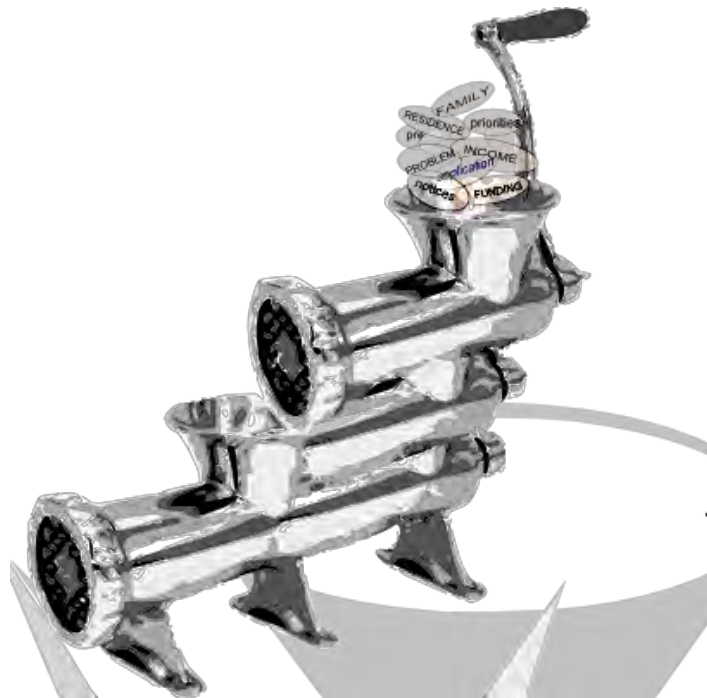

PENNSYLVANIA LEGAL AID NETWORK

ELIGIBILITY MANUAL

Version 3.0
September 2012



Prepared by David B. Tilove with Susan Lucas and Sam Milkes, Esq.

Table of Contents

Introduction	1
Overview of Content	1
Version History	4
Prologue	5
Chapter 1: Overview of Funding Sources	7
PLAN, Inc. Funding Sources	7
Title XX & State	7
Interest on Lawyers' Trust Accounts (IOLTA)	8
Access to Justice (AJA)	9
Disability Advocacy Project (DAP)	10
Legal Services Corporation (LSC)	10
Other Funding Sources	11
Quick Comparison Of Issues by Funding Source	12
Chapter 2: Establishing Eligibility: the Process	18
The Right to Apply for Service	18
Gathering Information	18
Signing the Application	21
Minors	22
Determination Date	23
Group Eligibility	23
How to Determine the Group's Eligibility	24
Funding Source Assignments	24
Common Pool	25
Basis of Eligibility	25
Component code	26
Change of Funding source	27
Retainer	28
Notices Required by Title XX Regulations	28
Notice of Grievance Procedures	29
Record Retention (Written and Electronic)	29
Chapter 3: Financial Eligibility Requirements	31
Protective Services	31
Medical Assistance	31
Income Eligibility	32

Whose Income is Counted?	32
Family.....	33
Individual.....	33
Emancipated Minor	33
Tax Dependents Option	34
Examples of Title XX Family Size	35
Tax Dependent Example	36
What is Counted as Income?	37
PLAN, Inc.:	37
LSC:.....	37
COMPARING INCOME Elements by Funding Source	37
Authorized Exceptions to the Income Ceiling.....	50
Assets	51
Change of Financial Circumstances	51
Chapter 4: Non-Financial Eligibility Issues and Other Requirements	53
Non-Financial Eligibility Issues	53
Citizenship, Eligible Alien Status	54
Pennsylvania Residency	54
Fee-Generating Cases.....	55
Conflict of Interest	56
Criminal Matter.....	56
Frivolous or Without Merit	57
Case Exclusions	57
Obligation of Commonwealth	57
Institutionalized Persons.....	58
Class Actions	58
Non-Priority Cases/Lack of Resources	59
Inconsistent With Professional Responsibilities	59
Attorney/Staff Unavailable	59
Waiting Lists.....	59
Chapter 5: Limited Service by telephone.....	61
Chapter 6: Grievances and Title XX Notices.....	63
Grievances.....	63
Grievance Policies and Procedures.....	63
Notice of Grievance Procedure.....	65

Adverse Actions and Grievance Procedures	65
Which Grievance Procedure Applies?.....	66
Closing DPW-Funded Cases/Rejecting Applicants for DPW-funded Services.....	66
Title XX Notices and DPW Fair hearing	66
Rejecting an Application for DPW-Funded Services	67
Title XX Written Notice of Closing A DPW-Funded Case.....	68
Communications Problems	69
Notices to PLAN, Inc. Regarding an Appeal	69
Instructions for Completion of Written Notices	70
Title XX Closing Notices.....	71
Model Notices of Case Closing.....	71
Model Notices of Applicant Rejection	71
Rejection Codes: Non-Financial Reasons for Rejection of Applicant.....	71
Text of language for section 5, Title XX Model Notices for Case Rejection.....	73
Text of language for Title XX Model Notices for Case Closing	75
Title XX Written Notice Form	76
Chapter 7: Closing and Reporting Cases to PLAN, Inc.....	78
Closing Cases.....	78
Close or Reject?.....	78
Automatic Closing	78
Prompt Closing.....	78
Closing Codes	79
Capturing Outcomes Data.....	80
Reporting Cases to PLAN, Inc.....	80
Appendices.....	84
Source Documents	1
Title XX Regulations	1
Access To Justice Act Regulations.....	1
B: Program Policies	1
List of Qualifying Medical Assistance Categories.....	1
Title XX Rights and Responsibilities	1
C: Forms	1

INTRODUCTION

This eligibility manual is intended for intake staff, compliance officers, and managers. Its emphasis is on rules and regulations for the use of funding provided to programs by the Pennsylvania Legal Aid Network (PLAN, Inc.). These include Title XX and associated state funds from the PA Department of Public Welfare (DPW), funding from DPW for the Disability Advocacy Project (DAP), Interest on Lawyers' Trust Accounts funding (IOLTA), and Access to Justice Act funding (AJA).¹ They are collectively referred to in this manual as "PLAN, Inc. funding sources."² A review of Legal Services Corporation (LSC) regulations is included to clarify similarities and differences with PLAN, Inc. funds, but this manual is not intended to offer comprehensive guidance on the use of LSC funds.

This manual replaces the Caseload Reporting Manual last published by the Pennsylvania Legal Services Center (now PLAN, Inc.) in 1984 and substantially revised, updated, and renamed as the PLS Eligibility Manual in 1995. Title XX regulations have not changed although a few modifications and waivers were implemented by contract. Access to Justice Act funding has come on the scene since then, and regulations were issued on the use of AJA. The 1985 manual was written at a time of hand-processed intakes. By 1995, the data processing was done using the Legal Services Case Reporting System (LSCRS). While all programs currently use a version of the Kemp's Case Management System (Prime for PA or PA Clients for Windows), or report data to PLAN, Inc. in a format friendly to the Prime software, this manual is not intended to specifically rely upon any one case management system. However, a thorough understanding of the program's case management system is required to successfully enter, manage, and report information.

OVERVIEW OF CONTENT

- The Table of Contents hyperlinks entries to the associated text.
- Chapter 1 provides an overview of LSC and PLAN, Inc. funding sources and includes a quick reference chart displaying how each funding source considers discrete eligibility issues.
- Chapter 2 describes the nuts and bolts of the application process for individuals and groups, including funding source assignments and record retention.
- Chapter 3 focuses on financial eligibility and includes guidance on determining family size. An annotated table details each element of income inclusions and exclusions identified by PLAN, Inc. sources and LSC.
- Chapter 4 reviews the factors, other than income, which affect eligibility.
- Chapter 5 identifies all of the regulatory requirements that are affected when limited services are delivered by telephone only.

¹ As of July 2012, PLAN, Inc. will also receive settlement funds from IOLTA for a five-year, mortgage foreclosure initiative.

² PLAN, Inc. was informed by the Department of Public Welfare that funding for the employment law project would end as of June 30, 2012. New cases could not be accepted after March 31, 2012. Efforts are ongoing to reinstate this funding, and if successful, this manual will be revised to include content about this special project.

- Chapter 6 addresses program grievance procedures and special Title XX procedures regarding the rejection of applicants and termination or reduction of services.
- Chapter 7 offers guidance for closing cases and reporting cases to PLAN, Inc.
- The appendices include Title XX and AJA regulations and some additional material. Links are included to on-line source material. The lists also suggest other local documents, which may be useful as local program links.

This manual is meant to be integrated with **local program guidance**. There is no single process by which legal services programs must perform all of the tasks associated with client eligibility. It is critical for each program to have a clear and consistent process, but the way tasks are handled will vary from one program to the next. Staffing patterns, divisions of responsibility, local priorities and case acceptance policies, uses of hotlines and centralized intake, routines for interviewing applicants, and other factors will affect local procedures. Certain rules must be uniform despite local variation in procedure. For example, the rule which states Title XX eligibility does not take assets into consideration is uniform, while local practice will govern whether certain eligibility decisions are made by an intake worker or a staff or managing attorney. The purpose of this manual is to identify and provide clear guidance on the rules that are uniform as well as the limits or framework within which local practices must function.

From the day this manual is issued, the content begins to be outdated as funders’ requirements change or new directives are issued. This manual is being distributed in an **electronic format** to support ongoing revision by PLAN, Inc. and to support the use of electronic links to other source materials. Title XX regulations, available for the first time in an electronic format, are included in the appendix, and applicable sections are linked from the text. The appendix both links to external relevant material and includes a suggested list of local program documents and policies— e.g. grievance procedure and funding source assignment policies— for which links can be locally inserted. (For the pdf version of the manual, try the link tool in Acrobat Pro). Because the primary use is expected in an electronic form, no formal index is included.

 This icon is used to identify suggested “**best practices**” in the text.

Navigating in Word: Ctrl-click on any entry in the Table of Contents, cross-referenced page, or citation to Title XX or AJA regs to hyperlink to the associated text. Alt+left arrow returns you to the previous location. Ctrl-f (find) allows you to search for any word. Hyperlinks (except the Table of Contents entries) are formatted [like this](#).

Navigating in Adobe reader: same as Word except use click instead of ctrl-click for a link. The tool bar has a left arrow next to the page number that also returns you to the prior location, and shift-ctrl-f or the edit menu brings up the advanced search which returns a full list of the word(s) in a one-line context. Boolean operators and wildcards are not allowed. “Stemming” (on the “more options” menu on the advanced search screen) finds words containing part of the specified search word, e.g. search for *opening* and get instances of *open, opened, opens, openly, etc.*

Source references in footnotes

Access to Justice regulations are found in the appendix and at [204 PA Code §401 et seq.](#), and are referred in this manual with the shorthand “AJA401.x.”

Title XX regulations, identified as 3-1-1 through 3-1-209 are referenced in this manual with the shorthand form “TXX 3-1-xxx.” These regs appear as an appendix and are not available online.

LSC regs are found in [45 CFR §1600](#), et seq., and are referenced in this manual with the shorthand “LSC 16xx.”

A word about what constitutes a “**case.**” While the term differs under various funding sources’ definitions, all sources share the common understanding that a “case” includes assistance to a client that is in the form of individualized legal advice or representation. Neither the provision of a pamphlet; the making of a referral; nor the guiding of a client to the PA LawHelp website constitutes a case. Those activities could be counted as “other services” (formerly referred to by LSC as “matters” and comprised of community legal education, *pro se* assistance, and referrals). To constitute a case, sending a pamphlet would require a companion discussion during which the client was advised, for example, about the procedures the landlord must follow to evict the client; a referral would have to be to the appropriate office to apply for unemployment compensation after the client was advised that, given the factual background, they should be eligible for unemployment compensation; or a referral to the website would have to be in connection with an explanation to the client as to why he/she was entitled to a return of the security deposit. This manual is focused on eligibility for case representation, which does not include “other services.”

The term “**Primary Recipient**” appears in the text of this manual only in this introduction although it is a key term in the Title XX regulations where it is defined as the “person (applicant/recipient) who voluntarily requests a Title XX social service, or on whose behalf service is requested.” The Primary Recipient is the determining factor in defining “family” for eligibility determination purposes. (TXX [3-1-14](#)). Rights and responsibilities are assigned to the Primary Recipient. We have elected not to use the term herein because:

- it is not a term in general use by staff.
- other funders, even while adopting some Title XX guidelines, have not employed the term.
- the term “recipient” is often used to refer to the legal services program providing services.
- combining the role of applicant and client in the definition poses an unnecessary challenge in clearly distinguishing different rights and responsibilities that may separately attach to each role.

In place of “Primary Recipient,” the manual generally refers to “client” or “applicant.” This editorial choice does require that the text clearly define the term “applicant” in the context in which it arises to distinguish the person requesting Title XX social services from a person applying for services not funded by DPW or who is inquiring more generally about the availability of program services without completing a formal application.

This manual—released in September 2012—is identified as version 3.0, considering the 1984 edition as 1.0 and the 1995 edition as 2.0. Changes to the content will be issued as needed. The follow page is reserved to identify key changes for each subsequent version.

VERSION HISTORY

[This page is intentionally blank for Version 3.0. This section will be used to track the history of versions.]

PROLOGUE

Some broad perspective may be useful about managing eligibility issues for multiple funding sources outside the context of narrow procedural questions considered elsewhere in this manual.

Consider these two scenarios:

- A person applies for services. She is over the program's LSC-related assets guidelines. Does the program have the option to reject the applicant if she would be eligible for the legal assistance she is seeking under the guidelines of a PLAN, Inc. funding source, which does not permit an assets test?
- An applicant who is not a Pennsylvania resident would not qualify for PLAN, Inc. funding sources.³ Can the request for service be rejected if the applicant meets the program's eligibility guidelines for LSC-funded cases?

In these two cases, it is clear that the applicants should not be rejected simply because they were not eligible for the first identified funding source or because the program had a protocol that tested eligibility in a certain order and declined to look further after an initial rejection. That would place an unfair burden on applicants. From the applicant's perspective, what he/she is seeking is legal help, not legal help from a particular funding source. In essence, a program must assess the applicant's request for legal assistance with all of its available services and related eligibility guidelines in mind.

To simplify the assignment of cases to particular funding sources, programs identify as many cases as they can which meet the eligibility requirements of both the PLAN, Inc. funding sources and LSC and assign these cases to a "common pool."⁴ They are "common" in the sense that they meet the common requirements of the major funding sources; they are considered to be in a "pool" from which cases are drawn quarterly³ and distributed to the PLAN, Inc. funding sources and LSC in a way that aims at meeting the funders' case goals and aligning expenditures with revenues.⁵ This is called the "fund

³ For the definition of Pennsylvania resident, see the discussion on page [54](#).

⁴ Coded as funding source 99, component L (or M if a protection from abuse case), and tagged as "common pool" in the case management system.

⁵ Each PLAN, Inc. funder establishes annual case goals for each program – how many cases they will handle. In addition to case goals, there is a contract or grant amount which is the equivalent of a target for how much staff time will be recorded to the cases handled during the year. LSC, for its part, has a grant award and requires reports of cases closed annually, but sets no goals for the number of cases to be reported. The need to reach targets for both number of cases and time with associated costs for each PLAN, Inc. funding source is currently achieved through the use of a common pool of cases and by flexibility in reassigning cases during the year from one PLAN, Inc. funding source to another or to or from LSC. At the time of the writing of this manual, IOLTA continues to express their preferences that cases not be moved to or from their funding sources solely for the purpose of reaching case goals, and that a reasonable proportionality of brief services and extended representation cases be achieved for their funding sources without such reassignments. When this eligibility

shift,” a process aided by programming within the case management system. In the second and subsequent quarters, the funding source assignment of cases qualified as common pool cases are adjusted as needed so that the year-to-date case numbers and expenditures remain on target.

manual was released, a committee was working with a financial consultant retained by PLAN, Inc. and IOLTA to review the fund shift process to ensure a high level of efficiency and compliance.

CHAPTER 1: OVERVIEW OF FUNDING SOURCES

An applicant's eligibility for legal services depends on meeting income guidelines, on whether the program handles their type of problem and offers the services requested, and on a number of conditions mostly related to the applicant's status. This manual will consider all of these— at least as they relate to PLAN, Inc. funding sources and LSC.

Clients do not pay a fee for service; legal services are supported by government agencies, the Pennsylvania IOLTA Board, bar associations, public corporations, private foundations, local governments, United Ways, and other parties. In each case, funds come with conditions of use— what types of services can and cannot be offered, under what conditions, and to whom. These are usually stated as specific conditions of a grant or contract, or in regulations governing the grant source. Sometimes, particularly with private donations, there may be no written agreement, but there will still be some understanding about how the contribution will be applied. Legal services programs are responsible for using funds subject to any attached conditions, express or implied. Effective client eligibility procedures will ensure delivery of service to the intended beneficiaries.

The general rule is that an applicant with a civil legal problem whose gross family income is within 125% of the Federal Poverty Guidelines (FPG) will be financially eligible for services under traditional legal services funding sources. Some sources of funds allow for higher levels of income and some, like Area Agency on Aging funding, or PLAN, Inc. funding for representation of victims of domestic violence, have no income limits at all, although priorities can still affect whether all clients will be represented. LSC requires an assets test, as might other funders.

Complexity in the administration of client eligibility regulations comes from exceptions to the general rules, and from the underlying reality that there are not sufficient resources to meet all the civil legal needs of the low-income community. Not all financially qualified applicants will find services available. The way in which that issue is dealt with varies according to the funding source.

PLAN, INC. FUNDING SOURCES

TITLE XX & STATE

Title XX of the Social Security Act, which is sometimes referred to as the Social Services Block Grant (SSBG), provides an allocation of federal funds to the states. Pennsylvania uses a portion of these funds for legal services, generally combining it with a state appropriation.⁶ The Pennsylvania Department of Public Welfare receives these funds under the Commonwealth's budget and contracts with PLAN, Inc. It, in turn, administers the funds, subcontracts with legal services programs to provide individuals with legal services, and monitors for compliance with grant and regulatory conditions. DPW published Title

⁶ As used in this manual the term "State funds" refers to this particular appropriation and does not include Title XX, DAP, IOLTA or AJA funds.

XX eligibility regulations in the Pennsylvania Bulletin for June 26, 1982 and July 17, 1982. The regulations, identified as 3-1-1 through 3-1-209, are referenced throughout this manual using the shorthand form “TXX 3-1-xxx.” These regulations have not been updated since 1982, although their terms have been modified from time to time in the form of waivers documented within the annual contract between DPW and PLAN, Inc. and between PLAN, Inc. and local programs. The regulations and modifications apply to state funding as well.

Title XX and State funds are subject to fixed eligibility and procedural guidelines. There is no local discretion in defining terms.

- Title XX provides a uniform structure for dealing with the eligibility process that includes a timetable for decision-making and a DPW fair hearing when a client or applicant disagrees with an adverse decision by the program.
- Financial eligibility is based on an applicant's gross monthly income, except that applicants in need of emergency legal assistance under the Pennsylvania Protection from Abuse Act may be served regardless of income.
- Eligibility for certain categories of Medical Assistance coverage can be used as a substitute for an independent review of income eligibility.
- Title XX eligibility regulations do not take into consideration applicants' assets.
- Programs must inform clients of certain rights and responsibilities, including their responsibility to report any changes in circumstances that might affect eligibility.
- Title XX funds can be used for services only to individuals, not to groups. However, State funds, which for all other purposes are governed by the same terms as Title XX funds, may be used for legal assistance to group clients.
- Title XX regulations define case priorities (“categories of need”) and require that services be provided strictly in order of priority.⁷
- Some types of services are prohibited.
- Though the regulations do not require a grievance procedure, PLAN, Inc.'s position is that all clients must be provided with notice of the program's grievance procedure.

INTEREST ON LAWYERS' TRUST ACCOUNTS (IOLTA)

Interest on Lawyers' Trust Accounts (IOLTA) funding was created in Pennsylvania in 1988.⁸ As with similar programs in every state, IOLTA receives interest from client funds held in a separate account by lawyers when those funds, because of their small amounts or limited duration of deposit, cannot earn sufficient income for the client that would be greater than the cost of securing that income. The funds are to be used, in large measure, for delivery of civil legal assistance to the poor and disadvantaged.

⁷ See TXX [3-1-44](#) for categories of need, TXX [3-1-167](#) for how rank is established (*incorrectly cited as 3-176 within 3-1-44*), and [3-1-78](#) for the prohibition against the imposition of categories of need or priorities other than those listed in the Title XX regulations.

⁸ Act of April 29, 1988 (P.L. 373, No. 59) known as the Interest on Lawyers' Trust Accounts Act. In 1996, when the Supreme Court of Pennsylvania amended [Pa. RPC 1.5](#) to cover IOLTA, it also suspended the statute, so that IOLTA funds are governed by the Supreme Court and its IOLTA Board, not by the legislature.

The Lawyers Trust Account Board, under the supervision of the PA Supreme Court, administers IOLTA funding.

- IOLTA generally defers to Title XX guidelines on client eligibility issues, including representation of groups as permitted with state funds, and to each program's non-Title XX grievance procedure.⁹ Unless otherwise specifically set forth as a special IOLTA requirement, most of the Title XX regulations and standards apply to this funding.
- Eligibility guidelines for clients served under specialized IOLTA zone grants may differ from the normal guidelines by agreement between a program and the Lawyers Trust Account Board. PLAN, Inc. is not involved in the administration of these funds.

ACCESS TO JUSTICE (AJA)

The Pennsylvania Access to Justice Act was enacted on October 2, 2002.¹⁰ The statute established a surcharge— currently set at \$2—on filings at various courthouse offices. The funds from the surcharge are designated to provide civil legal assistance to low-income Pennsylvanians without charge.

The AJA statute delegated authority to the PA Supreme Court to determine eligibility for legal assistance. These rules are found at 204 PA code [401.1](#) et seq. and are cited in this manual using the shorthand “AJA 401.x.”

- The IOLTA Board receives revenues under the Act and issues regulations governing the use of Access to Justice funds, contracting with PLAN, Inc., which in turn subcontracts with legal services programs. Eligibility rules combine both the Title XX and LSC approaches. Title XX family composition was adopted, as were the income inclusions and exclusions. Emergency protective services may be provided without regard to income, and the concept of establishing legal services eligibility based on eligibility for designated categories of Medical Assistance is accepted by IOLTA.¹¹
- AJA adopted a set of rules for special eligibility exceptions for applicants with gross income of up to 187.5% of the Federal Poverty Guidelines. The rules closely parallel, but are not identical to, the special exceptions set out in the LSC regulations. As with LSC, the special exceptions provisions provide a framework within which a program can design its own approach. See “Authorized Exceptions to the Income Ceiling” on page 50.

⁹ The PA legislature and Supreme Court created a means to collect funds and a Board to administer those funds. The Supreme Court delegated to the Board development of details on client eligibility. The IOLTA Board has consistently elected to use Title XX client eligibility guidelines.

¹⁰ Access to Justice Act Title [42 PA CSA 4901 et seq.](#) The Act was extended in 2006 for a second five-year term set to expire 11/1/2012. In June 2012, the legislature enacted another five-year extension of the Act.

¹¹ In recognition that the specific MA categories identified in the 1982 Title XX regulations were no longer in existence, the AJA regs allow eligibility to be based upon possession of a medical card for a category for which eligibility is based upon 125% of poverty income. See [List of Qualifying Medical Assistance Categories](#).

- The basic requirements for an AJA-compliant grievance procedure¹² could be met by a program plan adopted to implement LSC’s regulation¹³.
- AJA regulations (401.9) set out the requirements and touchstones for the development of formal priority setting and the integration of the priority setting process into the program’s daily operations. The process and goals are compatible with the LSC regulations on priority setting (45 CFR 1620).

DISABILITY ADVOCACY PROJECT (DAP)

The Disability Advocacy Project is funded by the Pennsylvania Department of Public Welfare.¹⁴ PLAN, Inc. administers the program, which provides legal assistance to individuals, referred by a County Assistance Office (a welfare office), who are seeking SSI or SSDI disability benefits. Financial eligibility is similar to Title XX, but eligibility is income-based only and cannot be based solely on need for protective service or Medical Assistance status. Client complaint procedures follow the Title XX notice of rights and responsibilities and appeal process, including the right to a DPW fair hearing. However, PLAN, Inc. expects that DAP clients will be given the program’s PLAN, Inc.-approved grievance procedure.

LEGAL SERVICES CORPORATION (LSC)

The Legal Services Corporation is a national public corporation created in 1974 and funded by Congress. All regional programs of PLAN, Inc., except Community Legal Services, receive LSC funding. None of the specialized programs receive LSC funding. LSC, through Federal regulations (45 CFR §1600 et seq.), outlines the terms of client eligibility in a general way. Each legal services program is required to further refine and localize those guidelines. Every LSC-funded program has a published policy on client eligibility—reviewed periodically by its Board of Directors—that describes eligibility for LSC-funded services and may cover other funding sources that do not specify their own rules.

- LSC requires programs to base financial eligibility on the gross annual income and current assets of the applicant's household. Programs may set the upper limit on gross income to be as high as 125% of the FPG.
- LSC provides a framework for programs to adopt a policy under which exceptions to that general income limit may be made for those with household incomes up to 200% of the FPG based on consideration of a number of factors. (In a couple of instances, gross income may be unrestricted.) A similar provision is found in the AJA regs, for which the maximum income is set at 187.5%.

¹² AJA_401.7

¹³ LSC 1621.4.

¹⁴ At the time this manual was released, PLAN, Inc. and DPW were in discussions about the continuation of the DAP program and eligibility criteria and other requirements for clients. The project was extended until September 30, 2012 under the terms of the current contract. If the project is continued, this manual will be revised when an agreement is reached.

- LSC restricts services that can be provided by a program receiving LSC funding to applicants who are either citizens or lawfully admitted aliens, whether or not the services are provided by LSC funds. There are exceptions to this policy for representation of victims of domestic violence and certain enumerated crimes (see page [54](#)).
- Services on certain issues are restricted and in many cases, the restriction applies not only to the LSC funding, but to all funding sources. These regulations are described on page 16.
- Financial eligibility will be redetermined when there is a change of circumstances, not on a fixed schedule.
- LSC requires each legal services program to define its priorities, and to periodically engage in a process to review priorities, recognizing that there will not be resources sufficient to meet all the needs. The types of cases accepted and those rejected are to be in line with that priority plan. If, for example, a request for a divorce was considered a low priority, a program might not handle that case at all even for a financially qualified individual unless it was also able to meet all requests for higher priority needs, or it might restrict the number of cases accepted or the level of service provided. As a second example, a program may have set aside staff time for community education work prompting the rejection of certain requests for individual representation due to insufficient resources.
- [LSC regulation 1621](#) sets a framework for a client grievance procedure and directs that legal services programs establish a policy best suited to local needs. The local policy will determine how a program will consider the complaints of applicants or clients about an adverse staff decision on eligibility or services.
- An amount equal to at least 12.5% of a program's LSC grant is to be directed to support the involvement of private attorneys in the delivery of services. Each LSC-funded program has an annual Private Attorney Involvement (PAI) plan describing its services. Those services may take the form of a *pro bono* referral program, a Judicare system, or another means of involving the private bar. The eligibility of clients participating in the PAI plan is determined according to LSC guidelines.

OTHER FUNDING SOURCES

Programs may have many other funding sources: contracts or grants from Area Agencies on Aging, county and municipal governments, Community Development Block Grants, local bar associations, private foundations, and others. Each may carry with it a particular set of rules. A review of this manual should help staff recognize the key points at which differences may be expected to arise.

QUICK COMPARISON OF ISSUES BY FUNDING SOURCE

Issue	Title XX/State	IOLTA	AJA	DAP	LSC
Legal source	Title XX eligibility regulations: 12 Pennsylvania Bulletin, 2001 (6/25/82), 12 Pennsylvania Bulletin, 2286 (7/16/82), and the PLAN, Inc. contract with programs for use of DPW funds (Title XX/State/DAP).	PLAN, Inc. contract with programs for use of IOLTA/AJA funds. Often guided by Title XX procedures.	Access to Justice Act Title 42 Chapter 49, PA Consolidated Statutes, 205 PA Code Chapter 401, and PLAN, Inc. contract with programs for use of AJA/IOLTA funds.	PLAN, Inc. contract with programs for use of DPW funds (DAP/ Title XX/ State).	Legal Services Corporation regulations on eligibility: 45 Code of Federal Regulations §1601, et seq. LSC Act, LSC Appropriations Act, program grant assurances.
Financial eligibility basis	1. In need of protective services under the Protection from Abuse Act without regard to income. 2. Eligible for certain categories of medical assistance. 3. At or below 125% of Federal Poverty Guidelines (FPG).	Same as Title XX.	Similar to Title XX with an option for authorized exceptions generally up to 187.5% of FPG if a program Board adopts a policy allowing this.	At or below 125% of Federal Poverty Guidelines.	At or below 125% of Federal Poverty Guidelines with option for authorized exceptions generally up to 200% of FPG if a program Board adopts a policy allowing this.
Manner of determining eligibility	Use declaration method (precludes requiring documentation on a routine basis).	Same as Title XX.	Use declaration method (documentation may be required if there is substantial reason to doubt the accuracy or completeness of the information provided).	Same as Title XX. Referral required from Disability Advocacy Project; legal representation for certain applicants. ¹⁵	Make reasonable inquiry; forms and procedures promote the development of trust between attorney and client. If substantial doubt, verify info in a manner consistent with attorney / client relationship.

¹⁵ Legal representation is provided to applicants appealing initial denials of SSI, denials of SSDI, denials on reconsideration of the initial decisions, or final administrative denials by the Social Security Administration.

Issue	Title XX/State	IOLTA	AJA	DAP	LSC
Income sources	Fixed list as reflected in Title XX eligibility regulations.	Same as Title XX.	Same as Title XX.	Same as Title XX.	General list in regs. See local program policy for specifics.
Income exclusions	Qualifying medical expenses, child and spousal support paid ¹⁶ , welfare payments to applicant, earnings of children under 14, proceeds from sale of assets, withdrawals from bank deposits, tax refunds, value of in-kind or certain third-party payments (free rent, donated food, etc.), other (see Title XX eligibility regs for full list of 27 exclusions).	Same as Title XX.	Same as Title XX.	Same as Title XX.	Proceeds from sale of assets, in-kind, payments from third parties, others (see program’s eligibility guidelines and LSC regulation 1611).
Applicable income period	Monthly income.	Monthly income.	Monthly income.	Monthly income.	Annual income.
Assets	Assets not considered.	Assets not considered.	Assets not considered.	Assets not considered.	Asset ceiling set by program subject to LSC regulation 1611. See local program policy for specifics.
Group representation	Not permitted with Title XX funds, but permitted with state funding.	Permitted subject to regulatory requirements.	Permitted subject to regulatory requirements.	Not permitted.	Permitted subject to regulatory requirements.
Family composition	Defined by uniform definitions in Title XX regs.	Same as Title XX.	Same as Title XX.	Same as Title XX.	Household defined by program, subject to LSC regulation 1611.

¹⁶ Medical expenses and support paid are, of course, not “expenses” though Title XX regs so classify them. The significance of including them with income that is excluded is because they lower the gross income. In programs that have not adopted special exceptions to the general income limits, the exclusion from gross income of child support, in particular, may be critical to establishing financial eligibility.

Issue	Title XX/State	IOLTA	AJA	DAP	LSC
Time limits for application	10 days to take application after request; 30 days to determine eligibility; 10 days to notify applicant.	Not specified.	Not specified.	Not specified.	Not specified.
Signed, dated application	Required except in emergencies and for telephone brief service.	Same as Title XX.	Same as Title XX.	Same as Title XX.	Required for citizenship/eligible alien status verification except when limited services are provided by <i>telephone only</i> advice/limited services.
Retainer Agreement	Not required but considered appropriate in extended service cases under Rules of Professional Conduct.	Same as Title XX.	Same as Title XX.	Same as Title XX.	Required by LSC regulation 1611.9 for extended service cases except when services are provided by an attorney under a PAI plan.
Redetermination of financial eligibility	Waived if clients are advised at intake of need to report changes and a PLAN, Inc. and PLAN, Inc. approved timely closing policy is in place.	Required when there is a change in circumstances. Expectation of compliance with timely closing policy.	Required when there is a change in circumstances. Expectation of compliance with timely closing policy.	Same as Title XX.	When changes are reported.
Procedure to Close Case	Must send Title XX closing notice except for PFA cases, cases closed by admin or court decision or client consent. See page 68 exception to requirement for notice for brief services by phone.	No requirement, but ethically, should still have client consent or explain closing.	No requirement, but ethically, should still have client consent or explain closing.	No requirement, but ethically, should still have client consent or explain closing.	No requirement, but ethically, should still have client consent or explain closing.

Issue	Title XX/State	IOLTA	AJA	DAP	LSC
Case exclusions I. Common exclusions	*Fee-generating (compliance with program policy required). *Defense of criminal prosecution. *Certain forms of lobbying.	Same as Title XX plus collateral attack on criminal conviction.	Same as Title XX plus collateral attack on criminal conviction.	Not applicable as scope of representation is narrowly defined. Certain forms of lobbying.	Same as Title XX plus collateral attack on criminal conviction.
Case exclusions II. Funding source specific	Divorce: 320,321,326 Taxes: 992,993,994 Property: 625, 972 (References are to special problem codes).	None.	None.	Not applicable.	Numerous restrictions. See listing below this table.
Case Exclusions III. Cases in which there is a statutory right to counsel	Examples of right to counsel case types that cannot be handled by legal aid: Juvenile Court: 411-423, 440, 490 Adoption: 301 Guardianships: 332, 440 Parental rights terminations: 351, 352 (References are to special problem codes).	Same as Title XX	Same as Title XX.	Not applicable.	No restriction.
Case Exclusions: IV Abortion-related	*LSC entity restriction on participation in any litigation.	*No funds may be used to advocate for or against abortion, plus *LSC entity restriction on participation in any litigation.	*LSC entity restriction on participation in any litigation.	Not applicable.	There are entity and funding source restrictions that are applicable.

Issue	Title XX/State	IOLTA	AJA	DAP	LSC
Class actions	Permitted with protocol (except for LSC recipient programs).*	Permitted with protocol (except for LSC recipient programs).*	Permitted with protocol (except for LSC recipient programs).*	Not applicable.	Not permitted (Entity restriction).*
Waiting list	Required.	None required.	None required.	None required.	None required.
PA residence	Pennsylvania residents only (students, migrants may be included).	Same as Title XX.	Same as Title XX.	Same as Title XX.	No restriction.
County of residence	Applicant must be a resident of the county in which service is requested.	No restriction.	No restriction.	No restriction.	No restriction.
Citizen/eligible alien	Not directly restricted but restricted for LSC recipient programs because of entity restriction.*	Same as Title XX.	Same as Title XX.	Same as Title XX.	Service to ineligible aliens is prohibited. Exceptions for protection from abuse and enumerated violations of trafficking laws.* (Entity restriction)
Grievance/complaint policy and procedure	Program's client grievance procedure and DPW fair hearing. Regulatory requirement for posting of right to DPW fair hearing. Recommended that grievance policy be posted, and—for clients not visiting office—client is otherwise informed of policy.	Same as AJA.	Program's client grievance procedure. Recommended that grievance policy be posted and for clients not visiting office, client is otherwise informed of policy.	Same as Title XX.	Program's client grievance procedure pursuant to LSC regulation 1621. Recommended that grievance policy be posted and for clients not visiting office, client is otherwise informed of policy.

**Generally, the substantive LSC grant restrictions fall into two categories: "entity restrictions" and "LSC funds restrictions." Entity restrictions apply to all activities of an LSC recipient regardless of the funding source and these generally originated in section 504 of LSC's FY 1996 appropriations act (the provisions of which have been carried forward in subsequent appropriations). In contrast, LSC funds restrictions usually*

originate from the LSC Act and apply to the use of LSC funds and private funds, but not to tribal or public non-LSC funds used as intended. LSC's regulation at [45 CFR part 1609](#), [41 FR 23502 Comments to final rule 4.27.2011](#).

Entity Restriction (restricts activities of LSC recipient regardless of funding)

§ 1613 Restrictions on legal assistance with respect to criminal proceedings.

§ 1617 Class actions.

§ 1626 Restrictions on legal assistance to aliens.

§ 1632 Advocacy for or against legislative redistricting plans including influencing the time or manner of census-taking.

§ 1633 Restriction on representation in certain eviction proceedings.

§ 1637 Representation of prisoners.

§ 1639 Welfare reform.

In Appropriations Act but with no specific regulation:

§ 504(a) 2-6, 12 Lobbying.

§ 504 (14) Participation in any litigation with respect to abortion.

Funding restriction (restricts use of LSC funds but not other funds received by an LSC recipient):

§ 1615 Restrictions on actions collaterally attacking criminal convictions.

§ 1643 Restrictions on Assisted Suicide, Euthanasia, and Mercy Killing.

In LSC Act but with no specific regulation:

1007(b) (2) Prohibits legal assistance with respect to any criminal proceeding.

1007(b) (8) Prohibits legal assistance respecting proceedings or litigation to procure non-therapeutic abortions or compel the provision of abortion services over religious or moral objections.

1007(b) (9) Proceedings involving desegregation of public schools.

1007(b) (10) Legal assistance with respect to the Military Selective Service Act or desertion from the Armed Forces.

CHAPTER 2: ESTABLISHING ELIGIBILITY: THE PROCESS

This chapter focuses on determining the eligibility of an applicant for services. The next two chapters review first the financial and then the non-financial considerations on which eligibility decisions are based.


THE RIGHT TO APPLY FOR SERVICE

In general, programs may turn away as many people as are accepted. Some people may be looking for a lawyer for a criminal charge or a fee-generating case; in other cases, a person may appear to staff to be clearly ineligible for services based on a brief screening — perhaps due to excess income, type of case, or type of service requested. In receiving and screening requests for service, staff is expected to communicate eligibility requirements thoughtfully to callers who appear to clearly not be eligible, offer referral options where available, and have access to supervisory staff when that might be useful in resolving a conflict. Most callers will—when these steps are taken— decline to pursue the formal application process. When that is not the case, give the person the option to complete a formal application, as this will be the program’s most effective path to dispute resolution.¹⁷

GATHERING INFORMATION

A request for services¹⁸ triggers the application process. The program should take a timely¹⁹ application. All applications can be taken by phone, but a face-to-face interview is required except when services will be limited and provided by telephone only.²⁰ For in-person brief services and extended representation, the application form can be completed initially by telephone, but a face-to-face eligibility interview is required before services can be provided.²¹

¹⁷ TXX_3-1-69 provides, “[A]ny individual and family may request services funded under the Title XX Social Service Block Grant”. Whether this provides a blanket right to apply or a right limited to non-excluded services is unresolved. Either way, as a practical matter, all persons should be allowed to apply.

¹⁸  Applicant requests are best considered as requests for services rather than for services supported by a particular source; where possible, procedures and protocols should be designed to meet the composite requirements of PLAN, Inc. funding sources, LSC, and other funders. If the applicant is found to be ineligible under the terms of one funding source, they should be considered for any others that are available. For example, an applicant who fails to meet the LSC assets requirements should be considered under PLAN, Inc. funding sources rather than being rejected. A non-PA resident should not be summarily rejected in a program with LSC funding if jurisdiction is within PA or an appropriate referral can be made to another legal aid program.

¹⁹ Title XX requires that the legal services program take an application within ten (10) days of the request (Title XX regulation [3-1-95](#)). Other funders set no specific time frames.

²⁰ If a face-to-face interview cannot be arranged, an application form may be mailed. ([3-1-195](#)).

²¹ Title XX, which allows 30 days for an eligibility determination to be made after the application is completed ([3-1-99.](#)), provides that service may be provided before eligibility is determined if the eligibility decision is made

A program's intake forms and procedures should be simple and designed to obtain information in a manner that promotes trust between attorney and client.²² The application is to be completed by staff based on information provided by the applicant or his/her authorized representative²³, or by someone, including program staff, acting responsibly for the applicant if he/she is physically incapable of completing an application form, or in an emergency.²⁴ The program is responsible for ensuring that the applicant or person acting on his/her behalf receives all the help necessary to provide accurate and complete information. Programs need to have procedures in place to serve limited English proficiency applicants, including arrangements for interpreters to assist non-English speaking and those who are hearing impaired or visually challenged on an as-needed basis in those cases in which no alternative methods for communication can be substituted effectively.²⁵ Most programs have bilingual staff or access to telephone translation services, such as [Language Line](#), as a means of complying with this requirement.

Title XX regs provide that a person living in a hospital, including one for the mentally ill and /or mentally challenged, a skilled nursing home facility, an intermediate care facility or a prison²⁶ must be given the same opportunity to apply for legal aid as a person in the community at large.²⁷

The application form has been standardized for PLAN, Inc. programs inasmuch as DPW requires that a form be approved by the Department of Public Welfare and that same form is used for LSC cases.²⁸

Eligibility determinations for individuals²⁹ are made by the declaration method.³⁰ Unless a regulation specifically requires documentation,³¹ a program will rely upon an applicant's statements as to income

within 30 days from the date the application form was dated and the determination shows the applicant was eligible when services began. (TXX [3-1-98](#).) Consider a situation in which: 1) the application form is first completed on the telephone 2) next, advice is provided on the phone, after which 3) the case is referred to a program office for extended representation. The application form —reviewed at the face-to-face interview— should be dated as of the telephone contact to ensure that the service fits properly within this rule.

²² [LSC 1611.7c](#).

²³ Title XX regulations refer to an "authorized representative" in connection with providing information in the application process (TXX [3-1-107](#)), signing the application (TXX [3-1-97](#)) and participation in a Fair Hearing (TXX [3-1-174](#)). The term itself is not defined. AJA refers only to a representative's role in providing information for an application (AJA [401.2](#). (d)) and, likewise, does not define the term.

²⁴ TXX [3-1-107](#); AJA [401.4](#)(d).

²⁵ TXX [3-1-108](#) ; AJA [401.2](#). (e)

²⁶ With respect to prisoners, LSC restricts the range of services that can be provided to prisoners and that restriction is applicable to all services provided by an LSC recipient (not just those services supported by LSC funds). LSC does not, however, bar all services to prisoners and so this alone should not limit a prisoner's right to apply for services.

²⁷ TXX [3-1-69](#).

²⁸ TXX [3-1-185](#) Title XX service providers shall use "the application approved by the Department..." Neither AJA nor IOLTA prescribe a form or require approval. LSC requires only that the forms be simple. (LSC [1611.7\(3\)\(a\)\(2\)\(b\)](#)).

and other elements of eligibility—address, family members, etc. The “declaration method” contrasts with the “verification” method in public benefits parlance. As specific questions arise, a program may request documentation – a pay stub or business tax return, for example – but this is the exception and not the rule. It would not, for example, be permitted to ask routinely for such documentary proof as pay stubs.³²

Use of the declaration method does not mean that the applicant’s statements are necessarily accepted without question. An applicant, for example, who claims no income source, should ordinarily be questioned more closely. Staff is responsible for explaining to the person signing the application that fraudulent receipt of services based upon false information provided knowingly makes the applicant liable to legal prosecution.³³

If there is substantial reason to doubt the accuracy or completeness of the information provided by the applicant, the program will need to make an appropriate inquiry to verify the information in a manner consistent with the attorney-client relationship,³⁴ promoting the development of trust between the attorney and client.³⁵

Such situations can arise both before and after an attorney-client relationship has been established. In general, continue to consider the applicant/client to be the primary source of the needed information, so that a request for clarification and/or verification or documentation³⁶ would be addressed to the applicant rather than to third parties. Title XX specifically provides that if it is necessary to contact outside sources for documentation, such contact can only be made with the applicant's informed and written consent.³⁷ In a case in which it appears appropriate to document information, but the applicant neither supplies that information nor consents to direct contact with a third party, a program may

²⁹ For group eligibility, see discussion on page [25](#).

³⁰ TXX [3-1-110. 401.2.](#) (f).

³¹ An example would be the requirement set out in the LSC and AJA authorized exceptions to the income ceiling that families with incomes above 125% of the FPG document that their income is going primarily to medical and/or nursing home expenses. AJA [401.3f\(2\)](#); LSC [1611.5\(a\)\(2\)](#).

³² TXX [3-1-110.](#)

³³ TXX [3-1-109](#) and [3-1-191](#).

³⁴ The language here is taken from [LSC 1611.7\(c\)](#). Similar language is found in TXX [3-1-193](#) (“documentation of inconsistent or incomplete information may be required at any time”) and AJA [401.3\(f\)](#) (“documentation also can be required and obtained if there is substantial reason to doubt the accuracy or completeness of the information provided by the applicant, but must be obtained in a manner that promotes the development of trust between the attorney and client.”)

³⁵ AJA [401.2.](#) (f).

³⁶ “Declarations” are intended to be proof resting upon the applicant’s assertion, while “verification” relies on documents or certification provided by third parties. The term “self-verification” is generally used as a “declaration” within a structured context; references, for example, are often to “self-declaration forms.”

³⁷ TXX [3-1-194.](#)

consider denying services for failure to cooperate.³⁸ Neither LSC nor AJA regulations specifically limit contact with third parties.

At times, third parties—often adverse—will question a client’s financial eligibility for services, alleging, for example, knowledge of income that was not reported. If substantial doubt is raised, an appropriate inquiry is needed, but under no foreseeable circumstance would it be appropriate to report and specify the findings to the complainant, beyond the fact that an inquiry occurred, since a report of specific findings would breach client confidentiality.

If, at any time after an initial determination of eligibility, the program learns, because of after-discovered or disclosed information, that a client was not initially eligible, or that a client has become ineligible due to a change of circumstances, it should take immediate steps to determine whether to discontinue services. Refer to “[Change of Financial Circumstances](#)” on page 51. This is true whether the information came from a third party complaint or from some other source.

SIGNING THE APPLICATION

Applications have to be signed in ink and dated³⁹ except when services are provided by telephone only.⁴⁰ Date each signature (the applicant and the interviewer/eligibility determiner) separately.

There may be an occasion when an applicant is not able to, or capable of, signing the intake form due to:

1. an emergency situation, when service is required immediately and the applicant cannot immediately visit the office to sign; or,
2. a physical incapability of the applicant to complete an application form.

If so, a staff person or someone acting on behalf of the applicant must sign the form:

1. Staff or other party must sign his/her own name (not the applicant's) on the form.

³⁸ TXX[3-1-106](#) and [3-1-191](#).

³⁹ AJA [401.2](#). c.

⁴⁰ LSC does not require a signed application insofar as financial eligibility is concerned, but requires the applicant’s signed statement with respect to their status as a U.S. citizen or eligible alien (see LSC 1620). The citizenship/eligible alien verification is not required by LSC for telephone brief service cases. This eligibility restriction applies to all cases handled by an LSC recipient regardless of the source of funds. For additional discussion of citizenship/eligible alien requirements see page [54](#).

AJA, IOLTA, and Title XX do, as a rule, require a signed application. AJA exempts “telephone advice and brief service cases” and DPW has waived the Title XX mandate for a signed and dated application form in the instance of brief telephone service consultation through a contract waiver of Title XX regs. IOLTA also permits the delivery of brief services by telephone without a signed application. For detail on the funders’ definitions of telephone advice and brief service see Chapter 5, beginning on page [64](#).

2. The reason for the alternate signature should be noted on the intake form or as an electronic note to the case file.
3. Where possible, when a staff person has signed for the applicant, the applicant's signature should be obtained, at the earliest possible date after that, by:
 - (a) scheduling an appointment at a later date; or,
 - (b) trying to arrange a home visit to obtain the signature; or,
 - (c) If (a) or (b) are not feasible, mailing a copy of the intake form to the applicant for the signature. It may be prudent to call the applicant in advance to stress the importance of returning the signed and dated intake form.

MINORS

DPW regulations define “family” in such a way that resident “minors” under the age of 21 will be included with their parent(s) household unless they are either married or otherwise emancipated. When a person under the age of 21 applies for services, staff needs to determine—for PLAN, Inc. eligibility purposes—whether that person meets the definition of an individual or a member of a family. If the applicant is deemed to be a member of the family, he/she needs to be informed, understand and consent to the fact that any declarations as to family income may later be subject, on a sampling basis, to verification which would require direct contact with his/her parent(s).⁴¹ It is clear that in Pennsylvania a person under the age of 18 can, if emancipated, legally enter into a contract for necessities. If a program deems an applicant under the age of 18 to be emancipated, that would certainly be sufficient to enable the person to sign the application, but note that an unemancipated minor may sign an application form on his/her own behalf.⁴² The Title XX regulations do not provide guidelines for determining when it would not be appropriate to have a minor sign; this decision will rest in the staff’s judgment as to the maturity of the applicant and his/her ability to understand their rights and responsibilities. Neither LSC nor AJA directly address this issue.⁴³

If a program—in its LSC eligibility guidelines— has defined the “household” to exclude children age 18 or older, special care must be taken to determine in each instance the composition of a household or family with one or more resident 18-20 year olds.

⁴¹ TXX [3-1-189](#) and [3-1-190](#).

⁴² See TXX 3-1-189 which suggests that an unemancipated minor may sign and TXX [3-1-190](#) which confirms that.

⁴³ PA Rule of Civil Procedure 2036 authorizes a minor to sign affidavits to pleadings if the minor has sufficient mental capacity to understand the contents of the paper to which the affidavit is made.

DETERMINATION DATE

This is the date when the program determines that an applicant is either eligible or ineligible. Title XX requires this date be not be more than 30 days from the date the applicant signs the intake.⁴⁴ Other funders do not set a specific time limit for a determination of eligibility, although programs may have established their own protocols.⁴⁵

GROUP ELIGIBILITY


Groups,⁴⁶ properly qualified, may be represented using AJA, IOLTA, State,⁴⁷ or LSC funds, but not using Title XX funds.⁴⁸ AJA ground rules are found at AJA regs 401.3(g); LSC at 1611.6; State and IOLTA follow LSC guidelines pursuant to a contract waiver.

To paraphrase the regulations:

A group is eligible when the program has determined that the group:

- 1) lacks, and has no practical means of obtaining, private counsel in the matter for which representation is sought; and,
- 2) either
 - a) a majority of the group's members, or, for a non-membership group, a majority of the organizing or operating group, are financially eligible for legal assistance; or,
 - b) the group has as a principal function or activity,⁴⁹ the delivery of services to persons in the community who would be eligible for legal assistance (under the applicable funding source) and the legal assistance the group seeks is related to that function or activity; or,
 - c) [for AJA-funded cases only] the group, which may not be delivering services as in (b) above, has as its principal function or activity, the furtherance of the interests of similarly situated people and the group is seeking representation related to that function or activity.

⁴⁴ TXX [3-1-99](#).

⁴⁵  The term Title XX “determination” is closer in meaning to what LSC would call finding a case to be “acceptable” (the applicant is financially eligible and meets the citizenship or lawfully admitted alien requirements, and the subject matter of the case is not prohibited) than being “accepted” which requires a clear and direct commitment to establish an attorney-client relationship. See Chapter 7 at page [78](#) for more details about the terms “acceptable” and “accepted.” Promptness reaching a decision on acceptance is at least as important as a decision on acceptability. It is a good practice to extend promptness to all eligibility decisions.

⁴⁶ In this section, the term “group” includes group, non-profit corporation, associations, or other entity.

⁴⁷ Use of state funds requires approval of the program’s Executive Director after a determination that LSC requirements have been met (state funding incorporates the LSC definition). DPW/PLAN, Inc. contract 2011-2013, Rider 2 (Work Plan) § 16(b).

⁴⁸ Title XX funds may be used to represent several eligible clients sharing the same legal problem, but when the files are opened for the individuals, this does not constitute group representation.

⁴⁹ The AJA definition may be a shade narrower than the LSC language above—by qualifying a group that has “as its principal activity...” rather than “has as a principal function or activity....”

HOW TO DETERMINE THE GROUP'S ELIGIBILITY

AJA regulation 401.3(g) (“the program is to collect information that reasonably demonstrates that the group is eligible”) and LSC 1611 (b) (with somewhat more specific direction) provide guidance on how to determine if the group is eligible.

As to the group’s ability to afford private counsel, the group is expected to disclose income and income prospects, assets and obligations. That would suggest review of financial statements, audits, or other documentation of finances for operating groups and similar, if less formal, disclosures for groups in the organizational stage. Every effort should be made to obtain independently produced financial reports for the organization, if they exist, as opposed to relying simply upon the group’s budget or similar projected revenues and expenses.


Consider a group that is seeking to qualify on the basis that it has as a principal activity delivery of service to, or—for AJA—the furtherance of the interest of, a large group of eligible persons. It may not be feasible to demonstrate the eligibility of those persons by testing of individuals. In that case, the question—as LSC frames it—is 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 legal assistance provided by the funding source. That would mean looking at such factors as income, education, marital status, unemployment, ethnicity, country of birth, family size, living arrangements, housing tenure (renter or owner) access to cars, and occupation.

If eligibility is determined based on the majority of the group being client eligible, then for a non-membership group or a membership of a size for which individual financial determinations are feasible, the group file must reflect that the determination had been made for at least a majority of people. This does not require actually opening a file for each of those persons. For membership groups too large for individual financial determinations, socioeconomic characteristics indicating that the membership is consistent with those persons who are financially eligible for legal assistance must still be documented in some manner.

Note further that when a group file is opened, that file should relate to a particular legal issue. For instance, a file might be opened to help a client start up a daycare center. If the group was also to be represented in seeking the development of a neighborhood center, that is a separate issue. Open a separate file. It is not appropriate to open a group file and use that file over time for the generalized ongoing representation of a group.

FUNDING SOURCE ASSIGNMENTS

The assignment of a funding source is very important because it will determine to which funding source(s) the case and its associated expenses will be reported. The funding source assignment will also determine the particular process that must be followed when handling a client complaint. The “basis of eligibility” and component codes discussed below also have an impact on reporting.

 The collective effect of individual funding source assignments should be a distribution of cases (and the value of time spent on cases) that generally reflects the distribution of program funding and ensures that the program meets its contractual commitments. There are many ways to accomplish this, and PLAN, Inc. strongly recommends that programs document internal funding source assignment procedures. That policy should provide clear guidance on the use of component codes as they control, along with the LSC CSR-eligible checkbox in Prime, which cases are reportable to LSC. The policy should identify the circumstances under which a case may be reassigned from one funding source to another.

The funding source assignment is relevant to the choice of grievance procedures when a program provides more than a single process. While some funding sources may narrowly focus the class of problems or clients that may be served, PLAN, Inc. funding sources and LSC are applicable in most cases. In the event that an action is taken adverse to the client’s perceived interests and subject to grievance, and taken at a time when the case is appropriately assigned to common pool funding, a program protocol is needed to establish a funding source for purposes of selecting the grievance procedure to be used.

COMMON POOL

PLAN, Inc. encourages programs to assign all qualified cases to the common pool. In general, these are cases that meet the eligibility requirements for Title XX, State, IOLTA, AJA, and LSC.

There are some exceptions to this general rule because the Prime fund shift process has been programmed to shift certain exception cases only to sources whose funds can be used to support the case types, thereby allowing the following cases to be added to the common pool:

- Protection from abuse cases accepted without regard to income; and
- Title XX restricted case types of divorce, property, and tax.

Cases that do not qualify for assignment to the pool include:

- Cases in which client income is above 125%, accepted pursuant to higher LSC or AJA income guidelines;
- Cases in which the LSC asset guidelines are not met (these must be assigned directly to a PLAN, Inc. funding source or local source);
- Potential “right to counsel by PA statute” cases (these are not eligible for support with PLAN, Inc. funding sources); and
- Cases referred under a PAI plan.

BASIS OF ELIGIBILITY

Each application entered in the case management system is tagged with a “basis of eligibility” which is a key element in understanding how the applicant’s income has been considered.

Without regard to income: These are Protection from Abuse cases supported with PLAN, Inc. funding, cases funded by Area Agencies on Aging (AAA), or other sources that place no limit on

applicant income.⁵⁰ This classification can be assigned even when the applicant would be income eligible. Some legal aid programs opt to check income eligibility for protective services cases and use a basis of *eligibility based on income* instead of *without regard to income* for those who meet income guidelines. Doing so allows programs to move some of these cases to the LSC funding source if the PLAN, Inc. sources are overspent. A few programs that receive AAA funds will do the same if they often overspend these funds and have to support some cases for the elderly with other sources of funding.

Eligibility by MA card: Eligibility may be established based on the applicant’s current eligibility for Medical Assistance, depending on the category of assistance.

Eligibility based on income: Use this when eligibility is based upon income even if that income is over 125% of the Federal poverty level as may be the case if the program has adopted special exceptions under AJA and LSC guidelines or have higher income guidelines for other sources of funding.

COMPONENT CODE

The component code, a single letter is related to the assignment of a funding source.

A	(LSC) Basic Field case
B	(LSC) Co-counsel between staff and PAI attorney
C	(LSC) Pro Bono
D	(LSC) Judicare
E	(LSC) Contract
F	(LSC) Other Private Attorney Involvement
G	(LSC) Native American
H	(LSC) Migrant
I	(LSC) Law School Clinic - LSC Special Project
J	(LSC) Private Law Firm High Volume Project - LSC Special Project
K	(LSC) Other LSC
L	(Non-LSC) Presumed LSC eligible
M	(Non-LSC) Not presumed LSC eligible
N	(Non-LSC) PAI not LSC-funded ⁵¹
X	Rejected records for applicants and LSC-deselected cases not reported to PLAN, Inc. ⁵²

⁵⁰ This would include—if implemented by the program—cases accepted under the LSC-authorized exception for applicants seeking legal assistance to maintain benefits provided by a governmental program for low-income individuals or families without regard to income ([LSC 1611.5\(a\)1](#)) or the AJA exception for excess medical or nursing home expense ([AJA 401.3f\(2\)](#)).

⁵¹ This code designates PAI cases that can be reported to LSC, but they are funded with a non-LSC source. If the case is not LSC eligible and can’t be reported, M should be used. If the program wants to track non-LSC eligible PAI cases, they should use a special advocate ID or special program code within Prime to do so.

⁵² If a staff member fails to select a component code when completing an intake, this field will default to X. It’s crucial that staff responsible for case reporting review all records with this component code to make sure that X is used as intended and not as an error.

For PLAN, Inc. funding sources, the component code will be either: L - Non-LSC Funds – Presumed LSC Eligible; or M - Non-LSC Funds - Not presumed LSC Eligible.

For cases funded by LSC (funding sources 2, 5, or 6), the component will be between A and K.

Most applicants whose eligibility for Title XX services is based upon income will be presumed eligible under LSC guidelines and would be coded L. The primary exception would be for clients who are not LSC eligible because of assets. However, an applicant seeking Protection from Abuse whose eligibility is based on the need for protective services would usually be coded "M" since the service is being provided without regard to income and LSC requires an income eligibility determination. If these clients are income eligible, a component code of L would be used. Other examples of applicants not presumed eligible for LSC would include those who decline to provide information on assets or whose assets exceed LSC guidelines, and persons served under an AAA contract whose eligibility is based on age and without regard to income or other means testing. Some legal aid programs receive other sources of funds with higher or no income guidelines; cases qualifying under the higher level or without regard to income are not eligible for reporting to LSC so the component code would be M.

CHANGE OF FUNDING SOURCE


There may be times when it would be appropriate to change the funding source assignment of a case after it has been accepted. (If a change is not clearly authorized by the program’s funding source assignment policy, check with management before making the change.) Because of the variation in eligibility and notice requirements among funding sources, it would sometimes be necessary to redetermine eligibility of the case before changing to a new funding source. If this issue is anticipated at the outset, it is often possible to avoid the requirement of a later redetermination by collecting sufficient information to establish eligibility for multiple funding sources during the initial intake. If substantial time has passed between the initial determination and the date of the proposed funding assignment change, it would be prudent to recheck the client’s eligibility.⁵³

For example, suppose a program receives a special grant to provide services and assigns this funding source to several cases. If any of these cases remain open after the grant funds have been exhausted or are no longer available, it might be prudent to reassign the cases to another eligible funding source since the program will presumably use funds from another source to complete service on the cases. To simplify the later change, you would need to know at the time of original intake that the applicant met the full eligibility requirements of multiple sources.

⁵³ Programs should provide staff with guidance on “substantial time.” That might be a universal criteria—say 6 months—or one which provides a shorter time frame for cases in which some change is expected (e.g. for those with no income or a time-limited source such a unemployment compensation) at the time of application and a longer period for those with fixed income such as Social Security or SSI.

RETAINER


PLAN, Inc. funding sources require a written retainer for extended service cases.⁵⁴ This is consistent with LSC regulations⁵⁵ requiring the execution of a written retainer at the time representation begins or as soon thereafter as is practical.

 A written retainer is not required when legal assistance is limited to counsel and advice or limited action. However, Rule 1.2 of the Pennsylvania Rules of Professional Conduct requires that to limit the scope of representation for a client, such as by providing only brief advice or consultation, there must be informed consent of the client. If this is not documented by a written retainer, the file should still document that this conversation has occurred with the client, and that the client has consented to the limitation of services.

NOTICES REQUIRED BY TITLE XX REGULATIONS

TITLE XX NOTICE OF RIGHTS AND RESPONSIBILITIES

At the time of intake and any financial redetermination of eligibility if applicable, applicants and clients must be advised of their Title XX Rights and Responsibilities. The regulations do not require that this notice be in writing, nor that it be signed by the client. However, it is very inconvenient for intake staffs to verbally inform applicants and clients of these rights and responsibilities so all programs provide a handout to clients who visit the office. (See Appendix C3 for sample notice.) The requirement for this notice has been waived when legal problems are resolved by the delivery of brief services by telephone. However, note that grievance procedures apply whether the services are provided face-to-face or by telephone only. See [Notice of Grievance Procedures](#) below; requirements governing grievance procedures are discussed more specifically beginning on page 63.

 Although it is good practice, it is not necessary to obtain a signed copy of the Title XX Notice of Rights and Responsibilities. If that is not the practice, a program should be able to demonstrate that such notices are given to all clients whose cases are DPW-funded including those whose cases are assigned to the common pool. This notice advises applicants and clients, in part, that they have the right to request a DPW fair hearing to appeal:

- a finding of ineligibility after a determination or redetermination of eligibility.
- the failure to make a decision on an application or a request for service within the time periods specified in the Title XX regulations.
- a denial of service.
- a reduction, termination or suspension of a service.

⁵⁴ The “requirement” for written retainer, set forth in LSC [1611.9](#), is not currently reflected in regulations or contracts related to PLAN, Inc. funding sources, but is a clear expectation of PLAN, Inc. management, based upon [Pennsylvania Rules of Professional Conduct Rule 1.2](#), as the scope of representation is generally limited in some manner.

⁵⁵ LSC [1611.9](#).

Note that the Title XX Rights and Responsibilities do not directly apply to complaints about the quality of the assistance provided. PLAN, Inc. requires programs to have grievance policies that would complement the DPW fair hearing process.⁵⁶ The contract between PLAN, Inc. and the LSPs does require that the grievance procedure allow for a complaint about quality. These include notice⁵⁷ to applicants and clients that the utilization of the internal grievance procedure does not affect the right to request a fair hearing as long as the request is timely. The policy, other than the reference to DPW hearings, can be the same policy used by the program to ensure compliance with AJA and LSC requirements.⁵⁸

NOTICE OF INELIGIBILITY

Applicants who are determined eligible for legal services can be notified in writing or verbally. However, applicants who are determined to be ineligible must be notified in writing. See Rejecting an Application for DPW-Funded Services on page 67. Many programs include a notice of eligibility or ineligibility with the notice of rights and responsibilities.

NOTICE OF GRIEVANCE PROCEDURES

Your program has one or more grievance procedures that apply to applicants who have been determined ineligible and to clients who have complaints about other issues including quality of service or the reduction or termination of service or the closing of their cases. Grievance procedures apply whether the services are provided face-to-face or by telephone only. Adequate notice of the grievance procedure is required for applicants at the time of application and in the case of client at the time of case acceptance or as soon thereafter as practical. Requirements governing grievance procedures are discussed more specifically on page 63 and, for specific notice requirement, see page 65.

RECORD RETENTION (WRITTEN AND ELECTRONIC)

Case files and related material are to be retained in accordance with the program's general record retention policy, augmented as needed, as follows: All application forms, rejected application forms, other approved service request documents, service logs (such as waiting lists when kept) and forms indicating the performance of an internal evaluation for a client seeking protective services must be kept on file for five years from the end of the fiscal year in which all Title XX service activities are

⁵⁶ Para 44 of PLAN, Inc. DPW contract provides: "Subject to the approval of PLAN, Inc., the LSP shall establish a system through which applicants for service and clients may present grievances about the operation of the LSP's program including, but not limited to complaints about the nature, quality, reduction or termination of the legal services provided to them."

⁵⁷ Notice of the grievance procedure must be posted in each program office.

⁵⁸ LSC 1621; 401.77.

terminated, except that if a Title XX compliance audit was begun before the end of the 5-year period, records are to be retained until the audit is complete and any audit findings resolved.⁵⁹

For each case reported to LSC, the documentation of eligibility shall be recorded electronically in a case management system record, or in a simple form as provided by [1611.7\(b\)](#) and shall be preserved for audit purposes for a period of five years.⁶⁰

⁵⁹ This combines the requirements set forth at TXX [3-1-85](#) to 87 and supplemental language in the PLAN, Inc./DPW contract. (Audit Clause A-Subrecipient (Local Governments and Non-Profit Organizations) 2011-2013 agreement).

⁶⁰ LSC CSR Handbook Ch 5, documents requirements.

CHAPTER 3: FINANCIAL ELIGIBILITY REQUIREMENTS

The legal services provided by programs are directed at people who cannot afford to pay privately for the service. The key element in determining financial eligibility is the income of the individual or family applying for service. Most clients who are found eligible for services under the various PLAN, Inc. funding sources' guidelines will also be eligible for services under LSC and vice versa. There are, however, clear differences between the approaches of these two funding sources. Take care to apply the requirements of each funding source correctly.

PROTECTIVE SERVICES

Services may be provided for PLAN, Inc.-funded cases without regard to income when the applicant is in need of protective services under the Protection from Abuse Act.⁶¹ A program may nonetheless wish to establish the income eligibility of protective services clients to determine whether the applicant will be eligible for related services such as custody, divorce, or child support assistance, or be served by a volunteer attorney program which may itself imposes income guidelines, or be eligible for service under different funding sources.

MEDICAL ASSISTANCE

Eligibility may be established if the applicant is currently eligible for one of a limited number of categories of Medical Assistance.⁶² In recognition that the standards for, and types of assistance have changed since the regulations were published, DPW—by waiver—modified the effect of the Title XX regs to provide that eligibility based upon MA eligibility would include that set forth in the regulation or the functional equivalent. AJA provides that “when an Applicant has a current medical access card for a category for which eligibility is based upon 125% of poverty income, no additional eligibility determination is needed. The list of specific categories and associated codes are included as “[List of Qualifying Medical Assistance Categories](#)” in the Appendix.

This is not an efficient method for routine use, but does need to be addressed in some circumstances. When medical assistance eligibility was first instituted, applicants carried a medical card that—on its face—disclosed eligibility dates and MA categories. The card was replaced by an access card that does not display that information. In the absence of card reader, a program must telephone or access DPW's on-line Electronic Verification System (EVS) in order to determine the category. Use of this method should be confined to situations in which the applicant would not otherwise be financially eligible. That might be the case using the Title XX regs, for example, for an applicant whose family includes a number of SSI recipients including the applicant and where the applicant has MA coverage and the total income

⁶¹ TXX [3-1-66](#) requires that financial eligibility for those seeking protective services be determined without regard to income. AJA [401.3d](#) allows the option of determining financial eligibility without regard to income.

⁶² TXX [3-1-13](#). [AJA 401.3b](#).

exceeds 125% of FPG.⁶³ This will be a rare circumstance. On the other hand, it may be more common when using the AJA “under 125% rule” — to find cases in which MA is approved based on income under 125%, for an applicant whose income would be considered over 125% as calculated using PLAN, Inc. or LSC guidelines. This would be due to differing definitions of the elements of income, deductions, and exclusions as between MA and PLAN, Inc. sources or LSC. Here again, programs which have implemented the LSC and/or AJA options on excess income might use those to address such over-income applicants. When the program has not implemented the excess income policy or it is not applicable to a particular applicant, MA eligibility may be the only available method of financially qualifying the applicant and, as such, programs would need to ask about MA status.

INCOME ELIGIBILITY

If the applicant does not meet the requirements of either of the preceding two sections, financial eligibility will be determined based upon income. For PLAN, Inc. funding sources, income eligibility is based upon the monthly gross income of the family; for LSC, it is the gross annual income of the household. The PLAN, Inc. funding sources’ definition of “family” is reviewed in some detail in the next chapter. The LSC definition, which will be referred to here as “household,” does not get the same attention in this manual because it is not defined by LSC in such particularity. Each LSC-funded program defines “household” in its eligibility policy.

Similarly, PLAN, Inc. funding sources, based on Title XX definitions, provide well-defined income inclusions and exclusions, while LSC includes a broad definition with an illustrative, but not exhaustive, list. A side-by-side comparison of the LSC and PLAN, Inc. funding source definitions is displayed in the table below. Refer to your program's eligibility policy for clarification of how LSC household composition and income and assets definitions have been locally implemented.

Income by family/household size is compared to 125% of the Federal Poverty Guidelines as determined annually by the Department of Health and Human Services and published in the Federal Register. The Legal Services Corporation publishes the 125% levels to the Federal Register a week or two thereafter. The updated guidelines are effective upon publication and should be promptly incorporated into a program’s eligibility process following publication by LSC.

WHOSE INCOME IS COUNTED?

Title XX regulations base income eligibility on the gross monthly income of the applicant and his/her family according to a set of definitions found in TXX [3-1-6](#). through [3-1-12](#). The family size may be one (“individual”). These definitions are summarized here:

⁶³ [LSC 1611.4\(c\)](#) allows a program to set a policy establishing financial eligibility based upon the applicant’s income being derived solely for a governmental program for low-income persons. A family with one or more adults and a number of children each receiving SSI might well have income over 125% of the FPG, but would qualify in a program which had adopted this policy. Also, LSC and AJA provisions for locally adopted policies for authorized exceptions to the annual income limits might be applied.

FAMILY

A family is one or more adults and unemancipated minor children, if any, who are related by blood or law⁶⁴, and who reside in the same household.

INDIVIDUAL

An individual is any of the following:

1. An emancipated minor
2. An unemancipated minor living with persons who are not his/her natural or adoptive parents, including minors living in a residential facility serving delinquent or dependent children
3. An adult residing alone
4. An adult who resides with other related or unrelated adults other than persons who are married or who have (a) child (ren) in common
5. A person defined as an individual is not included in a family grouping

EMANCIPATED MINOR

For these purposes, an emancipated minor is a person under the age of 21 who is either:

- married (whether living with his/her parents or not), or
- financially independent of his/her parents and acting independent of the control of parents or persons acting *in loco parentis*. He/she may be receiving financial assistance or benefits to which he/she is entitled in his/her own right.

Note that the definition of “emancipation” in this eligibility manual may or may not be the same as the definition in other contexts such or eligibility for housing or benefits.

⁶⁴ This definition of “family” in [3-1](#) refers to “... persons in a marriage or common law relationship” to illustrate persons related by law. The definition, as published in the PA Bulletin in 1982, must be considered in light of subsequent changes in the law. Pennsylvania recognized the doctrine of common law marriage from as early as 1873 until the 2003 Commonwealth Court’s ruling in [PNC Bank Corp. v. Workers Compensation Appeal Board, 831 A.2d 1269](#) (Pa. Cmwlth. 2003), holding that courts would no longer recognize marriages formed after the court decision. This was adopted as a statute (23 Pa Cons. Stat 1103) which reads “[n]o common-law marriage contracted after January 1, 2005 shall be valid.”

Thus, in order to recognize a common law marriage in determining the family composition, a couple—legally free to marry—must (prior to 1/2/2005), have agreed to live together as husband and wife without benefit of a marriage license, and both publicly and privately considered themselves married. In addition, persons who entered into a valid common law marriage in another state would be considered legally married in Pennsylvania. Common law marriages can still be contracted in nine states (Alabama, Colorado, Iowa, Kansas, Montana, Rhode Island, South Carolina, Texas, and Utah) and in the District of Columbia.

Note that programs with resources other than those which subscribe to Title XX guidelines may elect to modify family composition definitions affecting eligibility determination for those alternate sources of funding.

TAX DEPENDENTS OPTION

A person may choose to count as a “family” member anyone else residing in the same household who is claimed by that person as a tax dependent. If the person providing the support makes that choice then you will increase the size of the family and include any income of that dependent person in your eligibility determination.

This situation generally arises when there is an adult relative of the applicant living in the household with little income of their own who is supported primarily by the applicant. The provision cannot be applied with technical precision because there is a conflict between the general Title XX focus on the applicant's status in the current month and the notion of *tax dependent*, which is based in part on the experience of the prior year. To resolve this, you should take a common sense approach to this issue and keep your focus on the current situation rather than the past.

If the person providing support, on his/her most recent tax return, claimed a member of the household as a tax dependent and the circumstances have remained basically unchanged (the dependent's income and the supporter's contribution to his/her support are about the same in the current month as they were for the year covered by the tax return), then it is clear that the supporter may choose to include that person in the family for purposes of determining eligibility.

When prior tax treatment is not a helpful guide (perhaps because circumstances have changed⁶⁵), use the following test to determine if a person would qualify as a tax dependent for Title XX purposes. (This method is based generally upon Internal Revenue Service regulations (circa 2012).

- 1) Is the dependent person living in the applicant's household? (This is a requirement of Title XX not IRS): Yes _____ No _____
- 2) Is the person
 - a) related to the supporter as
 - i) son, daughter, stepchild, foster child, or a descendant of any of them (for example, grandchild), or
 - ii) brother, sister, half-brother, half-sister, or son or daughter of any of them (for example, niece or nephew), or
 - iii) father, mother, or an ancestor or sibling of either of them (for example, grandmother, grandfather, aunt, or uncle, or
 - iv) stepbrother, stepsister, stepfather stepmother, or
 - v) son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law, or,
 - b) if not related, was the person a part of the applicant's and supporter's household all of the prior year and/or is expected to be living in the household all the current year?

Yes _____ No _____
- 3) Is the person's current monthly income less than \$308 not counting public assistance or social security? Yes _____ No _____
- 4) Does the supporter contribute more than half of that person's support? Yes _____ No _____

⁶⁵ Note that item 5 on the checklist was added in 2012.

Consider all of the person's support and see if the supporter contributes more than half. Support includes amounts paid for necessities as well as the fair market value of lodging provided. Welfare is considered support provided by the state and not by the applicant.

- 5) Is the person a U.S citizen, U.S. national, U.S. resident alien, or citizen of Mexico or Canada?
Yes ____ No ____

If the answer to all five questions is "yes," the supporter may choose to include that person in the family (along with all of his/her income) for purposes of determining income eligibility. If the answer to any of the five questions is "no," then this option is not available.

Note that the inclusion of the tax dependent is the choice of the supporter and is not automatic. Further, a tax dependent who is the applicant is not given the option to be included in the family of the person providing his/her support; the option rests solely with the person providing the support.

EXAMPLES OF TITLE XX FAMILY SIZE

The composition of the family will often be self-evident. When it is not immediately clear who to include and who to exclude, the simplest approach to determining family size may be to:

- 1) count how many people in the household, starting with the applicant, would be included in the definition of family.
- 2) remove from that group anyone who meets the definition of an individual.
- 3) add any tax dependent(s) that the applicant chooses to have included in the family.

1. *PARENT AND CHILDREN.* Claudia lives with her two children, ages 4 and 6. Their family size is 3.

*2. *OTHER RELATIVE AND CHILDREN.* Juana lives with her two grandchildren, ages 8 and 14. The family size is 1. (The definition of a family would include all three. However, the children are unemancipated minors living with persons other than their natural or adoptive parents. This makes them individuals and therefore not included in the family group). *Consider the tax dependent option in this and other cases marked with an asterisk.*

3. *UNMARRIED ADULTS WITH A CHILD IN COMMON.* Frank and June are not married. They live together with their 1-year-old daughter. Their family size is 3. (The parents are each related by blood to their joint child.)

*4. *UNMARRIED ADULTS WITHOUT CHILDREN IN COMMON.* Bill and Janet are not married. They live with Janet's two children; Bill is not the father of either child. Janet and her two children are a family unit of three; Bill is considered an individual (an adult residing with an unrelated person) and is not included in the family grouping.

Suppose they came with an eviction problem. What is the family size? The family size does not change but, since the problem will affect them all, there may be two separate cases—for Bill (family size 1) and Janet (family size 3). A file could be opened for either family or for both, depending upon who the clients are. Care needs to be taken that there not be any adverse relationship between the two adults that could cause the two cases to be in conflict with one another.

If they marry, the family size will be four. If they have a child in common, the family size will be five whether or not they marry.

*5. *UNMARRIED; NO CHILDREN*. Sharon and Patrick are not married and have no children. They are not a family unit; each is considered an individual.

*6. *UNMARRIED, RELATED ADULTS*. Janet and Carla are sisters, age 58 and 64. They live with their mother age 88. (Each will be considered as an individual, but keep in mind the tax dependent option.)

*7. *TWO GENERATIONS*. Scott, 19, and Anita, 17, married and living with Anita's parents, apply for assistance with a consumer problem. Their family size is two.

Anita's parents apply for services for a bankruptcy. They have been paying for Scott's and Anita's food and necessities. The family size is two. Anita is emancipated because she is married and is thus an individual and not part of their family unit.

*8. *THREE GENERATIONS*. Sally, 42, her daughter Keisha, 22, and granddaughter Terry, 2, live together.

Sally applies for services. The family size is one. She meets the definition of individual (#4). If Keisha applies, her family size is two.

Suppose Keisha is 16, unmarried and supported by Sally. The family size is three. Keisha is an unemancipated minor living with an adult and unemancipated minor child to whom she is related by blood.

If Keisha gets public assistance for herself and daughter and is financially independent of her mother and acting independent of Sally's control, she is emancipated. Sally will be treated as an individual.

9. *MINOR SEEKING EMANCIPATION*. Ted is 17, living at his girlfriend's parents' house and wants to be emancipated. His family size is one. Ted is an individual either because he is unemancipated living with persons other than his parents, or depending on individual circumstances, is an emancipated minor.

Ted lives at home. He will be an individual only if he has established himself as a separate entity within the household, financially independent and not under the control of his parents.

TAX DEPENDENT EXAMPLE

* In each example above marked with an asterisk, the family size may be changed, under appropriate circumstances, if the tax dependent option is used.

For example, in number 2 above, Juana applies for services:

Suppose the parents of Juana's two grandchildren contribute \$250/month in child support.

If Juana herself contributes more than \$250/month (including the fair market value of lodging) to her grandchildren's support, she could opt to increase the family size to three and add \$250/month to the family income (the amount of the child support received).

WHAT IS COUNTED AS INCOME?

PLAN, INC.:

The regulatory sources for income definitions used for PLAN, Inc. funding sources (Title XX, DAP, State, IOLTA, and AJA) are:

- Title XX regulations, PA Bulletin, Vol. 12 No. 26, June 26, 1982, Appendix I, sections [3-1-199](#) through 3-1-204 , pp. 2012- 2914
- Access to Justice Eligibility Rules 24 PA Code §§401, [401.5](#))

Income refers to “the total amount of income earned or received before any deduction.” Specific listings identify the sources and items to be included or excluded as income. Income eligibility limits for PLAN, Inc. funding sources are established by contract at 125% of the Federal Poverty Guidelines, published annually in the Federal Register by the Department of Health and Human Services.

LSC:

The regulatory source of “income” definitions for LSC is 45 Code of Federal Regulations §1611.

“Income” is defined as an actual current annual total cash receipt 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 each LSC recipient program.

COMPARING INCOME ELEMENTS BY FUNDING SOURCE

The following table compares the elements of income (what is counted and what is excluded) as defined by PLAN, Inc. funding sources and by LSC. The most notable differences are:

Income counted by LSC, but not by PLAN, Inc. funding sources are

- wages/salary earned by individuals under age 14, and
- public assistance income received by the applicant.

“Income” excluded by PLAN, Inc. funding sources but not by LSC are

- medical expenses in excess of 10% of income, and
- child and spousal support paid.

Apart from these instances, there appear to be no significant differences in defining the elements of income. Most differences are in the level of detail. Where, for example, LSC refers simply to “net income from self-employment,” the Title XX regulations use 259 words to detail the elements of gross income and deductible expenses used to arrive at countable self-employment income. The results will likely be materially the same though the income will be expressed as monthly gross income in one case and annual in the other. Since the PLAN, Inc. sources are detailed, they can serve as useful models for how to arrive at countable income in complex cases, whether or not the case will be funded by PLAN, Inc. sources.

In some cases, the funding source guidelines refer to specific statutes, which may have since been changed or superseded (e.g. the G.I. Bill). The footnotes in those instances may require intake staff to consult with a managing attorney.

LSC counted		PLAN, Inc. funding sources (TXX, DAP, State, IOLTA, AJA) counted
Income that is counted		
Employment-related income		
Wages and salaries before any deduction.	Money wages or salary earned by individuals 14 years of age or older before deductions for taxes, social security, bonds, pensions, union dues, health insurance, and similar purposes for work performed as an employee including commissions, tips, piece-rate payments, and cash bonuses.	
Training stipends.	Armed Forces pay which includes base pay plus cash housing and/or subsistence allowances, but does not include the value of rent-free quarters. ⁶⁶	
Unemployment and worker's compensation payments.	Unemployment compensation received from government unemployment agencies or private companies during periods of unemployment and any strike benefits received from union funds; worker's compensation received from private or public insurance companies for injuries incurred at work. The cost of this insurance must have been paid by the employer and not by the worker.	
Strike benefits from union funds.		
Support ⁶⁷		
Alimony.	Voluntary or court-ordered spousal (and/or child) support received by a present or former spouse.	
Child support payments.	Voluntary or court-ordered child support.	
Military family allotments.	[Included in income but not specifically identified as "military allotments"] ⁶⁸	

⁶⁶ The value of rent-free quarters is exempted from income by both LSC and PLAN, Inc. funders (see income exclusions below). The exemption is not limited to the Armed Forces but would include, for example, farmworkers living rent-free in company housing.

⁶⁷ It is the amount being paid that is counted, not the amount ordered.

LSC counted		PLAN, Inc. funding sources (TXX, DAP, State, IOLTA, AJA) counted
Self-employment ⁶⁹		
Income from self-employment after deductions for business or farm expenses.		Net income from non-farm self-employment, defined as gross receipts minus expenses from one's own business, professional enterprise, or partnership. Gross receipts include the value of all goods sold and service rendered. Business expenses include costs of goods purchased, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (no personal income taxes), and similar expenses. Inventory changes may be considered in determining net income only when they are documented by income tax returns or other official records which reflect inventory changes. The value of marketable merchandise consumed by the proprietors of retail stores is not included as part of net income.
		Net income from farm self-employment, defined as gross receipts minus operating expenses from the operation of a farm by a person on his/her own account, as an owner, renter, or share-cropper. Gross receipts include the value of all products sold, government subsidies—crop loans, money received from the rental of farm equipment to others, and incidental receipts from the sale of wood, sand gravel and similar items. Operating expenses include the cost of feed, fertilizer, seed, and other farming supplies, cash wages paid to farmhands, depreciation charges, cash rent, interest on farm mortgages, farm building repairs, farm taxes ⁷⁰ (not State and Federal income taxes), and similar expenses. The value of fuel, food, or other farm products used for family

⁶⁸ Military family allotments are not specifically identified in the PLAN, Inc. list but such allotments would be considered voluntary support payments for spouse or children under the PLAN, Inc. definitions. An allotment is a deduction of pay from a military paycheck. While there are several reasons for establishing an allotment, the reference here is to payments in the nature of child or spousal support or alimony.

Allotments may also be authorized for payment of rent for a service member's dependents. If payment is made to the household it would be counted as income; if paid directly to the landlord it would be exempt.

⁶⁹ As a practical matter, consider asking, at intake, for the prior year's tax return to determine net income from self-employment or from non-resident real estate. While PLAN, Inc. funding sources focus on the current month's income, the tax return will provide you with a baseline for the gross income and expenses of the business. You can then ask about current changes from the prior year.

- Farm gross income and expenses are reported on IRS schedule F and posted to Form 1040 at line 18 (2011 Tax year).
- Non-farm self-employment gross income and expenses are reported on IRS schedule C and posted to Form 1040 at line 12 (2011).
- For forms based on [Schedules C](#) and [Schedule F](#), check [IRS on-line](#).

⁷⁰ "Farm taxes" here refers to property taxes, not income taxes.

LSC counted		PLAN, Inc. funding sources (TXX, DAP, State, IOLTA, AJA) counted
		living is not included as part of net income. Inventory changes may be considered in determining net income only when they are documented by income tax returns or other official records which reflect inventory changes.
Public benefits		
	Social Security payments.	Social Security pensions, survivors' benefits, permanent disability insurance payments, and special benefit payments made by the Social Security Administration before deductions of health insurance premiums. ⁷¹
	Regular payments from governmental programs for low-income persons or persons with disabilities. ⁷²	Public assistance or welfare payments such as General Assistance, SSI and State Supplemental payments, but only when the person is a family member other than the applicant.
		State Blind Pension payments made by the Department of Public Welfare.
Retirement, pensions, and VA benefits		
	See next page	
	Public or private employee pension	Railroad retirement, disability, and survivors' benefit payments made by the U.S. Government under the Railroad Retirement Act before deductions of health insurance premiums.

⁷¹ In asking applicants about Social Security income, it would not be surprising to find variations in the amount attributed to medical insurance premiums. While there are mandatory premium deductions from Social Security payments for those enrolled in Medicare Part B that would be standard for most recipients, a number of governmental programs are available to subsidize these contributions in whole or in part for low-income persons. Also, premium payments for Medicare Supplemental plans for Parts A and B or Part D prescription drug plans may be deducted from Social Security payments as well, at the option of the payer. Note that both AJA and LSC allow programs, at their option, to take these same medical insurance payments into account in determining eligibility for persons with gross income over 125% of the Federal Poverty Guidelines. Thus an applicant whose Social Security income before premium deductions is over 125% might be income eligible in a program which has opted to make use of this flexibility.

⁷² LSC does not exempt public assistance income of the applicant.

LSC counted	PLAN, Inc. funding sources (TXX, DAP, State, IOLTA, AJA) counted
benefits. Regular insurance or annuity payments.	Private pension and annuities, including retirement benefits paid to a retired person or his/her survivors by a former employer or by a union, either directly or through an insurance company. Government employee pensions received from retirement pensions paid by Federal, State, County, or other governmental agencies to former employees including members of the Armed Forces or their survivors.
Veterans' benefits.	Veterans payments, defined as money paid periodically by the Veterans Administration to disabled members of the Armed Forces or to the survivors of deceased veterans, and subsistence allowances, paid to veterans for education and on-the-job training, as well as the so-called "refunds" paid to ex-service persons as GI insurance premiums. The two basic educational programs sponsored by the Veterans Administration are the G.I. Bill Educational Training Program and the VA Vocational Rehabilitation Program. There is a different method for providing funds to veterans in these programs. The veteran in G.I. Bill Education Training Program receives a monthly sum which may be used totally for education or subsistence, or partially for education and partially for subsistence. The VA calls this monthly sum a "rate." Therefore, all the money received by the G.I. Bill veteran is counted as income. [Editor's note: <i>strikeout was added to indicate that this is an obsolete reference</i>]. The Veteran in a VA Vocational Rehabilitation Program receives what the VA calls a "subsistence allowance" and the VA itself handles the educational costs directly. Therefore, for the disabled veteran in the Vocational Rehabilitation Program, the subsistence allowance and the veteran's disability allowance are counted as income. ⁷³

⁷³ The "GI Bill Education Program" has been succeeded by the "Post 9/11 GI Bill" in which education payments are paid directly to the institution while housing allowances and book stipends go to the student. The general principal holds—education and training funds will be counted as income only to the extent that the funds are paid directly to the student.

Note that whether or not income is countable for eligibility purposes is not governed by whether the payments are taxable. Payments from the VA for education, training or subsistence are not subject to Federal tax (IRS Publication 970).

Income derived from assets	
Income from dividends, interest, rents, royalties or from estates and trusts.	Dividends including dividends from stockholdings or memberships in associations.
	Interest on savings, checking accounts and bonds.
	Income from estates and trust funds.
	Net income from royalties.
	Net income from non-resident real property income, defined as gross receipts minus the expenses for continuing the income such as depreciation charges, business taxes (not personal income taxes), interest on mortgage, repairs, and similar expenses. ⁷⁴
	<p>Net income from room and board payments, paid singly or in combination, and for rent from apartments, determined by deducting the sum of (1) and (2) from the total gross receipts.</p> <p>(1) Deductions for minimal costs: (a) \$10 per month for each tenant (lone person) or tenant group (two or more persons living together as a family normally would) whose rent arrangements with the landlord/landlady are independent of other persons, or (b) \$20 per month for each boarder, or (c) \$30 per month for each separate tenant-boarder (person not included in (a) or (b) above) whose rent and board arrangements with the landlord/landlady are independent of other persons. (d) \$30 per month for the first person and \$20 per month for each additional person in a tenant-boarder group (persons not included in (a), (b), or (c) above) whose joint rent and board arrangements with the landlord/ landlady are independent of other persons, and;</p> <p>(2) The following amount is deducted to recognize costs above the minimum: 50% of the remainder after the deduction in (1).⁷⁵</p>

⁷⁴ As with other self-employment income, consider asking for the prior year's tax return to determine net income non-resident real estate. While Title XX focuses on the current month's income, the tax return will provide you with a baseline for the gross income and expenses. You can then ask about current changes from the prior year. Gross Income and expenses from rental real estate are reported on IRS schedule E and posted to Form 1040 at line 17 (combined with income from royalties, estates, trusts and other sources).

⁷⁵ In short, from the gross rental income, deduct fixed minimal costs; half the remainder will be counted as income.

If there are no boarders—only those renting space—the minimal expense is \$10 for each rental arrangement with the landlord/landlady. For example, if two individuals are renting, the minimal expense is \$10 if they are both covered by the same arrangement and \$20 if there are two independent arrangements.

For boarders (those paying for room and meals), the minimum expense is \$20 for each boarder, or \$30 for each individual person and or group renting under a separate arrangement. For example, if the applicant provides room and board to a family of 3 plus two individuals, the minimum expenses under the per-person method would be \$100 (5 individuals @ \$20 = \$100) or 3 separate arrangements, 2 for the family and one each for the individuals (3 arrangements @ \$30 = \$90). Use the higher figure since it is more favorable to the applicant.

These rules are stated to apply to more complicated scenarios in which there may be multiple family groups and individuals and separate arrangements within a group but these will be rare.

LSC excluded	PLAN, Inc. funding sources (TXX, DAP, State, IOLTA, AJA) excluded
Excluded Income	
LSC <u>includes</u> as income all sources listed to the right. These items are not excluded by LSC. ⁷⁶	Earnings of a child under 14 years of age.
	Medical expenses (doctor, dental services, hospital bills, and health care premiums) that are not reimbursed by insurance and to the extent that, in total, the expenses exceed 10% of the total family monthly gross income. The expenses must have been incurred in past 90 days and be expected to continue for six months after the application or after a redetermination of financial income, if applicable. ⁷⁷
	Voluntary or court-ordered support paid out by the applicant or a member of his/her family to a present or former spouse not residing in the same household. ⁷⁸

⁷⁶ Title XX regulations list medical expenses and support payments under the heading of excluded income. It emphasizes the fact that these are items which affect the calculation of gross—rather than net—income.

⁷⁷ *Example. The family's gross monthly income is \$1,200/month. Their unreimbursed medical expenses over the past two months were \$350 which averages \$175 a month and are expected to continue at this rate for the next six months or more. Deduct from their monthly income \$55 (the amount by which their medical expenses exceed 10% of their income). The family income for eligibility purposes would be \$1,455.*

1. Gross family income: \$1,200
2. 10% of gross income: \$120
3. Unreimbursed medical expenses: \$175
4. Medical expenses greater than 10% (3-2): \$55
5. Adjusted total gross monthly income (1-4): \$1,455

Note that while medical expenses which exceed 10% of the family income are countable as income exclusions, full medical expenses can be considered under a Board-approved policy pursuant to AJA authorized exceptions to income eligibility (regs 401.3e and f(2)).

⁷⁸ The inclusion of the word “child” preceding “support” in the published AJA definition is understood to be an inadvertent error, and not meant to bar the exclusion of spousal support or alimony payments.

LSC excluded	PLAN, Inc. funding sources (TXX, DAP, State, IOLTA, AJA) excluded
	Voluntary or court-ordered child support paid out by the applicant or a member of his/her family for his/her child who is not residing in the same household.
The items to the right are not specifically listed as exclusions by LSC but would be presumably excluded from income because they are not specifically included and are not sources of financial support that are either regular or recurring.	Money received from the sale of property such as stocks, bonds, a house or a car unless the person was engaged in the business of selling such property, in which case the net proceeds would be counted as income from self-employment.
	Lump sum inheritance or insurance payments ⁷⁹
	Lump sum lottery winnings
[money borrowed]. ⁸¹	*Money borrowed ⁸² *

⁷⁹ “Lump sum” is here taken to modify both “inheritance” and insurance payments.

⁸⁰ The Act, codified at [42 U.S.C. Chapter 61 §§4601 et seq.](#), can compensate owners for the value of acquired property and residents displaced, for moving expenses and added costs of renting or purchasing comparable replacement housing. The implementing regulations ([24 CFR Part 42](#)) cap the payments and the time period over which they can be made. The acquiring agency can elect to make a lump sum or periodic payments.

⁸¹ Loans are not specifically mentioned in the LSC regs. If the proceeds go to a third party, or if money borrowed is not a regular or recurring source of income this would be excluded from income. That leaves open the question of whether loans, the proceeds of which are available to the applicant over an extended period of time, would be included as income for LSC purposes. On that question, consult your program’s eligibility policy.

*⁸² These three asterisked items taken together constitute:

1. A general rule: money borrowed is not counted as income.

LSC excluded		PLAN, Inc. funding sources (TXX, DAP, State, IOLTA, AJA) excluded
	Excluded as not available to applicant.	*Loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs.
	[money borrowed].	*Any grant or loan, to an undergraduate student for education purposes, made or insured under any program administered by the Commissioner of Education under the Higher Education Act.
	Compensation and/or one-time insurance payments for injuries sustained ⁸³ .	Lump sum inheritance or insurance payments ⁸⁴

2. An exception: education loans will be counted as income to the extent that the funds are placed within the control of the student and can be used for living expenses; and,

3. An exception to the exception: if the loan is for undergraduate education and made or insured under any program administered by the Commissioner of Education under the Higher Education Act, the proceeds will not be counted as income even if they can be used for living expenses.

The applicable Higher Education Act programs are

- Federal Pell grants
- Federal early outreach and student services programs
- Federal supplemental educational opportunity grants
- Leveraging educational assistance partnership program
- Special programs for students whose families are engaged in migrant and seasonal farm work
- Robert C. Byrd honors scholarship program
- Child care access means parents in school
- Teach grants

(20 USC 28 Subchapter IV, Part A §§1070 et seq.)

⁸³ Since worker’s compensation payments are clearly included in income, this item is likely meant to refer to lump sum payments and would apply to either work or non-work related injuries. Look to your program policy for a clearer definition.

⁸⁴ “Lump sum” is here taken to modify both “inheritance” and insurance payments. Note there is no mention either in Title XX income inclusion or exclusions regarding periodic (as distinct from lump sum) payments for non-work related injuries. To align with the treatment of workers comp, such payments should be counted as income.

LSC excluded		PLAN, Inc. funding sources (TXX, DAP, State, IOLTA, AJA) excluded
Money withdrawn from a bank.		Money withdrawn from a bank
Capital gains.		Capital gains
Tax refunds.		Tax refunds and tax rebates from any source
Food and in-kind goods and services		
Value of food or rent received by the applicant in lieu of wages.		The value of rent-free quarters.
		The value of supplemental foods assistance under the child Nutrition Act of 1966 and the special food service programs of children under the National School Lunch Act, as amended.
		Any home produce used for household consumption.
		The value of USDA donated foods.
		The value of the coupon allotment under the Food Stamp Act of 1964, as amended, in excess of the amount paid for the coupon.
Excluded as a non-cash benefit.		Any payment made on behalf of any individual for household expenses such as rent, food, utilities.
Third party payments.		Payments made to an institution by an Applicant's relative or other person for the costs of institutional care for the Applicant.
		Any payments to vendors by a State agency including foster care payments.
Gifts.		Gifts.

LSC excluded	PLAN, Inc. funding sources (TXX, DAP, State, IOLTA, AJA) excluded
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.	Per capita payment to, or funds held in trust for, any individual in satisfaction or judgment of the Indian Claims Commission or the court of claims. ⁸⁵
Other Income probably not excluded by LSC.	Payments made pursuant to the Alaska Native Claims Settlement Act, to the extent that such payments are exempt from taxation under Section 21(a) of the Act. ⁸⁶
	Payments to VISTA volunteers pursuant to Section 404(g) of the Domestic Assistance Act of 1973, and Stipends derived from the Foster Grandparents Programs under P. L. 93-113, Section 404(9). ⁸⁷

⁸⁵ In May 2011 final settlement in the amount of \$3.4 billion was reached in [Cobel v Salazar](#), a class action suit alleging defendants’ breach of its trust duties to Indian beneficiaries.

⁸⁶ ANCSA—42 U.S.C 1608 et seq.—exempts from taxation direct distribution of revenues, dividends, and shares of stock. LSC does not exclude this income source.

⁸⁷ These two programs were authorized by the Domestic Volunteer Service Act of 1973 (87 stat. 394) 42 USC 4950 et seq. Section 5044(f) provides that payments to volunteers under this chapter shall not in any way reduce or eliminate the level of, or eligibility for, assistance or services any such volunteers may be receiving under any governmental program except when the Director of the Corporation for National & Community Service finds that the hourly rate is equal to or greater than the prevailing state or Federal minimum wage. This last proviso is unlikely to affect Foster Grandparent stipends which are very low. As to Vista, the US and Pennsylvania minimum wage was \$7.25/hr in 2012 while VISTA payments, which vary regionally, were in the range of \$5/hour.

However, is not clear whether LSC programs would fall within the meaning of “governmental program” (not defined within the Act) so it would be prudent to count such income for LSC financial eligibility purposes.

AUTHORIZED EXCEPTIONS TO THE INCOME CEILING

AJA⁸⁸ and LSC⁸⁹ have each established guidelines within which a program may determine that certain applicants whose income exceeds 125% of the FPG are financially eligible. Programs choosing to make use of these exceptions need to make their implementation of one or both LSC and AJA options explicit in program eligibility policies adopted by the Board of Directors. Note that the two regulations are similar but not identical.⁹⁰

With a couple of exceptions, the program can select an upper limit (up to 187.5% of FPG for AJA or 200% for LSC) within which range to consider other factors upon which an exception may be based. Each funder lists several specific factors as well as including “other significant factors related to financial inability to afford legal assistance.” The program may opt not to consider any exceptions or—with respect to LSC—to select among them⁹¹. Upon this framework, a program can construct a policy for which factors, if any, to consider and, upon consideration, how decisions will be made.

There is—with one exception⁹²—no requirement that the applicant’s gross income, with the expenses factored in, be reduced to less than or equal to 125% of FPG or to any other specified level, although a local program policy may adopt such a “spend down” requirement.⁹³ Nor is there a prescribed method for how to consider these factors, e.g. who makes the decision and on what criteria, but generally, eligibility determinations made on a “spend down” basis can be made without a manager’s approval

⁸⁸ AJA [401.3\(e\)](#).

⁸⁹ [LSC 1611.5](#).

⁹⁰ AJA regs include an exclusion for cases in which an applicant with income up to 187.5% of the FPG seeks to “secure” benefits provided by a governmental program for the poor. LSC uses the terms “obtain” and “maintain” with respect to the same benefits and treats each of the two somewhat differently. (LSC programs may establish guidelines to serve those seeking to maintain benefits without regard to their income; gross income for those seeking to obtain benefits is limited to 200% of the applicable FPG.) The term “secure” in the AJA regs should be construed to mean both “obtain” and “maintain” using the words’ common definitions.

⁹¹ AJA lists most of the same factors as LSC, most notably excluding “current taxes.” Programs opting to establish a policy on special exceptions must consider all of the AJA-identified factors although the ways in which those factors affect the eligibility decision is determined by the program.

⁹² [LSC 1611.5\(a\)2](#) includes this requirement when the applicant’s income is primarily committed to medical or nursing home expenses. For these cases there is no upper limit on income. AJA has a similar provision, but does not require that the applicant be within normal program income guidelines if the expenses were excluded.

⁹³ To illustrate, in a program which has adopted a “spend-down” system, an applicant whose income for eligibility purposes was \$200 over the 125% income limit (and below the maximum) would need to have at least \$200 in relevant expenses (e.g. child support payments) to qualify. Another program may implement a policy in which the same person could qualify with less than \$200 in relevant expenses while other factors such as the type of case might apply in determining eligibility.

whereas a policy in which multiple factors are to be considered are more likely to require management participation at the time of the determination.

ASSETS

LSC requires an assets test. PLAN, Inc. funding sources do not permit it.

In a program with both PLAN, Inc. and LSC funding, it is best to routinely ask applicants about assets so as to determine eligibility for both LSC and PLAN, Inc. funding sources⁹⁴. This gives greater flexibility in funding and reporting cases. However, an applicant cannot be rejected solely based on assets if he/she meets the eligibility guidelines for one or more of the PLAN, Inc. funding sources and those funds are available. PLAN, Inc. funding sources might not apply if, for example, the applicant is not a Pennsylvania resident, or is seeking assistance in a matter in which there would be a statutory right to counsel. In such cases, the assets will remain a critical factor for eligibility.

Note that LSC allows for a waiver of the assets ceiling under “unusual conditions.”⁹⁵ Where the person meets PLAN, Inc. funding source guidelines, use of a waiver for the applicant to meet LSC eligibility guidelines would not, as a rule, be efficient. The cost in time to obtain and document a waiver would likely outweigh any marginal benefit (e.g. the ability to report the case to LSC).

CHANGE OF FINANCIAL CIRCUMSTANCES

Each client has the obligation to report changes in circumstances that affect financial eligibility. When those changes become known, the program has an obligation to redetermine the client's eligibility.

When a client has become financially ineligible⁹⁶ due to a change in circumstances, AJA⁹⁷ and LSC⁹⁸ regulations require termination of services provided with their funds only if the change in circumstances is sufficient and is likely to continue, to enable the client to afford private legal counsel, and that discontinuation would not be inconsistent with applicable rules of professional responsibility. PLAN, Inc. expects programs to employ a consistent policy in determining whether a client, under the circumstances, is able to afford private legal counsel.

⁹⁴ In cases in which an applicant reports no assets—either in total or with respect to a particular classification such as a bank account—enter a “0” on the appropriate form rather than leaving the entry blank. This will clearly distinguish cases in which there were no assets from cases in which the questions were not asked, or were asked and the applicant declined to answer.

⁹⁵ LSC 1611.3(2) requires approval of the Executive Director or his/her designee. When the assets ceiling is waived, the reason for the waiver must be documented.

⁹⁶ It is here assumed that the client has become financially ineligible for all funding sources to which the case could be assigned, consistent with the program’s funding source assignment policy.

⁹⁷ AJA [401.6](#).

⁹⁸ [LSC 1611.8\(a\)](#).

PLAN, Inc. funding sources (other than AJA as noted above), do not consider the client's inability to afford private counsel, *per se*, as a factor in determining whether to discontinue services they fund.⁹⁹ Services are to be terminated, but only if the termination would not be inconsistent with applicable rules of professional responsibility.

The rules of professional responsibility will usually affect the timing of discontinuation of representation, not the necessity of ultimately discontinuing representation. If, for example, a client obtained a job a week before a custody hearing, the client would likely be adversely affected and discontinuation at that moment would violate obligations to the client. If this occurred two months before the hearing, the ethical considerations could be different as the client might then have sufficient time to make other arrangements.

If the assigned funding source will not permit the continued representation and there is no ethical duty to continue with the representation, discontinuation of representation should proceed in a manner consistent with the requirements of the funding source that supports the case. The program must provide appropriate notices and grievance opportunities to the client. In all instances, the basis for continued representation must be noted in the case file.

LSC has a separate protocol to cover situations in which the program determines that the client is financially ineligible on the basis of later discovered or disclosed information (rather than through a change of circumstances). In such a case, services would be terminated if the termination is not inconsistent with the rules of professional conduct; there would be no separate consideration concerning the client's ability to afford private legal assistance.¹⁰⁰

The past practice of periodically performing formal redeterminations of eligibility for Title XX or state funded services has been eliminated by waiver, so long as the program has an approved policy in place for the timely closing of case files. Presently, all programs have approved policies in place so the formal Title XX redeterminations are not required. A redetermination of eligibility may still be necessary where there is reason to believe the client has become ineligible or where the funding used to support the case is changed.

⁹⁹ While no Title XX regulation directly addresses the issue, TXX [3-1-42](#)(1) states that legal services is provided if "the provision of service is consistent with the American Bar Association Code of Professional Responsibility, and/or the Disciplinary Rules of the Supreme Court of Pennsylvania." This provision is understood to modify the rules requiring unconditional discontinuation of services set out in the redetermination sections TXX [3-1-122](#) through 133, since there may be circumstances in which the termination of representation would constitute an ethical violation.

¹⁰⁰ AJA does not directly address this scenario of a later finding that a client was ineligible at the time of case acceptance. There is no specific guidance or direction on how to handle such a change of circumstances within the Title XX regs or the IOLTA agreement. Presumably, the applicable rules of professional responsibility will take precedence for cases funded by those sources as well, but there would be no separate consideration concerning the client's ability to afford private legal assistance, essentially mirroring the LSC protocol.

CHAPTER 4: NON-FINANCIAL ELIGIBILITY ISSUES AND OTHER REQUIREMENTS


NON-FINANCIAL ELIGIBILITY ISSUES

Funding source regulations, enabling legislation, professional judgment standards, and local program policies may prohibit a legal services program from providing service to an applicant who is financially eligible. Some of the common reasons why programs reject an applicant who has applied for legal services are described below. If a person has elected to complete a formal application for legal services, the rejection reason should be selected in the eligibility slip within Prime or indicated in the eligibility notes to the applicant's slip. The PLAN, Inc. standard rejection codes that correspond to the formal Title XX reasons for denial of services are described in Chapter 6 on page 67. Programs can add other codes that appropriately describe other reasons for rejecting an applicant.

- 01 Fee-Generating
- 02 Conflict of Interest
- 03 Criminal Matter
- 04 Frivolous or Without Merit
- 05 Other¹⁰¹
- 06 Case Exclusion
- 07 Not within Category of Need
- 08 Inconsistent with Professional Responsibilities
- 09 Out of Jurisdiction
- 10 Obligation of Commonwealth
- 11 Attorney/Staff Unavailable

If a person requests legal services, he/she has the right to complete a formal application within ten (10) days and have eligibility determined within thirty (30) days. If the applicant is ineligible—for a financial or non-financial reason—he/she must be given a notice of ineligibility in writing.¹⁰² The applicant must also be provided with the formal Title XX Written Notice of rejection unless he/she agrees with the decision and this is noted in the rejection record, preferably by written consent. Refer to page 70 for instructions on how to complete Title XX Written Notices and for agreement statements.

Generally, all applicants for PLAN, Inc.-funded legal services who have eligibility formally determined are entitled to receive the Title XX Notice as the common pool funding source is often assigned at the time of intake. Recall that a Title XX Notice is not required for telephone brief service cases. However, notification of the program's grievance procedures is required for all cases, regardless of the funding

¹⁰¹  When "other" or "miscellaneous" appear as a choice in any data collection field and is selected more than 10% of the time, programs might want to take a closer look at staff's understanding of the field choices and the possible need for an additional code.

¹⁰² TXX [3-1-144](#).

source supporting the case and regardless of whether the case is brief or extended, in person or by telephone.

Ordinarily, applicants and clients visiting a legal aid office will have been adequately informed of grievance procedures by the formal posting of those procedures, as required by DPW and/or by the inclusion of these procedures in the initial information given at the time of intake. However, because many applicants or clients are served by telephone or outreach and do not present themselves in the office, care must be taken to notify these people of their grievance rights, and to document the notification in some manner in the file if not in a letter confirming brief advice given by phone.

CITIZENSHIP, ELIGIBLE ALIEN STATUS

PLAN, Inc. funding sources place no restrictions on services to otherwise eligible persons based on their citizenship or alien status. LSC does, and LSC's restrictions apply not only to the use of LSC funds but also to the use of any funds by a program receiving LSC funds¹⁰³. For this reason, an LSC recipient will need to determine citizenship/alien status of all applicants. Note that LSC regulations authorize legal assistance without regard to citizenship/eligible alien status when the assistance is related to the prevention of, or relief from, battery or cruelty, sexual assault or trafficking or certain crimes listed in the Immigration and Nationality Act. The best guidance on this issue will be the program's policy implementation of [45 CFR 1626](#).

PENNSYLVANIA RESIDENCY

PLAN, Inc. funding sources restrict services to Pennsylvania residents. In determining residence, note that there is no requirement for a minimum length of residency and residency is not interrupted by temporary absences from Pennsylvania with subsequent returns or with a plan to return when the purpose of the absence has been accomplished. Out-of-state students, and foreign students who are living in Pennsylvania while attending an educational or job-training institution in Pennsylvania are considered residents of Pennsylvania as are migrant workers who are seasonally employed or seeking seasonable employment.

Note that Title XX regulations governing all DPW funding (Title XX/State/DAP) require that a person apply for services in the county in which they reside.¹⁰⁴ This restriction does not apply to IOLTA or AJA funding.

If an applicant does not reside in a county served by the program, or if the applicant has a legal problem that involves a legal matter in a Pennsylvania county that is not within a program's service area, the program should arrange to refer the applicant to another PLAN, Inc. program, as necessary, for intake or services. Note that DPW funds cannot be used by a program to fund services to a person living outside a county served by that program whether or not the person is referred by a program serving the person's county of residence.

¹⁰³ See "LSC "entity restrictions" on page 15.

¹⁰⁴ TXX [3-1-40](#).

Inter-County Referrals to other PLAN, Inc. Programs

The following are some guidelines to consider when making referrals.

- Always consider the interests of the applicant when arranging for a referral. A program's practices should always ensure that the applicant does not perceive the process as one where he/she is getting "the run around" or there is a lack of respect for the applicant's time. For example, the referring and accepting program should be clear with each other as to which one is conducting the formal intake, so the client is not caught in the middle and there should be clear direction to the client as to what steps to take, not based upon an assumption of how the other program should handle the situation, but based on good communication between the two programs.
- Make the effort to become familiar with neighboring programs' case priorities, both for extended representation and brief services by phone.
- Before making a referral, prescreen for financial eligibility and type of legal problem. Refer clients to other PLAN, Inc. programs only when the legal problem type is one the referring program believes has some merit and is within the accepting program's priorities.
- Before referring a case to another program, the managing attorney, or other appropriately designated staff person of the referring program's office, should have a phone or electronic conversation with a manager or other appropriate staff person of the other program to ensure that a referral is appropriate and will be accepted.
- The formal intake should be completed by the accepting program. It is not necessary for the referring program to complete an intake.
- If the case is one that a program would accept but for the jurisdiction, referring program staff should remain available to provide reasonable assistance after the referral is accepted. If the referred case type is not within the referring program's priorities, the referring program should make it clear that their staff will not be available to provide assistance with the case. If a conflict of interest exists for the referring program, provide the applicant with contact information for the other legal aid program. Inform the applicant of the conflict and explain why involvement in discussions with the other program has to be limited.
- In the case of a program contacted directly by a person who resides outside the program's service area who is in need of advice or brief services by phone, consider if it's in the best interest of the applicant for the program to provide the service without the need for a referral.

FEE-GENERATING CASES

A "fee-generating case" is any case that, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services to be paid from a monetary award made by a court or an administrative agency. A program may not use PLAN, Inc. funding sources or LSC funds to provide representation in a fee-generating case unless other adequate representation is deemed unavailable.

Each program is required to establish written policies and procedures regarding the referral of fee-generating cases to guide staff in compliance.¹⁰⁵ Generally, the procedures require that attempts have been made to refer the case, either to independent attorneys or to a lawyer referral service but the attempts were rejected and this has been documented in the file. The IOLTA/AJA policy also provides for consideration of the program's experience within the previous six months when it would indicate that the current case will not be accepted by a private attorney. It may also be necessary to document the view that the pursuit of damages was not the principal purpose of the representation.

The above summary is not a complete recitation of the fee-generating provisions of various funding sources. Where it appears possible that a financial award could be achieved in the case, or attorney fees awarded, there must be close attention to the program's fee-generating case policy and adherence to funding source requirements to determine whether representation is permitted.

CONFLICT OF INTEREST

An applicant is ineligible if providing services would be a conflict of interest. As part of the intake process, programs will have a procedure to check on whether the applicant is or was an adverse party in another case handled by staff, or if any adverse party in the applicant's case is a present or former client. The procedure must extend to all of the program's offices because conflicts apply program-wide. The fact that an adverse party in a case was previously represented does not, in itself, bring about the finding of a conflict, but it may. Each program has its own policies guiding this decision, which take into account the applicable regulations and contract provisions and the Pennsylvania Rules of Professional Conduct.

When a conflict is identified, the PLAN, Inc. contract covering Title XX/State funds directs that programs ensure the applicant is referred to, or otherwise receives equivalent service from other sources of legal assistance pursuant to a program's policy and procedures approved by PLAN, Inc.

CRIMINAL MATTER

Legal services are provided only in civil, not criminal matters. A criminal proceeding is "the adversarial judicial process prosecuted by a public officer and initiated by formal complaint, information or indictment charging a person with an offense denominated as 'criminal' by applicable law and punishable by death, imprisonment, or jail sentence."¹⁰⁶ There are two circumstances in which services may be provided in criminal cases.

¹⁰⁵ LSC 1609; DPW: Annual PLAN, Inc. program agreement for DPW/State/DAP funds (see definitions); AJA/IOLTA: annual contract, IOLTA Board/PLAN, Inc. Grant Agreement, Attachment D, IOLTA Grant use provisions, restated as item 10 of the agreement modifying revised AJA401.8b effective 1/10/2010 to more closely align with LSC language and to cover both IOLTA and AJA funds with a single policy statement. Note that the AJA/IOLTA and DPW provisions, while patterned on LSC 1609, are not identical to 1609 or to each other.

¹⁰⁶ The definition is from [LSC 1613.2](#), AJA, which has the same prohibition and exceptions at AJA [401.8\(c\)](#), does not specifically define the term. LSC's comment to its regulation states that the definition is intended to include cases in which a jail sentence is authorized even when its imposition is unlikely. [41 FR 177, 38506, 9/10/1976](#).

- Pursuant to a court appointment made under a statute or court rule or practice of equal applicability to all attorneys in the jurisdiction if authorized by the program after a determination that it is consistent with the program’s primary responsibility to provide legal assistance in civil matters.
- When professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being, or has been, represented by the program.

Cases handled under either of these exceptions can be funded by AJA or LSC. The general prohibition applies to Title XX or IOLTA funding, but for these funders, there are no exceptions.

FRIVOLOUS OR WITHOUT MERIT

A claim or defense is without merit when, in the judgment of an attorney, the party is not going to prevail because the weight of the facts in the situation overwhelmingly supports the position of the opposing party.

CASE EXCLUSIONS

Certain types of cases may be excluded by program policies or by the funding source(s) for which the applicant financially qualifies. In particular, the Pennsylvania Department of Public Welfare established three types of cases that cannot be handled with Title XX or State funds¹⁰⁷ (references are to Prime special problem codes).

- Tax (Federal (992), state (993) or local property or other local taxes (994))
- Property (Real property problems, either housing (625) or non-housing (972))
- Divorce (Divorce or annulment (320), property settlement (321) or separation advice (326))

Use of other PLAN, Inc. funding (IOLTA and AJA) for these cases is not restricted.

OBLIGATION OF COMMONWEALTH

PLAN, Inc. funds may not be not used to provide services if the Commonwealth of Pennsylvania has an obligation to provide counsel to the indigent through another funding source identified by statute.¹⁰⁸ There are no such restrictions on LSC funding.

The affected cases are

- Juvenile Court: delinquency, dependency or abuse cases (special problem codes 411-423, 440, 490)

¹⁰⁷ TXX [3-1-44](#).

¹⁰⁸ TXX [3-1-42](#); AJA [401.8d](#); For IOLTA, exclusion of these cases has been the on-going practice.

- Adoption (301)
- Guardianships: children (440) or adults: (332)
- Parental rights terminations: for parent or child (351, 352)
- Paternity: (361)

INSTITUTIONALIZED PERSONS

Title XX regulations bar service to institutionalized persons (referring here to a person living in a hospital, including one for the mentally ill and/or mentally retarded, a skilled nursing home facility, intermediate care facility, or a prison) when the service is one not available to residents in the surrounding community, the service is provided by the institution’s staff, or is the legal responsibility of the institution.¹⁰⁹ The restriction applies to the use of Title XX and State funds. As to prisoners, specifically, LSC regulation 1637 prohibits recipient programs from participating in any civil litigation, or assisting in administrative proceedings challenging the conditions of incarceration on behalf of persons incarcerated in a federal, state or local prison, regardless of the source of funding used for the services.¹¹⁰

CLASS ACTIONS

Programs that receive LSC funding are prohibited from initiating or participating in any class action lawsuits.¹¹¹ A program that does not receive LSC funds may use AJA, IOLTA, Title XX, or State funds for class action representation on the condition the program follows certain protocols prior to filing a class action against the Commonwealth of Pennsylvania.¹¹²

In brief, prior to commencing any class action, the legal services attorney will first confer with the appropriate PLAN law group — a procedure intended to help assess whether the action may benefit some low-income clients but harm others, or whether the concern addressed in the action might have differing applications in various parts of the state.

After this step, if the class action involves the Commonwealth as a defendant, the program is to give written notice to counsel for the affected Department of the Commonwealth, the named state defendant (if not represented by either the Departmental or General Counsel’s office), and the Governor’s Office of General Counsel. The notice sets out the policy or practice at issue, the principal

¹⁰⁹ TXX [3-1-69](#)

¹¹⁰ [LSC 1637](#) requires program to adopt policies to guide staff compliance with this restriction. See your local policy.

¹¹¹ [LSC 1617](#).

¹¹² The provisions are found in Rider 2, §15 of the Title XX/State/DPW contract for 2011-2013 and as Attachment F in the IOLTA/AJA Agreement. The latter had, as of 2011, one additional term not found in Rider 9—requiring notice to the Attorney General of Pennsylvania in cases in which the class action, though a civil matter, involves issues which may implicate the criminal justice system.

legal basis for the challenge, the willingness to engage in reasonable efforts aimed at resolving the adverse effects of such policy or practice without litigation, and that class relief may be sought if attempts at resolution are unsuccessful. Any such correspondence is to be copied to the Executive Director of PLAN, Inc.

If the Office of General Counsel believes the suit is frivolous, the Commonwealth's counsel will notify the legal services attorney and PLAN, Inc., giving the legal basis for that belief. In such a case, PLAN, Inc. will convene a panel of three Pennsylvania law school deans to render an advisory opinion to the Executive Director of the program intending to file the class action as to whether the proposed class action is frivolous. Absent exigent circumstances requiring immediate steps to protect the rights of the client, the Executive Director shall not approve the filing until he/she has reviewed the advisory opinion.

NON-PRIORITY CASES/LACK OF RESOURCES

A program, through its priority setting process, may exclude—or limit the range of services provided in—certain types of cases. Those exclusions or limitations should be clearly stated in the program's case acceptance guidelines.

INCONSISTENT WITH PROFESSIONAL RESPONSIBILITIES

Services should be declined if, in the attorney's view, representation of the applicant would require the attorney to handle a matter that she/he should not handle because of obligations imposed by the Disciplinary Rules of the Supreme Court of Pennsylvania aside from a case where there is a conflict of interest (rejection code 02) or a case that is frivolous or without merit (rejection code 04).

ATTORNEY/STAFF UNAVAILABLE

A legal services program may reject an applicant when it does not have sufficient resources to provide representation and the application is not for Title XX services. Title XX provides that if services are unavailable for an otherwise qualified applicant, that applicant is to be placed on a waiting list.

WAITING LISTS

For Title XX and State-funded cases, the Categories of Need¹¹³ must be used in the order listed to determine which cases shall be handled by your program. All cases listed under the 1st Category of Need, i.e., emergency, must be handled before any other types of Title XX-funded cases can be handled. If the program/office is able to handle all of the emergency cases, then cases in the 2nd Category of Need, i.e., Title XX Other, can be handled.

If an applicant who is determined eligible for services has a case that falls into Categories of Need 1 or 2, and if your program cannot make the Title XX-funded legal service immediately available to that person, that person's name must be placed on a waiting list if they have completed an intake form (3-1-44). In

¹¹³ TXX [3-1-44](#) sets out Categories of Need.

other words, the program cannot simply reject an applicant on the basis that services are not immediately available. A legal services program is not permitted to impose any other set of priorities than these with respect to Title XX-funded services.

The waiting list¹¹⁴ must indicate:

- the applicant's name.
- the Category of Need applicable to the case (1 or 2).
- the date that the request was made for the service (i.e., the date the intake form was signed and dated by the applicant).

In practice, intake staff commonly turns away—without completing a formal intake application—those persons with cases that the program has determined, through priority-setting, that it cannot handle. No application having been taken, none of those persons would be considered to have had their Title XX eligibility determined, hence no waiting list. *However, all applicants are to be informed that they have a right to complete the intake form even if it appears that they would be ineligible or that your program would be unable to handle their case in the foreseeable future.* The Title XX regulations technically require placement on a waiting list, but when doing so, it is crucial that programs avoid any misrepresentation to the applicant when the program knows with certainty that it will not be able to offer assistance in the foreseeable future, and most likely, not at any time.

¹¹⁴ See TXX [3-1-164](#) et seq. for waiting list rules.

CHAPTER 5: LIMITED SERVICE BY TELEPHONE

The ground rules for legal aid programs were developed when legal services were provided in person, not on the telephone. As the practice of delivering limited services by telephone has become widespread, operating regulations have been adjusted. Those changes have been noted in several sections above. Here we have consolidated a review of all procedures that are affected when services are delivered by telephone only.

Sources:

DPW waived various Title XX regulations. The waivers are in the DPW/PLAN, Inc. agreement encompassing Title XX/State/DAP funds for 2011-2013 Rider 2 item 13 B. The provisions are also included within the agreement between PLAN, Inc. and the programs. The full text of the waiver follows with parenthetical descriptions of the Title XX regulations added for clarity.

“Paragraphs:

- [3-1-95](#) (act promptly on request);
- [3-1-97](#) through 3-1-99 (timing of determination of eligibility);
- [3-1-104](#) (advice on rights and responsibilities at intake and redetermination);
- [3-1-106](#) (signed and dated application);
- [3-1-107](#) (who has to complete the application form);
- [3-1-185](#) through 3-1-187 (application form requirements);
- [3-1-188](#) through 3-1-190 (signature and when a minor can sign);
- [3-1-192](#) (signing the application); and
- [3-1-195](#) (face-to-face interviews and exceptions thereto)

Chapter II, Section I of the Department’s regulation for Title XX-funded services shall be waived to the extent necessary to authorize the following changes in mandating a signed and dated eligibility application form prior to the delivery of legal services in the instance of brief telephone conversations.”

“Brief telephone consultations shall include, but not be limited to telephone conversations between applicants, meeting all other conditions of eligibility and qualified employees of a Legal Services Provider regarding information pertaining to specific legal problems or questions. The total time required for any one telephone conversation shall be no longer than thirty (30) minutes and the total time devoted to the provision of these services via telephone by the Legal Services Provider shall not exceed three (3) hours. This waiver includes any necessary written follow up by the Legal Services Provider, necessary in connection with the telephone advice or consultation. The Legal Service provider shall maintain a written record of said brief telephone conversation(s) including other eligibility information.”

AJA regulations, at 401.1, define “Telephone Advice and Brief Service” as “civil legal assistance provided to eligible Applicants by Recipients through a telephone service system which provides legal information and brief service at or near the time an eligible Applicant contacts the Recipient. Such telephone service systems are often referred to as “helplines” or “hotlines.” Legal assistance provided through these

systems is limited to advice and counsel, brief service and referral after legal assessment when such activities are likely to address the problems without the need for in-person initial contact and within a short time¹¹⁵ from the contact by the eligible Applicant.”

IOLTA follows the AJA definition. The only material distinction between the AJA/IOLTA and DPW definitions is with regard to the DPW limitation on the length of calls and the total time spent on a case.

LSC does not have a specific definition of limited service by telephone, but indirectly defines it through its compliance rules. Limited service by telephone includes those cases in which the only service provided is that described by case closure categories A-Counsel and Advice or B-Limited Action. There are no specific time or duration limits. These are the practices that are affected:

1. Signed, dated application and face-to-face interview
See “Gathering Information” on page 18
2. Citizenship/eligible client status
While neither written verification of status nor production of documents related to resident alien status are required for telephone service cases, staff must note in the file the specific document(s) on which an alien is basing his/her status. For example, the notation “Client has documentation of status” is not sufficient; “Green Card” is. See footnote [40](#) on page 21. Note that the verification/document production requirements are not waived if the telephone service includes “continuous representation.”¹¹⁶
3. Bilingual
Need for translators unchanged by the mode of delivery. See page [19](#).
4. Timely closing
(For LSC cases – See [CSR Handbook](#); for DPW cases, see above description of the DPW waiver).
5. Title XX notice of rights and responsibilities
Requirement of written notice is waved. See page [19](#).
6. Grievance procedure: Client and applicants have a right to know that there is a grievance procedure and how to access it. Such notice is expected to be in writing, but for persons who apply for service on the telephone or for clients for whom services are by telephone only, the form of notice may be oral.

¹¹⁵ IOLTA and PLAN, Inc. have the expectation that telephone brief service cases will not be opened more than six months.

¹¹⁶ [LSC 1626.6\(a\)](#). The term “continuous representation” is not defined in the regulation. In the CSR Handbook §5.5 the term appears in this context “...continuous representation beyond Counsel and Advice or Limited Action (CSR Closure Categories A and B),” rather than as an attribute of a limited service case. Also, note that any in-person contact by the client with office staff in the course of representation by telephone (for example, dropping off papers) will trigger the requirements for citizenship verification or documentation of eligible alien status.

CHAPTER 6: GRIEVANCES AND TITLE XX NOTICES

This chapter reviews the requirements for program grievance procedures, and the particulars of closing DWP-funded cases and rejecting applications for DPW-funded services.

GRIEVANCES

This section reviews what happens when the program takes an action potentially adverse to the client's interest. That arises most frequently when the program determines that an applicant is ineligible or when a case is closed or services terminated without the clear consent of the client. Less frequently, there will be situations in which services are reduced or the client may be dissatisfied with the quality of services.

Grievance procedures allow programs to adequately consider complaints by applicants about the denial of legal assistance and from clients about the manner or quality of legal assistance provided, and thereby help to ensure that programs are accountable to applicants and clients. It is critical that an established procedure is in place to consider grievances, and that applicants and clients are provided timely notice that such a system is available and how to access it. Notice is generally required at the time of the first contact with the program by an applicant with respect to grievances related to denial of service, and not later than the date on which a case is accepted with respect to client grievances.

GRIEVANCE POLICIES AND PROCEDURES

PLAN, Inc. (with respect to DPW-funded services: Title XX, State, and DAP), AJA, and LSC regulations each require programs to have grievance policies and procedures. Though the IOLTA grant provisions do not address this directly, PLAN, Inc. requires a grievance procedure for all its funding sources. Some additional funders may have specific requirements (AAA, for example, may require a Department of Aging fair hearing); others will have none. While not technically required, it would be highly beneficial for a program to have an "umbrella" grievance policy to cover applicants and clients whose services will be supported by funders that have no specific requirements.

LSC¹¹⁷ and AJA¹¹⁸ require a program to have simple procedures for review of complaints by applicants about decisions to deny legal assistance and by clients with respect to operations of the program including, but not limited to, the nature, quality, reduction or termination of legal services provided to them. The program grievance procedure must have at a minimum, these elements:

¹¹⁷ [LSC 1621.3](#) covers complaints about denial of service; 1621.4 addresses complaints about the manner or quality of service. Notice of that complaint procedure is to be given at the time of acceptance of the case or as soon thereafter as possible.

¹¹⁸ AJA [401.4\(b\)](#). This section addresses denial of assistance. 401.7(a) addresses complaints about legal assistance. Information about that complaint process is to be given to a client at the initial visit.

1. A procedure designed to foster effective communications between the recipient and complaining applicants.
2. Practical methods to provide applicants with timely notice¹¹⁹ of the complaint procedures and how to make a complaint.
3. An opportunity for prompt consideration of each complaint by the Executive Director or the Executive Director's designee.
4. An opportunity, if the Executive Director or the Executive Director's designee is unable to resolve the matter:
 - a. As the procedure applies to applicants: to the extent practical, to communicate with a representative of the governing body (AJA indicates a preference for that representative to be a board member who is himself/herself client eligible).
 - b. As the procedure applies to clients: to submit an oral or written statement to a grievance committee established by the governing body.¹²⁰ AJA requires that the submission be, at a minimum, to a member of the committee, and, as above, preferably a member who is herself/himself client eligible).

PLAN, Inc. requires programs to establish, subject to its approval, an internal grievance system, and sets three requirements:

1. Notice informing all applicants and clients, including those receiving brief service by telephone,¹²¹ orally or in writing, that they have a right to grieve through the program's internal grievance procedure. Notice of the right to a review and the steps in the process must be posted in program offices.
2. Notice that the applicant or client, by using the internal grievance procedure, does not waive the right to a fair hearing applicable to Title XX/State-funded services, as long as the fair hearing request is made within the applicable time limits.
3. Written notification of the decision by the program to the applicant or client.

In summary, the elements of grievance procedures required by PLAN, Inc. and LSC are sufficiently aligned to be accommodated by a single program policy, leaving only the question of the DPW hearing. This is a program choice, i.e. to decide which procedure is likely to work best for the applicant and program, but PLAN, Inc. urges that programs adopt one grievance notice that can be used for clients

¹¹⁹ LSC describes the timing of the notice as "adequate notice" as applied to applicants, and "at the time the person is accepted as a client or as soon thereafter as is practical" for clients. AJA calls for notice as the time of the client's initial visit. AJA [401.7\(2\)\(i\)](#).

¹²⁰ LSC adds at [1621.4\(b\)\(3\)](#) that the procedures must also provide the opportunity to submit an oral statement. This can be accomplished in person, by teleconference, or through some other reasonable alternative; procedures must permit a complainant to be accompanied by another person who may speak on that complainant's behalf and provide that, upon request of the complainant, the recipient shall transcribe a brief written statement, dictated by the complainant for inclusion in the recipient's complaint file.

¹²¹ How to give required notice of a grievance procedure when services are delivered by telephone is best left to local policies, as long as it is done and documented. Some programs may include a grievance notice in automated scripts while others might include it with letters that confirm the advice given, or send the notice by mail or email, or have intake workers or advocates speak directly with clients.

whose cases are funded with PLAN, Inc. or LSC funding with addendums to address anything unique, such as the DPW fair hearing process. Procedures governing the grievance process should not be *ad hoc*, but rather set as a standard practice.

It is best if all clients are effectively informed of the program's grievance process, regardless of the funding used to support the case or the type of service offered and even if the services are supported by a funder which has no requirement of a grievance process. All clients whose cases are supported with PLAN, Inc. funding must be given their grievance rights and provided with the procedure.

Finally, note that the required elements of the program's grievance procedure are not meant, nor should they be, the only elements of an effective dispute resolution plan. The great majority of disputes are resolved informally without the filing of an appeal or a grievance and a settled protocol is needed for how to handle these situations as they arise.

NOTICE OF GRIEVANCE PROCEDURE

To summarize the requirements for notifying applicants and clients of applicable grievance procedure:

- Notify an applicant at the time an application is taken of the right to grieve a decision that they are ineligible. A person calling a program office, seeking legal assistance, should not be denied service without being notified of the program's grievance policy even in the absence of a formal application. When an application is taken on the phone, note in the eligibility slip or case notes that notice was given. This notice may be included in a phone script.
- Give the Title XX Notice of Rights and Responsibilities to applicants when their applications are taken in person. If the notice is distributed prior to taking the application, give it to all applicants. If distributed after completion of the application, give it to all successful applicants who qualified under Title XX guidelines and to all applicants who were rejected. When the application is taken on the telephone for a person receiving brief services by phone, no Title XX written notice is required.
- Notify accepted clients of the right to grieve not later than the date of acceptance or as soon thereafter as practical.
- Post notice of the PLAN, Inc.-approved grievance procedure and the right to a fair hearing in each office in the client waiting room.

ADVERSE ACTIONS AND GRIEVANCE PROCEDURES

When a legal services program makes a decision that might be considered adverse to the interests of a client, it advises the person of its decision and affords an opportunity to challenge the decision through a grievance procedure. The form of notice of the program's decision and the person's opportunity to formally challenge that decision may vary depending upon the funding source. In general terms, there is a procedure that applies to DPW-funded cases, providing for a fair hearing in which the scope of the complaint that will be heard is limited, and one or more internal complaint-handling procedures that apply to all funding sources including DPW-funded cases.

WHICH GRIEVANCE PROCEDURE APPLIES?

Most, if not all, programs have a single grievance procedure, which will likely offer some separate options depending, for clients, on the funding source supporting the client services. With a single policy, there may still be questions about which funding source to consider in deciding what options are available within the policy. This would, for example, be the question when the right to a fair hearing is applicable. If there is more than one grievance policy in place, one should be designated as the “umbrella” policy that is in effect for all applicants and clients in the absence of special circumstances.

If there is more than a single policy, or when there are variant procedures within a single policy, clear guidance must be provided to staff on which policy or variant is to be used. As to clients, the answer is pretty straightforward: the grievance procedure would be the one that, by its terms, applies to services supported by the funder to whom the client’s case is assigned at the time of the grieved action. Between the date on which the case was opened and the next fund shift, there is no single funding source associated with the cases that are assigned to the common pool. Program policy must address this situation. PLAN, Inc. recommends that programs provide the umbrella policy to these clients as long as the right to a fair hearing is noted, as this right will attach since pool cases are eligible for Title XX/State funding.

As to applicants, as noted in the prologue, there are serious shortcomings with considering an applicant to be applying for services supported by a particular funder rather than applying for services in general. Program practice should require that applicants be screened in order to qualify them pursuant to the most favorable outcome so they can be deemed eligible. Here, however, after the fact, all applicants who were seeking services that could be funded by Title XX may be deemed to have applied for Title XX services, and thereby have the right to a fair hearing as well as access to the program’s internal grievance procedure.

CLOSING DPW-FUNDED CASES/REJECTING APPLICANTS FOR DPW-FUNDED SERVICES

TITLE XX NOTICES AND DPW FAIR HEARING

The Title XX Notice of Rights and Responsibilities, generally provided at intake, advises applicants and clients, in part, that they have the right to request a Department of Public Welfare fair hearing¹²² to appeal a denial of service or a reduction, termination or suspension of a service. This applies directly to Title XX and State-funded cases. Although Title XX regulations do not directly apply because no Title XX funds are involved, a program may, for convenience, follow the Title XX notice procedures in DAP cases.

At termination of services, if a Title XX Written Notice of intent to close is required, the client will be informed of some rights in that notice.

¹²²TXX [3-1-82](#). A program may not substitute any other internal hearing.

REJECTING AN APPLICATION FOR DPW-FUNDED SERVICES

When an applicant for Title XX-funded services is determined ineligible for DPW-funded services following completion of an intake (and not found to be eligible under any other program funding source), and the applicant does not agree with the decision, the program must provide a Notice of Ineligibility and a Title XX Written Notice.¹²³ This notice provides the applicant with the basis for the program’s decision, the steps to be taken by the applicant to request a fair hearing, and the applicable time limits.

The term “applicant for Title XX-funded services” means, first, that a formal application has been completed—a necessary prerequisite to an eligibility determination—and second, that the services requested could be funded by Title XX. That would exclude criminal, fee-generating, divorce, property, or tax cases as well as cases in which there is a right to counsel provided by statute: Juvenile court cases, adoption, guardianship, and termination of parental rights.¹²⁴ On the other hand, it would include cases within the Title XX Categories of Need even if those cases were not within the program’s general priorities.

A Title XX Written Notice is not required if the applicant agrees with the program’s decision. When an application is taken by phone and the applicant agrees with the decision, document the applicant’s verbal consent in the notes to the eligibility slip within the case management system. If the application is taken in-person, and the applicant agrees, an agreement statement for rejected applications should have language substantially similar to the following:

- I agree with the program’s decision that I do not financially qualify for Title XX-funded legal services because my income exceeds the limits established by the Department of Public Welfare.
- It has been explained to me that I cannot receive the legal services that I requested because legal services are not provided in cases where:
- A conflict of interest exists
 - There is no merit to the case
 - The program does not handle this type of case
 - Other (explain)

I understand and accept the program’s decision. I have been informed that I can appeal the program’s decision through the Department of Public Welfare’s Hearings and Appeals Unit; however, I do not wish to appeal the decision.

Applicant’s Signature

Date

In the absence of an applicant’s agreement with a denial after completion of a formal application, use the Title XX Written Notice (DPW form 1011 as included within Prime) to give notice of a decision to reject an applicant’s case. These notices should be generated directly from the case management

¹²³TXX 3-1-144.

¹²⁴ If an applicant is challenging the characterization of the service— e.g., whether a case is fee-generating, or is a “property” case—consider that application to be for Title XX-funded services.

system. A sample Title XX notice is included as Appendix 7; instructions for completing the notice are found below beginning on page 70.

TITLE XX WRITTEN NOTICE OF CLOSING A DPW-FUNDED CASE

Title XX regulations require that, with the exceptions listed below, a client be notified, in writing, of a proposed action to reduce, terminate or suspend service.

When a Title XX, State or DAP-funded case is closed, send¹²⁵ a Title XX Written Notice unless:

1. The client was receiving Protective Service (3-1-159).

2. The case has been decided by a court or an administrative agency. If the client wishes to appeal, the client would complete a new intake form upon which an eligibility decision would be made. If the opposing party appeals, the client may request a new application for legal services for representation on the appeal (3-1-144).

3. The client agrees with the decision.

- a) The agreement must be documented (3-1-151). An agreement statement for closed cases should contain language substantially similar to the following. If a client's signature cannot be obtained, the advocate must make a notation of consent within the case file notes and confirm the client's consent within a closing letter to the client.

[] *I agree with the program's decision that I no longer qualify for Title XX funded legal services because my income exceeds the limits established by the Department of Public Welfare.*

[] *I agree that my case can be closed.*

I understand and accept the program's decision. I have been informed that I can appeal the program's decision through the Department of Public Welfare's Hearings and Appeals unit; however, I do not wish to appeal the decision.

Client's Signature

Date

- b) If you cannot immediately obtain the client's written agreement, you may satisfy the documentation requirements by sending a confirmation letter to the client stating that service is being discontinued or changed as he/she verbally agreed. Place a copy of the letter in the client's file.

¹²⁵ The notice can be generated from the case management system. See instructions beginning on page 72 for manually preparing the form if needed

4. The client voluntarily requests the termination or reduction in services (3-1-151).

- a) If that request is not made in writing, ask the client to sign the following statement:

I voluntarily request that my case be closed or services be reduced.

Client's Signature

Date

- b) If you cannot immediately obtain the client's written agreement, you may satisfy the documentation requirements by sending a confirmation letter to the client stating that service is being discontinued or changed as he/she agreed. Place a copy of the letter in the client's file.

5. Services will be continued through another funding source.

COMMUNICATIONS PROBLEMS

When a client has visual difficulties or language barrier problems, notice must be provided in a manner that takes that situation into consideration ([3-1-137](#)).

NOTICES TO PLAN, INC. REGARDING AN APPEAL

In the event that a request for an appeal is filed, DPW's Office of Hearing and Appeals will notify the program. Because the legal services program is a subcontractor of PLAN, Inc. for purposes of Title XX services, the regulations ([3-1-181](#) and [3-1-183](#)) require that within three calendar days of receipt, you send to PLAN, Inc.:

- a. One copy of the written material received from the Office of Hearings and Appeals in response to an appeal filed; and,
- b. One copy of the appeal disposition.

When you submit this material, delete client-identifying information in order to maintain confidentiality.

INSTRUCTIONS FOR COMPLETION OF WRITTEN NOTICES

The model Title XX Written Notice (Form 1011) on page 76 is divided into fourteen (14) numbered areas for purposes of these instructions.

1. Agency Name Name of the legal services program.
2. Date Notice Mailed Date the notice is mailed or handed to applicant/client.
3. Agency Address Address of the legal services program office issuing the notice.
4. Agency's Telephone Number Telephone number of the office issuing the notice including the area code. This is the number that the Office of Hearings and Appeals will contact to schedule the hearing.
5. Reason for Denial of Service Complete for applicants, not clients. Refer to the model notices. State the specific reasons that apply to the particular case in simple, non-technical language, in sufficient detail that the applicant is able to understand the basis for the decision or proposed action.
6. Reduction or Termination of Service Complete for clients, not applicants. Check "reduced," "terminated," or "other." The effective date is ten (10) calendar days from the date entered in #2. If the 10th day is a weekend or holiday, enter the date of the next working day.
7. Reason for Reduction or Termination of Service Complete for clients, not applicants. Refer to the model notices. State the specific reasons that apply to the particular case in simple, non-technical language, in sufficient detail that the client is able to understand the basis for the decision or proposed action. As applicable, include the information needed to establish continuing eligibility. See the text in the lists below.
8. Contact Person The person in your legal services office who is to be contacted if the recipient of the notice has any questions. If that person is not available at the phone number listed in item #4 (e.g., the contact is in an administrative office), then you should include that person's area code and telephone number.
9. Appeal Postmarked Date Enter a date that is 30 calendar days from the date the notice was mailed (the date used in #2). If the 30th day is a weekend or holiday, use the date of the next working day.
10. Appeal Dismissal Date Enter the same date as in #9 above.
11. Continuation of Service Complete for clients, not applicants. Use the same date as in #6.
12. Discontinuation of Service/Appeal Postmark Date Complete for clients, not applicants. The first date should be one working day after the date used in #6. The second date should be the same date indicated in #9.
13. Client Name and Address Client name and address.
14. Worker's Name and Date Signed Enter the name of the case handler and the date the notice was prepared.

TITLE XX CLOSING NOTICES

The following four model notices are to be used in closing Title XX cases. (If a situation occurs that is not covered by the model notices, please call PLAN, Inc. before completing the Title XX Written Notice).

MODEL NOTICES OF CASE CLOSING

- 1) Over-Income
- 2) Failure to Cooperate with the Redetermination Process (not currently applicable)
- 3) Miscellaneous
 - a) Client has either met the goal and no longer needs the service, or
 - b) Service is no longer appropriate for meeting the goal, or
 - c) Client has been uncooperative and/or has misused the service
- 4) Not a Pennsylvania Resident (Client has moved out of the state since the initial application or the last redetermination)

Ten days after the Title XX Written Notice is sent, the file should be closed unless the client has requested a review of the decision by the Hearing and Appeals Unit of the Pennsylvania Department of Public Welfare.

The following ten models are to be used when denying services to an applicant. (If a situation occurs that is not covered by the model notices, please call PLAN, Inc. before completing the Title XX Written Notice).

MODEL NOTICES OF APPLICANT REJECTION

- 1) Over-Income
- 2) Failure to Provide Information or Failure to Sign Intake Form
- 3) Fee-Generating (Rejected codes 01 on the intake form—see list below)
- 4) Code of Professional Responsibilities/Disciplinary Rules (Rejected codes 02, 04 & 08)
- 5) Criminal Matters (Rejected code 03)
- 6) Case Exclusion (Rejected code 06)
- 7) Service Requested by Institutionalized Person - specific service requested is not available to other persons in the community (Rejected code 06)
- 8) Service Requested by Institutionalized Person - service requested is provided by institution's staff or is the legal obligation of the institution (Rejected code 06)
- 9) Not a Pennsylvania Resident (Rejected code 09)
- 10) Obligation of Commonwealth (Rejected code 10)

REJECTION CODES: NON-FINANCIAL REASONS FOR REJECTION OF APPLICANT

01 Fee-Generating	Model notice 2
02 Conflict of Interest	Model notice 4
03 Criminal Matter	Model notice 5
04 Frivolous or without Merit	Model notice 4
05 Other	No model notice
06 Case Exclusion	Model notice 6
07 Not within Category of Need	No model notice

08 Inconsistent with Professional Responsibilities	Model notice 4
09 Out of Jurisdiction	Model notice 9
10 Obligation of Commonwealth	Model notice 10
11 Attorney/staff unavailable	Not valid for Title XX
12 Ineligible alien	Not valid for Title XX

TEXT OF LANGUAGE FOR SECTION 5, TITLE XX MODEL NOTICES FOR CASE REJECTION
(FOR APPLICANTS)

Text of language for section 5, Title XX Model Notices for Case Rejection

Over-Income	Your application for service has been denied because you reported your income for a family of (# in family) as being (\$ amount). The maximum income under Title XX regulations for a family of (#) is (\$). 12 Pennsylvania Bulletin, pages 2291, 2292 (July 17, 1982), Regulations 3-1-43 and 3-1-209, as modified by the annual contract between the Pennsylvania Department of Public Welfare and Pennsylvania Legal Aid Network, which established income guidelines at 125% of the Federal Poverty Guidelines.
Failure to cooperate	Your application for service has been denied because you have refused to give all of the information necessary in order to determine eligibility - or - you have refused to sign the application form. 12 Pennsylvania Bulletin, page 2007 (June 26, 1982), Regulation 3-1-106.
Fee-Generating	Your application for service has been denied because there is a possibility that money would be received from your case that could pay counsel fees. Title XX does not allow fee-generating cases to be accepted. 12 Pennsylvania Bulletin, page 2291 (July 17, 1982), Regulation 3-1-42(2).
Inconsistent with Professional Responsibility/Disciplinary Rules	Your application for service has been denied because the handling of your case would violate the Rules of Professional Conduct and/or the Disciplinary Rules of the Supreme Court of Pennsylvania because your case (does not have enough merit to pursue, is a conflict of interest, etc.). 12 Pennsylvania Bulletin, page 2291 (July 17, 1982), Regulation 3-1-42(1).
Criminal Case	Your application for service has been denied because your case involves a criminal matter and Title XX legal services are limited to civil cases. 12 Pennsylvania Bulletin, page 2291 (July 17, 1982), Regulation 3-1-42(3).
Case Exclusion	Your application for service has been denied because the type of service that you requested (divorce, property, tax) is not an allowable Title XX service. 12 Pennsylvania Bulletin, page 2004 (June 26, 1982), Regulation 3-1-44(2).
Institutionalized Person - services not generally available	Your application for service has been denied because the service that you requested is not available to residents in the surrounding community. 12 Pennsylvania Bulletin, page 2005 (June 26, 1982), Regulation 3-1-69.
Institutionalized Person - institution responsible	Your application for service has been denied because you are residing in a facility where: (1) the service is provided by the institution's staff - or (2) the service is the legal responsibility of the institution. 12 Pennsylvania Bulletin, page 2005 (June 26, 1982), Regulation 3-1-69.
Not a Pennsylvania Resident	Your application for service has been denied because you are not residing at an address in Pennsylvania. Title XX limits services to Pennsylvania residents.

	12 Pennsylvania Bulletin, page 2006 (June 26, 1982), Regulation 3-1-80.
Obligation of Commonwealth	Your application for service has been denied because the Commonwealth of Pennsylvania has the obligation to provide counsel for your case through another source identified by statute. 12 Pennsylvania Bulletin, page 2291 (July 17, 1982), Regulation 3-1-42(2).

TEXT OF LANGUAGE FOR TITLE XX MODEL NOTICES FOR CASE CLOSING
(FOR CLIENTS)

<p>Over-Income</p>	<p>After a redetermination of your income, we can no longer provide service to you because you reported your income for a family of (# in family) as being (\$ amount). The maximum income under Title XX regulations for a family of (#) is (\$). 12, Pennsylvania Bulletin, pages 2291, 2292 (July 17, 1982), Regulations 3-1-43 and 3-1-209 as modified by contract between the Pennsylvania Department of Public Welfare and PLAN, Inc., which established income guidelines at 125% of the Federal Poverty Guidelines.</p>
<p>Failure to Cooperate in Redetermination <i>(not current applicable)</i></p>	<p>We can no longer provide service to you since you have not responded to our request to redetermine your eligibility. In order to establish continued eligibility you must provide the following information: [indicate information required]. 12, Pennsylvania Bulletin, page 2008 (June 26, 1982), Regulation 3-1-131.</p>
<p>Miscellaneous</p>	<p>We can no longer provide service to you because: (1) you have met your goal and no longer need the service - or (2) the service in no longer appropriate for meeting the goal - or (3) you have been uncooperative and/or have misused the service. 12, Pennsylvania Bulletin, pages 2009, 2010 (June 26, 1982), Regulations 3-1-153 (1), (2) or (3).</p>
<p>No Longer a Pennsylvania Resident</p>	<p>We can no longer provide service to you because you are no longer residing at an address in Pennsylvania. Title XX limits services to Pennsylvania residents. 12 Pennsylvania Bulletin, page 2006 (June 26, 1982), Regulation 3-1-80.</p>

TITLE XX WRITTEN NOTICE FORM

TITLE XX WRITTEN NOTICE

IMPORTANT NOTICE TO TITLE XX RECIPIENTS READ CAREFULLY	
AGENCY NAME (1)	DATE NOTICE MAILED (2)
ADDRESS (3)	AGENCY'S TELEPHONE NUMBER (4) (AREA CODE)
THIS IS TO NOTIFY YOU THAT TITLE XX SERVICES WILL NOT BEGIN BECAUSE OF THE FOLLOWING FACTS AND REGULATIONS:	
(5)	
6 THIS IS TO NOTIFY YOU THAT TITLE XX SERVICES WILL <input type="checkbox"/> BE REDUCED <input type="checkbox"/> BE TERMINATED <input type="checkbox"/> OTHER ▼ EFFECTIVE ▼	
THIS ACTION IS PLANNED BECAUSE OF THE FOLLOWING FACTS AND REGULATIONS:	
(7)	
IF YOU DISAGREE WITH THE DECISION LISTED ABOVE, YOU HAVE THE RIGHT TO APPEAL AND REQUEST A FAIR HEARING THROUGH THE DEPARTMENT OF PUBLIC WELFARE'S BUREAU OF HEARINGS AND APPEALS.	
However, you do not have the right to appeal a decision which is based on changes in federal or state law or regulations simply because the law or regulations has changed and now excludes you from service, reduces the amount of service or imposes a fee. You do have the right to appeal if you believe you meet the requirements for service based on the new regulation or law, or if you believe the computation of the fee amount is incorrect. If the Bureau of Hearings and Appeals finds you do not meet the new requirements, you will be responsible for the cost of service received from the proposed effective date of the service provider's decision which was appealed until the date service is terminated or reduced. If a fee computation is being appealed, the Bureau of Hearings and Appeals will determine the amount of the fee to be paid and you will be responsible for the payment of that amount from the proposed effective date of the service provider's decision which was appealed until the effective date of the Bureau of Hearings and Appeals decision.	
This form is sent to you in duplicate, if you want to file an appeal and request a fair hearing, please complete the reverse side of this form and return one copy directly to the Bureau of Hearings and Appeals. Keep the other copy for your records.	
If you do not understand this decision, or would like to meet with a representative of our agency, please contact	▶ (8)
Your appeal notice must be postmarked on or before (9), and should be sent directly to the Department's Bureau of Hearings and Appeals.	
If the appeal notice is postmarked after (10), the Bureau of Hearings and Appeals reserves the right, by regulation, to dismiss the appeal without a hearing.	
If the appeal notice is postmarked on or before (11), Title XX services will continue pending the hearing decision. If an appeal is postmarked after this date, service will be discontinued.	
If the appeal notice is postmarked on or after (12), but before (12), the appeal will be accepted, but Title XX service will not be continued pending the fair hearing decision.	
(13)	(14)
NAME OF CLIENT _____	Print or Type Service Provider Agency Worker's Name _____
ADDRESS _____	DATE _____
CITY _____ STATE _____ ZIP _____	

CLIENT COPY

PW 1011 1005

RIGHT TO APPEAL AND FAIR HEARING

You have the right to file an appeal within the time limits specified on the other side of this form and request a fair hearing from the Department of Public Welfare.

In order to have a fair hearing, you **MUST DO THE FOLLOWING**:

1. state your reason(s) for the appeal in the space provided below otherwise the appeal request will be dismissed without a hearing; and
2. indicate your phone number including area code in the space provided below; and
3. indicate your exact address in the space provided below; and
4. mail this form directly to the Bureau of Hearings and Appeals, PO Box 2675, 2330 Vartan Way, 2nd Floor, Harrisburg, Pennsylvania 17110.

If you have any questions, you may call the Bureau of Hearings and Appeals at the following toll-free number: 1-800-932-0680.

You have the right to be represented at the hearing by a lawyer or other person if you desire. You can ask the service provider agency to direct you to the local legal services office if you want information about obtaining a lawyer to represent you at a hearing.

Before the scheduled hearing takes place, you or your representative have the right to examine all information which the agency will introduce as evidence at the hearing.

During the hearing, a representative of the Department of Public Welfare who did not take part in the decision will talk with you. All facts will be studied and a ruling will be made as to whether the decision of the service provider agency is in accordance with the Department of Public Welfare's regulations.

I WANT A HEARING BECAUSE:

(You must state your reason(s) or your appeal will be dismissed without a hearing.)

YOU MUST INSERT YOUR TELEPHONE NUMBER HERE ▶	AREA CODE ()
YOU MUST INSERT YOUR MAILING ADDRESS HERE ▶	_____

	ZIP CODE

I understand that I will receive written notification of the hearing arrangements.

DATE AND SIGNATURE OF CLIENT

DATE AND SIGNATURE OF PERSON ACTING ON CLIENT'S BEHALF

MAIL THIS FORM DIRECTLY TO:

BUREAU OF HEARING AND APPEALS
PO Box 2675
2330 Vartan Way, 2nd Floor
Harrisburg, Pennsylvania 17110

CHAPTER 7: CLOSING AND REPORTING CASES TO PLAN, INC.

CLOSING CASES

CLOSE OR REJECT?

An applicant's request for legal services may be rejected as opposed to being closed when the legal services program has never accepted it, i.e. an attorney-client relationship was never established either explicitly such as by verbal agreement or the signing of a retainer, or implicitly by the actual delivery of legal assistance. At this stage of an application for legal services, whether the applicant was found to have satisfied all of the program's eligibility requirements or none, there is no "case" to be closed so that if the application is not accepted it would be rejected (not closed). A case may be closed (not rejected) when, after it is "accepted," it is determined that no further action will be taken on the case either because the client's problems are resolved or for other reasons. Once an applicant is accepted, the case can no longer be rejected.

There may be a few situations in which the distinction between closing and rejecting is blurred. For example:

An applicant who is otherwise eligible for services presents an issue that is, on its face, clearly without merit. The application would generally be rejected. However, if a decision on the merits of the applicant's request for service cannot be made without further development of facts, the applicant would become a client, and the case may be accepted for the purpose of evaluating and advising the client as to the legal merit, then later closed if there is found to be insufficient merit.

AUTOMATIC CLOSING

Title XX requires the closure of a case after a court or administrative decision. If the client wishes to appeal, the client would complete a new intake form upon which an eligibility decision would be made. If the opposing party appeals, the client may request a new application for legal services for representation on the appeal.¹²⁶ Opening a new case on appeal—with a new eligibility determination—is now consistent with LSC's approach as stated in the CSR Handbook §6.5.

PROMPT CLOSING

Each program has provided PLAN, Inc. with a plan for the prompt closing of cases—a condition of DPW's waiver of Title XX redetermination requirements. During monitoring, PLAN, Inc. will assess programs' adherence to the timely closing policy, but does not disallow reporting of cases untimely closed. LSC does require timely closing of case as a condition of reportability.

¹²⁶ TX [3-1-44](#).

CLOSING CODES

If you need direction in deciding the most appropriate case closure code, look to the LSC CSR Handbook and the accompanying [Frequently Asked Questions](#). This applies whether or not the cases are reported to LSC or your program receives LSC funding.

PLAN, Inc. also requires designation of a “was case” status for all closed cases with choices: won, lost, settled, withdrawn, and advised. This field is reported to PLAN, Inc. within the quarterly statistical transfers and used in reports and other materials to PLAN, Inc. funders, legislators, and others. It defines the status of the case at the time of closing. The definitions below are provided in the interests of achieving common usage.

A “win” in this context means to have gained a victory over an adversary. Wins may not be as unambiguous as the winner of a ball game, but a win doesn’t have to be a shutout to be claimed. To win in this context is not, however, synonymous with simply achieving a successful outcome. Some might consider good advice as overcoming the adversary of ignorance, but we are not going there. Most often, the decision producing the win or loss will be made by an administrative agency or court. You may consider a favorable decision as a win even in the absence of an active adverse party when that adversary chooses not to participate. A “loss” is the failure to win in an adversarial context.

A negotiated settlement—with or without court action—should be noted as “settled.”

Use “advice only” to cover all advice and limited service cases (Closure Categories A and B). In spite of its current name, take it to mean any result that cannot be classified as “won,” “lost,” “settled,” or “withdrawn.”


“Withdrawn” applies to situations in which the client terminates the relationship before what would have been the intended conclusion. When this occurs at a time at which the legal services provided has extended beyond that suitable for Closure Categories A or B, the case will often be classified as Closure Category L. That category, in addition to “withdrawn” cases, will include a mixed bag of cases that do not fit elsewhere. When in doubt, report these as “advice only.”¹²⁷ If services in a case were anticipated to be limited, and some—but not all—anticipated limited services were delivered, note the case as “advice only.” If the highest level of service was Case Closure A or B but a higher level was anticipated in the retainer but not reached due to the termination, note the case as “withdrawn.”

Pro se support. When services consist of support to a *pro se* litigant or a client who is provided guidance with respect to his or her negotiations with another party, the Closure Categories A, B or L will be used depending on the nature and extent of services. The *Was Case* field should be reported as “advice only” unless the program has information—noted in the file—as to the outcome of the proceeding or negotiation in which case the field may be reported as “won,” “lost,” or “settled.” The tribunal is to be

¹²⁷ Note that LSC strongly discourages use of Closure Category K. If a program that is not an LSC-recipient is using both “K” and “L” to purposefully distinguish differing circumstances, those internal definitions should be communicated to PLAN, Inc. If “K” and “L” are being used interchangeably, use of “K” should be discontinued.

reported as “none” since the tribunal code is intended to indicate the highest tribunal level in which the program directly represented the client and that would not encompass assistance to a *pro se* litigant.

CAPTURING OUTCOMES DATA


 PLAN, Inc. strongly encourages programs to capture main benefits data at the time that an outcome occurs and at the time of closing. Although this is not a regulatory or contractual requirement, data that support results achieved for clients are often used by PLAN, Inc. and other funders in materials that help preserve funding for legal services and support the need for additional funds.

The case management system can be used to track main benefits and to capture lump sum awards, monthly amounts, lump sum debt avoided, and monthly debt avoided. Prime includes a main benefits feature with a standardized coding structure that can be customized internally by programs if they have the need to track benefits in more detail.¹²⁸ Outcomes data fields are included within the closing section of the intake form and the data is reported to PLAN, Inc. within the quarterly statistical transfers.

REPORTING CASES TO PLAN, INC.

What constitutes a *case*? While the term differs under various funding sources’ definitions, all have in common that the term includes assistance to a client that is in the form of individualized legal advice or representation. It does not include “other services.”¹²⁹ The DPW grant agreement with PLAN, Inc. and the subagreements with the programs define a case as allowable service activities employed by the LSPs or their subcontractors to resolve or prevent a civil legal problem, or a set of closely related legal problems, on behalf of an eligible client or several eligible clients. A more specific definition is needed to describe which “cases” are reportable to PLAN, Inc.

The statewide legal services grant agreement between PLAN, Inc. and the IOLTA Board, covering IOLTA and AJA-funded service, requires that all cases funded and included in reports under the agreement must meet the definition of a “case” as patterned after the definition in [LSC’s Case Service Reporting \(CSR\) Handbook](#). Although DPW’s definition of a case is not modeled on the LSC definition, PLAN, Inc. expects that all cases included as a new cases within the quarterly statistical transfers will meet the LSC definition of having been properly accepted for legal services (i.e. all items below but for (4) which is not assessed until closing) and will be reported as closed having, in addition, met the requirements for legal assistance provided (item (4)). “Acceptance” is to be evidenced by at least one advocate time entry to the case and associated case notes.

¹²⁸  For an example of a well-developed model for the use of the Main Benefit , Recovery and Outcome fields in PRIME, see the [Bay Area Legal Aid protocol](#) at : http://lri.lsc.gov/sites/default/files/LRI/docs/Main_Benefits_Recovery_1.pdf

¹²⁹ See discussion on page 8.

The definition of “PLAN, Inc. reportable case” is one in which:

1. the client is financially and otherwise **eligible** to receive legal assistance under the terms of the applicable funding regulations and agreements;
2. the client’s case is **within the program priorities** (or is an emergency case accepted under the program’s emergency case acceptance procedures);
3. the legal services program has actually **accepted** the client for service through its intake system or another established procedure for ensuring client eligibility;
4. the **legal assistance provided** to the client meets the criteria of one of the following CSR Closure Categories;¹³⁰
 - A Resolved by counsel and advice.
 - B Limited action.
 - F Negotiated settlement without litigation.
 - G Negotiated settlement with litigation.
 - H Administrative agency decision.
 - I Court decision.
 - a. Uncontested court decisions.
 - b. Contested court decisions.
 - c. Appeals to an appellate court taken from a decision of any court or tribunal.
 - K Other
 - L Extensive service (not resulting in settlement, or court or administrative action).
5. The **type of legal assistance** provided to the client is **not prohibited**; and
6. The **legal problem(s)** of the client are **not of a type prohibited**.

Part (3) of the definition refers to a case being “accepted.” When, in the application process, a case has been found to meet all the program’s eligibility criteria—the applicant is financially eligible, meets other criteria such as citizenship or residency requirements, if applicable, and neither the type of services requested nor the legal problem are prohibited—the case is deemed to be “acceptable.” The term “accepted” means that a formal commitment was made by the program to represent the client. That might take the form of an executed retainer, the actual delivery of services, or a direct communication between the applicant and an advocate.¹³¹

As noted above, once a case is accepted, it cannot—at least by LSC rules—be rejected, but rather must be closed. If, for any number of reasons (some of which are noted below), the case cannot be reported to the funder when closed, it will be “deselected,” a descriptor in the case management system which identifies the reason it will not be reported to LSC.

¹³⁰ See LSC CSR Handbook for detailed definitions of case closure categories.

¹³¹ The “determination of eligibility” cited in Title XX regulations fits the definition of a finding of “acceptability,” but not that the case has been “accepted.”

LSC directs programs to “deselect” cases that do not fully meet the criteria for what is here termed an “LSC reportable” case. While PLAN, Inc. generally uses the LSC Case Service Reporting Handbook for its definition of a reportable case, an “LSC reportable case” and a “PLAN, Inc. reportable case” are not identical.

One set of reasons for deselection addresses the situation in which a case is accepted, but fails to meet one or more other criteria for reporting. These include situations in which “LSC reportable” and “PLAN, Inc. reportable” would appear to coincide.

- Case files were properly opened where the client withdrew before any legal assistance could be rendered.
- Case files in which the client gave the program erroneous information at intake and the correction of which showed that the client was ineligible.
- Case files in which administrative or computer error causes a case to be opened when no case should have been opened.

There are another set of reasons for deselection cited as examples in the CSR Handbook¹³² for which LSC and PLAN, Inc. are not necessarily aligned.

- **Untimely Closing.** Case files which closure is untimely according to LSC guidelines (for which there is no comparable PLAN, Inc. requirement).
- **Documentation Lacking.** Case files where the required documentation is not present (e.g., a signed application where required, or adequate documentation that the clients were advised as to their specific legal situations as “advice only” cases¹³³). If the initial file notes in the case adequately document any client service, the case will be reportable.
- **Duplicate case files.**¹³⁴ The largest portion of LSC-deselected cases may be those that would be considered duplicates of other cases reported in the same year. It is often impossible to tell at the outset whether two or more cases will be duplicates. For example, one of the factors for identifying a duplicate is closing date—two cases that would be duplicates if closed in the same reporting year, will be properly reported separately if closed in different years. Another LSC criterion is the extent of services. Two family law cases, for example, may be considered duplicates if limited services are provided or, as separate cases, if services are extended. There is currently no contractual or regulatory requirement that defines this issue for PLAN, Inc.-supported cases. Programs should take care not to open a new case for a client when there is a case currently open for the same legal problem. That aside, programs should report all qualifying cases to PLAN, Inc. without elimination of duplicates as defined by LSC.

Case management systems generally date the intake as of the day the application is taken. The most critical issue in reportability will be determining that the case has been accepted. The case management

¹³² [LSC CSR Handbook §3.5.](#)

¹³³ LSC CSR Q&A § 5.6. For example that, in an eviction case, the case notes would reflect that the client was advised as to the specific dates of his/her response rather than “went over eviction time frames.”

¹³⁴ [LSC CSR Handbook §§6.6 and 6.4.](#)

system currently can track the status of a case to identify cases that have matured to a reportable status: case type S (staff) or P (PAI) rather than H (hold), which could apply to cases not yet accepted. To a limited extent, the H case type can be used to distinguish “acceptable” cases from reportable cases. A time entry for a case would be a reasonably reliable indicator of case acceptance though case notes should reflect case acceptances. The internal protocol must provide clear guidance to staff.

To summarize the above text, follow these general guidelines when reviewing data prior to reporting each quarter to PLAN, Inc.:

- LSPs should rely on case type codes to designate cases that are eligible for reporting. Case types of S (the case is handled by in-house staff) and P (the case is handled by a private attorney pursuant to the program’s PAI project) are the only case types that should be reported. A case type code of H (Hold) can be used to tag records that are not quite ripe for reporting.
- If an advocate has not yet established an attorney-client relationship with a client and delivered some form of legal assistance (see CSR categories above), as evidenced by at least one timekeeping entry, the definition of a case is not yet met so the record cannot be reported as a case, although it might be reported as a matter in the annual Provider’s End-of-Year Report. This will ensure that *no-shows* are never reported as cases.
- If accepted applicants are scheduled for clinics, and they will meet with an advocate at the clinic, the record cannot be reported until the clinic is held and the meeting takes place. Designation as a case type code of H, until the clinic is held, will help guard against inadvertent reporting of these contacts as cases. Records for applicants who are *no-shows* at the clinics should never be reported.
- If an applicant has been referred to a private attorney without meeting with a legal aid advocate, and there is no evidence that the attorney has met with the client, the record should not be reported until the definition of a case has been met. Again, this avoids the reporting of *no-shows*.

APPENDICES

Source Documents

- 1) Internal Materials for LSP's Intake Process
- 2) [Title XX Regulations](#)
- 3) [AJA regulations](#) (PA Code) // [Access To Justice Act Regulations](#) within this manual
- 4) IOLTA Grant Use Provisions
- 5) Grant contracts governing IOLTA, Access to Justice and State funding including contract waivers (Excerpts)
- 6) [LSC regulations \(full listing\)](#) // [LSC Eligibility \(45 CFR 1611 \)](#)
- 7) Medical card–electronic verification system and [List of Qualifying Medical Assistance Categories](#).
- 8) [Title XX Rights and Responsibilities](#)
- 9) [Annual income guidelines](#) (HHS/LSC look for listing below 1611 for current guidelines)
- 10) [LSC Case Service Report \(CSR\) Handbook and Frequently Asked Question](#)

Program Policies

- 1) LSC /AJA program priorities and case acceptance practices
- 2) Policy on assignment of funding sources
- 3) Grievance procedure(s)
- 4) Conflict of interest procedure
- 5) Referral policy
- 6) Program definition of brief services by phone
- 7) Fee-generating cases
- 8) Restrictions on legal assistance to aliens (w/ alien eligibility form)
- 9) Legal services program eligibility guidelines (w/retainer)
- 10) Program / PLAN, Inc. memos on eligibility

Source Documents

- 1) LSP's materials for intake procedures: general handout, grievance procedures, notice of eligibility, etc. (to be inserted into manual by LSP).

SOURCE DOCUMENTS

TITLE XX REGULATIONS

**Pennsylvania Bulletin 6/26/1982 and 7/17/1982
with table of contents and text of DPW/PLAN, Inc. waivers.**

Section	Description	Waiver?
3-1-xx	This is Annex A DPW Chapter III – Eligibility for legal services	
1-2	LEGAL BASE for the regulations	
3 to 17	Definition of terms (includes family unit (3-1-10))	
[3-1-18 – 3-1-37]	not applicable (Adult services and family planning)	
38	ELIGIBLES FOR LEGAL SERVICES	
39	Services provide by lawyers and aids. General; subject matter of provider	
40	Recipients must be 18 (W-A) and a resident of the county which is served by the program. In which services are provided (rev 7/17/82)	Rev7/17/82 W-A
41	18 years and older (W-A) in need of emergency service without regard to income for protective services	W-A
42	qualifying conditions *provision of service consistent with the code of professional responsibility and the PA disciplinary rules *Not fee-generating and Commonwealth does not have an obligation to provide counsel though a source identified by statute * Not a criminal matter *Service is needed for a reason listed under categories of need (see 44) +Financial eligibility requirements are met + Service is provided in the recipient's county of residence Client is a resident of the county in which legal services is requested (7/17/82)	Rev 7/17/82
43	Who is eligible: welfare recipients and persons with family income not over 50% of BLS intermediate standards 125% of Official Poverty Guidelines(W-a)	W-A
44	Categories of need: *Emergencies *Family, domestic, housing, income, employment, consumer. Health, education and civil rights But, no divorce, property or tax matters. Waiting list if services are not immediately available. Services are automatically terminated by and administrative or court adjudication. Appeals require a new application.	

Section	Description	Waiver?
[45 -65]	Not applicable. (Bureau of Blindness and visual services/Protective service)	
66	Protective Service Eligibility	
67-69	General requirements; Right to request services	
70/71	Basic Eligibility Financial , in need of service, fitting category of need	
72/73	Discontinuation of services – sets order	
74	Dicontinuees placed on waiting list	
75/76	Nondiscrimination re: Primary Recipients applicants and clients	
77/78	Barring additional eligibility requirements	
79/80	Pa residents and limiting Primary Recipients to residents of the county	
81/82	Right to appeal and receive DPW fair heading	
83/84	Confidentiality	
85-88	Record retention applications & other eligibility info, adverse notifications, other approved docs, and service logs	
89	Right of individual to review their own record 55 PA Code 100.5.b	
90-92	Responsibility for eligibility determination	
93	DETERMINATION OF ELIGIBILITY	
94	Generic requirements	
95	Act promptly on request	W-B
96	Timing of app for multi-service provided	W-B
97	Generally eligibility is determined before services	W-B
98	Exception to 97	W-B
99	Determine eligibility in 30 days	W-B
100-102	Duty to explain eligibility criteria	
103	Show respect for the client’s dignity and right to privacy	
104	Advise on rights and responsibilities at intake and redetermination	W-B
105	INDIVIDUAL ELIGIBILITY DETERMINATION	

Section	Description	Waiver?
106	Signed and dated application	W-B
107	Who has to complete the application form	W-B
108	Provide any needed help to the Primary Recipient in the applicant process	W-B
109	Explain that false statements subject application to criminal prosecution	W-B
110	Use declaration method	
111-113	I&R services are without regard to income	
114-115	[Not applicable]	
116-121	Reassessment for protective services	
122-133	REDETERMINATION OF ELIGIBILITY	#127W-A
134	Notifying clients of eligibility decisions, service requests and proposed action	
135/136	Generic requirements... Plain language notification using DPW form	
137	Addressing visual and language limitations	
138	Elements of the written notice	
139	Consequences of deficient notice	
140	Subgrantor's role in providing notices	
141	Notice of initial eligibility decision	
142`	Timely: (10 day) notice	
143	Oral notification when service can be provided immediately	
144	Notice of ineligibility	
145	What to do when written notice of eligibility is not possible	
146	Form of notice of adverse eligibility decision	
147	Time limits	
148	Deadlines	
149	ADVANCE NOTICE OF PROPOSED ACTION	
150	When notice is required	

Section	Description	Waiver?
151	When notice is not required	
152	Timing – at least ten days prior to proposed action	
153	Bases for service reductions or termination of services	
154	Forms	
155	OHA to notice program appeal was filed and set date for hearing	
156	Add to 138: need to notify client of need to action within 10 days to continue services pending appeal	
157	Instructions on dates in the form	
158-159	Protective Services Notification requirements	
160-163	Not applicable: Protective Services related to shelter and housing	
164-170	WAITING LIST ADMINISTRATION	
171-183	DEPARTMENTAL APPEALS. Describes the appeal process, as distinguished from earlier sections, which describe various forms and notifications	
184-185	APPLICATION FORM REQUIREMENTS	W-B
186	Single form may be used for all Primary Recipients residing in the same household	W-B
187	Application form represents a request for service	W-B
188	Signature	W-B
189 /190	When minor can sign	W-B
191	Explain prosecution for fraudulent receipt of service	
192	Signing application	W-B
193	Documentation of inconsistent or incomplete info may be required at any time	
194	Primary Recipient is always considered the prime source of information	
195	Face-to-face interviews and exceptions thereto	W-B
196-198	Service eligible in a declared state of disaster	
199-202	Income inclusions	
203-204	Income exclusions	
205-209	Bureau of labor statistics intermediate standards; gross monthly income levels;	Rev

Section	Description	Waiver?
	eligibility at 50% or below 40% or below rev 7/1/17/82 125% of Official Poverty Guidelines (W-a)	7/17/82 W-A

Waivers: (Rider 2, §44 DPW-PLAN, Inc. Agreement 7/1/11-6/30/13)

(A) Paragraphs 3-1-40, 3-1-41, 3-1-43, 3-1-127, 3-1-205, and 3-1-209 in Chapter III, Section 1 of the Department’s regulations for Title XX funded services shall be waived to the extent necessary to authorize the following changes in eligibility for legal services:

- (i) Services to persons under 18 years of age shall be authorized;
- (ii) Consistent with the ethical obligations of lawyers, the formal redetermination of client eligibility shall not be required, so long as the Legal Services Provider has in place procedures which make it clear to clients that they have an obligation to report changes in their family financial circumstances and so long as the Legal Services Provider has in place a formal policy which will guard against the accumulation of open files which could and should be closed.
- (iii) The maximum income levels to be used shall be equivalent to one-hundred and twenty-five (125) percent of the Federal Poverty income Guidelines (updated annually).

(B) Paragraphs 3-1-95; 3-1-97 through 3-1-99; 3-1-104; 3-1-106; 3-1-107; 3-1-109; 3-1-185 through 3-1-187; 3-1-188 through 3-1-190; 3-1-192; and 3-1-195 in Chapter III Section 1 of the Department’s regulations for Title XX-funded services shall be waived to the extent necessary to authorize the following changes in mandating a signed and dated eligibility application form prior to the delivery of legal service in the instance of brief telephone consultations. Brief telephone consultations shall include but not be limited to telephone conversations between applicants meeting all other conditions of eligibility and qualified employees of a Legal Services Provider regarding information pertaining to specific legal problems or questions. The total time required for any one telephone conversation shall be no longer than thirty (30) minutes and the total time devoted to the provisions of these services via telephone by the Legal Services Provider shall not exceed three (3) hours. This waiver includes any necessary written follow up by the Legal Services Provider, necessary in connection with the telephone advice or consultation. The Legal Services Provider shall maintain a written record of said brief telephone conversation(s) including other eligibility information.

RULES AND REGULATIONS

Title 55

PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

Eligibility for Certain Services Funded through the Title XX Social Services Block Grant

(Editor's note: The regulations below are those published in the Pa Bulletin 6/26/1982 but incorporating changes issued in the PA Bulletin of 7/26/1982. Sections not relevant to legal services have been deleted (as noted). Sections which have been affected by DPW waivers, appearing in the agreement between DPW and PLAN, Inc. are so noted. The text of the waivers appears in the accompanying unofficial table of contents)

The Department of Public Welfare, by this order, adopts the regulations set forth in Annex A, pursuant to the authority of Article II and IV of the Public Welfare Code, act of June 13, 1967 (P. L. 31, No. 21) (62 P. S. 201 *et seq.* and § 401 *et seq.*) and the Omnibus Budget Reconciliation Act of 1981 (P. L. 97-35), August 13, 1981, which amended Title XX of the Social Services Act, referred to as the Title XX Social Security Block Grant Act. The regulations and Fiscal Note DPW 81-57 were proposed and published at 12 Pa. B. 1735 (May 29, 1982).

These regulations take effect July 1, 1982. These regulations replace the current regulations contained in Chapter III, Section 1 of the Department of Public Welfare's Social Services Manual published in the October 31, 1981 *Pennsylvania Bulletin*.

The purpose of these final regulations is to update the current regulations consistent with changes made by the Department in the administration of Title XX Block Grant for FY 1982- 83 under the State's plan for their use.

These regulations set forth the eligibility requirements for all persons requesting or receiving Title XX social services except Child Welfare Social Service, service to adjudicated delinquents, Mental Health and Mental Retardation service and service through the Department of Aging for which eligibility is provided by the eligibility regulations of the respective programs.

These regulations have little fiscal impact. Family Planning Service will be provided free to persons with incomes not exceeding 40% of the BLS Intermediate Standard. Persons with incomes above 40% but not exceeding 50% will pay a fee which will partially pay for their services at an average rate of \$18 per year. In the proposed Title XX Block Grant level of \$5,620,000 (\$5,320,000 Federal and \$300,000 State), the projected number of clients is 110,542 of which 33,905 will pay the partial fee.

Promulgation of these regulations will ensure proper utilization of the available Title XX Social Services Block Grant funds. The paperwork requirements are not changed and remain minimal. Services other than those provided without regard to income require completion of an application form by the applicant/recipient of service which takes a maximum of 15 minutes to complete. A written notice of

adverse action which includes the right to appeal for a Departmental fair hearing must be given to applicants/recipients.

Revisions in these regulations from the proposed regulations include:

- (1) changes in the eligibility for Legal Service from 40% of the BLS to 50% of the BLS and elimination of persons under the age of 18 from service. Additionally, final regulations eliminated the grandfathering provision for persons eligible for Legal Service under Category of Need prior to June 30, 1982. While eliminating the provisions, persons who were income eligible will effectively remain eligible since the income limitation has been revised upward. These changes were necessary because Legal Service is now funded under the Adult Services Block Grant to counties;
- (2) eligibility limitations for Family Planning Service were raised from 36% to 40% of the BLS. This allows the family planning clinics to conform with the new Federal definition of poverty. The level at which Title XX ceases to fund services remains at 50%;
- (3) the Adult Services Block Grant appropriation now includes Legal Service. Counties have the option of providing or not providing Legal Service. In those counties which elect not to provide Legal Service, the Department will contract for its provision. Legal Service unlike other services under the Adult Services Block Grant is available to anyone 18 years of age or older (including persons age 60 or above) if they meet all other eligibility requirements;
- (4) in order to separate procedures from regulations; the procedural sections were removed and will be published as a Social Programs Bulletin. The sections which were removed provide instructions on necessary steps for:
 - (a) individual eligibility determinations;
 - (b) requirements for application forms developed by providers
 - (c) eligibility determination during a declared state of disaster;
 - (d) table for converting income from weekly to monthly accounts.

Only a few comments were received during the comment period. Several people and agencies commented on the removal of a phrase which requires the Department to arrange for face-to-face interviews through the service provider. This language was unintentionally omitted in the proposed regulations and has subsequently been reinserted in the final version.

Another comment related to the automatic termination of legal services upon adjudication of a case. This issue had been discussed previously with the representative agency for Pennsylvania's Legal Service providers and it was through this discussion that the Department arrived at the language that appeared in the proposed regulations. The decision to use this language was based on the following principles:

- (1) That an attorney's ethical responsibility to the client is carried only through the adjudication. At that time an attorney can within the Code of Professional Ethics close his file.
- (2) That before appealing to a higher level, Legal Service providers must judge whether a case has merit.
- (3) That the client can reapply for Legal Service after termination and if he/she is still eligible can receive Title XX-funded Legal Service for an appeal.

For the above reasons, the Department will retain the regulation as proposed.

Contact Person [Deleted as out of date]

Title XX regs: 7

The Department of Public Welfare finds:

- (1) That public notice of intention to amend the administrative regulations amended by this order has been duly given pursuant to sections 201 and 202 of the CDL (45 P. S. § 1201 and 1202) and the regulations thereunder, 1 Pa. Code sections 7.1 and 7.2.
- (2) That the amendment of the regulations of the Department of Public Welfare in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

The Department of Public Welfare, acting pursuant to the authorizing statutes, orders:

- (A) The regulations of the Department of Public Welfare amended by amending the regulations to read as set forth in Annex A to this order.
- (B) The Secretary of the Department of Public Welfare shall submit this order and Annex hereto to the Attorney General and General Counsel for approval as to legality as required by law.
- (C) The Secretary of the Department of Public Welfare shall duly certify this order and Annex A hereto and deposit the same with the Legislative Reference Bureau as required by law.
- (D) This order shall take effect on July 1, 1982.

By the Department of Public Welfare

HELEN B. O'BANNON,

Secretary

Annex A

DEPARTMENT OF PUBLIC WELFARE

CHAPTER III—ELIGIBILITY

FOR SOCIAL SERVICES

Section 1 — Eligibility For Certain Services Funded Through the Social Services Block Grant: Adult Services, Blindness and Visual Services, County Assistance Office Direct Services, Family Planning Service, Legal Service, and Protective Service.

LEGAL BASE.

3-1-1. The legal base for these regulations is:

3-1-2. — the Public Welfare Code, Act of June 13, 1967, P. L. 31, No. 21, Articles II and IV (62 P. S. 201 et seq. and 401 et seq.);

— the Omnibus Budget Reconciliation Act of 1981. Public Law 97-35. August 13, 1981, effective October 1, 1981; and,

— Title XX of the Social Security Act, as amended. 42 U.S.C. 1397 et seq.

Title XX regs: 8

3-1-3. **DEFINITION OF TERMS.**

3-1-4. *BLS.*

3-1-5. BLS is the abbreviation for the U. S. Bureau of Labor Statistics.

3-1-6. *Emancipated Minor.*

3-1-7. An emancipated minor is a person under 21 years of age (irrespective of whether he/she is receiving services designed for adults or children) who either:

- (1) is married, whether he/she lives within, or away from, his/her parent's household: or
- (2) has left the parental household or has established himself/herself as a separate entity within the parental household; and
 - is acting for himself/herself independent of control by his/her parents, or persons acting in loco parentis: and
 - is financially independent of his/her parents, although he/she may be receiving financial assistance or benefits to which he/she is entitled in his/her own right.

3-1-8. An unmarried minor who, after living outside the parental household, returns to live with his/her parents or someone acting in loco parentis, is no longer considered emancipated unless he/she remains independent of control by his/her parents or someone acting *in loco parentis*, and is financially independent of them although he/she may be receiving financial assistance or benefits in his/her own right.

3-1-9. *Family Unit*

3-1-10. Individual. An individual is any of the following:

- an emancipated minor;
- an unemancipated minor living with persons other than his/her natural or adoptive parents;
- an unemancipated minor living in a residential facility serving dependent and delinquent children;
- an adult who resides alone;
- an adult who resides with another related or unrelated adult, other than persons who are married or living in a common law relationship.

3-1-11 Family. A family is one or more adults and unemancipated minor children, if any, who are related by blood or law, and who reside in the same household. A Family includes:

- one person and his/her unemancipated minor children (natural and adoptive) who reside in the same household.
- two persons in a marriage or common law relationship who reside in the same household;
- two persons in a marriage or common law relationship and their joint unemancipated minor children (natural or adoptive) who reside in the same household;
- two persons in a marriage or common law relationship and their joint unemancipated minor children (natural and adoptive) and the unemancipated minor children (natural and adoptive) of either/both persons who reside in the same household:
- two persons who are residing together with a child(ren) in common.

A pregnant woman shall be counted as one person in the determination of family size.

A man and woman who are legally free to marry, who agree to live together as husband and wife without benefit of a marriage license, and both publicly and privately consider themselves married are regarded as living in a common law relationship.

3-1-12. A person defined as an “Individual” (3-1-10) is not included in a family grouping.

A person may choose to count as a family member any other person(s) residing in the same household who is claimed by that person as a tax dependent.

PA 5-A Medical Assistance Identification Card.

3-1-13. The PA 5-A Medical Assistance Identification Card (MAID), referred to as a PA 5-A card, is a card issued monthly to eligible recipients of AFDC, Supplemental Security Income (SSI), General Assistance and Categorically Needy Non-Money Payment Title XIX Medical Assistance. Except for Categorically Needy Non-Money Payment Title XIX Medical Assistance eligibles, category symbol PA, PJ, PC, PM, or PD, whose eligibility is based on total family size and total gross monthly income, the PA 5-A card establishes financial eligibility for Title XX social services for the persons listed on the card.

3-1-14. *Primary Recipient.*

3-1-15. A Primary Recipient is the person (applicant/recipient) who voluntarily requests a Title XX social service, or on whose behalf service is requested. The Primary Recipient is the determining factor in defining “Family” for eligibility determination purposes.

3-1-16. *Title XX Service Provider.*

3-1-17. A Title XX service provider as used in these regulations refers to service providers with the delegated authority to determine and redetermine eligibility.

Deleted 3-1-18—through 3-1-37 deleted as not relevant to legal services

3-1-22. Information and Referral Service. Protective Service General and Legal Service provided as a component of protective service under the Protective Service Abuse Act are provided without regard to PA 5-A card status or family monthly gross income.

3-1-38. **ELIGIBLES FOR LEGAL SERVICE.**

3-1-39. Legal Service must be provided by lawyers and/or aides under their supervision to resolve or prevent civil legal problems. These problems normally fall within the following two subject areas: Emergency Situations; and, Family, Domestic, Housing, Income, Employment, Consumer, Health, Education, and Civil Rights Problems.

3-1-40. **[As modified 7/17/1982 and See Waiver A.]**

Primary Recipients of Legal Service must be 18 years of age or older and a resident of the County in which service is requested. Recipients who are eligible for and receiving Title XX funded Legal Service on or before June 30, 1982, will remain eligible through his next regularly scheduled eligibility redetermination if they are age 18 or over and they continue to meet the categories of

need as described in 3-1-44. At that time, continued eligibility depends upon the Primary Recipient meeting the appropriate eligibility and service requirements.

3-1-41. [**See Waiver A.**] Persons 18 years of age and older may receive Emergency Legal Service without regard to income provided it is given as a component of Protective Services Abuse Act.

3-1-42. Legal Service is provided if **As modified 7/17/1982**

- (1) the provision of service is consistent with the American Bar Association Code of Professional Responsibility and/or the Disciplinary Rules of the Supreme Court of Pennsylvania; and
- (2) the case is not fee-generating, or the case is not one in which the Commonwealth of Pennsylvania has an obligation to provide counsel to the indigent through another source identified by statute; and
- (3) the case is not a criminal matter and,
- (4) the service is needed for one of the reasons listed under the heading Categories of Need for Legal Service (3-1-44); and,
- (5) the financial eligibility requirements are met; and
- (6) The client is a resident of the county in which Legal Service is requested.

3-1-43 . [**See Waiver A.**] Those financially eligible for Legal Service are:

- current recipients of AFDC;
- current recipients of SSI;
- current recipients of State-funded General Assistance
- Primary Recipients, other than those described above, whose family monthly gross income does not exceed 40% of the BLS Intermediate Standard, adjusted according to family size.

3-1-44. *Categories of Need for Legal Service.*

(1) *Emergency Situations.*

This includes all situations in which the person is:

- experiencing sudden unexpected circumstances or a set of circumstances demanding immediate legal action to preserve or protect the individual's life, income, health, or safety;
- involved in a child custody suit as respondent, or involved in the potential loss of custody of children, other than by court action;
- experiencing or expecting an imminent loss of independence because of involuntary confinement, relocation or care.

(2) *Family, Domestic, come, Employment, Health, Education, and Problems.*

This includes circumstances in which the person needs civil legal services because of problems relating to:

- (a) relationships with his/her spouse, child/children, parents, and other family members, or individuals living within the same household;
- (b) his/her housing situation;

- (c) personal income, employment issues, or government benefits, including welfare and social security and employment issues:
- (d) consumer issues:
- (e) his/her health situation
- (f) his/her education and
- (g) situations in which the person needs civil legal services because of denial or violation of his/her rights under the constitution or laws of the United States and/or the Commonwealth.

These categories do not include Divorce, Property, or Tax Matters.

When Legal Service is not immediately available, the Primary Recipient's name must be placed on a waiting list for provision of the service at an appropriate later date. Rank for receiving the service at an appropriate later date is specified at 3-1-176.

Legal Service is automatically terminated when an adjudication is made by an administrative agency or by a court. If a Primary Recipient wants to appeal the adjudication, a new application requesting Legal Service with respect to representation in that appeal must be made. If the opposing party appeals the adjudication, the Primary Recipient may request a new application for Legal Service with respect to representation in that appeal.

Deleted 3-1-45—through 3-1-65 deleted as not relevant to legal services

3-1-66. Protective Service, including service to victims of rape and domestic violence is provided without regard to PA-5A card status or family monthly gross income.

3-1-67. **GENERAL REQUIREMENTS.**

3-1-68. *Right to Request Service.*

3-1-69. Any individual and family may request services funded under the Title XX Social Service Block Grant. A person living in a hospital, including one for the mentally ill and mentally retarded, a skilled nursing facility, an intermediate care facility, or a prison. must be given the same opportunity to apply for services as a person in the community at large. However, residents of institutions, may receive a Title XX funded service only if the service to be provided.

- is also available to residents of the surrounding community;
- is not provided by institutional staff; and is not an activity for which the institution is legally responsible.

3-1-70. *Basic Eligibility.*

3-1-171. Except for Information and Referral Service, Protective Service, and Family Planning Service for those 16 and 17 years of age, in order to receive a Title XX service, a person:

- must meet the individual financial eligibility criteria, and
- must meet any specific service regulations, and if the service is provided through a publicly operated or supervised program established to serve a specific target population, must meet the eligibility criteria for the categorical program. and
- must be determined to need the particular service requested.

3-1-72. Discontinuation of Service to Eligibles.

3-1-73. If a Title XX service provider's resources are insufficient to serve all eligible Primary Recipients currently receiving service, the provider may discontinue service only on the basis of the date service began. The Primary Recipient who most recently started to receive service must be the first discontinued from service. Any subsequent discontinuances must be made in this order. If service is provided based on a Category of Need or priority, discontinuance is based on the date service began within each Category of Need or priority with those in the lowest Category of Need or priority being discontinued first. If a Primary Recipient's situation indicates that discontinuance of service may be life threatening, service to that Primary Recipient must not be discontinued.

3-1-74. Primary Recipients discontinued from service pursuant to 3-1-73 shall be placed at the top of the waiting list by the date service originally began, earliest date first.

3-1-75. Nondiscrimination.

3-1-76. Primary Recipients applying for, and receiving, services may not be discriminated against because of race, color, religious creed, ancestry, national origin, age, sex, handicap or disability.

3-1-77. Additional Conditions Prohibited

3-1-78. Title XX service providers may not impose any Title XX eligibility conditions, including priorities, categories of need, or fees, other than those listed in these regulations. Neither may a Title XX service provider impose acceptance of any particular service or combination of services as a condition of eligibility for receiving any Title XX funded social services.

3-1-79. Residency.

3-1-80. The Primary Recipient must be a resident of Pennsylvania to receive a Title XX service. A Primary Recipient who requests a service including Legal Service funded under the Adult Service Block Grant also must be a resident of the county in which the service is requested. No requirements as to citizenship or length of residence in the State or the County, in the case of the Adult Services Block Grant, may be imposed as a condition of Title XX eligibility. Temporary absences from Pennsylvania, with subsequent returns, or with a plan to return when the purpose of the absence, such as a trip or a visit, has been accomplished, does not interrupt residence. Out-of-State students and foreign students who are living in Pennsylvania while attending an educational or job training institution in Pennsylvania are considered residents of Pennsylvania. Migrant workers who are seasonally employed or seeking seasonal employment in Pennsylvania are considered residents of Pennsylvania.

3-1-81. Right to Appeal and Receive a Departmental Fair Hearing.

3-1-82. The Department's Appeal and Fair Hearing Regulations, [55 Pa. Code, Chapter 275](#), apply to the provision of Title XX funded social service, The regulations may not be replaced by any internal hearing procedure established by a Title XX service provider. Additional Title XX appeal rights and requirements begin at 3-1-175.

3-1-83. *Confidentiality.*

3-1-84. The Commonwealth of Pennsylvania, through the Department of Public Welfare, is required under Federal and State law to safeguard the use and disclosure of information on applicants and recipients of social services. Federal authorities, the Commonwealth, the Department of Public Welfare, the County Commissioners, Title XX service providers, or their authorized agents, responsible for supervision, review, evaluation, or audit responsibilities, must have access to, and the right to the use and disclosure of, information on applicants for, and recipients of, information on applicants for, and recipients of, social services provided that such information is confined to that which is required to carry out the agent's required functions. All face to face contacts with applicants/recipients must be arranged through the Title XX service provider.

Disclosure of information beyond this scope requires the Primary Recipient's informed and written consent.

3-1-85. *Record Retention.*

3-1-86. All application forms including rejected application forms, other approved service request documents and service logs must be kept on file by the Title XX service provider;

- for a period of 5 years from the end of the fiscal year in which all Title XX service activities are terminated:
- until the completion of any audit for compliance with Title XX requirements which was begun, but not completed, at the end of the 5 year period specified above; or
- until audit findings, not resolved at the end of the 5 year period specified above, have been resolved, whichever occurs last.

3-1-87. An agency, organization, or individual who is the prime provider and who delegates the eligibility determination authority to a subprovider may require that the subprovider:

- submit all forms to the main provider for filing and retention purposes; or
- contact the main provider, in writing, before destroying application forms or other approved service request documents when the time limit for retention ends.

3-1-88. Title XX service provider agencies must keep and maintain minimum files regarding service activity in accordance with 55 Pa. Code, Chapter 105, and Section 105.5. A separate file must be kept for each Primary Recipient or applicant group. The following information must be kept in each file:

- (1) All application forms which establish eligibility for Title XX social services.
- (2) Copies of written adverse notifications sent to the Primary Recipient and/or family group.
- (3) Any additional information regarding eligibility determination which cannot fit on the application form.

3-1-89. The requirements which detail the conditions under which an individual may examine his/her own case record at the Title XX service provider agency are provided in 55 Pa. Code, Chapter 105.5b.

3-1-90. *Responsibility for Eligibility Determination,*

3-1-91. The Department has delegated to Title XX service providers the authority to determine and redetermine the eligibility of the Primary Recipient who voluntarily requests service, or on whose behalf service is requested.. Included as Title XX service providers are:

- a local level agency directly operated by the Department of Public Welfare (County Assistance Office and District Office for Blindness and Visual Services);
- an agency, organization, or individual having a prime contract or grant through the Department for provision of Title XX social services and subcontractors to whom the prime contractor/grantor delegates this authority in the subcontract,

3-1-92. Agencies, organizations, or individuals who have a prime contract/grant with the Department will be held fiscally liable by the Department of Public Welfare for failure to exercise properly the delegated authority for eligibility determinations made by them and by their subcontractors.

3-1-93. **DETERMINATION OF ELIGIBILITY FOR ALL SERVICES.**

3-1-94. Generic Requirements.

3-1-95. [See Waiver B.] The eligibility determination process begins when the Primary Recipient, or someone acting on behalf of the Primary Recipient, voluntarily requests a social service. The Title XX service provider shall act upon the request by obtaining a signed and dated application form from the Primary Recipient within 10 calendar days of the receipt of the request.

3-1-96. A Title XX service provider, such as a County Assistance Office or other multi-service provider may determine eligibility before a specific service is requested, but must ensure that when a service is requested, the Primary Recipient meets all of the applicable eligibility requirements.

3-1-97. [See Waiver B.] Title XX social services may not be provided until the application form has been dated and signed by the Primary Recipient or his/her authorized representative, and, normally, only after a determination of eligibility has been made,

3-1-98. [See Waiver B.] However, service may be provided before eligibility is determined if the eligibility decision is made within 30 calendar days from the date the application form was dated and signed and the determination shows that the Primary Recipient was eligible when service began. This 30 calendar day provision does not apply to redeterminations.

3-1-99. [See Waiver B.] The eligibility determination must be made within 30 calendar days from the date the application form was dated and signed by the Primary Recipient. The effective date for eligibility must never be a date earlier than the date the application form was signed.

3-1-100. The Title XX service provider is responsible for explaining the specific eligibility criteria for the service being requested.

3-1-101. The Title XX service provider shall make the Primary Recipient aware that the criteria for service differ by such factors as visual handicap, income qualifications, and Category of Need.

3-1-102. When applicable, the Title XX service provider also shall explain requirements based on service regulations related to the service being requested and categorical program eligibility criteria if the

service is provided through a publicly operated or supervised program established to serve a specific target population.

3-1-103. The Title XX service provider shall at all times treat the Primary Recipient in a manner which assures respect for his/her personal dignity and right to privacy under the United States Constitution, the Social Security Act, Title VI of the Civil Rights Act of 1964, and all other relevant provisions of Federal and State laws and regulations.

3-1-104 . [See Waiver B.] . At the time of each application and redetermination, the Title XX service provider shall advise the Primary Recipient that he/she has:

- the right to request services funded under the Title XX Social Services Block Grant;
- the right to have an application form completed by the Title XX service provider within 10 calendar days from the date of the service request;
- the right to have eligibility determined within 30 calendar days from the date the application form is dated and signed;
- the right to be notified of eligibility and service decisions;
- the right to appeal and have a Departmental fair hearing;
- the right to continue to receive service, if a timely appeal is filed, until the fair hearing decision is rendered;
- the responsibility to provide true and complete information to enable the Title XX service provider to establish eligibility;
- the responsibility to report to the Title XX service provider any subsequent changes in circumstances which may change his/her eligibility, such as address, family size, PA 5-A card status, or income;
- the responsibility to provide documentation of eligibility-related items when required, as a condition for receiving, and continuing to remain eligible for, Title XX social services;
- the responsibility for the cost of service from the proposed effective date of the Title XX service provider's decision which was appealed until the date service is terminated or reduced, if the Office of Hearings and Appeals finds the Primary Recipient does not meet the eligibility or service requirements:
- the responsibility for payment of the fee decided by the Office of Hearings and Appeals as a result of an appeal hearing.

3-1-105. *Individual Eligibility Determination.*

3-1-106 . [See Waiver B.] An individual eligibility determination requires completion of a dated and signed application form containing information which enables the Title XX service provider to determine a Primary Recipient's eligibility to receive the requested service,

3-1-107. [See Waiver B.] The Departmentally approved application form must be completed by the Title XX service provider from the information given by the Primary Recipient, his/her authorized representative, or, by someone, including Title XX service provider staff, acting responsibly for the Primary Recipient if he/she is physically incapable of completing an application form, or in an emergency situation.

3-1-108 . [See Waiver B.] The Title XX service provider shall ensure that the Primary Recipient, or the person responsible for giving the information, receives all the help necessary to provide accurate and

complete information. Arrangements must be made for interpreters to assist non-English speaking, deaf, and visually handicapped Primary Recipients on an as-needed basis in those individual cases for whom no alternative methods for communication can be substituted effectively.

3-1-109 . [See Waiver B.] The Title XX service provider shall ask the Primary Recipient the proper questions, fill out the application form correctly, and explain to the Primary Recipient or person signing on behalf of the Primary Recipient that fraudulent receipt of Title XX social services based on false information, provided knowingly, makes the Primary Recipient liable to legal prosecution. When the Primary Recipient signs the application form, he/she accepts responsibility for the information and is the person liable to legal prosecution, not the Title XX service provider.

3-1-110. Individual eligibility determinations are made using the declaration method. The declaration method is the acceptance of a Primary Recipient's statements that he/she meets the applicable eligibility criteria. This does not preclude the requirement to provide documentation when specified in these regulations. However, it does preclude requiring every Primary Recipient to provide documentation on a routine basis. If a Title XX service provider asks each Primary Recipient or a majority of Primary Recipients for documentation of such things as income, the Title XX service provider is in violation of these regulations.

3-1-111. Determination for Services Provided Without Regard to Income.

3-1-112. *Information and Referral Service.*

3-1-113. A written application is not required for Information and Referral Service. However, a log must be kept listing the number of Information and Referral contacts made, the nature of the requests, the agency to whom the person was referred, and, whether the person was accepted for service by the agency to which he/she was referred.

Deleted 3-1-114 through 3-1-115 deleted as not relevant to legal services

3-1-116.—*Protective Service.*

3-1-117. A form PW 652 or other document approved by the Department must be used by the Title XX service provider authorized to provide Title XX Protective Service.

3-1-118. The following information must be included on Form PW 652 or other approved document before it is dated and signed in ink by the Title XX service provider:

- name, address, and birthdate of the Primary Recipient in need of Protective Service:
- name, address, and relationship of any individual to whom Protective Service activities, if any, shall be provided on the Primary Recipient's behalf;
- statement of basis of need for the service.

3-1-119. When a Primary Recipient has been receiving Protective Service for 6 months, and at 6 month intervals thereafter, as long as Protective Service is provided, the Title XX service provider shall

- evaluate the current circumstances to determine whether the Primary Recipient continues to meet the criteria for receiving Protective Services: and.

— enter the findings of the evaluation on the PW 652 or other approved document.

3-1-120. The first PW 652 must be placed in the agency file on or before the 10th calendar day following the receipt of the oral or written report of abuse, neglect, or exploitation. Each succeeding 6 month evaluation must be completed and placed in the agency file on or before the 10th calendar day after the evaluation.

3-1-121. When Protective Service is terminated, a PW 652 or other approved document must be updated to record the reason for, and the date of, the action. This decision can be made:

- as part of the 6 month evaluations
- at any other time that the Primary Recipient is found no longer to meet the criteria for service.

If there are not changes since the most current PW 652 was completed and a termination is required, the termination can be recorded on the most current PW 652 without an update form being completed.

3-1-122. **REDETERMINATIONS OF ELIGIBILITY.**

3-1-123. Generic Requirements.

3-1-124. A redetermination of eligibility is required for all services provided on an individual basis unless otherwise indicated.

3-1-125. A redetermination is not required for services provided Without Regard to Income. However, a 6 month evaluation is required for Protective Service (3-1-119).

3-1-126. A redetermination may be made at any time and is required before the established redetermination due date when the Title XX service provider obtains information about changes which have occurred that may make the Primary Recipient ineligible. In these cases, the redetermination must be completed within 30 calendar days from the date the information is obtained.

3-1-127. **[See Waiver A.]** The redetermination time frames are:

- 12 months for current recipients of SSI and family monthly gross income eligibles whose income is derived solely from pensions or Social Security benefits, or a combination of these;
- 6 months for all other PA 5-A cardholders and family monthly gross income eligibles.

3-1-128. A redetermination is not required and a control date is not established for a Primary Recipient who receives a one-time only service.

3-1-129. Title XX service providers must maintain a redetermination control file which records redetermination due dates for all Title XX eligible persons. The Title XX service provider must establish a control date which is at least 30 calendar days earlier than the date on which the actual redetermination periods ends. The 30 calendar day control date is calculated either from the effective date that eligibility was established, or from the date of the last redetermination.

3-1-130. Primary Recipients must be contacted at least 30 calendar days before the due date to ensure that the redeterminations are completed on a timely basis.

3-1-131. If the Primary Recipient has been notified at least 30 calendar days before the redetermination due date and fails to arrange for, or complete the redetermination requirements by the due date, the Title XX service provider must provide the Primary Recipient with a Written Advance Notice of Proposed Action (3-1- 149) that service will terminate. The termination date is the day following the required redetermination due date.

3-1-132. If the Title XX service provider fails to arrange for a timely redetermination and the Primary Recipient is not at fault, the Title XX service provider is responsible for the cost of service provided to the Primary Recipient from the day after the redetermination due date until the Primary Recipient's eligibility is reestablished or service is terminated.

3-1-133. If the Primary Recipient's name is on a waiting list for six months or longer,, a redetermination of the Primary Recipient's eligibility is required before service is provided to the Primary Recipient.

3-1-134. Requirements for notifying primary recipients of eligibility decisions, service requests, and proposed actions.

3-1-135. *Generic Requirements.*

3-1-136. The Title XX service provider shall notify the Primary Recipient of the decision on eligibility, on the service request, and on proposed action, in simple, non-technical language, in sufficient detail that the Primary Recipient is able to understand the basis for the decision or proposed action. With the exception of County Assistance Offices, Title XX service providers shall use the written notice form (PW 1011) approved by the Department, when written notices are required. The County Assistance Office shall always notify Primary Recipients according to DPW-OIM-PA Manual 125.24(d), 127.24(f), 133.4(a)(1), and 34(a)(2).

3-1-137. Primary Recipients with visual difficulties or language barrier problems must be provided notice in a manner that takes into consideration the individual's particular situation.

3-1-138. When a written notice is required, the Title XX service provider shall always include:

- (1) a statement of the decision or proposed action and the effective date:
- (2) a full statement of the reason(s) for the decision or proposed action:
- (3) a citation of the regulation(s) used as the basis for the decision or proposed action and a brief explanation of the regulation(s):
- (4) a statement of the information needed to establish continuing eligibility, if applicable; and
- (5) information explaining the Primary Recipient's right to appeal the decision or proposed action and to receive a Departmental fair hearing by submitting, within a specified time period, a request for a hearing, either orally or in writing, directly to the Office of Hearings and Appeals;
- (6) the exact date on which the request for an appeal and fair hearing must be received by the Office of Hearings and Appeals:
- (7) the toll free telephone number for the Office of Hearings and Appeals.

3-1-139. By regulation, the Department's Office of Hearings and Appeals reserves the right to find, without a hearing, in favor of a Primary Recipient who appealed a decision or proposed action whenever the written notice given to a Primary Recipient by a Title XX provider is found to be defective because it did not contain all of the necessary information. If the Office of Hearings and Appeals notifies the Title

XX service provider of a defective notice, the Title XX service provider is responsible for providing the Primary Recipient with a corrected written notice. In the case of a proposed action, the corrected written notice must be given to the Primary Recipient before the proposed action is taken.

3-1-140. A Title XX service provider who has a prime contract/grant with the Department may require subcontractors from whom the provider purchase services, including those with the eligibility determination responsibility delegated to them in the subcontract, to:

- prepare and submit to them for approval and mailing all written notices to Primary Recipients; or
- submit an “information only” copy of all written notices prepared and mailed by them to Primary Recipients.

3-1-141. *Notice of Initial Application or Reapplication Eligibility Decisions.*

3-1-142. The Primary Recipient must be notified of the eligibility decision and service request within 10 calendar days from the date the Title XX service provider makes the eligibility decision.

3-1-143. Primary Recipients determined eligible by Title XX service providers may be notified orally or in writing when the requested service can be provided immediately.

3-1-144. Primary Recipients determined ineligible for Title XX services must always be notified in writing unless: (1) the Primary Recipient agrees with the decision or (2) the Title XX ineligible Primary Recipient is provided the requested service through another funding source in which case the notification maybe oral or written.

3-1-145. If the required written notice cannot be mailed or handed to the Primary Recipient, the Title XX service provider is required to justify this action in writing in the agency record and indicate the method used to notify the Primary Recipient of the adverse action.

3-1-146. Written notice of adverse eligibility decisions must be prepared in triplicate. The original and first copy must be mailed or handed to the Prima Recipient. The Primary Recipient must be instructed to return the first copy directly to the Office of Hearings and Appeals if he/she wishes to appeal the decision. The Primary Recipient must be instructed to state his/her reason for the appeal on the form or the appeal will be dismissed without a hearing. The Primary Recipient must be instructed to include his/her correct address and telephone number including area code on the form. The last copy of the form is kept on file by the Title XX service provider for 120 days from the date the written notice if mailed or handed to the Primary Recipient or, in the case of an appeal and Departmental fair hearing, until the point in question is resolved.

3-1-147. The written notice must indicate that an appeal and hearing request must be postmarked on or before the deadline date specified on the written notice or the appeal and hearing request will be dismissed by the Office of Hearings and Appeals which reserves the right, by regulation to dismiss these appeal requests without hearing.

3-1-148. The deadline date to be specified on the written notice is 30 calendar days from the date the written notice is mailed or handed to the Primary Recipient. If the 30th calendar day is not a working day, the deadline date to be specified is the next working day.

3-1-149. *Written Advance Notice of Proposed Action.*

3-1-150. Except as indicated in 3-1-151, the Primary Recipient must always be notified in writing of a proposed action:

- to reduce, terminate, or suspend service:
- to charge a fee for a service which had previously been provided free:
- to increase the fee of a current fee-payer:
- to render the Primary Recipient ineligible as a result of a redetermination.

3-1-151. A written advance notice is not required when:

- the Primary Recipient agrees with the proposed action:
- the Primary Recipient voluntarily requests a service reduction or termination:
- the service will be continued without interruption through another funding source.

When any of the above actions are voluntarily agreed to by the Primary Recipient, the Primary Recipient's agreement must be documented in writing and retained in the agency file. If the Primary Recipient's written agreement cannot be immediately obtained by the Title XX service provider, the provider may send a confirmation letter to the Primary Recipient stating that service is being discontinued or changed as he/she agreed.

3-1-152. A written advance notice must be provided to the Primary Recipient 10 calendar days before a proposed action is scheduled to take place.

3-1-153. A written advance notice of service reduction or termination may be based on the professional judgment of the Title XX service provider that:

- (1) the Primary Recipient has either met the service goal and no longer needs the service: or
- (2) the service is no longer appropriate for achieving the particular goal: or
- (3) the Primary Recipient's uncooperative behavior and/or misuse of the service warrants termination of the service.

Adverse actions based on a Title XX service provider's professional judgment must be justified, in writing, in the service plan. The service plan must be updated and revised sufficiently to support the Title XX service provider's decision.

3-1-154. Written advance notice of proposed adverse action must be prepared in triplicate. The original and first copy must be mailed or handed to the Primary Recipient. The Primary Recipient must be instructed to complete, sign and return the first copy directly to the Office of Hearings and Appeals if he/she wishes to appeal the decision. The Primary Recipient must be instructed to state his/her reason for the appeal on the form or the appeal will be dismissed without a hearing. The Primary Recipient must be instructed to include hi/her correct address and telephone number including area code on the form.

The last copy of the form is kept on file by the Title XX provider for 120 days from the date the written notice is mailed or handed to the Primary Recipient or, in the case of an appeal and Departmental fair hearing, until the point in question is resolved.

3-1-155. Upon receipt of an appeal, the Office of Hearings and Appeals will notify the Title XX service provider by telephone of an appeal received which was postmarked within the 10 calendar day time period. Telephone calls will be confirmed in writing by the Office of Hearings and Appeals.

If a Title XX service provider has not been notified of an appeal by the Office of Hearings and Appeals by the 14th calendar day from the date the written notice was mailed or handed to the Primary Recipient, the Title XX service provider must take the proposed action on the 15th calendar day. If the 15th calendar day is not an agency working day, the proposed action must be taken on the next agency working day.

The Office of Hearings and Appeals will telephone the Title XX service provider whenever an appeal which is postmarked within the 10 day period is received after the 14th calendar day. When this happens, the Title XX service provider must immediately reinstate the Primary Recipient to the status he/she had before the adverse action was taken and wait for the hearing decision.

3-1-156. The advance written notice must, in addition to the requirements listed in 3-1-138, specify that:

- if social services or eligibility is to be continued pending the Departmental fair hearing decision, a written request for a Departmental fair hearing must be postmarked within 10 calendar days from the date the written notice was mailed;
- a request for a Departmental fair hearing postmarked after the 10th calendar day and before the 30th calendar day from the date the written notice was mailed will be accepted by the Office of Hearings and Appeals but services or eligibility may not be continued pending the fair hearing decision;
- a request for a Departmental fair hearing postmarked after the 30th calendar day from the date the written notice was mailed may be dismissed by the Office of Hearings and Appeals which reserves the right, by regulation, to dismiss these appeal requests without a hearing.

3-1-157. The two dates to be specified on the written notice are the exact calendar days when the calendar days specified are working days. If the calendar day specified is not a working day, the day to be specified is the next working day.

3-1-158. Protective Services Notification Requirements

3-1-159. The Title XX service provider is not required to provide a Primary Recipient receiving Protective Services with an advance written notice of service termination.

Deleted 3-1-160 through 3-1-163 deleted as not relevant to legal services

3-1-164. REQUIREMENTS FOR PROVISION OF SERVICE AT AN APPROPRIATE LATER DATE.

3-1-165. When a service is not immediately available, the Primary Recipient's name must be placed on a waiting list for provision of the service at an appropriate later date. The arrangement for provision of service at an appropriate later date must be made with the Primary Recipients full knowledge and take into consideration his/her needs. If an individual's situation indicates that a delay in service may be life threatening, service to that person must take precedence over all Categories of Need.

3-1-166. The Title XX service provider shall maintain accurate and up- to-date waiting lists. A waiting list system must not be used to deny service for an inordinate period of time. At no time will an eligible Primary Recipient, who is receiving service, be replaced by a Primary Recipient with a higher Category of Need.

3-1-167. Rank on the waiting list is established on the basis of the date eligibility was determined (initial application or reapplication) and, if Home Delivered Meals Service, Homemaker Service, or Legal Service is the requested service, by the Primary Recipient's Category of Need in the order listed. Rank on the waiting list for Chore Service, Life Skills Education Service, and Transportation Service provided through the Bureau of Blindness and Visual Services is specified in 3-1-45.

3-1-168. Rank on the waiting list changes as the names of persons are removed as they are provided with service. Rank also changes if the Category of Need changes. If this occurs, the Primary Recipients name must be inserted under the new Category of Need according to the date on which the earlier Category of Need was established.

3-1-169. If a waiting list exists, service must be provided to the Primary Recipient, listed first on the waiting list. However, if another Primary Recipient's situation indicates that a delay in service may be life threatening, service to this person will take precedence over the waiting list. The Title XX service provider shall justify the action in writing and retain the written justification in the agency file.

3-1-170. The Primary Recipient who is ranked #1 on the waiting list must be notified by the Title XX service provider as soon as the service becomes available.

If the Primary Recipient no longer wants the service, his/her name must be removed from the waiting List. If the Primary Recipient cannot accept the service for a valid reason, the next person on the waiting list must be notified of service availability. The Primary Recipient who was ranked #1 then becomes #2.

3-1-171. DEPARTMENTAL APPEAL AND HEARING REQUEST.

3-1-172. The Department's Appeal and Fair Hearing Regulations, 55 Pa. Code, Chapter 275, and Chapter 105, Section 105.5 apply to the provision of Title XX social services.

3-1-173. The Primary Recipient's freedom to request a Departmental hearing is a fundamental right and must not be interfered with in any way.

3-1-174. The Office of Hearings and Appeals may conduct telephone hearings in a conference telephone call with the parties to the appeal (including the Primary Recipient, his/her authorized representative, the Title XX service provider and the Hearing Officer). Telephone hearings provide an early hearing date and allow for a prompt decision for both the Primary Recipient and the Title XX service provider. The Primary Recipient's participation in a telephone hearing is voluntary. The Primary Recipient may request a fact to face hearing which will be scheduled at a location specified by the Office of Hearings and Appeals.

3-1-175. Title XX Specific Requirements.

3-1-176. Unless otherwise provided by these or other specific Program Regulations, each Primary Recipient applying for, or receiving, Title XX funded social services, or someone acting on behalf of a Primary Recipient, has the right to request a Departmental hearing to appeal:

- a finding of ineligibility after a determination or redetermination of eligibility;
- the failure to make a decision on an application or a request for service within the time periods specified in these regulations;
- a denial of service;
- a reduction of service;
- the termination or suspension of a service;
- the computation of the fee amount for a service which requires the payment of a fee.

3-1-177. The Primary Recipient does not have the right to appeal a decision which is based on changes in Federal or State law or regulations simply because the law or regulation has changed and now excludes him/her from service, reduces the amount of service, or results in a fee being charged.

Any request for a Departmental hearing which seeks to appeal such a denial, reduction, termination, or computation of the fee amount will be dismissed by the Office of Hearings and Appeals without a hearing.

However, the Primary Recipient does have the right to appeal if he/she believes:

- (1) he/she meets the requirements for service based on the new regulation or law;
- (2) the computation of the fee amount is incorrect.

If the Office of Hearings and Appeals finds that the Primary Recipient does not meet the new requirements, the Primary Recipient is responsible for the cost of service received from the proposed effective date of the Title XX service provider's decision which was appealed until the date service is terminated or reduced. If the computation of a fee is being appealed, the Office of Hearings and Appeals will determine the amount of the fee to be paid. The Primary Recipient is responsible for the payment of that amount from the proposed effective date of the Title XX service provider's decision which was appealed until the effective date of the Office of Hearings and Appeals Final Administrative Action

3-1-178. The Office of Hearings and Appeals has the exclusive authority to grant or dismiss an appeal for failure to file in a timely manner.

3-1-179. The hearing request, as defined in the 55 Pa. Code, 275.2 and 275.4(a)(2), must be made directly to the Office of Hearings and Appeals and must specify the reason(s) for the appeal and hearing request.

3-1-180. If the appeal is postmarked within the specified 10 calendar days, the Office of Hearings and Appeals

- (1) notify the Title XX service provider by telephone to continue providing the service until the appeal and fair hearing decision is rendered;
- (2) provide written confirmation of the telephone call and a copy of the written appeal to the Title XX service provider;
- (3) notify, in writing, the Primary Recipient and Title XX service provider, of the arrangement for the hearing.

3-1-181. If the Title XX service provider is a subcontractor, the Title XX service provider must send, within three calendar days of receipt, one copy of the written material received from the Office of Hearings and Appeals to the prime provider.

3-1-182. Unless the appeal is withdrawn, as defined in 55 Pa. Code 275. (e) (6)(ii), the Title XX service provider, against whom the appeal was made shall take part in the scheduled hearing to justify the action objected to by the Primary Recipient.

3-1-183. The Office of Hearings and Appeals will notify the Title XX service provider and the Primary Recipient in writing, when disposition of the appeal is made. The Title XX service provider shall implement the Final Administrative Action within the time period ordered by the Department's Office of Hearings and Appeals. If the service provider is a subcontractor, the Title XX service provider shall, within three calendar days of receipt, make and submit one copy of the appeal disposition to the prime provider.

3-1-184. **[See Waiver B.] APPLICATION FORM REQUIREMENTS.**

3-1-185. **[See Waiver B.]** Title XX service providers shall use the application for approved by the Department for use by the specific program area.

3-1-186. **[See Waiver B.]** Title XX service providers must have an application form on file for each Title XX eligible Primary Recipient. However, a single application form may be used for all Primary Recipients living in the same household. Each Primary Recipient must be identified by his/her eligibility status.

3-1-187. **[See Waiver B.]** The application form constitutes the request for service, unless a separate request for service form has been approved by the Department. The application form must therefore list each Title XX service requested. Subsequent requests for service from the same Title XX service provider must be documented by recording the service requested and the date of the request on the most recent application form, or other approved service requests made by a Primary Recipient on a single application form, or other approved service request document.

3-1-188. **[See Waiver B.]** If a person signs the application form on the Primary Recipient's behalf, he/she shall use his/her own signature, not that of the Primary Recipient, and the specific reason for an alternate signature must also be given.

3-1-189. **[See Waiver B.]** A minor may sign an application form on his/her own behalf. However, the Title XX service provider is responsible for determining whether the minor meets the definition of an individual (3-1-10) or falls within the Family definition (3-1-11). An assumption should not automatically be made that the minor is emancipated simply because he/she requests a Title XX funded social service.

3-1-190. **[See Waiver B.]** Before an unemancipated minor, who is part of a Family (3-1-11), signs an application form, he/she must be fully informed, understand, and consent to, the fact that his/her declaration of the Family's PA 5-A card status or family monthly gross income may be subject, on a sampling basis, to verification at a later date, which may require direct contact with his/her parents. This requirement does not apply to the unemancipated minor in cases where he/she is considered an Individual as defined in (3-1-10).

3-1-191. [See Waiver B.] The Title XX service provider is also responsible for explaining to the person signing the application form that fraudulent receipt of service based on false information, provided knowingly, makes him/her liable to legal prosecution.

3-1-192. [See Waiver B.] The application form must be dated and signed in ink by the Title XX service provider and by the Primary Recipient or by the person responsible for giving the information. By signing, the Primary Recipient certifies that the information is correct, and that he/she may be required to provide documentation to support his/her declaration of information recorded on the application form/registration document, at any time. In particular, documentation may be required at a later date, on a sampling basis, as part of the State's monitoring process.

3-1- 193. Documentation of inconsistent or incomplete information may be required at any time.

3-1-194. The Primary Recipient is always considered the primary source of the information needed. The Title XX service provider must be available to aid the Primary Recipient in obtaining the requested information. If it is necessary to contact outside sources to obtain documentation of any eligibility factor, this contact will only be made with the Primary Recipients informed and written consent:

3-1-195. [See Waiver B.] Determinations and redeterminations of eligibility require a face to face interview with the Primary Recipient or with the person who made the application on the Primary Recipient's behalf. If a face to face interview cannot be arranged, an application form may be mailed. The Primary Recipient may complete the application form at home and forward it to the Title XX service provider by mail. The application form must be dated and signed and contain the information required to provide the basis for making an eligibility decision. The application form must be returned to the Title XX service provider within 10 calendar days from the date it was mailed to the Primary Recipient. The Title XX service provider shall exercise good judgment in using this option. Application forms sent to Primary Recipients must be carefully accounted for, and followed up by the Title XX service provider. The date on which the application form is to be returned must be noted in the written instructions to the Primary Recipient. If a Primary Recipient fails to return an application form within 10 calendar days, the Title XX service provider shall follow-up by telephone or personal visit to be certain that the Primary Recipient was able to complete the application form and understood what was involved.

3-1-196. SERVICE ELIGIBLE — DECLARED STATE OF DISASTER.

3-1-197. A state of disaster exists as of the date on which the Governor declares a specific geographic area to be a disaster area.

3-1-198. Those eligible for all services declared by the Secretary of the Department to be essential in dealing with the disaster are:

- Primary Recipients who normally reside within the declared disaster area and who are affected by the disaster. These Primary Recipients are eligible to receive service for a period which must not exceed two months from the date the disaster was declared; and
- other Primary Recipients physically in a disaster area at the time of the disaster and who are affected by the disaster. These Primary Recipients are eligible to receive service only for so long as is necessary to relocate them to their normal place of residence and in no case, for longer than 30 calendar days from the date that the disaster was declared.

APPENDIX I

3-1-199. Sources of Income to be included and excluded in determining monthly gross income.

3-1-200. Monthly gross income is defined as the total amount of income earned or received before any deductions are made.

3-1-201. ***Income Inclusions.***

3-1-202. The source of income to be included in determining the total monthly gross income are:

- money wages or salary earned by individuals 14 years of age or older before deductions for taxes, social security, bonds, pensions, union dues, health insurance, and similar purposes for work performed as an employee including commissions, tips, piece-rate payments, and cash bonuses;
- Armed Forces pay which includes base pay plus cash housing and/or subsistence allowances, but does not include the value of rent-free quarters;
- voluntary or court-ordered support received by a present or former spouse;
- voluntary or court-ordered child support;
- net income from non-farm self-employment, defined as gross receipts minus expenses from one's own business, professional enterprise, or partnership. Gross receipts include the value of all goods sold and service rendered. Business expenses include costs of goods purchased, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (no personal income taxes), and similar expenses. Inventory changes may be considered in determining net income only when they are documented by income tax returns or other official records which reflect inventory changes. The value of marketable merchandise consumed by the proprietors of retail stores is not included as part of net income.
- net income from farm self-employment, defined as gross receipts minus operating expenses from the operation of a farm by a person on his/her own account, as an owner, renter, or sharecropper. Gross receipts include the value of all products sold, government subsidies — crop loans, money received from the rental of farm equipment to others, and incidental receipts from the sale of wood, sand, gravel, and similar items. Operating expenses include the cost of feed, fertilizer, seed, and other farming supplies, cash wages paid to farmhands, depreciation charges, cash rent, interest on farm mortgages, farm building repairs, farm taxes (not State and Federal Income taxes), and similar expenses. The value of fuel, food, or other farm products used for family living is not included as part of net income. Inventory changes may be considered in determining net income only when they are documented by income tax returns or other official records which reflect inventory changes.
- net income from non-resident real property income, defined as gross receipts minus the expenses for continuing the income such as depreciation charges, business taxes (not personal income taxes), interest on mortgage, repairs, and similar expenses;
- Social Security pensions, survivors' benefits, permanent disability insurance payments, and special benefit payments made by the Social Security Administration before deductions of health insurance premiums;
- Railroad retirement, disability, and survivors' benefit payments made by the U.S. Government under the Railroad Retirement Act before deductions of health insurance premiums;
- State Blind Pension payments made by the Department of Public Welfare;

- Public assistance or welfare payments such as AFDC, General Assistance, SSI and State Supplemental payments, only when the person is not the Primary Recipient;
 - private pensions and annuities, including retirement benefits paid to a retired person of his/her survivors by a former employer or by a union, either directly or through an insurance company;
 - government employee pensions received from retirement pensions paid by Federal, state, County, or other governmental agencies to former employees including members of the Armed Forces or their survivors;
 - unemployment compensation received from government unemployment insurance agencies or private companies during periods of unemployment and any strike benefits received from union funds;
 - worker's compensation received from private or public insurance companies for injuries incurred at work. The cost of this insurance must have been paid by the employer and not by the worker
 - Veterans payments defined as money paid periodically by the Veterans Administration to disabled members of the Armed Forces or to the survivors of deceased veterans, and subsistence allowances, paid to veterans for education and on-the-job training, as well as the so-called "refunds" paid to ex-service persons as GI insurance premiums. The two basic educational programs sponsored by the Veterans Administration are the G.I. Bill Educational Training Program and the VA Vocational Rehabilitation Program. There is a different method for providing funds to veterans in these programs. The veteran in G.I. Bill Educational Training Program receives a monthly sum which may be used totally for education or subsistence, or partially for education and partially for subsistence. The VA calls this monthly sum a "rate." Therefore, all the money received by the G.I. Bill veteran is counted as income. The Veteran in a VA Vocational Rehabilitation Program receives what the VA calls a "subsistence allowance" and the VA itself handles the educational Costs directly. Therefore, for the disabled veteran in the Vocational Rehabilitation Program, the subsistence allowance and the veteran's disability allowance is counted as income;
 - dividends including dividends from stockholdings or membership in association;
 - interest on savings checking accounts and bonds;
 - income from estates and trust funds;
 - net income from royalties;
 - net income from room and board payments, paid singly or in combination, and for rent from apartments, determined by deducting the sum of (1) and (2) from the total gross receipts.
- (1) Deductions for minimal costs:
- (a) \$10 per month for each tenant (lone person or tenant group (two or more persons living together as a family normally would) whose rent arrangements with the landlord/landlady are independent of other persons, or
 - (b) \$20 per month for each boarder, or
 - (c) \$30 per month for each separate tenant-boarder (person not included in (a) or (b) above) whose rent and board arrangements with the landlord/landlady are independent of other persons.
 - (d) \$30 per month for the first person and \$20 per month for each additional person in a tenant-boarder group (persons not included in (a), (b), or (c) above) whose joint rent and board arrangements with the landlord/landlady are independent of other persons, and.

(2) The following amount is deducted to recognize costs above the minimum 50% of the remainder after the deductions in (1).

3-1-203 ***Income Exclusions.***

3-1-204. Sources of income not counted in determining monthly gross income and income exclusions are:

- earnings of a child under 14 years of age:
 - any medical expense not reimbursed through medical insurance which exceeds 10% of the total family monthly gross income. The medical expense must have been incurred within 90 days from the date of the application/redetermination and be expected to continue or be incurred for a period of six months after the application/redetermination. Medical expenses include bills for doctors, hospital costs, dental services, and health care premiums;
 - voluntary or court-ordered support paid out by the Primary Recipient or a member of his/her family to a present or former spouse not residing in the same household;
 - voluntary or court-ordered child support paid out by the Primary Recipient or a member of his/her family for his/her child who is not residing in the same household;
 - payments made pursuant to the Alaska Native Claims Settlement Act, to the extent that such payments are exempt from taxation under Section 21(a) of the Act;
 - per capita payment to, or funds held in trust for, any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims;
 - money received from the sale of property, such as stocks, bonds, a house, or a car unless the person was engaged in the business of selling such property, in which case the net proceeds would be counted as income from self-employment;
 - withdrawals of bank deposits;
 - money borrowed
 - tax refunds including tax rebate from any source;
 - gifts;
 - lump sum inheritances or insurance payments;
 - lump sum lottery winnings;
 - capital gains;
 - the value of the coupon allotment under the Food Stamp Act of 1964, as amended, in excess of the amount paid for the coupons;
 - the value of USDA donated foods;
 - the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service programs for children under the National School Lunch Act, as amended;
 - loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs;
 - any grant or loan, to an undergraduate student for educational purposes, made or insured under any program administered by the Commissioner of Education under the Higher Education Act;
 - any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
 - any home produce used for household consumption;
 - the value of rent-free quarters;

- any payment made on behalf of an individual for household expenses such as rent, food, utilities;
- payments to VISTA volunteers pursuant to Section 404(g) of Domestic Assistance Act of 1973;
- earnings received by any youth under Title III, Part C- the 'Youth Employment Demonstration Program' of the Comprehensive Employment and Training Act of 1973 (CE TA);
- any payments to vendors by a State agency including foster care payments;
- payments made to an institution by a Primary Recipient's relative or other person for the costs of institutional care for the Primary Recipient; and
- stipends derived from the Foster Grandparents Programs under P. L. 93-1 13, Section 404(9).

APPENDIX II

[See Waiver A.] 3-1-205. BUREAU OF LABOR STATISTICS (BLS) INTERMEDIATE STANDARD.

[See Waiver A.] 3-1-206. The dollar amounts specified within the income levels are based on the Bureau of Labor Statistics (BLS) Intermediate Standard. See 3-1-207. MAXIMUM MONTHLY GROSS INCOME LEVELS.

[See Waiver A.] 3-1-208. The income levels to be used must not exceed the maximum monthly gross income levels specified below which are expressed as percentages of the Intermediate Bureau of Labor Statistics (BLS) Standard adjusted by family size according to a formula.

[See Waiver A.] 3-1-209.

ACCESS TO JUSTICE ACT REGULATIONS

Pennsylvania Code
Title 204 Judicial System General Provisions
Part IX Access to Justice Regulations

- 401.1 Definitions of Terms.
- 401.2. Application for Legal Assistance.
- 401.3. Eligibility Criteria.
- 401.4. Income Inclusions.
- 401.5. Income Exclusions.
- 401.6. Change in Circumstances.
- 401.7. Grievance Procedure.
- 401.8. Prohibited Use.
- 401.9. Priorities in Allocation of Resources.

§ 401.1. **Definition of Terms**

“Act” means the Access to Justice Act, Title 42, Chapter 49 of the Pennsylvania Consolidated Statutes, and as it may be amended.

“Applicant” is the person who voluntarily requests legal assistance, or on whose behalf service is requested. The Applicant is the determining factor in defining “individual or family status” for eligibility determination purposes.

“Fee-generating case” means any case or matter which, if undertaken on behalf of a client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

“Eligible Legal Services Provider” is a not-for-profit entity incorporated in this Commonwealth, tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)), or any successor provision, which operates within this Commonwealth for the primary purpose of providing civil legal services without charge, and which operates to provide such civil legal services to eligible clients and victims of abuse under contract or subcontract with the Department of Public Welfare for the expenditure of funds appropriated by the General Assembly for the provision of legal services.

“Emancipated Minor”

(a) An emancipated minor is a person under 21 years of age (irrespective of whether he/she is receiving services designed for adults or children) who either:

- (1) is married, whether he/she lives within, or away from, his/her parent’s household; or
- (2) has left the parental household or has established himself/herself as a separate entity within the parental household; and
 - (i) is acting for himself/herself independent of control by his/her parents, or persons acting as loco parentis; and

ii) is financially independent of his/her parents, although he/she may be receiving financial assistance or benefits to which he/she is entitled in his/her own right.

(b) An unmarried minor who, after living outside the parental household, returns to live with his/her parents or someone acting in loco parentis, is no longer considered emancipated unless he/she remains independent of control by his/her parents or someone acting in loco parentis, and is financially independent of them although he/she may be receiving financial assistance or benefits in his/her own right.

“Family”

(a) A family is one or more adults and unemancipated minor children, if any, who are related by blood or law, and who reside in the same household.

A Family includes:

(1) one person and his/her unemancipated minor children (natural and adoptive) who reside in the same household;

(2) two persons in a marriage or common law relationship who reside in the same household;

(3) two persons in a marriage or common law relationship and their joint unemancipated minor children (natural and adoptive) who reside in the same household;

(4) two persons in a marriage or common law relationship and their joint unemancipated minor children (natural and adoptive) and the unemancipated minor children (natural and adoptive) of either/both persons who reside in the same household.

(5) two persons who are residing together with a child(ren) in common.

(b) A pregnant woman shall be counted as one person in the determination of family size.

(c) A man and woman who are legally free to marry, who agree to live together as husband and wife without benefit of a marriage license, and both publicly and privately consider themselves married are regarded as living in a common law relationship.

(d) A person defined as “Individual” is not included in a family grouping.

(e) A person may choose to count as a family member any other person(s) residing in the same household who is claimed by that person as a tax dependent.

“Criminal proceeding” means the adversary judicial process initiated by a formal complaint, information, or indictment charging a person with an offense denominated “criminal” by applicable law and punishable by death, imprisonment, a jail sentence, or a fine.

“Individual” is any of the following:

(a) an emancipated minor;

(b) an unemancipated minor living with persons other than his/her natural or adoptive parents;

(c) an unemancipated minor living in a residential facility serving dependent and delinquent children;

(d) an adult who resides alone;

(e) an adult who resides with another related or unrelated adult, other than persons who are married including those living in a common law relationship.

“Legal Assistance” means the provisions of any legal services consistent with the Rules of Professional Conduct of the Supreme Court of Pennsylvania and with the purposes and provisions of the Act.

“Lobbying Activities” are any efforts to influence Federal, State or local legislative or administrative action, including, but not limited to, activities intended to influence the issuance, amendment or revocation of any executive or administrative order or regulation of a Federal, State or local agency, or to influence the introduction, amendment, passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body.

“Recipient” means an eligible Legal Services Provider that receives a grant of funds derived from the Act.

“Telephone Advice and Brief Service” means civil legal assistance provided to eligible Applicants by Recipients through a telephone service system which provides legal advice, information and brief services at or near the time an eligible Applicant contacts the Recipient. Such telephone service systems are often referred to as “helplines” or “hotlines.” Legal assistance provided through these systems is limited to advice and counsel, brief services, and referral after legal assessments when such activities are likely to address the problem without the need for in-person initial contact and within a short time from the contact by the eligible Applicant.

§ 401.2. Application for Legal Assistance.

(a) An individual eligibility determination requires completion of a dated application form containing information which enables the Recipient to determine an Applicant’s eligibility to receive the requested service.

(b) A written application is not required for general non-legal information and referral service.

(c) Application forms for extended services and in-person advice and brief services must be signed by the Applicant. The application form need not be signed by the Applicant for telephone advice and brief services.

(d) The application form must be completed by the Recipient from the information given by the Applicant, his/her authorized representative, or, by someone, including Recipient’s staff, acting responsibly for the Applicant if he/she is physically incapable of completing an application form, or in an emergency situation.

(e) The Recipient shall ensure that the Applicant, or the person responsible for giving the information, receives all the help necessary to provide accurate and complete information. Arrangements must be made for an interpreter to assist non-English speaking, deaf, and visually handicapped Applicants, on an as-needed basis in those individual cases for whom no alternative methods for communication can be substituted effectively.

(f) Individual eligibility determinations are made using the declaration method. The declaration method is the acceptance of an Applicant’s statements that he/she meets the applicable eligibility criteria. This does not preclude the requirement to obtain documentation when needed to comply with requirements of funding sources of the grant Recipient organization. Documentation also can be required and obtained if there is substantial reason to doubt the accuracy or completeness of the information

provided by the Applicant, but such documentation must be obtained in a manner that promotes the development of trust between the attorney and client.

§ 401.3. Eligibility Criteria.

Those financially eligible for civil legal assistance are:

(a) applicants whose family monthly gross income does not exceed 125% of the Federal Poverty Guidelines, as published annually in the Federal Register by the Department of Health and Human Services, adjusted according to family size.

(b) The Commonwealth of Pennsylvania authorizes the issuance of medical assistance based upon the combination of income and certain public policy circumstances. When an Applicant has a current medical access card for a category for which eligibility is based upon 125% of poverty income, no additional eligibility determination is needed for legal assistance.

(c) The Applicant must be a resident of Pennsylvania. No requirements as to citizenship or length of residence in the State may be imposed as a condition of eligibility. Temporary absences from Pennsylvania, with subsequent returns, or with a plan to return when the purpose of the absence, such as a trip or a visit, has been accomplished, do not interrupt residence. Out-of-State students and foreign students who are living in Pennsylvania while attending an education or job-training institution in Pennsylvania are considered residents of Pennsylvania. Migrant workers who are seasonally employed or seeking seasonal employment in Pennsylvania are considered residents of Pennsylvania.

(d) Legal assistance may be provided without regard to income when the Applicant is in need of protective services under the Protection from Abuse Act.

(e) Authorized Exceptions to Income Eligibility. The governing body of the recipient may adopt policies for the provision of legal assistance under the Act to an applicant whose family, monthly gross income, does not exceed 150 percent of the 125% of poverty eligibility income level (i.e. 187.5% of poverty income level). The determination of family, monthly gross income shall be made pursuant to the income inclusions and exclusions defined within Sections 401.4 and 401.5 except that the definition of medical expenses is modified as included below in (f)(2). When a recipient's policies provide for authorized exceptions to income eligibility, legal assistance can be provided when:

(1) The Applicant's circumstances require that eligibility should be allowed on the basis of one or more of the factors set forth in Section 401.3(f); or

(2) The person is seeking legal assistance to secure benefits provided by a governmental program for the poor.

In the event that a recipient determines to serve a person whose family, monthly gross income exceeds 125% of poverty, the factual basis for the decision shall be documented and retained by the recipient.

(f) Factors which shall be used in the determination of the eligibility of clients over the 125% of poverty income level shall include:

(1) Current income prospects, taking into account seasonal variations in income;

- (2) Medical expenses, and in exceptional instances, with the prior, written approval of the Recipient's project director based on written documentation received by the recipient and available for review, if an Applicant's family, monthly gross income is primarily committed to medical or nursing home expenses, a person may be served even if that person's gross income exceeds 187.5 percent of the poverty income eligibility level;
- (3) Fixed debts and obligations, including unpaid Federal, state and local taxes from prior years;
- (4) Child care, transportation, and other expenses necessary for employment;
- (5) Expenses associated with age or physical infirmity of resident family members; and
- (6) Other significant factors related to financial inability to afford legal assistance.

(g) A Recipient may provide legal assistance to a group, non-profit corporation, association or other entity if the Recipient has determined that the group, non-profit corporation or association or other entity lacks and has no practical means of obtaining private counsel in the matter for which

- (1) at least a majority of the group's members are financially eligible for legal assistance; or
- (2) for a non-membership group, at least a majority of the individuals who are forming or operating the group are financially eligible for legal assistance; or
- (3) the group has as its principal function or activity the delivery of services to those persons in the community who would be financially eligible for legal assistance; or
- (4) the group has as its principal function or activity the furtherance of the interests of those persons in the community who would be financially eligible for legal assistance and the representation sought relates to such function or activity.

In order to make a determination that a group, non-profit corporation, association or other entity is eligible for legal services as required by paragraph (a) of this section, a recipient shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility requirements set forth herein.

§ 401.4. **Income Inclusions.**

The sources of income to be included in determining the total monthly gross income are:

- (a) money wages or salary earned by individuals 14 years of age or older before deductions for taxes, social security, bonds, pensions, union dues, health insurance, and similar purposes for work performed as an employee including commissions, tips, piece-rate payments, and cash bonuses;
- (b) Armed Forces pay which includes base pay plus cash housing and/or subsistence allowances, but does not include the value of rent-free quarters;
- (c) voluntary or court-ordered spousal and/or child support received by a present or former spouse;
- (d) voluntary or court-ordered child support;
- (e) net income from non-farm self-employment, defined as gross receipts minus expenses from one's own business, professional enterprise, or partnership. Gross receipts include the value of all goods sold and service rendered. Business expenses include costs of goods purchased, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (no personal income taxes), and similar expenses. Inventory changes may be considered in determining net income only when they are

documented by income tax returns or other official records which reflect inventory changes. The value of marketable merchandise consumed by the proprietors of retail stores is not included as part of net income;

(f) net income from farm self-employment, defined as gross receipts minus operating expenses from the operation of a farm by a person on his/her own account, as an owner, renter, or share-cropper. Gross receipts include the value of all products sold, government subsidies—crop loans, money received from the rental of farm equipment to others, and incidental receipts from the sale of wood, sand gravel and similar items. Operating expenses include the cost of feed, fertilizer, seed, and other farming supplies, cash wages paid to farm hands, depreciation charges, cash rent, interest on farm mortgages, farm building repairs, farm taxes (not State and Federal income taxes), and similar expenses. The value of fuel, food, or other farm products used for family living is not included as part of net income. Inventory changes may be considered in determining net income only when they are documented by income tax returns or other official records which reflect inventory changes;

(g) net income from non-resident real property income, defined as gross receipts minus the expenses for continuing the income such as depreciation charges, business taxes (not personal income taxes), interest on mortgage, repairs, and similar expenses;

(h) Social Security pensions, survivors' benefits, permanent disability insurance payments, and special benefit payments made by the Social Security Administration before deductions of health insurance premiums;

(i) Railroad retirement, disability, and survivors' benefit payments made by the U.S. Government under the Railroad Retirement Act before deductions of health insurance premiums;

(j) State Blind Pension payments made by the Department of Public Welfare;

(k) Public assistance or welfare payments such as General Assistance, SSI and State Supplemental payments, only when the person is not the Applicant;

(l) private pension and annuities, including retirement benefits paid to a retired person or his/her survivors by a former employer or by a union, either directly or through an insurance company;

(m) government employee pensions received from retirement pensions paid by Federal, State, County, or other governmental agencies to former employees including members of the Armed Forces or their survivors;

(n) unemployment compensation received from government unemployment agencies or private companies during periods of unemployment and any strike benefits received from union funds;

(o) worker's compensation received from private or public insurance companies for injuries incurred at work. The cost of this insurance must have been paid by the employer and not by the worker;

(p) Veterans payments, defined as money paid periodically by the Veterans Administration to disabled members of the Armed Forces or to the survivors of deceased veterans, and subsistence allowances, paid to veterans for education and on-the-job training, as well as the so-called "refunds" paid to ex-service persons as GI insurance premiums. The two basic educational programs sponsored by the Veterans Administration are the G.I. Bill Educational Training Program and the VA Vocational

Rehabilitation Program. There is a different method for providing funds to veterans in these programs. The veteran in G.I. Bill Education Training Program receives a monthly sum which may be used totally for education or subsistence, or partially for education and partially for subsistence. The VA calls this monthly sum a "rate." Therefore, all the money received by the G.I. Bill veteran is counted as income. The Veteran in a VA Vocational Rehabilitation Program receives what the VA calls a "subsistence allowance" and the VA itself handles the educational costs directly. Therefore, for the disabled veteran in the Vocational Rehabilitation Program, the subsistence allowance and the veteran's disability allowance are counted as income;

(q) dividends including dividends from stockholdings or memberships in associations;

(r) interest on savings, checking accounts and bonds;

(s) income from estates and trust funds;

(t) net income from royalties; and

(u) net income from room and board payments, paid singly or in combination, and for rent from apartments, determined by deducting the sum of (1) and (2) from the total gross receipts.

(1) Deductions for minimal costs:

(i) \$10 per month for each tenant (lone person) or tenant group (two or more persons living together as a family normally would) whose rent arrangements with the landlord/landlady are

(ii) \$20 per month for each boarder, or

(iii) \$30 per month for each separate tenant-boarder (person not included in (a) or (b) above) whose rent and board arrangements with the landlord/landlady are independent or other persons.

(iv) \$30 per month for the first person and \$20 per month for each additional person in a tenant-boarder group (persons not included in (a), (b), or (c) above) whose joint rent and board arrangements with the landlord/ landlady are independent of other persons, and;

(2) The following amount is deducted to recognize costs above the minimum: 50% of the remainder after the deduction in (1).

§ 401.5. **Income Exclusions.**

Sources of income not counted in determining monthly gross income and income exclusions are:

(a) earnings of a child under 14 years of age;

(b) any medical expense not reimbursed through medical insurance which exceeds 10% of the total family monthly gross income. The medical expense must have been incurred within 90 days from the date of the application and be expected to continue or be incurred for a period of six months after the application. Medical expenses include bills for doctors, hospital costs, dental services, and health care premiums;

(c) voluntary or court-ordered child support paid out by the Primary Recipient or a member of his/her family to a present or former spouse not residing in the same household;

- (d) voluntary or court-ordered child support paid out by the Primary Recipient or a member of his/her family for his/her child who is not residing in the same household;
- (e) payments made pursuant to the Alaska Native Claims Settlement Act, to the extent that such payments are exempt from taxation under Section 21(a) of the Act;
- (f) per capita payment to, or funds held in trust for, any individual in satisfaction or judgment of the Indian Claims Commission or the court of claims;
- (g) money received from the sale of property, such as stocks, bonds, a house, or a car unless the person was engaged in the business of selling such property, in which case the net proceeds would be counted as income from self-employment;
- (h) withdrawals of bank deposits;
- (i) money borrowed;
- (j) tax refunds including tax rebate from any source;
- (k) gifts;
- (l) lump sum inheritances or insurance payments;
- (m) lump sum lottery winnings;
- (n) capital gains;
- (o) the value of the coupon allotment under the Food Stamp Act of 1964, as amended, in excess of the amount paid for the coupons;
- (p) the value of USDA donated foods;
- (q) the value of supplemental foods assistance under the child Nutrition Act of 1966 and the special food service programs of children under the National School Lunch Act, as amended;
- (r) loans and grants, such as scholarships, obtained and used under conditions that preclude their use of current living costs;
- (s) any grant or loan, to an under-graduate student for education purposes, made or insured under any program administered by the Commissioner of Education under the Higher Education Act;
- (t) any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (u) any home produce used for household consumption;
- (v) the value of rent-free quarters;
- (w) any payment made on behalf of any individual for household expenses such as rent, food, utilities;
- (x) payments to VISTA volunteers pursuant to Section 404(g) of the Domestic Assistance Act of 1973;

- (y) any payments to vendors by a State agency including foster care payments;
- (z) payments made to an institution by an Applicant's relative or other person for the costs of institutional care for the Applicant; and
- (aa) stipends derived from the Foster Grandparents Programs under P. L. 93-113, Section 404(9).

§ 401.6. Change in Circumstances.

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

§401.7. Grievance Procedure.

(a) Complaints about legal assistance.

- (1) A Recipient shall establish procedures for determining the validity of a complaint about the manner or quality of legal assistance that has been rendered.
- (2) The procedures shall provide at least:
 - (i) Information to a client at the time of the initial visit about how to make a complaint, and
 - (ii) Prompt consideration of each complaint by the director of the Recipient, or the director's designee, and, if the director of the Recipient is unable to resolve the matter,
 - (iii) An opportunity for complainant to submit an oral and written statement to a member(s) of the Recipient's grievance committee established by the governing body, preferably a board member who is himself/herself client eligible.
- (3) A file containing every complaint and a statement of its disposition shall be preserved for examination. The file shall include any written statement submitted by the complainant.

(b) Complaints about denial of assistance. A Recipient shall establish a simple procedure for review of a decision that a person is financially ineligible, or that assistance is prohibited by the Act or Regulations, or by priorities established by the Recipient pursuant to section 401.9. The procedure shall include information about how to make a complaint, adequate notice, an opportunity to confer with the director of the Recipient or the director's designee, and, to the extent practicable, with a representative of the governing body, preferably a board member who is himself/herself client eligible.

§ 401.8. Prohibited Use.

Recipients of funds under this Act are prohibited from using them for the following purposes:

(a) Political and Lobbying Activities. Funds shall not be used to contribute to or be made available to any political party or association, or the campaign of any candidate for public or party office or similar political activities or to support or oppose candidates from public or party office or to support or oppose candidates for public or party office or to support or oppose any ballot questions or to engage in lobbying activities, except that:

(1) A Recipient of funds may engage in lobbying activities in response to a request from a governmental agency, legislative body, committee, member or staff thereof made to the recipient, consistent with the Rules of Professional Conduct.

(2) A Recipient may engage in lobbying activities in the provision of legal services to an eligible client on a particular application, claim or case, which directly involves that client's legal rights and responsibilities, however this shall not be construed to a permit a Recipient to solicit a client, in violation of the Rules of Professional Conduct, for the purpose of making such representation possible.

(b) Fee generating case. Funds shall not be used to provide legal assistance in a fee-generating case unless other adequate representation is unavailable. All Recipients shall establish procedures for the referral of fee-generating cases.

(1) Other adequate representative is deemed to be unavailable when the Recipient has determined that free referral is not possible because:

(i) The case has been rejected by the local lawyer referral service, or by two private attorneys, or the Recipient's experience within the previous six months with similar cases is that the current case will not be accepted by a private attorney; or

(ii) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee; or

(iii) Emergency circumstances compel immediate action before referral can be made, but the client is advised that if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other non-pecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims; or

(3) A court appoints a Recipient or an employee of a Recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(4) An eligible client is seeking benefits under Subchapter II of the Social Security Act, 42 U.S.C. 401, et seq., as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. 1381, et seq., as amended, Supplemental Security Income for Aged, Blind, and Disabled.

(5) A Recipient may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement, if the requirements of sub-section 401.8 (b)(1) are met.

(6) When a case or matter subject to this sub-section results in a recovery of damages, other than statutory benefits, a Recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case or matter, if

(i) The requirements of sub-section 401.8(b)(1) are met, and

(ii) The client has agreed in writing to reimburse the Recipient for such costs and expenses.

(7) Nothing in this part shall prevent a Recipient from:

(i) Requiring a client to pay court fees when the client does not qualify to proceed *in forma pauperis* under the rules of the jurisdiction; or

(ii) Acting as a co-counsel with a private attorney when the case meets the standards set forth in sub-section 401.8(b)(1) and accepting part of any fees that may result from a shared case.

(c) Defense of Criminal Prosecutions.

(1) Funds shall not be used to provide legal assistance with respect to a criminal proceeding, unless authorized by sub-section 401.8(c)(2).

(2) Legal assistance may be provided with respect to a criminal proceeding;

(i) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the Recipient after a determination that it is consistent with the Recipient's primary responsibility to provide legal assistance to clients in civil matters; or

(ii) When professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being, or has been, represented by a Recipient.

(3) Actions Attacking Criminal Convictions. Funds shall not be used to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the action is brought against an official of the court or against a law enforcement official for the purpose of challenging the validity of the criminal conviction.

However, this sub-section does not prohibit legal assistance pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the Recipient after a determination that it is consistent with the primary responsibility of the Recipient to provide legal assistance to eligible clients in civil matters.

(d) Statutory Right to Counsel. Funds shall not be used to provide legal assistance in cases in which the Commonwealth of Pennsylvania has an obligation to provide counsel to the indigent through another source identified by statute.

§ 401.9. *Priorities in Allocation of Resources.*

Recipients daily must make decisions concerning what cases to handle, what area of client need to pursue, what models of delivery of services to choose, what communities to serve, and related issues. A high quality Recipient program responds effectively to changing client needs and integrates its priority setting process into its daily operations. This section is intended to assure that Recipients plan and perform services provided under the Act in a way that responds to existing and changing client and community needs, promptly and strategically.

(a) The governing body of a Recipient shall adapt procedures for establishing priorities in the allocation of its resources. The procedures adopted shall:

(1) Include an effective appraisal of the needs of eligible clients in the geographic areas served by the Recipient;

(2) Insure an opportunity for participation by representatives of all significant segments of the client community and the Recipient's employees in the setting of priorities.

(b) The following factors could be among those considered by the Recipient in establishing priorities:

- (1) the appraisal described in paragraph (a)(1) of this section;
- (2) the population of eligible clients in the geographic areas served by the Recipient, including all significant segments of that population with special legal problems or special difficulties of access to legal services;
- (3) the resources of the Recipient;
- (4) the availability of another source of free or low-cost legal assistance in a particular category of cases or matters;
- (5) the availability of other sources of training, support, and outreach services;
- (6) the relative importance of particular legal problems of the individual clients of the recipient;
- (7) the susceptibility of particular problems to solution through legal processes;
- (8) whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served; and
- (9) whether legal efforts will result in efficient and economic delivery of legal services.

(c) A Recipient shall allocate resources consistent with the purposes and requirements of the Act and regulations, and in a manner that assures such resources are put to their highest and best use in meeting client needs. To the extent possible efforts should be made to provide that all potentially eligible clients in the Recipients' service area have reasonably equal access to similar types of services. If the governing body of the Recipient so desires, the types of services may vary so as to take into account different priorities in different parts of the Recipient's service area, a higher incidence of a particular kind of problem, the considerably higher costs of providing services, or differences in individual client financial resources.

(d) The governing body of a Recipient shall establish policies and procedures that assure clients that cases which are accepted for representation of eligible clients substantially comply with the priorities adopted by the Recipient.

(e) Annual Review. Priorities shall be set periodically and shall be reviewed by the Recipient at least annually.

B: PROGRAM POLICIES

LIST OF QUALIFYING MEDICAL ASSISTANCE CATEGORIES

**PENNSYLVANIA LEGAL SERVICES
MEDICAL ACCESS CARD
AUTOMATIC ELIGIBILITY
JUNE 2012**

The following guidelines should be used when determining eligibility based on the MA card.

Individuals are classified as at or below 125% of poverty for the following Medical Assistance categories:

- A – Supplemental Security Income 65+
- C – TANF
- U – TANF Unemployed
- D – General Assistance chronically needy
- J – Supplemental Security Income disabled
- M – Supplemental Security Income blind

The following combinations of MA categories and program status codes identify individuals whose income is at or below 125% of poverty:

Category	Program Status Code		Category	Program Status Code
C	00, 04, 06, 07, 08, 09		PAN	66, 80
U	00, 04, 06, 07, 08, 09		PJN	66, 80
D	00, 02, 05, 15, 50		PMN	66, 80
B	00, 80		PVN	66, 80
PC	00, 02, 03, 27		TA	00, 66, 80
PU	00, 27		TB	00, 80
PD	00, 29		TC	00
PH	00, 80		TD	00
PI	66, 80		TJ	00, 66, 80
PW	66, 80		TU	00
A	00, 44, 45, 46, 60, 62		TAW	66, 80
J	00, 44, 45, 46, 60, 62		TJW	66, 80
M	00, 44, 45, 46, 60, 62		TAN	66, 80
PA	00		TJN	66, 80
PJ	00		TVN	66, 80
PM	00		PG	00
PAW	66, 80		TA	65
PJW	66, 80		TJ	65
PMW	66, 80			

Follow the instructions below to obtain the applicant's MA Category and Program Status Code

INSTRUCTIONS FOR DETERMINING MA ELIGIBILITY FOR OUR SERVICES USING THE DPW ELIGIBILITY VERIFICATION SYSTEM (EVS). (You will need the client's SSN and Date of Birth.)

1. Call 1-800-766-5387. This is the DPW Eligibility Verification System (EVS).
2. You will get an electronic response indicating that you've reached the system and asking about how you want to identify us. Answer "1" to enter our 13 digit provider number--
0999000030001#
3. Enter "2" when it asks for method of recipient identification, and then enter the client's 9-digit social security number and end with the "#" sign.
4. Enter the Date of birth of the client as mmddyyyy#. Example: for a date of birth of June 6, 1944 you would enter 06061944#.
5. Press "#" sign to get the eligibility for today. The System will then give you the person's Recipient Number (which we call the Access card number). WARNING: the system talks fast so you will need to concentrate to get all of the recipient number. You will not be able to get them to repeat the information without calling back and starting all over again.

Press "1" when it asks if you want general eligibility information. It will then give you the Category of Assistance (1 or 2 letters) and the Program status code (2 digits). There will be other information as well that is not necessary for our purposes.

Category Descriptions

See Medical Assistance Eligibility [Handbook 305 App. F](#)

- PA - Old Age Assistance
- PC - Temporary Assistance for Needy
- PJ - Aid to the Disabled
- PM - Aid to the Blind
- PS - Healthy Beginnings – Pregnant Woman or Qualified Child
- PH - Healthy Horizons Categorically Needy
- PU - Unemployment of the Principal Wage Earner Parent
- TA - Old Age Assistance
- TD - General Assistance
- TJ - Aid to the Disabled

Program Status Code Descriptions

See Medical Assistance Eligibility [Handbook 305 App. C](#)

- 26 - Pre TANF Eligibility Rules – NMP Eligible
- 27 - TANF Eligibility Rules – NMP Eligible
- 40 - Elderly/Disabled without Buy-In
- 55 - GA Medical Assessment
- 65 - Specified Low Income Medicare Beneficiaries (SLMB) – Medicare Part B Only
- 66 - Specified Low Income Medicare Beneficiaries (SLMB) – Medicare Part B and Medically Needy Only
- 70 - Elderly With Buy-In
- 90 - Disabled With Buy-In

TITLE XX RIGHTS AND RESPONSIBILITIES

Title XX Rights and Responsibilities

You have:

- The right to request Title XX services.
- The right to have an application form completed by this program with 10 calendar days of from the date of a service request.
- The right to an eligibility determination within 30 calendar days from the date the application form is dated and signed.
- The right to be notified on eligibility and service decisions.
- The right to appear and have a Department of Public Welfare fair hearing.
- The right to continue to receive service if a timely appeal is filed until the fair hearing decision is rendered.

You have:

- The responsibility to provide true and complete information to enable this program to establish eligibility.
- The responsibility to report to this program any subsequent changes in circumstances which may change your eligibility such as address, family size PA Medical Assistance card status or income.
- The responsibility to provide documentation of eligibility related items as a condition for receiving and continuing to remain eligible for Title XX services.

Appendix 7

C: FORMS

(To be inserted by the LSP)