from union funds; veterans benefits; alimony, child support, military family allotments or other regular support from an absent family member or some other third party not living in the household; or income from dividends, interest, rents, royalties, estates or trusts that are available to or used for the benefit of the applicant for service.

Total cash receipts would not include the income of an absent, noncontributing spouse, nor would it include such one-time items as money withdrawn from a bank, tax refunds, gifts, insurance payments or cash settlements for injuries sustained unless paid out over time on a regular basis. These one-time items, however, should be considered by the recipients when reviewing an applicant's assets before determining eligibility. The question of how to treat income taxes that are withheld from salary or paid periodically is dealt with in a later section. The current regulation includes "training stipends" as part of "income." A recipient should be able to decide whether a particular training stipend, fellowship, scholarship or similar payment constitutes income to the applicant. That determination may depend on whether the payment is paid to the applicant or directly to an educational or training institution; whether the payment is intended to cover tuition or living expenses; and other similar considerations. Finally, a recipient should be able to determine whether money is actually and currently available to the applicant. For example, money paid in trust to an applicant, but not available until the applicant reaches a particular age or status, may not be income.

Section 1611.3 Eligibility Policies or Guidelines

Section 1611.3(a)

This subsection is based on language that appears in §1611.5(a) of the current part 1611, but it is substantially revised and relocated. The provision does not simply refer to the annual income ceiling, which is dealt with in the next section. Rather, it refers to the overall set of policies or guidelines that a recipient follows to establish eligibility for LSC-funded services, including both financial and non-financial considerations. While the Committee agreed that a recipient ought to review its annual income ceilings annually in light of revisions to appendix A, the Committee felt that the eligibility guidelines themselves needed to be reviewed less frequently. An annual review requirement, such as that under the current regulation, often encourages

a mere *pro forma* review. The Committee felt that a less frequent review would encourage more thoughtful analysis.

Section 1611.3(b)

This subsection is based on § 1611.5(b)(2)(D) of the current regulation, but the provision has been moved up in the proposal to guide the recipient through the process of determining financial eligibility in a more logical manner. It makes it clear that under the LSC Act recipients must consider an applicant's assets before determining that the applicant is financially eligible.

Section 1611.3(c)

This subsection is based on the remaining factors listed in §1611.5(b) of the current regulation. It discusses those additional factors that a recipient may consider before determining that an applicant who might be financially eligible on the basis of income alone should be served. While these are factors that the recipient would generally use to disgualify an otherwise financially eligible applicant, the Committee recognized that they might also be weighed against one another to permit a recipient to determine that a particular applicant should be served. For example, a recipient might interview an applicant for services whose current income is below the recipient's income ceiling, but who anticipates a significant increase in income because he or she has been promised a job that is scheduled to start in several weeks. Looking only at income and income prospects, the recipient might determine not to provide service to that applicant. If, however, the applicant is seeking emergency legal assistance to prevent the loss of the family's home, the recipient could weigh the severity of the consequences for the individual if legal assistance is denied and decide that, on balance, it should undertake the representation. However, if, during the course of the representation, the promised job materializes, the recipient would have to determine whether the change in circumstances requires that assistance be discontinued, pursuant to §1611.10.

The Committee added language regarding the recipient's priorities, as well as other case acceptance criteria to make it clear that financial eligibility based on income and assets does not create an entitlement to legal services. Financial eligibility is only one piece in the puzzle that determines whether a recipient will actually represent any particular applicant for service. A recipient should look to its own priorities as well as any other case acceptance criteria that it has adopted to manage its caseload, including conflicts considerations and factors used in determining whether a case has sufficient merit to justify expenditure of scarce resources.

Section 1611.4 Annual Income Ceilings

The Committee changed the name of this section, which is found in §1611.3 in the current regulation, from "maximum income level" to "annual income ceilings." The term "maximum" is used twice in this section of the current regulation with respect to two different sets of numbers and is confusing and misleading. Under the current rule, LSC is required to set a "maximum" income level, currently 125% of the Federal Poverty Income Guidelines, but recipients can set their own ceilings (or maximum) on income at any level at or below the LSC "maximum." In addition, the current regulation permits recipients to make exceptions to the "maximum" income level to take account of factors that limit an applicant's ability to afford legal services, so the recipient's income level may not really represent a maximum. The Committee felt that the use of the term "annual income ceilings" was more appropriate to describe how the section was to be applied, and it is consistent with the term "asset ceilings" that is used later in the regulation.

Section 1611.4(a)

The Committee added language to emphasize that the recipient's annual income ceiling is applicable only to legal assistance supported by LSC funds. Other funders may set their own income eligibility levels, and many have done so or have based eligibility for services on some other basis, such as age or status. Some funders have chosen to adopt LSC financial eligibility guidelines to determine eligibility for services supported with their funds. This additional language does not represent any substantive change from current law, but does emphasize what was not always clear under the current regulation, i.e., that other funders are not bound by LSC eligibility guidelines and recipients may use whatever eligibility standards the non-LSC funder prescribes.

The Committee also added language to make it clear that both income and assets are to be used to determine financial eligibility, but that financial eligibility does not entitle a particular applicant to receive legal services, since a recipient may also consider other

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