

(a) *Awarded applicants' obligation.* One of the three-year awards will provide leadership to curriculum coordination in the Southeast area including Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee. The other three-year award will provide leadership for the Western area including American Samoa, Arizona, California, Guam, Hawaii, Nevada and Trust Territory of Pacific Islands.

Each awardee will be the facilitator in enabling the States in their regional consortium to:

(1) Improve their curriculum services and capabilities;

(2) Share information and plans regarding curriculum materials and needs in order to reduce duplication of efforts;

(3) Plan for cooperation in development, testing, evaluation, dissemination, reproduction and implementation of materials; and

(4) Develop and maintain intra-State liaison activities that will stimulate cooperative relationships at State and local levels.

In addition each awardee will become a member of the National Network Council for Curriculum Coordination in vocational and technical education; and as a member each awardee will:

(1) Conduct coordination, dissemination and diffusion activities in order to improve the acceptance of new curriculum products and to assess their impact;

(2) Establish and maintain a system for determining curriculum needs in vocational and technical education based on available manpower projections and the advancement of equity for girls and women in vocational education and for recommending priorities for State and national emphasis;

(3) Share information regarding materials and studies available and under development; and

(4) Provide curriculum services which will encourage the adaptation, demonstration and adoption of effective curricula and curriculum development practices in vocational and technical education in conjunction with business and labor.

The Office of Education will entertain requests for these grants to support:

(1) Communication and coordination activities with the States, the Network, and the U.S. Office of Education.

(2) Travel costs and per diem for the Center personnel to attend two meetings annually of the National Network Council for Curriculum Coordination. One of these meetings will be held in Washington, D.C.

(3) Travel costs and per diem, excluding honoraria, for State representatives to attend meetings sponsored by the center. Each of the six centers will hold a consortium meeting with their State representatives concurrently at a central U.S. location.

(b) Application review criteria. The criteria to be utilized in reviewing applications are listed below. These criteria are consistent with section 100a.26, Review of Applications, in the Office of Education's General Provisions for Programs, published in the *Federal Register* in 38 FR 30684 on November 6, 1973.

Segments of a segment of the application must address each criterion. Each criterion is weighted to show the maximum score that can be given to each specific criterion. Each criterion and the maximum points possible are as follows:

CRITERIA AND SCORE

(a) *Need and problems.*—The application should clearly define the need for the project within the specified consortium of States and should indicate responsiveness to problems rather than symptoms. 15

(b) *Objectives.*—The objectives should be clearly stated, supportive of defined needs,

capable of being attained by the proposed procedures, and capable of being measured. 15

(c) *Plan.*—The management plan should show functions to be performed and services to be provided; and the procedures for accomplishing each are delineated. The size and scope of the project is appropriate and is phased to the multi-year duration of the project. The proposed plan of operation should clearly describe (a) how the objectives will be undertaken and accomplished, (b) how and when personnel and resources will be utilized, (c) what, if any, in-service training connected with project services will be provided, (d) what feedback and evaluation procedures will be implemented and (e) how input from State vocational education administrators will be utilized. 20

(d) *Results.*—The proposed outcomes should be identified and described in terms of (1) expected potential for their use for similar educational purposes and (2) anticipated impact at National, State and local levels, and (3) relationships to Federal/National curriculum program. Provisions should be made for disseminating the results of the project including techniques or other outputs to the consortium States and the National Network. 20

(e) *Institutional capability.*—Application should clearly set forth current curriculum strengths and the capability of the applicant to immediately initiate and maintain liaison functions with consortium States. There should be evidence that adequate facilities and equipment will be provided and that participation of cooperating States has been authorized. Relationships with other dissemination, diffusion and facilitation systems, if any, should be described. 15

(f) *Personnel.*—The qualifications and experience of key staff should be appropriate for the requirements of the project; specific responsibilities and time commitments should be identified for each of the key staff; and at least one key staff person should devote a minimum of 50 percent of their time to the total objectives of the project. 10

(g) *Budget.*—The estimated cost should be reasonable in relation to anticipated results and the geographic area, scope, and duration of the project. Where possible anticipated costs by objectives are included. The application should also include a clear statement of cost-sharing which is substantiated by line items in the proposed budget. 5

[FR Doc. 76-34569 Filed 11-22-76; 8:45 am]

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1611—ELIGIBILITY

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996f ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(a)(2) of the Act requires the Corporation to establish maximum income levels for individual eligible for legal assistance, eligibility guidelines which take into account certain enumerated factors, and priorities to insure that persons least able to afford legal assistance are given preference in furnishing such assistance.

On June 11, 1976 (41 FR 23727) a proposed regulation on eligibility was published. Interested persons were given

until July 12, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

COMMENT

Maximum income levels. The Legal Services Corporation Act provides little guidance for establishing a maximum income standard for persons eligible to receive legal assistance. Section 1002(3) defines an "eligible client" as "any person financially unable to afford legal assistance". Congress recognized that the Corporation would not have resources adequate to provide legal assistance to all who would be eligible according to the statutory definition, and the House Report states that "it is expected that, until a substantial increase in program appropriations is provided, the eligibility level will be approximately commensurate to the poverty line in each community. Regulations promulgated by the Corporation will insure that the poorest of the poor receive a priority in the provision of legal services . . ." p. 8-9. Consistent with the legislative history, Section 1007(a)(2)(C) directs the Corporation to "establish priorities to insure that persons least able to afford legal assistance are given preference in the furnishing of such assistance."

The maximum income level adopted here is equal to 125% of the official poverty line.¹ In designating that level, the

¹ The definition of "income in § 1611.2 conforms to the one used by the Community Services Administration, that develops the "official" poverty line. A chart showing the maximum income levels adopted by the Corporation is attached hereto.

Corporation recognizes that a substantial number of people who are unable to afford legal assistance will nonetheless be rendered ineligible, but the Corporation's limited resources prevent adoption of a higher level at this time. After the Corporation reaches its preliminary goal of providing the equivalent of two lawyers for every 10,000 poor persons, as defined by the official measure, additional funds may be sought to permit adoption of an income standard that is more realistic in terms of the income required in order for a person to be able to afford private legal assistance. It is also hoped that the development of knowledge about the fees charged for various legal services by the private Bar will contribute to a more informed determination of how much income is required to afford private assistance.

The "official" poverty measure attempts to define poverty in terms of the minimum income needed for subsistence. Critics of the measure argue that it is too low—that even bare subsistence living requires a higher income than indicated by the official line. The recently published, Congressionally-mandated study, "The Measure of Poverty", describes some flaws in the current measure, but adhering to the Congressional directive,

does not make any specific recommendations for change.

An acknowledged limitation of the current measure is that it does not make any geographic distinctions, except for Hawaii and Alaska. Yet it is generally conceded that the cost of living does vary geographically; and the Act requires the Corporation to take substantial cost of living variations into account. In the absence of data that would enable the Corporation to make these distinctions, we have no choice but to give each recipient the responsibility for doing so. Setting a maximum below 125% of the poverty line would deny some programs the latitude required by local conditions, that Congress intended them to have. See Senate Report, p. 14-15.

A maximum income level below 125% of the poverty line would disqualify the working poor, whose financial resources are only slightly greater than those of families entirely dependent on welfare. (The 125% line is 140% of the maximum AFDC grant for a family of four, 124% of the maximum AFDC standard of need for a family of four,² and 132% of the maximum AFDC grant for a family of two.)

As a matter of policy, the Corporation believes it would be a mistake to adopt a standard so low that it excluded all but welfare recipients from receiving legal assistance.

The Corporation rejected a proposal that it set the maximum at 150% of the poverty line to accommodate areas with exceptionally high living costs. Our research indicates that there are very few places in the United States where the cost of living is more than 25% above the national average. A random-sample poll of legal services programs conducted in August 1975 indicated that only a small number of them applied an eligibility standard greater than 125% of the poverty line. Adopting a national standard high enough to cover those few seems unjustifiable. It seems wiser to require them to apply for authority to adopt a higher standard on a program-by-program basis, as the regulation does.

The Corporation also rejected a suggestion that it adopt the Bureau of Labor Standard's "Lower Standard Budget" as the maximum standard. According to "The Measure of Poverty", there are numerous technical limitations in its methodology, and it was not intended to be a poverty standard. In autumn of 1974, the lower BLS budget for a family of four was more than 80% higher than the comparable poverty measure. In view of the Corporation's limited resources, adoption of the BLS standard is inconsistent with the statutory mandate to give priority to those least able to afford legal assistance. Moreover, the BLS standard measures only 40 cities, and it provides no basis for extrapolating geographical variations in the cost of

living in other areas. Using the BLS standard in the cities it does study, while relying on the poverty standard elsewhere, would result in gross inequity, extending eligibility in some areas to people whose income were far above the eligibility levels elsewhere.

Satisfaction of the directions of the Act requires coordination between the Corporation and recipients in establishing maximum income levels for individuals eligible to receive legal assistance. The Corporation cannot set an inflexible standard because, as stated above, no poverty definition now in use adequately takes into account either substantial cost-of-living differences or urban-rural differences. The only way of complying with the statutory mandate to consider those factors is by giving recipients the responsibility for doing so.

The Regulation does not permit a recipient automatically to set its income standard at the maximum authorized. Section 1611.3 requires a recipient to take into account cost of living in the locality, the number of clients that can be assisted with the resources available to the recipient, the population at and below alternative income levels in the area served by the recipient, and the availability and cost of legal services provided by the private Bar in the area before it establishes a maximum income standard. The regulation thus formalizes a process that has occurred in many programs in the past. Recognizing that their own resources are limited, most programs have set their financial eligibility level below the poverty line, and they may be expected to continue to do so. It is expected that only a few programs, located in localities with exceptionally high living costs, will adopt the maximum authorized by the regulation. An even smaller number may request specific authorization to set a standard above that level.

In allocating resources among legal services programs the Corporation uses a formula that takes into account, among other factors, the size of the population at and below the official poverty line in the area served by the program, and for the present the Corporation will continue to apply that standard even to programs that set their maximum income levels above the poverty line. Knowing that choice of a higher maximum income level will not increase program resources, few programs are likely to choose an inappropriately high standard.

Authorized exceptions. A person whose income exceeds the maximum income level established by a recipient may not be provided legal assistance unless the person comes within one of three exceptions described in § 1611.4.

The first exception, in § 1611.4(a), is mandated by the Act, that requires a recipient to determine individual eligibility on the basis of factors such as fixed debts, medical expenses, and other factors affecting a client's ability to pay for legal assistance. An individual whose income is above the maximum income level adopted by a recipient may be eligible for

legal assistance after allowance is made for such factors.

Section 1611.4(b) allows a recipient to provide legal assistance to a person whose income is above the established maximum if the person is seeking legal assistance to obtain, or prevent the loss of, benefits provided by a "governmental program for the poor", as defined in § 1611.2. These cases traditionally have been a major part of the caseload of legal services programs. The private Bar is rarely willing to undertake them, because they require a high degree of familiarity with complex administrative regulations, and generally do not generate a fee for legal services. Individuals who depend on such programs for subsistence usually have no discretionary income with which to pay for legal services.

Section 1611.4(c) allows a recipient to provide legal assistance to a person whose income exceeds the maximum if the person would be eligible but for the receipt of benefits from a "governmental income maintenance program", as defined in § 1611.2.

Comparison of the poverty line with current AFDC and SSI standards and grant levels shows that the poverty line is considerably higher than the AFDC standard of need in every state, and that in only three states—California, Colorado and Massachusetts—does the maximum SSI payment exceed 125% of the poverty line. Therefore, with the exception of SSI recipients in those three states, any person whose income is derived entirely from those benefit programs would be eligible for legal assistance on the basis of income without regard to the authorized "exception". Indeed, since 125% of the poverty line is equal to 140% of the maximum AFDC grant for a family of four, most families that receive income from both AFDC and employment would still have an income below 125% of the poverty line, particularly after deduction for child care and other work-related expenses. But this would not be invariably true. In a few states, strict adherence to the maximum income level would render otherwise eligible welfare recipients ineligible if they became employed. That result would be inconsistent with federal law that "disregards" a percentage of earned income in order to permit welfare recipients to become employed without thereby sacrificing welfare benefits. In effect, the regulation adopts the federal "income disregard" policy. It also permits legal assistance to a person whose income is derived, in the main, from employment, with some supplementation by governmental benefits.

The Corporation recognizes that § 1611.4(c) may be viewed as inequitable in one respect, because it permits legal assistance to an employed person who also receives welfare benefits, while denying assistance to a person whose identical income is derived entirely from employment. But after much deliberation the Corporation concluded that, on balance, that potential inequity was outweighed by the desirability of following the fed-

² The "need standard" is the amount determined by a state to be necessary for subsistence, and is, in all states, greater than the maximum actually granted.

RULES AND REGULATIONS

eral policy of providing work incentives welfare recipients.

An additional advantage of the provision is administrative simplicity, because it permits a recipient to avoid complicated income calculations if an applicant for legal assistance submits proof of receipt of benefits from a governmental income maintenance program. It would still be necessary, however, for a recipient to consider the individual factors listed in § 1611.5.

Determination of eligibility. Section 1611.5(b) lists some of the personal factors that should be considered by a recipient in determining eligibility. The list is not exhaustive. Depending on local circumstances, a recipient may consider other factors that might either expand or narrow eligibility. For example, a recipient in a state like Alaska might consider the cost of transportation from a remote area to the nearest private lawyer as a factor bearing on a client's ability to pay for private assistance. Another recipient might consider the value of a person's non-liquid assets as a factor rendering the person ineligible.

In determining a person's income, past earnings are irrelevant except insofar as they may have resulted in the acquisition of assets, that are required by § 1611.5(b) (2) to be considered. Inquiry should be focused on present income, and on the prospects for its continuation. Thus, if a person is engaged in seasonal work such as farm labor, it should be recognized that the person's salary during peak harvest is not an accurate indication of annual income. This requirement is established by § 1611.5(b) (1).

Federal and local taxes should be considered before determining whether to provide legal assistance to a person whose gross income is above the established maximum. Failure to do so would discriminate against working people, whose income is subject to taxation, while that of individuals on welfare is not. After taxes have been deducted, a working person whose gross income is above the maximum may actually have less discretionary money available for legal services than a welfare recipient.

A person who is aged or disabled may have unusual expenses associated with that condition (such as special housing, utility, transportation, dietary or medical needs), and allowance should be made for them in determining eligibility.

The disqualifying factor described in § 1611.5(c) is required by Section 1007 (a) (2) (B) (iv) of the Act.

A group, corporation, or association may be afforded representation if the criteria of § 1611.5(d) are met. The legislative history of the Act makes clear that Congress intended to permit recipients to aid such organizations, as they have in the past.

Manner of determining eligibility. Section 1611.6 requires a recipient to determine eligibility by means of a simple and dignified procedure that is appropriate to a law office and conducive to development of an effective attorney-client rela-

tionship. At the same time, all necessary information must be obtained and preserved, in a manner that protects the identity of the client, for audit by the Corporation.

Both the House and the Senate Reports on the Act stated that financial eligibility should be determined in a manner that promotes "trust and confidence between an attorney and client". It would be inconsistent with that directive for a recipient to require an applicant for assistance to swear, under penalty of perjury, to the accuracy of confirmation provided. If there is substantial reason to doubt the information, the recipient should make further inquiry of the client.

Section 1611.6(c), prohibiting disclosure of financial eligibility information provided by a client, without express written consent, is consistent with Ethical Opinions rendered by the American Bar Association and the Ethics Committees of local Bar Associations. Because the Corporation frequently has been called upon to confirm its agreement with those Opinions, an explicit statement of Corporation policy was deemed appropriate. Section 1006(b) (3) of the Act requires the Corporation to insure that legal services activities are conducted in a manner consistent with professional and ethical obligations.

Change in circumstances. If a client becomes ineligible because of a change in circumstances, § 1611.7 requires a recipient to discontinue representation if the change is sufficiently likely to continue to enable the client to obtain private counsel, and if discontinuation is not inconsistent with the Code of Professional Responsibility.*

Accordingly, Part 1611 is added to read as set forth below.

Sec.

- 1611.1 Purpose.
- 1611.2 Definition.
- 1611.3 Maximum Income Level.
- 1611.4 Authorized Exceptions.
- 1611.5 Determination of Eligibility.
- 1611.6 Manner of Determining Eligibility.
- 1611.7 Change of Circumstances.

Appendix A.

AUTHORITY: Sec. 1007(a) (2); 42 U.S.C. 2996(a) (2).

§ 1611.1 Purpose.

This Part is designed to insure that a recipient will determine eligibility according to criteria that give preference to the legal needs of those least able to obtain legal assistance, and afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. The Part also seeks to insure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

§ 1611.2 Definitions.

"Governmental income maintenance program" means Aid for Dependent

* Former § 1611.8, dealing with caseload control priorities, has been renumbered Part 1620.

Children, Supplemental Security Income, Unemployment Compensation, and a state or county general assistance or home relief program.

"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 deductions, but do not include food or rent in lieu of wages. They include income from self-employment after deductions for business or farm expenses, they include 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; income from dividends, interest, rents, royalties, or from estates and trusts. They do not include money withdrawn from a bank, or received from sale of real or personal property, or from tax refunds, gifts, one-time insurance payments or compensation for injury; nor do they include 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%) of the official poverty threshold as defined by the Office of Management and Budget.

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

- (1) Cost-of-living in the locality;
- (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 person whose income exceeds the maximum income level established by a recipient may be provided legal assistance under the Act if:

- (a) 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); or
- (b) The person is seeking legal assistance to secure benefits provided by a governmental program for the poor; or
- (c) The person would be eligible but for receipt of benefits from a governmental income maintenance program.

§ 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. At least once a year, guidelines shall be reviewed and appropriate adjustments made.

(b) In addition to income, a recipient shall consider other relevant factors before determining whether a person is eligible to receive legal assistance. Factors considered shall include:

- (1) Current income prospects, taking into account seasonal variations in income;
- (2) Liquid net assets;
- (3) Fixed debts and obligations, including federal and local taxes, and medical expenses;
- (4) Child care, transportation, and other expenses necessary for employment;
- (5) Age or physical infirmity of resident family members;
- (6) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;
- (7) The consequences for the individual if legal assistance is denied; and
- (8) Other factors related to financial inability to afford legal assistance.

(c) Evidence of a prior administrative or judicial determination that a person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment, shall disqualify the person from receiving legal assistance under the Act. This paragraph does not bar provision of legal assistance to an otherwise eligible person who seeks representation in order to challenge the prior determination.

(d) A recipient may provide legal assistance to a group, corporation, or association if it:

- (1) Is primarily composed of persons eligible for legal assistance under the Act, or
- (2) Has as its primary purpose furtherance of the interests of persons in the community unable to afford legal assistance, and
- (3) Provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

§ 1611.6 Manner of determining eligibility.

(a) A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client. The form and procedure adopted shall be subject to approval by the Corporation, and the information obtained shall be preserved, in a manner that protects the identity of the client, for audit by the Corporation.

(b) If there is substantial reason to doubt the accuracy of the information, a recipient shall make appropriate inquiry to verify it, in a manner consistent with an attorney-client relationship.

(c) Information furnished to a recipient by a client to establish financial eligibility shall not be disclosed to any person who is not employed by the recipient in a manner that permits identification of the client, without the express written consent of the client.

§ 1611.7 Change in circumstances.

If an eligible client becomes ineligible through a change in circumstances, a recipient shall discontinue representation if the change in circumstances is sufficiently likely to continue for the client to afford private legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibilities.

Effective date: December 23, 1976.

APPENDIX A

Table showing maximum income levels equal to 125% of the Office of Management and Budget 1976 revision of the official poverty line threshold figures.

ALL STATES EXCEPT ALASKA AND HAWAII

Size of family unit:	Maximum income
1.....	\$3,600
2.....	4,825
3.....	5,750
4.....	6,874
5.....	8,000
6.....	9,125

For family units with more than 6 members, add \$1,125 for each additional member in a nonfarm family and \$950 for each additional member in a farm family.

ALASKA

Size of family unit:	Maximum income
1.....	\$4,400
2.....	5,800
3.....	7,200
4.....	8,600
5.....	10,000
6.....	11,400

For family units with more than 6 members, add \$1,400 for each additional member in a nonfarm family and \$1,188 for each additional member in a farm family.

HAWAII

Size of family unit:	Maximum income
1.....	\$4,050
2.....	5,338
3.....	6,625
4.....	7,913
5.....	9,200
6.....	10,488

For family units with more than 6 members, add \$1,288 for each additional member

in a nonfarm family and \$1,088 for each additional member in a farm family.

THOMAS EHRLICH,
President,
Legal Services Corporation.

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PART 1617—CLASS ACTIONS

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996f ("the Act"). Section 1006(d)(5) of the Act, 42 U.S.C. 2996e(d)(5), requires class action litigation undertaken by a recipient to be approved by the project director in accordance with policies established by the governing board. Section 1007(a)(3), 42 U.S.C. 2996f(a)(3), requires the Corporation to insure that legal assistance is rendered in the most economical and effective manner, and Section 1007(a)(1), 42 U.S.C. 2996f(a)(1), requires the Corporation to protect against impairing the integrity of the adversary process.

On September 23, 1976 (41 FR 41722) a proposed regulation on class actions was published. Interested persons were given until October 28, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

COMMENT

Section 1006(d)(5) of the Act requires class action litigation undertaken by a recipient to be approved by the project director in accordance with policies established by the governing board. The legislative history of the section makes it clear that Congress did not intend to discourage use of class actions, but did want to insure that class action litigation would be undertaken according to standards established by persons accountable for the overall performance of the legal services program.

Neither the Act nor relevant American Bar Association Ethics Opinions permits a governing body to review class action litigation on a case-by-case basis. What is contemplated is the establishment by a governing body of broad policies that are consistent with its resource allocation priorities, and with the need to protect the rights of an individual client and similarly situated clients. The class action policy adopted by a governing body should not interfere with an attorney's independent judgment or duty to a client. See Sections 1006(a)(3); 1007(a)(1); ABA Committee on Ethics and Professional Responsibility, Formal Opinion 334.

Because a class action may be a useful way of avoiding duplicative and repetitive actions, the mandate of Section 1007(a)(3) that legal assistance be rendered in "the most economical and effective" manner, as well as the prohibition in Section 1007(a)(1) against impairing the integrity of the adversary process, preclude a recipient from adopting policies

that would prevent class actions in appropriate cases.

Part 1617 is added to read as follows.

- Sec.
1617.1 Purpose.
1617.2 Definition.
1617.3 Approval Required.
1617.4 Standards for Approval.

AUTHORITY: Secs. 1006(d)(5), 1007(a)(1), 1007(a)(3), 1008(e) (42 U.S.C. 2996e(d)(5), 2996f(a)(1), 2996(a)(3), 2996g(e)).

§ 1617.1 Purpose.

This Part is intended to promote responsible, efficient, and effective use of Corporation resources. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

§ 1617.2 Definition.

"Class action" means a class suit, class action appeal, or amicus curiae class action, as defined by statute or the rules of civil procedure of the court in which an action is filed.

§ 1617.3 Approval required.

No class action may be undertaken by a staff attorney without the express approval of the director of the recipient, acting in accordance with policies established by the governing board.

§ 1617.4 Standards for approval.

The governing body of a recipient shall adopt policies to guide the director of the recipient in determining whether to approve class action litigation. The policies adopted:

- (a) Shall not prohibit class action litigation when appropriate to provide effective representation to a client or a group of similarly situated clients;
- (b) Shall not require case-by-case approval of class action litigation by the governing body;
- (c) Shall give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act or Corporation regulations; and
- (d) Shall not interfere with the professional responsibilities of an attorney to a client.

Effective date: December 23, 1976.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 76-34497 Filed 11-22-76; 8:45 am]

PART 1618—ENFORCEMENT PROCEDURES

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996f ("the Act"). Sections of the Act, including Sections 1006(b)(1), 1006(b)(5), and 1007(d), 42 U.S.C. 2996e(b)(1), 2996e(b)(5), 2996f(d), provide that the Corporation shall have the authority to enforce, and to monitor and evaluate programs to insure, compliance with the Act and Corporation rules, regulations,

and guidelines. Section 1006(b)(2), 42 U.S.C. 2996e(b)(2), requires recipients to insure compliance by their employees with the Act and Corporation rules, regulations, and guidelines.

On September 23, 1976 (41 FR 41723) a proposed regulation on enforcement procedures was published. Interested persons were given until October 26, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

COMMENT

Congress conferred upon the Corporation the dual responsibility of insuring compliance by recipients and their employees with the provisions of the Act and Corporation rules, regulations, and guidelines, and of insuring "the protection of the integrity of the adversary process from any impairment in furnishing legal assistance" to eligible clients. (Sections 1006(b)(1) and 1007(a)(1)). The enforcement procedure established by this Part attempts to satisfy both these goals.

The Corporation's authority to enforce the Act is found in Sections 1006(b)(1) and 1007(d). The Act specifically mentions only termination of financial support to recipients as a means of general enforcement, but such a severe remedy probably would be unwarranted in most instances. It was necessary, therefore, to provide other methods of enforcement. Cf. Section 1006(b)(5), that does contemplate other remedies for violations of its provisions. The Congressional intention that the Corporation should have authority to create other remedies is specifically stated in the Conference Report:

The conferees intend that remedial measures short of termination be utilized prior to termination. S. Conf. Rep. 93-845, 93rd Cong., 2nd sess., 21 (1974).

To allow maximum latitude for informal resolution of violations, this Part does not specify what kind of remedial action, short of suspension or termination, should be taken when the Corporation finds a violation of the Act. It is anticipated that some initial violations may be due to uncertainty about the proper interpretation of the Act. In such instances, it should be sufficient to notify the recipient that its interpretation of the Act is erroneous. In other cases, the Corporation may instruct the recipient to remedy the matter according to its own procedures. It is expected that the Corporation will take formal action to remedy a violation only after other means have failed.

The procedure established by this Part is consistent with the Congressional intention that a recipient should have the initial responsibility for insuring that its employees comply with the Act. Section 1006(b)(2).

PRIMARY JURISDICTION

To insure uniform and consistent interpretation and application of the Act,

every alleged violation should be dealt with in the manner prescribed by this Part. Use of this procedure will also protect the integrity of the adversary process by insuring that questions of compliance with the Act will not become ancillary issues in cases undertaken by attorneys employed by recipients. The most common situation in which a question of compliance arises is when an opposing party in a lawsuit challenges a client's eligibility for representation by a legal services attorney. Several courts confronted with that issue have held that it is not a proper one for judicial determination. *Ingram v. Justice Court*, 69 Cal. 2d 832, 447 P. 2d 650 (1968); *Budget Finance Plan, Inc. v. Staley*, Civil No. GS 19245-65 (D.C. Ct. Gen. Sess., June 9, 1966); *Florida ex rel T.J.M. v. Carlton*, No. 75-245 (Fla. Dist. Ct. App., June, 1975) 9 Clearinghouse Rev. 209 (July, 1975); *Brednener v. Brednener*, (Penn. C.P. Luzerne Co., June 10, 1975) 9 Clearinghouse Rev. 277 (August, 1975). In both *Carlton* and *Brednener*, the courts specifically recognized the issue as being one for administrative resolution. In *Carlton*, the Court said:

No authorization, either state or federal, permits judicial inquiry into a client's eligibility for representation in a Florida Court by an attorney who is a member of the Florida Bar in good standing who has been designated by the client. Where the federal government makes legal services available under congressional authority, eligibility for rendering and receiving such legal services is a matter [to be resolved] by the federal agencies which make such services available. Slip Opinion at 2-3.

The approach taken by these courts is consistent with the one adopted here, which assumes that the Corporation has primary jurisdiction to enforce compliance with the Act. The primary jurisdiction doctrine requires a party to exhaust an available administrative procedure before seeking judicial resolution of a dispute subject to an agency's jurisdiction. The rationale for the doctrine supports its application to questions of compliance with the Legal Services Corporation Act. As explained by Professor Kenneth Davis, the doctrine is based on:

... recognition of the need for orderly and sensible coordination of the work of agencies and of courts. Whether the agency happens to be expert or not, a court should not act upon subject matter that is peculiarly within the agency's specialized field without taking into account what the agency has to offer, for otherwise parties who are subject to the agency's continuous regulation may become the victims of uncoordinated and conflicting requirements. 3 Davis Administrative Law § 1901, at 5 (Footnote omitted).

Where appropriate, the primary jurisdiction doctrine applies even in the absence of a specific statutory provision requiring it, as shown by the decision in *Andrew v. Louisville & Nashville R.R. Co.*, 406 U.S. 320 (1972). Commenting on *Andrew*, Professor Davis said:

... perhaps the case stands for the broad proposition that establishment of federal administrative machinery to take care of a class of controversies indicates legis-

tive intent to require prior resort to that machinery, even though the legislative body said nothing about such prior resort. Davis Administrative Law, 1976 Supplement, § 18.03 at 428.

The legislative history of the Legal Services Corporation Act supports the view that Congress intended the Corporation to have primary jurisdiction to enforce compliance with the Act. The original legal services bill, S.1815, 93rd Cong. 1st Sess. (May 15, 1973) and H.R. 7824, Id., contained a provision that would have given private citizens the right to seek enforcement of the Act in federal court. The provision was deleted, and in the Senate debates it was specifically noted by Senator Nelson that "Any violation of the bill's restrictions [is] to be enforced by the Corporation." 120 Cong. Rec. 12923 (Daily Ed., July 18, 1974).

Support for application of the primary jurisdiction doctrine is found in the provisions of the Act itself. Section 1006(b) (1) gives the Corporation the authority, and Section 1007(d) gives it the obligation to enforce the Act. Moreover, the Act's restrictions are cast in terms that refer to the relation between the Corporation and a recipient: Section 1007(a) requires the Corporation to "insure" that certain restrictions are observed, and Section 1007(b) prohibits certain use of "funds made available by the Corporation." Both provisions support the view that an alleged violation of the Act is, at least in the first instance, a matter to be resolved by the Corporation.

Part 1618 is added to read as follows:

- Sec
- 1618.1 Purpose.
- 1618.2 Definition.
- 1618.3 Complaints.
- 1618.4 Duties of Recipients.
- 1618.5 Duties of the Corporation.

AUTHORITY: Sections 1006(b)(1), 1006(b)(2), 1006(b)(5), 1007(d), 1008(e) (42 U.S.C. 2996e(b)(1), 2996e(b)(2), 2996e(b)(5), 2996f(d), 2996g(e)).

§ 1618.1 Purpose.

In order to insure uniform and consistent interpretation and application of the Act, and to prevent a question of whether the Act has been violated from becoming an ancillary issue in any case undertaken by a recipient, this Part establishes a systematic procedure for enforcing compliance with the Act.

§ 1618.2 Definition.

As used in this Part, "Act" means the Legal Services Corporation Act or the rules and regulations issued by the Corporation.

§ 1618.3 Complaints.

A complaint of a violation of the Act by a recipient or an employee may be made to the recipient, the State Advisory Council, or the Corporation.

§ 1618.4 Duties of Recipients.

A recipient shall:

- (a) Advise its employees of their responsibilities under the Act; and
- (b) Establish procedures, consistent with the notice and hearing require-

ments of Section 1011 of the Act, for determining whether an employee has violated a prohibition of the Act; and shall establish a policy for determining the appropriate sanction to be imposed for a violation, including:

(1) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(2) Suspension and termination of employment; and

(3) Other sanctions appropriate for enforcement of the Act; but

(c) Before suspending or terminating the employment of any person for violating a prohibition of the Act, a recipient shall consult the Corporation to insure that its interpretation of the Act is consistent with Corporation policy.

§ 1618.5 Duties of the Corporation.

(a) Whenever there is reason to believe that a recipient or an employee may have violated the Act, or failed to comply with a term of its Corporation grant or contract, the Corporation shall investigate the matter promptly and attempt to resolve it through informal consultation with the recipient.

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the Act, or, after notice, has failed to take appropriate remedial or disciplinary action to insure compliance by its employees with the Act, and attempts at informal resolution have been unsuccessful, the Corporation may proceed to suspend or terminate financial support of the recipient pursuant to the procedures set forth in Part 1612, or may take other action to enforce compliance with the Act.

Effective date: December 23, 1976.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 76-34498 Filed 11-22-76; 8:45 am]

PART 1620—PRIORITIES IN ALLOCATION OF RESOURCES

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996f ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(a)(2) of the Act requires the Corporation to establish, *inter alia*, priorities to insure that persons least able to afford legal assistance are given preference in furnishing such assistance.

On June 11, 1976 (41 FR 23727) a proposed regulation on priorities was published as § 1611.8 of the proposed regulation on eligibility. Interested persons were given until July 12, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

COMMENT

Section 1007(a)(2)(C) of the Act requires the Corporation to "establish priorities to ensure that persons least able to afford legal assistance are given preference in the furnishing of such assistance." In one sense, it may be argued that the mandate of that Section would be fully satisfied by the Corporation's choice of a maximum income level close to the subsistence line, excluding those with higher incomes who also might be deemed "eligible clients" within the meaning of the statutory definition. But regardless of the maximum income level established, no legal services program will have sufficient resources to meet all the legal needs of the financially eligible population in the area it serves. Disciplinary Rule 7-106 of the ABA Code of Professional Responsibility prohibits lawyers from undertaking more cases than they can handle in a professional manner. Recognizing this, every program has found it necessary to control its caseload, but few have done so in a rational way that insures that the most urgent needs of clients are met. As long as the need to control caseload continues, it will be necessary for programs to establish priorities in the provision of legal assistance.

In Formal Opinion 334 (August 10, 1974), the ABA Committee on Ethics and Professional Responsibility said that

A governing board [of a legal services program] may legitimately exercise control by establishing priorities as to the categories or kinds of cases which the office will undertake The subject matter priorities must be based on a consideration of the needs of the client community and the resources available to the program.

The procedure established by the proposed regulation follows the direction suggested by the ABA, and also harmonizes the statutory mandate to give preference to those least able to afford legal assistance with the provision immediately following, Section 1007(a)(3), that requires the Corporation to "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance." Section 1620.2 requires a recipient to enlist its clients, employees, and governing body in a focused inquiry designed to determine the community's most urgent legal needs, before establishing priorities. The approach is consistent with the one recommended to the Corporation by the Office of Management and Budget:

As in the case of medical treatment, the concept of triage must be applied—the relative need must be further defined in terms of resource availability and the distinction between emergency and deferrable legal matters. We believe it advisable for guidelines to be established which array the legal resources available and the worth (both social and economic) of the rights at issue. . . . Only when resources are sufficient to meet all "needs" is the luxury of a policy which need not make such a distinction reasonable.

Among other factors that a recipient may deem relevant, the regulation requires that consideration be given to the

resources of the recipient, the size of the financially eligible population in the area served, the availability of another source of free or low-cost legal assistance in a particular category of cases or matters, the urgency of particular legal problems, and the general effect of the resolution of a particular category of cases or matters on persons least able to afford legal assistance in the community served. To the extent that the priorities chosen by a program give preference to the legal problems of the poor *qua* poor, they may promote more economical and effective legal services by directing resources to problems that are likely to be encountered by numerous members of the community, and may be capable of solution by a unified approach.

There are a variety of methods by which a program might choose to implement its priorities. It might determine to give no assistance at all in certain categories of cases, or to give advice and consultation without engaging in litigation, or to limit litigation to the trial level. It might establish different income eligibility standards for different categories of cases. For example, if a recipient determined that divorce representation could be obtained from the private Bar for a low fee, it might limit its representation in divorce cases to only the poorest clients. Another means of enforcing priorities is through educational efforts to inform the client community of the availability of a legal remedy in a particular category of problems. Priorities should not be enforced in a manner that would prevent the recipient from providing legal assistance in an emergency when the interest of justice so required, or providing appropriate legal assistance in response to unexpected or changed circumstances.

Part 1620 is added as follows.

Sec.
1620.1 Purpose.
1620.2 Procedure.

AUTHORITY: Sec. 1007(a) (2); 42 U.S.C. 2996 (a) (2).

§ 1620.1 Purpose.

This Part is designed to insure that a recipient will allocate its resources in an economical and effective manner.

§ 1620.2 Procedure.

(a) A recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedures adopted shall insure participation by clients and employees of the recipient, and shall provide opportunity for comment by interested members of the public. Priorities shall be reviewed periodically.

(b) The following factors shall be among those considered in establishing priorities:

- (1) The resources of the recipient;
- (2) The population of eligible clients in the geographic area served by the recipient;
- (3) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;
- (4) The urgency of particular legal

problems of the clients of the recipient; and

(5) The general effect of the resolution of a particular category of cases or matters on persons least able to afford legal assistance in the community served.

Effective date. December 23, 1976.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc.76-34499 Filed 11-22-76; 8:45 am]

Title 47—Telecommunication

[FCC 76-1034]

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 0—COMMISSION ORGANIZATION

Order

Adopted: November 9, 1976.

Released: November 17, 1976.

By the Commission:

In the Matter of Amendment of § 0.465 Rules and Regulations.

1. A number of data bases are maintained on the Commission's computer. Copies of these data bases, and extracts therefrom, are available to the public in a variety of forms from the National Technical Information Service, Department of Commerce, and the Commission's duplicating contractor. Computer source programs and associated documentation produced by the Commission is available directly from the Data Automation Division, Office of Executive Director. It is appropriate for information concerning the availability of such data bases and where and how to obtain them to be set out in the Freedom of Information Rules. We are therefore amending those rules to provide this information.

2. Accordingly, it is ordered, effective November 29, 1976, that § 0.465 of the Rules and Regulations is amended as set out in the Appendix hereto. Authority for this amendment is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and in 5 U.S.C. 552. Because the amendment is purely informational in nature, compliance with the prior notice and effective date requirements of 5 U.S.C. 553 is unnecessary.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT MULLINS,
Secretary.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is revised as follows:

In § 0.465, paragraph (a) is revised and paragraph (d) is added to read as follows:

§ 0.465 Request for copies of materials which are available, for public inspection.

(a) The Commission annually awards a contract to a commercial firm to make copies of Commission records and offer

them for sale to the public. The contract is awarded on the basis of the lower cost to the public. The charges are 8.5 cents a page for 8½" x 11" pages and 9 cents a page for 8½" x 14" pages. Currently, the contractor is Downtown Copy Center, 1730 K Street N.W., Washington, D.C. 20006 (Tel: 202-452-1422). Except as provided in paragraphs (b), (c) and (d) of this section and in § 0.467, requests for copies of the records listed in §§ 0.463 and 0.455 and those made available for inspection under § 0.461, should be directed to the contractor.

(d) (1) Copies of computer maintained data bases produced by the Commission may be obtained from the National Technical Information Service (NTIS), Department of Commerce, in the form of computer tapes, cards and paper printouts, or as microfiche. Extracts from such data bases requiring a computer run may also be obtained from NTIS. These materials are not available directly from the Commission. Data bases produced by the Commission are listed in "Directory of Computerized Data Files, Software—and Related Technical Reports" (NTIS/SR-75-02), which may be obtained from NTIS. Extracts from this volume pertaining to the Commission are available, without charge, from the Commission's Consumer Assistance Office and the Public Information Officer. The materials describe the data base, state the fee for providing it, and specify ordering information.

(2) Copies of computer generated data stored as paper printouts or on microfiche may also be obtained from the Commission's duplicating contractor (see paragraph (a) of this section).

(3) Copies of computer source programs and associated documentation produced by the Commission may be obtained from the Data Automation Division, Office of the Executive Director. Requests shall be limited to computer source programs and associated documentation in existence when the request is submitted; requests which require the Commission to produce unique computer programs, data bases, and documentation, which are not part of its inventory at the time of the request, will not be honored. Likewise, periodic updates of these materials, as they occur, will not be furnished.

[FR Doc.76-34572 Filed 11-22-76; 8:45 am]

[Docket No. 20895]

PART 73—RADIO BROADCAST SERVICES
Report and Order (Proceeding Terminated)

Adopted: November 15, 1976.

Released: November 16, 1976.

By the Chief, Broadcast Bureau:

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Douglas, Wyoming)

1. The Commission herein considers the Notice of Proposed Rule Making, 41 FR 36220, in the above-captioned proceeding which was instituted on the Commission's own motion. The Notice proposed the substitution of Channel 257A for Channel 221A at Douglas, Wyo-