LSC-funded legal assistance. This proposal incorporates a number of revisions to the current language. This new language is based on the original group representation provision that was in effect from 1976 until 1983. While the new proposal is based on the 1976 provision, there are several changes. In order to clarify the provision, the order was changed and some of the language was revised.

Section 1611.7(a)

The Committee added a reference to "financial" eligibility of group members in paragraph (1) To make it clear that group members had only to be financially eligible for services, not that they would actually receive services for a particular matter. Paragraph (2) which includes the "primary purpose" provision, was revised to make it clear that a group could be served as long as its main function or activity is the furtherance of the interests that benefit people in the community who would be eligible for legal assistance under the Act, and the representation relates to such a function or activity.

Section 1611.7(b)

This new provision was added to emphasize that recipients may use non-LSC funds to provide legal assistance to groups that do not meet the criteria of this section.

The Committee discussed whether the group representation provisions were sufficient to take account of the uniqueness of Indian tribes and raised the issue of whether the regulation should include special treatment for tribes under this section. While the Committee did not propose adding any specific language to the proposal, it would welcome comments from members of the Native American community and others on the degree to which the proposed language meets the concerns of that community.

Section 1611.8 Manner of Determining Financial Eligibility.

Section 1611.8(a)

Many of the revisions in this section are intended to simply clarify the language. The principal changes relate to the role of LSC in reviewing intake forms and financial information provided to recipients by applicants for services. Under the current regulation, the Corporation has authority to approve both the forms and procedures that a recipient uses to determine eligibility. That authority is no longer contained in this proposal. In addition, the proposed § 1611.8(a) refers to

§ 1611.8(d) regarding LSC's access to client information.

Section 1611.8(b)

The revisions to this provision are intended to clarify the language of the provision, but no substantive changes are intended.

Section 1611.8(c)

This new provision was added to make it clear that national and state support centers can provide assistance to local field programs or co-counsel with them in cases without making independent eligibility determinations for clients referred by field programs. The support center should, of course, be able to satisfy itself that such a determination was actually made by the field program. The Committee wished to make clear that a support center was free to review a client's eligibility before undertaking representation, if it so chose, but it was not required to do so if satisfied by the actions taken by the original recipient.

Section 1611.8(d)

This subsection has been substantially revised in the proposed new regulation. The Committee believes that the provisions on access to client eligibility information contained in the current regulation may have been applied in a manner that was inconsistent with the applicable rules of professional responsibility and section 1006(b)(3) of the LSC Act that prohibits LSC from abrogating the authority of states and local jurisdictions to enforce those rules. The ABA's Standing Committee on Legal Aid and Indigent Defendants ("SCLAID") expressed great concern about the protection of client confidences, secrets, and other information gained in the course of representation. SCLAID urged the Committee to adopt rules that would permit LSC to have access to information only in a manner consistent with the applicable rules of professional responsibility. The Committee proposal makes it clear that information disclosed by a client or applicant for service in order to establish eligibility for services should not be disclosed to LSC or to any third party without the express written permission of the client or applicant, unless disclosure is permitted by and would not violate the attorney-client privilege and the applicable rules of professional responsibility. The Committee recognized that such a provision might mean that LSC could be subject to somewhat different rules in each jurisdiction, but agreed that Congress, in enacting section 1006(b)(3) of the Act,

clearly intended that the state or local rules would govern. The Committee noted that LSC would have to discharge its responsibilities for ensuring that LSC funds were used to serve only financially eligible clients and in a manner consistent with the disclosure requirements of each jurisdiction. LSC is working to develop general procedures to permit it to fulfill its obligations in this regard. The Committee welcomes comments that would assist the Corporation in designing such procedures.

Finally, the Committee proposal noted that recipients may reveal to third parties information provided by a client or applicant to establish eligibility when the disclosure of the information is implicitly authorized in order to carry out the representation, as permitted by Rule 1.6(a) of the ABA's Model Rules of Professional Conduct, subject to any variations in the rules adopted by various states or local jurisdiction. There are many situations where the client either wants such disclosures made or where it can be assumed that the client wants disclosure made in order to advance the task the lawyer has been asked to carry out on behalf of the client. Examples include sharing financial information about a client with the court or counsel for the opposing party in a divorce action where necessary to establish appropriate alimony or child support payments or with an administrative agency that has cut off welfare benefits based on the alleged existence of other income. Clearly, by seeking representation in these cases, a client has implicitly authorized the limited sharing of information needed for full representation, but has not authorized the disclosure of that information for other purposes not directly related to the case or matter.

The Committee discussed the possible need for LSC to develop a records retention policy to ensure that recipients maintained records relating to eligibility for a sufficient period to guarantee accountability. The Committee did not recommend any particular policy, but would like to receive comments on whether such a policy would be desirable and what should be included in such a policy.

Section 1611.9 Retainer Agreement Section 1611.9(a)

While keeping the requirement for recipients to execute written retainer agreements with all clients who are represented by the recipient, the Committee decided to delete the requirement that LSC approve or reject