

December 3, 1999

David B. Neumeyer, Executive Director
Virginia Legal Aid Society, Inc.
513 Church Street
P.O. Box 6058
Lynchburg, Virginia 24505-6058

Re: Group Eligibility

Dear Mr. Neumeyer:

This is a response to your November 19, 1999 request for a legal opinion on two eligibility questions.

Eligibility for farmers. First, you have asked for guidance on how to determine eligibility for farmers and whether a recipient may take into account the costs of running a farm.

The Legal Services Corporation's ("Corporation") eligibility rule, 45 C.F.R. Part 1611, provides that:

Unless authorized by Section 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.

Section 1611.3(d). *Income* is defined as:

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**; . . . [emphasis added].

This definition permits the deduction of farm expenses from the calculation of income from self-employment. Thus, the farm policy you cited from Iowa, which takes "into account deductions for actual operating expenses, including straight line

depreciation, but excluding investment credits and capital losses,” is a reasonable interpretation of the regulatory guidance in Part 1611.

In addition to income, the rule also directs recipients to consider other relevant factors, such as assets in excess of the asset ceiling established by the recipient. Section 1611.5(b)(2)(D).¹ However, Section 1611.6(d) provides an exemption for certain assets applicable to a farmer’s eligibility. It provides that:

Reasonable equity value in work-related equipment which is essential to the employment or self-employment of an applicant or member of a family unit, shall not be utilized to disqualify an applicant, provided that the owner is attempting to produce income consistent with its fair market value.

Finally, the rule also permits a recipient to consider the fixed debts and obligations of an applicant whose income is over the maximum income level when determining eligibility. Section 1611.5(b)(1)(C). This would include farm mortgages and farm equipment loan debts.

In summary, the rule permits the above described deductions from income, exemptions from the asset ceiling, and consideration of fixed debts and obligations when determining eligibility for farmers. A policy that reflects these factors is permissible under the rule.

Citizenship eligibility for group clients. You have also asked whether you must determine citizenship for group clients pursuant to the Corporation’s rule on alien eligibility, 45 C.F.R. Part 1626. As discussed below, your program does not need to determine the citizenship of individual group members when determining group eligibility.

Eligibility for groups is regulated in Part 1611 and eligibility is determined solely on the basis of the financial status of the group.² Section 1611.5 (c) provides that:

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

¹ The rule requires consideration of the various factors listed in Section 1611.(b)(1) and (2) at different stages of the eligibility determination process. *See* Sections 1611.5(b)(3)(A) and (B).

² Part 1611 deals only with financial eligibility. With the exception of the section on retainer agreements, the rule includes provisions on the financial status of applicants, including: requirements governing maximum income guidelines; exceptions for persons whose income exceeds the guidelines; consideration of assets available to the applicants; factors to be considered that would affect a person’s accessibility to or use of income, such as fixed debts and medical expenses; and the manner of determining financial eligibility. Nothing in the rule deals with subject matter or citizenship eligibility.

lacks, and has no practical means of obtaining, funds to retain private counsel.

Under Section 1611.5(c), the group is the client. Although the group's eligibility is determined in part by the financial status of 51% of its members or persons served, the group is the legal client of the recipient. The financial status of the group's members or persons served merely establishes whether the group is eligible for legal assistance. It is the group's interests that will be represented by the recipient's attorney and it is the group through its representative with whom the recipient will enter into a retainer agreement.

A group found to be financially eligible under Part 1611 is not disqualified from eligibility if members of or persons served by the group are not United States citizens or aliens eligible for legal assistance under Part 1626. Part 1626 does not include any group eligibility provision and, by its terms, applies only to individual persons.³ Thus, the citizenship and alien provisions in Part 1626 do not apply to group eligibility. They apply only when legal assistance is provided to individual persons. The only requirement governing group eligibility is in Section 1611.5 (c). Thus, as long as a group meets the financial criteria in Section 1611.5 (c), it would qualify for legal representation from a recipient.

I hope this adequately responds to your inquiry. Please let me know if you need any additional assistance on this matter.

Sincerely,

Suzanne B. Glasow
Senior Assistant General Counsel

EX99-28

³ Under the Immigration and Nationality Act, an "alien" is defined as "any person not a citizen or national of the United States." 8 U.S.C. 1101.