

45 CFR PART 1611 FINANCIAL ELIGIBILITY

NEIGHBORHOOD LEGAL SERVICES, INC. APPLICANTS FOR LEGAL ASSISTANCE FINANCIAL ELIGIBILITY POLICY July 2017

I. NLS Financial Eligibility Policy

- a. This Financial Eligibility Policy (FEP) sets forth guidelines to be used to determine who is financially eligible to receive NLS services that are funded by the Legal Services Corporation (LSC), or other funding sources that have financial eligibility criteria. The NLS Board of Directors will review its FEP at least once every three years and make adjustments as necessary, in compliance with 45 CFR §1611.3(a).
- b. Only individuals and groups determined to be financially eligible under this FEP and LSC regulations may receive NLS services supported with LSC funds.
- c. The maximum annual income level for NLS services financial eligibility is 125% of the official Federal Poverty Guidelines, as adjusted annually, by household size. 45 CFR Part 1611 Appendix A, *Income Level for Individuals Eligible for Assistance, Legal Services Corporation Income Guidelines* is incorporated by reference into and constitutes part of this FEP. The NLS Board of Directors reviews the FEP maximum income levels annually and revises them, as necessary, in accordance with official Federal Poverty Guidelines published annually in the FEDERAL REGISTER, and incorporated as Appendix A to 45 CFR Part 1611. NLS distributes revised FEP maximum income levels to its advocates annually as so published.
- d. NLS has adopted authorized exceptions to this FEP's income limit in accordance with 45 CFR §1611.5. The NLS process for making an authorized exception to the FEP income limit is set forth in §VII of this FEP.
- e. NLS has adopted a reasonable applicant asset limit for individuals and households. A copy of the NLS *Client Asset Eligibility Limits*, approved by the NLS Board of Directors, is incorporated by reference into and constitutes part of this FEP. Exemptions from and calculation of an applicant's total assets are set forth below in §V of this FEP. The NLS Board of Directors reviews the FEP asset limit annually and revises it as necessary. NLS distributes revised FEP asset limits to advocates as updated and adopted by its Board of Directors.

- f. Applicants may be eligible for a waiver of the NLS asset limit. The process for determining whether an asset limit waiver is appropriate is set forth below in §VI of this FEP.
- g. When assessing the income/assets of an applicant who is a victim of domestic violence (DV), NLS will include only the income and assets of the applicant and members of the applicant's household and must exclude the alleged DV perpetrator's assets and any assets the applicant or members of the applicant's household hold jointly with the alleged DV perpetrator.
- h. In creating this FEP, NLS has considered: cost of living in the service area; number of clients who can be served by NLS resources; population that would be eligible at and below alternative income and asset limits; and the availability and cost of legal services provided by the private bar and other local free or low cost legal services providers.
- i. Applicants deemed financially eligible are not entitled, solely on the basis of such financial eligibility, to receive legal services from NLS. NLS handles applicant case acceptance as a matter separate from financial eligibility. Additional factors that may be considered in the NLS case acceptance process are set forth in §X of this FEP.
- j. This FEP does not apply to applicants who seek NLS services pursuant to a funding source that does not have financial eligibility criteria as a condition of receiving services. All NLS legal services supported with non-LSC funds will comply with the LSC Act, LSC regulations, and all other applicable laws and regulations.

II. Financial Eligibility for Legal Assistance

- a. NLS will provide legal assistance supported with LSC funds only to applicants determined to be financially eligible for NLS services under this FEP. NLS may provide legal assistance to an applicant who does not meet this FEP's income and asset limits, provided that the services provided are wholly supported by non-LSC funds and the services are permissible under the LSC Act and related regulations. In such cases, NLS will determine eligibility in accordance with the terms and conditions of the relevant non-LSC funding source. Should non-LSC supported cases meet LSC financial eligibility criteria, NLS will report these cases to LSC. All NLS legal services supported with non-LSC funds will comply with the LSC Act and related regulations and all other applicable laws and regulations.

b. An applicant for NLS services may be determined financially eligible for legal assistance if:

i. Applicant's assets do not exceed this FEP's asset ceiling, or an authorized exception to the asset ceiling applies to applicant, **AND** applicant's income does not exceed the FEP income limit, or NLS has determined an authorized exception to the income limit applies to applicant,

OR

ii. Applicant's income comes solely from a governmental program for low-income individuals and families with an income eligibility level at or below 125% of the official Federal Poverty Guidelines and an asset eligibility test. The NLS Board of Directors has determined that the only governmental programs in the NLS service area that currently meet these income and asset limitations are Temporary Assistance (Family Assistance and Safety Net Assistance) and Non-PASS Supplemental Security Income. When an applicant's income is derived solely from either of these two programs, then NLS may determine the applicant to be financially eligible without making an independent determination of the applicant's income or assets. NLS must, however, record the applicant's household size, household income and specify the identity of the qualifying governmental program from which applicant receives all income.

III. Income Defined

45 CFR §1611.2(i) defines income as actual **current annual total cash receipts before taxes** for all persons who are resident members and contribute to the support of an applicant's household.

a. Total cash receipts include, but are not limited to:

- Wages and salaries before any deduction
- Income from self-employment, after deductions for expenses
- Regular payments from governmental programs for low income persons or persons with disabilities
- Supplemental Security Income (SSI)
- Social Security payments
- Unemployment payments
- Worker's Compensation payments
- Strike benefits from union funds
- Veterans benefits
- Training stipends

- Alimony/Maintenance payments
- Child support payments
- Military family allotments
- Pension benefits (public/private)
- Regular insurance or annuity payments
- Dividends
- Interest
- Rental income
- Royalties
- Estate and/or Trust Income

b. Total cash receipts do not include:

- Value of food or rents received in lieu of wages
- Money withdrawn from a bank account
- Tax refunds
- Gifts
- Personal injury compensation and/or one-time insurance payments
- Non-cash benefits
- Indian Trust Income up to \$2000 per year per individual in household

c. Household Defined.

NLS has determined that, for purposes of this FEP, a household consists of those people living in the same physical dwelling as the applicant and for whom the applicant has a legal obligation to provide support, or who has a legal obligation to support the applicant. In a specific case, NLS may include in the household an individual who shares the same physical dwelling with an applicant, but who has no legal obligation to support the applicant. This decision depends on whether the non-applicant's income and/or resources are available to secure other legal representation. The decision to include the non-applicant's income and/or resources in the financial eligibility determination requires the approval of the intake advocate's Unit Supervisor, the NLS Deputy or Executive Director.

IV. Assets Defined

45 CFR §1611.2 defines assets as 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. Only the equity value, i.e., not the fair market value, of applicant's assets will be included in total asset value for FEP eligibility purposes. Although the terms liquid and non-liquid assets are no longer

used in 45 CFR Part 1611, NLS considers all assets available to an applicant to obtain private legal assistance in calculating total assets for FEP purposes. NLS will include the equity value of real property that is not applicant's primary residence as an asset toward an applicant's asset ceiling unless the applicant demonstrates it should not be considered a resource available to secure private legal representation. If an applicant jointly owns real property that is not applicant's primary residence, NLS will not include such real property presumptively within applicant's total assets for purposes of financial eligibility unless the co-owner is a member of applicant's household as defined in §III.c. of this FEP.

V. Asset Ceiling

a. The NLS Board of Directors has adopted an applicant asset ceiling for individuals and households. A copy of the NLS *Client Asset Eligibility Limits*, approved by the NLS Board of Directors, is incorporated by reference into and constitutes part of this FEP. NLS advocates with questions regarding assets to be included within or excluded from total asset value computation for a particular applicant should consult the NLS Deputy Director, Legal Compliance and Operations.

a. Applicant asset levels are calculated excluding consideration of the following:

- Applicant's principal residence
- Vehicles used for transportation (i.e., non-recreational vehicles)
- Assets used in producing income
- Assets (real and personal property) exempt from attachment under state or federal law, such as:
 - IRA, 401(k), Keogh or other qualified retirement plan
 - NYS college choice tuition savings program trust fund payments for the benefit of a minor, or up to \$10,000 if applicant owns account
 - Household goods, limited*
 - Tools of the trade, limited*
 - Interest in a life insurance policy, limited
 - Property/money damages arising from personal property damages for up to one year after collection of proceeds
 - Spendthrift trust property, provided trust not created by applicant
 - Jewelry, limited*
 - Military uniforms, arms, equipment, pensions and awards
 - Benefits from crime victim reparation laws/certain wrongful death actions
 - Security deposits for rental real estate/utilities
 - Service animals
 - Necessary medical/dental accessories

* Limits associated with some above-listed assets are set by New York State and/or federal bankruptcy laws. NLS advocates with questions regarding asset exemption limits should consult the NLS Deputy Director, Legal Compliance and Operations.

VI. Waiver of Asset Limit

- a. Applicants may be eligible for a waiver of the FEP asset limit. If an applicant possesses available assets that exceed the FEP asset limit, the applicant is financially ineligible for legal assistance unless the relevant NLS Unit Supervisor, Deputy or Executive Director grants a waiver because the applicant's circumstances are unusual.
- b. NLS advocates who identify applicants with compelling circumstances justifying an asset waiver request will request permission for an asset waiver by submitting a completed Asset Ceiling Waiver Request form to the advocate's Unit Supervisor, the NLS Deputy or Executive Director detailing the reasons why such a waiver is appropriate. (See attached Asset Ceiling Waiver Request form.)
- c. The advocate requesting an applicant asset waiver will give a copy of the approved, signed and dated Asset Waiver Request form to the Executive Director for NLS records and place a copy of this form in the client file.

VII. Authorized Exceptions to Income Limit

- a. NLS may determine that an applicant whose income exceeds the FEP annual income limit is financially eligible for services, provided that the applicant's assets do not exceed the FEP asset limit or the applicant has received an asset ceiling waiver under this FEP. In all income exception cases involving applicants with income above 200% of Federal Poverty Guidelines, intake advocates will seek approval for the income exception from the advocate's Unit Supervisor, the NLS Deputy or Executive Director.

NLS may approve an applicant income exception under the following circumstances:

- i. When the relevant NLS Unit Supervisor, Deputy or Executive Director has determined that applicant seeks NLS services to maintain government benefits for low income individuals or families (annual income may exceed 200% of Federal Poverty Guidelines),

OR

ii. When the relevant NLS Unit Supervisor, Deputy or Executive Director has determined that, excluding applicant's verified medical/nursing home expenses, applicant's income does not exceed the FEP income limit (annual income before medical/nursing home exclusions may exceed 200% of Federal Poverty Guidelines). NLS will verify medical/nursing home expenses through documentation from the client or a relevant service provider.

1. NLS advocates requesting permission for an authorized income exception under §VII.a.i. or ii. will be responsible for completing for the approval of the relevant NLS Unit Supervisor, Deputy or Executive Director Executive Director, as applicable, an Income Exception Request form.
2. Upon approval of an income exception under §VII.a.i. or ii., the NLS advocate will also be responsible for giving the Executive Director a copy of the signed and dated Income Exception form and placing a copy of the memo in the client file.

OR

iii. When applicant's income does not exceed 200% of the official Federal Poverty Guidelines **AND**:

1. Applicant seeks NLS services to obtain governmental benefits for low income individuals and families;

OR

2. Applicant seeks NLS services to obtain/maintain government disability benefits;

OR

3. NLS has determined financial eligibility on the basis of one or more of the following factors:
 - a. Current income prospects/seasonal income variation;

- b. Unreimbursed medical expenses/medical insurance premiums;
- c. Fixed debt/financial obligations;
- d. Employment or pre-employment expenses such as dependent care, transportation, work clothing/equipment, job training and/or educational activities in preparation for employment;
- e. Age/disability non-medical costs; and/or
- f. Current taxes;

OR

- 4. NLS has determined and documented the existence of other factors significantly affecting the applicant's ability to afford legal assistance.
 - iv. NLS advocates who determine that an applicant meets the criteria for an authorized income exception under Section VII.a.iii. of this FEP will document the specific facts and factors upon which the exception is made by recording them in the NLS electronic case management system. The NLS Deputy Director, Legal Compliance and Operations will conduct regular electronic file review of selected cases in which a client's gross income exceeds 125% of Federal Poverty Guidelines to ensure that NLS the income exception is properly applies this FEP's income exceptions and adequately documents reasons for these exceptions.
 - b. For all authorized income exceptions granted pursuant to §VII of this FEP, the NLS advocate will ensure that the automated case management system documents the applicant's gross income in order to preserve a record that the applicant initially exceeded the basic income level, but was served under this FEP's authorized income exceptions. **Advocates also will ensure that calculations involving exceptions to income ceilings are not applied in a manner that changes applicant's gross income recorded in the file.**

VIII. Group/Entity Applicants

- a. NLS may provide legal assistance to a group or an entity, provided that the legal assistance is permissible under the LSC Act and related regulations and all other applicable law and regulations. Financial eligibility criteria set forth below applies only to LSC-funded legal assistance provided to an applicant group/entity.

b. NLS legal assistance to a group, corporation, association or other entity may be given if the applicant group/entity provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel **AND**:

i. Applicant group, or governing body if a non-membership entity, is primarily composed of individuals who would be financially eligible for LSC-funded assistance,

OR

ii. Applicant group/entity's principal activity is the delivery of services to persons in the community who would be eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity.

c. In determining whether the applicant group/entity is financially eligible under this FEP, NLS will consider the resources available to the applicant group/entity, including its income and income prospects, assets and obligations,

AND

i. In the case of an applicant group/entity primarily composed of individuals eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the group members/governing board are consistent with those who are financially eligible for LSC-funded legal assistance,

OR

ii. In the case of an applicant group/entity 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 is related to such activity of the group.

d. The NLS advocate representing the applicant group/entity will collect information that reasonably demonstrates that the applicant group/entity meets the FEP criteria set forth in subsections (b) and (c) above and place such information in the client file.

IX. Manner of Determining Eligibility of Individual and Group Applicants

a. NLS will determine an individual applicant's eligibility by making reasonable inquiries regarding sources of applicant's income, income prospects and assets.

NLS advocates will record this information on the income and available assets portion of the NLS intake form. The intake advocate must record applicant's household income even if it is ZERO.

- b. If an individual applicant's total household income is derived solely from a governmental program for low income individuals/families pursuant to §II(b)(ii) of this FEP, the total assets value does not have to be determined or recorded, but the advocate must record applicant's household size, household income and the specific identity of the qualifying governmental program.
- c. Both the intake procedures and intake form(s), when applicable, for individuals and group applicants will be as simple as possible to foster trust between client and attorney. The intake process and forms will be sufficient in detail to ensure compliance with this FEP, the LSC Act and related regulations. NLS will preserve all intake forms for five years.
- d. If there is substantial reason to doubt the accuracy of the information provided by a client, the advocate will make appropriate inquiry to verify it in a manner consistent with an attorney-client relationship.
- e. Information furnished to an NLS employee by a client to establish financial eligibility will not be disclosed to any person who is not employed by NLS in a manner that permits identification of the client without the client's consent, except in exigent circumstances relating to the client's case. However, NLS may provide this information to staff of the Legal Services Corporation for purposes of verifying compliance with the LSC Act and related regulations for cases reported to the LSC.
- f. When an applicant has been determined financially eligible for LSC-funded legal assistance by an LSC-funded program, the program performing the initial intake may request that another LSC-funded program provide legal assistance to said applicant in reliance upon the initial program's financial eligibility determination unless:
 - i. There is a change in the applicant's financial circumstances,

OR

 - ii. There is substantial reason to doubt the validity of the original financial eligibility determination.
- g. In the event of one LSC-funded program making a financial eligibility determination and referring the applicant to another LSC-funded program, the referring program will provide the receiving program a copy of the applicant's intake form documenting the financial eligibility of the applicant. The receiving

LSC-funded program will retain a copy of the referring program's intake sheet in the applicant intake file or, if applicable, the client file.

X. Case Acceptance Factors for Financially Eligible Applicants

- A. An individual or group whose income does not exceed the NLS FEP income/assets limit may be determined ineligible for services. In addition to income, other relevant factors must be considered before a determination of eligibility for services is made. These factors include, but are not limited to:
1. The availability of private legal representation at a low cost with respect to the particular matter in which assistance is sought;
 2. The consequences for the applicant if legal assistance is denied;
 3. The availability of advocate staff to provide services;
 4. NLS program priorities; and
 5. Whether the applicant is a U.S. citizen or an eligible alien.


XI. Change in Financial Eligibility Status

- a. If NLS becomes aware that a client has become financially ineligible since initial intake, NLS will discontinue representation with LSC funds if the client's change in circumstances is sufficient, and is likely to continue, to enable the client to afford private legal assistance. Such cases remain CSR reportable even if NLS discontinues representation. *CSR LSC Handbook*, 2008 Ed., 2017 Cumulative Revision §3.5, footnote 16.
- b. If, after making a determination of financial eligibility and accepting a client for service, NLS determines that the client was not financially eligible at intake, on the basis of later discovered or disclosed information, NLS will discontinue representation supported with LSC funds if the discontinuation is not inconsistent with applicable rules of professional responsibility. Such cases are not CSR reportable because the client was not LSC income eligible upon case acceptance. *CSR LSC Handbook*, 2008 Ed., 2017 Cumulative Revision §3.5, footnote 16.
- c. Withdrawal as counsel under all of the circumstances in (a) and (b) above must be done in accordance with the provisions of the NYS CPLR and the NYS Rules of Professional Conduct.
- d. When representation discontinuation is not possible under XI.a. or b. of this FEP due to professional responsibility rules, NLS may continue to provide representation with LSC funds.

XII. Retainer Agreement

- a. NLS staff will execute a written retainer agreement on the form provided by NLS with each client who receives extended service from the program. Extended service means legal assistance characterized by the performance of multiple tasks incident to continuous representation. NLS staff will also execute a written retainer agreement with each client whose case is accepted after an in person NLS consultation with a legal advocate.
- b. The retainer agreement will be executed when representation commences or as soon thereafter as is practicable.
- c. The retainer agreement will be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the NLS service area and will 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. The retainer will also clearly identify the relationship between the client and the recipient and the rights and responsibilities of the client. The advocate will ensure that the signed retainer agreement is placed in the client file.
- d. NLS program staff are not required to execute a written retainer agreement when the only service to be provided is advice and counsel or brief service and the client does not meet in person with an NLS advocate for case acceptance purposes, or for legal services provided to the client by a private attorney pursuant to 45 CFR §1614.

This Program Policy was adopted by resolution of the NLS Board of Directors by unanimous written consent on ~~February~~ August 16, 2017.



Thomas F. Knab, Esq.
NLS Board President

August 16, 2017

Date