

Indiana Legal Services, Inc.

Client Eligibility Guidelines

I. Authority.

The authority for this policy is 45 CFR 1611.

II. Purpose.

This policy sets forth requirements relating to the financial eligibility of individual applicants for legal assistance supported with Legal Services Corporation (LSC) funds and Indiana Legal Services' (ILS's) responsibilities in making financial eligibility determinations. This policy is not intended to and does not create any entitlement to service for persons deemed financially eligible. This policy also seeks to ensure that financial eligibility is determined in a manner conducive to development of an effective attorney-client relationship. In addition, this policy sets forth standards relating to the eligibility of groups for legal assistance supported with LSC funds. Finally, this part sets forth requirements relating to ILS's responsibilities in executing retainer agreements with clients.

III. Definitions.

(a) "Advice and counsel" means legal assistance that is limited to the review of information relevant to the client's legal problem(s) and counseling the client on the relevant law and/or suggested course of action. Advice and counsel does not encompass drafting of documents or making third-party contacts on behalf of the client.

(b) "Applicable rules of professional responsibility" means the rules of ethics and professional responsibility generally applicable to attorneys in the jurisdictions where ILS provides legal services.

(c) "Applicant" means an individual who is seeking legal assistance supported with LSC funds from ILS. The term does not include a group, corporation or association.

(d) "Assets" means cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash, which are currently and actually available to the applicant.

(e) "Brief services" means legal assistance in which ILS undertakes to provide a discrete and time-limited service to a client beyond advice and consultation, including but not limited to activities, such as the drafting of documents or making limited third party contacts on behalf of a client.

(f) "Extended service" means legal assistance characterized by the performance of multiple tasks incident to continuous representation. Examples of extended service would include representation of a client in litigation, an administrative adjudicative proceeding, alternative dispute resolution proceeding, extended negotiations with a third party, or other legal representation in

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which ILS undertakes responsibility for protecting or advancing a client's interest beyond advice and counsel or brief services.

(g) “Governmental program for low income individuals or families” 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.

(h) “Governmental program for persons with disabilities” means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability.

(i) “Income” means actual, current, annual total cash receipts before taxes of all persons who are resident members and contribute to the support of an applicant's household, as that term is defined by ILS. Total cash receipts include, but are not limited to,

- wages and salaries before any deduction;
- income from self-employment after deductions for business or farm expenses;
- regular payments from governmental programs for low income persons or persons with disabilities;
- social security payments;
- unemployment and worker's compensation payments;
- strike benefits from union funds;
- veterans benefits;
- training stipends;
- alimony (spousal support);
- child support payments;
- military family allotments;
- public or private employee pension benefits;
- regular insurance or annuity payments;
- income from dividends, interest, rents, royalties or from estates and trusts; and
- other regular or recurring sources of financial support that are currently and actually available to the applicant.

Total cash receipts do not include:

- the value of food or rent received by the applicant in lieu of wages;
- money withdrawn from a bank;
- tax refunds;
- gifts;
- compensation and/or one-time insurance payments for injuries sustained;
- non-cash benefits; and
- up to \$2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

(j) “Household” means persons who live together and includes persons who:

- i. are related by blood or marriage and who have a legal obligation of support for one another; or
- ii. share financial resources; or
- iii. have a child or children together.

Household does not include the perpetrator of domestic violence upon a household member. Additionally, the income and assets of an alleged perpetrator of domestic violence upon the applicant or another household member shall not be considered in determining household financial eligibility. See further explanation below in Section VII.

IV. Financial eligibility policies.

(a) The ILS Board of Directors shall review these financial eligibility policies at least once every three years and make adjustments as necessary. ILS will implement procedures consistent with its policies.

(b) Only individuals and groups determined to be financially eligible under ILS’s financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds.

(c)(1) As part of its financial eligibility policies, ILS shall establish annual income ceilings for individuals and households, which may not exceed one hundred and twenty five percent (125%) of the current official Federal Poverty Guidelines amounts. The income ceilings used by ILS will be consistent with 45 CFR 1611 and are attached to these policies as Appendix A. The ceilings will be reviewed annually.

(2) As part of its financial eligibility policies, ILS adopts authorized exceptions to its annual income ceilings consistent with 45 CFR 1611.5 and as described below in Section V. B.

(d)(1) As part of its financial eligibility policies, ILS shall establish reasonable asset ceilings for individuals and households consistent with 45 CFR 1611.3.

(e) Before establishing its financial eligibility policies, ILS shall consider the cost of living in the ILS service area or locality and other relevant factors, including but not limited to:

(1) The number of clients who can be served by the resources of ILS;

(2) The population that would be eligible at and below alternative income and asset ceilings;
and

(3) The availability and cost of legal services provided by the private bar and other free or low cost legal services providers in the ILS service area.

V. Financial eligibility for legal assistance.

A. Income ceilings

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(a) ILS may provide legal assistance supported with LSC funds only to individuals whom ILS has determined to be financially eligible for such assistance. Nothing in this policy, however, prohibits ILS from providing legal assistance to an individual without regard to that individual's income and assets if the legal assistance is wholly supported by funds from a source other than LSC, and is otherwise permissible under applicable law and regulation.

(b) Consistent with ILS's financial eligibility policies and this policy, ILS may determine an applicant to be financially eligible for legal assistance if the applicant's assets do not exceed the ILS asset ceiling established pursuant to 45 CFR 1611.3(d)(1), described in Section VI below, or the applicable asset ceiling has been waived pursuant 45 CFR 1611.3(d)(2), described in Section VI(d) below, and:

(1) The applicant's income is at or below ILS's annual income ceiling; or

(2) The applicant's income exceeds ILS's applicable annual income ceiling but one or more of the authorized exceptions to the annual income ceilings, as provided in 45 CFR 1611.5 and described in Section V. B, applies.

B. Authorized exceptions to the annual income ceilings

(a) Consistent with ILS's policies and 45 CFR 1611.5, ILS may determine an applicant whose income exceeds ILS's applicable annual income ceiling to be financially eligible if the applicant's assets do not exceed ILS's applicable asset ceiling or the asset ceiling has been waived and:

(1) The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families; or

(2) The ILS Executive Director, or his/her designee, has determined on the basis of documentation received by ILS, that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service; or

(3) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and:

(i) The applicant is seeking legal assistance to obtain governmental benefits for low income individuals and families; or

(ii) The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities; or

(4) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and ILS has determined that the applicant should be considered financially eligible based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household:

- (i) Current future income prospects, taking into account seasonal variations in income;
- (ii) Unreimbursed medical expenses and medical insurance premiums;
- (iii) Fixed debts and obligations;
- (iv) Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;
- (v) Non-medical expenses associated with age or disability;
- (vi) Current taxes; or
- (vii) Other significant factors that ILS has determined affect the applicant's ability to afford legal assistance.

(b) In the event that ILS determines that an applicant is financially eligible pursuant to this section and is provided legal assistance, ILS shall document the basis for the financial eligibility determination. ILS shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such determination.

VI. Asset ceilings

- (a) The asset ceiling shall be \$8,000 of cash or items readily convertible to cash which are currently and actually available to the applicant's household and are not excluded or exempt as indicated below.
- (b) Exclusions from assets are:
 1. The applicant's or household's primary residence and household goods,
 2. Vehicles used by the applicant or household members for transportation,
 3. Assets used in producing income (although the earnings are counted as income),
 4. Other assets exempt from attachment under Indiana law under Indiana Code Sections 34-55-10 et seq., 5-10.3-8 et seq.; 5-10.4-5 et seq.; 6-8-11 et seq.; 27-1-12 et seq.; and 27-2-5 et seq.;
- (c) Waiver of asset ceiling:

In unusual circumstances, the Executive Director or designee may waive the asset ceiling for an applicant if consideration of the factors listed in Section V. B. above demonstrate the applicant will face undue hardship absent a waiver. The reason for any waiver must be documented and must be maintained in the client file.

VII. Financial Eligibility of Households with Victims of Domestic Violence

- (a) In assessing the income or assets of an applicant who is a victim of domestic violence, or is a member of the household of a victim of domestic violence, ILS will consider only the assets and income of the applicant and members of the applicant's household other than those of the alleged perpetrator of the domestic violence and will not include any assets held by the alleged perpetrator of the domestic violence, or assets jointly held by any member of the applicant's household with the alleged perpetrator of the domestic violence.

VIII. Representation of groups

(a) ILS may provide legal assistance to a group, corporation, association or other entity if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel and either:

(1) The group, or for a non-membership group the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or

(2) The group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity.

(b)(1) In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by paragraph (a) of this section, ILS shall consider the resources available to the group, such as the group's income and income prospects, assets and obligations and either:

(i) For a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or

(ii) For a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought relates to such activity of the group.

(2) ILS shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria set forth herein.

(c) The eligibility requirements set forth herein apply only to legal assistance supported by funds from LSC, provided that any legal assistance provided by ILS, regardless of the source of funds supporting the assistance, must be otherwise permissible under applicable law and regulation.

IX. Manner of determining financial eligibility

(a)(1) In making financial eligibility determinations regarding individual applicants, ILS shall make reasonable inquiry regarding sources of the applicant's income, income prospects and assets. ILS shall record income and asset information in client files, whether they be paper or electronic.

(2) In making financial eligibility determinations regarding groups seeking LSC-supported legal assistance, ILS shall follow the requirements set forth in 45 CFR 1611.6(b) and described in Section VIII above.

(b) ILS shall adopt simple intake forms (including online forms) and procedures to obtain information from applicants and groups to determine financial eligibility in a manner that promotes the development of trust between attorney and client. The forms shall be preserved by ILS.

(c) If there is substantial reason to doubt the accuracy of the financial eligibility information provided by an applicant or group, ILS shall make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship. Any documents obtained during the inquiry shall be retained in the client file.

(d) When another LSC-recipient program has determined that a client is financially eligible for service in a particular case or matter, that LSC recipient may request ILS to extend legal assistance or undertake representation on behalf of that client in the same case or matter in reliance upon the initial financial eligibility determination. In such cases, ILS is not required to review or redetermine the client's financial eligibility unless there is a change in financial eligibility status as described below in the section titled "Change in financial eligibility status" or there is substantial reason to doubt the validity of the original determination, provided that the referring LSC recipient provides and ILS retains a copy of the intake form documenting the financial eligibility of the client.

X. Change in financial eligibility status

(a) If, after making a determination of financial eligibility and accepting a client for service, ILS becomes aware that a client has become financially ineligible through a change in circumstances, ILS shall discontinue representation supported with LSC funds if the change in circumstances is sufficient, and is likely to continue, to enable the client to afford private legal assistance, and discontinuation is not inconsistent with applicable rules of professional responsibility.

(b) If, after making a determination of financial eligibility and accepting a client for service, ILS later determines that the client is financially ineligible on the basis of later discovered or disclosed information, ILS shall discontinue representation supported with LSC funds if the discontinuation is not inconsistent with applicable rules of professional responsibility.

XII. Retainer agreements

(a) When ILS provides extended service to a client, ILS shall execute a written retainer agreement with the client. The retainer agreement shall be executed when representation commences or as soon thereafter as is practicable. Such retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal services to be provided.

(b) No written retainer agreement is required for advice and counsel or brief service provided by the recipient to the client or for legal services provided to the client by a private attorney pursuant to 45 CFR 1614.

(c) ILS shall maintain copies of all retainer agreements generated in accordance with this section.

XIII. Additional Policies Concerning Client Eligibility:

Client eligibility is always contingent upon the client and the case or matter being eligible under all other ILS policies and LSC statutes and regulations.