

Victor M. Fortuno
General Counsel