

received, there would be an increase in assets and a potential change in circumstances, see § 1611.10. In addition, the language has been changed so that it is clear that a person whose income is devoted primarily to payment of medical expenses may be considered eligible for LSC services without regard to income, but only if the applicant's income does not exceed the recipient's annual income ceiling after unreimbursed expenses are deducted.

Paragraph (C) has been revised in several respects. First, the proposal removes the discrimination against the working poor that is inherent in the existing rule, which does not exclude current taxes from the calculation of available income. Second, since alimony and/or child support payments made to a current or former spouse or custodial parent are included in the current definition of income for those who receive them, the Committee agreed that they should also be deducted from income for those who pay them. Another issue that has arisen from time to time is the treatment of rent versus mortgage payments under this provision. In general, rent for housing has not been included as a fixed obligation under this section, but several General Counsel's opinions have treated mortgage payments as fixed debts, creating a discrimination against renters in favor of homeowners. In order not to discriminate against renters, both rent and mortgage payments should be treated the same way. The Committee seeks comments on whether both rent and mortgage payments should be permitted as factors. The Committee also seeks comments on any other types of fixed debts or obligations that should be specifically included in the language of the rule or in the Commentary.

Paragraph (D) has been revised to provide explicitly that educational or job training expenses necessary to prepare a person for work should be treated the same as expenses related to actual employment.

Paragraph (E) has been revised to make it clear that not all expenses that can reasonably be attributable to age or disability are deductible, but only those that are unusual. Programs can make that determination on a case-by-case basis.

Paragraph (F) has been revised to make it clear that the recipient has discretion to consider other factors to deem a particular applicant eligible for services, even though the applicant is over the program's annual income ceiling, but below 200% of poverty.

Section 1611.5(b)

The Committee proposes to revise the provision in the current regulation that requires recipients to maintain specific documentation relating to decisions to provide representation to individuals whose income is between 125% and 187.5% of poverty. The Committee believes that requiring the recipient to keep this information in the client's file, as is the case under the current regulation, could interfere with LSC's ability to have access to the information that it needs without going into the client case files and possibly compromising confidentiality. Thus, the record that the recipient keeps to meet the requirement of this section for purposes of informing LSC about the exceptions should be maintained separate from any client case files. The Committee also believes that the current provision does not contain sufficient protection to insure that LSC would not have access to any client information that should be protected under applicable rules of professional responsibility, and has incorporated a reference to § 1611.8(d) that delineates the parameters of LSC's access to such information. The Committee noted that, under the proposed regulation, the applicable rules were those of the jurisdiction where the records were kept or where the services were provided, whichever were more protective of the client's privacy. However, the Corporation seeks comments on any conflict of laws questions that would be raised by the proposed provision.

Section 1611.6 Asset Ceilings

Section 1611.6(a)

The requirement for annual establishment of asset ceilings and transmittal to LSC has been deleted in keeping with the Committee's effort to eliminate unnecessary reporting requirements. Compliance with the asset ceiling guideline requirement can be assured through periodic monitoring, self-assessments, or other compliance processes. The proposed revised subsection requires that recipients review their asset ceilings as part of the overall review of eligibility policies or guidelines that must be done at least once every three years under § 1611.3(a) of this proposed regulation. In addition, language has been added to make it clear that asset guidelines must be considered in determining eligibility for service, whether the applicant's income is below 125% of poverty or below 200% of poverty. Finally, the Committee deleted the language that required recipients to consider non-liquid assets. The LSC Act, section

1007(a)(2)(B)(i), only requires that LSC guidelines ensure that recipients take into account liquid assets; it does not mention non-liquid assets. When part 1611 was amended in 1983, LSC added the requirement for consideration of non-liquid assets. When read with the definition of assets contained in § 1611.2, this proposal goes back to the original treatment of assets in the first regulation and in the LSC Act.

Section 1611.6(b)

The Committee deleted the specific items that the current regulation requires be considered in establishing asset guidelines and those that the current regulation permits to be exempted from the asset guidelines. The Committee felt that this level of detail was not required by the Act and was inappropriate to include in the regulation, and that recipients should be able to establish asset guidelines based on their determination of local conditions, with flexibility to consider the circumstances of a particular applicant for service as well as local economic conditions and other local concerns. In addition, the Committee felt that it was appropriate to explicitly permit recipients to look to other existing federal or state asset exemption schemes for guidance in setting their own guidelines.

Section 1611.6(c)

The language of this subsection has been revised to correct a reference in the current regulation to "minimum", rather than "maximum" asset ceilings. In addition, the subsection was revised to make it clear that the director of a recipient could designate another staff member to make the determination to waive the asset ceilings in unusual situations, and to remove the requirement that documentation for such waivers be maintained in the individual client's file. This was done to protect materials in the case file from inadvertent and improper disclosure to LSC.

Section 1611.6(d)

This documentation provision has been revised to refer to § 1611.8(d) to describe the general limitations on LSC's access to records and information.

Section 1611.7 Group Eligibility

This proposed section deals with the issue of group eligibility that is addressed in § 1611.5(b)(2)(C) of the current regulation. The Committee decided to treat this issue in a separate section to make it clear that different criteria apply to the consideration of whether or not a group is eligible for