the particular form of a recipient's agreement. The language makes it clear that retainers are needed only when the recipient actually undertakes representation. Some forms of legal assistance, such as *pro se* clinics or community legal education, do not require the recipient to obtain retainer agreements from everyone who attends. The proposal acknowledges that many jurisdictions have their own rules or practices regarding retainer agreements, and that recipients should make sure their retainers are consistent with those rules, as well as with local practice, where applicable. Nothing in the current LSC Act requires retainer agreements, although all of the current LSC reauthorization bills would include such a requirement, and the Committee acknowledged that it is good practice in most instances to have a written retainer.

Section 1611.9(b)

The Committee decided to remove the language relating to emergencies, in recognition of the fact that there may be numerous circumstances when a recipient could not immediately execute a retainer before taking action on behalf of a client. The Committee also decided to delete the specific information that needed to be included in a retainer agreement, recognizing that such requirements could be inconsistent with requirements governing retainer agreements in state rules of professional responsibility.

Section 1611.9(c)

This provision was revised in response to a concern that, if the retainer was required to be included in the client's file and was subject to examination by LSC during monitoring, it might give LSC an opportunity to review the whole file, which could violate the restrictions on LSC access to client information, even though the current rule suggests that client identity is protected. As with eligibility information, this section requires that disclosure of information be consistent with the attorney-client privilege and the applicable rules of professional responsibility. The Committee recognized that in most instances, the recipient could simply redact the names and other identifying information from the retainer agreement to meet the standard set out in this section. However, there might be instances where a particular retainer agreement includes more information about the actual representation than would a financial intake sheet. The retainer agreement, for example, might reveal so much information about the client or case that it would be impossible to protect client identity by redacting only client identifying information such as name and address. In such a case, all additional information that could indirectly reveal client identity would have to be redacted as well.

In cases where the identity of the client is already known, review of a retainer agreement could reveal substantial information that relates to representation. SCLAID reiterated its concern about protection of client information. Clearly, the Corporation would need to devise procedures that would balance its need to ensure that retainer agreements are being properly executed and maintained, while appropriately protecting client information. The Committee welcomes comments on such procedures.

Section 1611.9(d)

The Committee adopted additional language in its revision of this provision to expand the explanation of the circumstances under which a retainer agreement was not necessary, such as when the service was of brief duration or very limited in scope. This provision would be particularly important for programs that operate telephone hotlines, where, in many instances, the services consist of limited advice or consultation and the only contact with the client is via telephone. The issue is where to strike the balance between protecting the interests involved and limiting the administrative burdens on recipients. The Committee invites public comment on this issue.

Section 1611.9(e)

This provision was added to deal with the situation where a state or national support center has joined a case brought by a local recipient as co-counsel. This provision makes it clear that the client must have notice that another program is assisting in the representation, and the original retainer agreement must be broad enough in scope to encompass the new services that are being provided. The Committee wanted to distinguish the co-counselling situation from the case where a local field program turned the representation over to a support center or other recipient, with the original recipient no longer serving as counsel in the case. The Committee felt that a new retainer agreement should be required in that situation, but invites comments on the issue. Nothing in this provision would prevent a support center from executing a new retainer agreement with a client, even when the relationship is clearly one where the support center is only a co-counsel in the case, and there may be situations where it would be necessary or prudent for it to do so.

The Committee also wished the Commentary to make clear that this provision was not applicable to situations where a recipient does intake and financial eligibility screening for an applicant for service and then refers the applicant to another attorney who has agreed to represent the applicant on a pro bono basis, either through the recipient's PAI program or on some other basis. In that instance, the private attorney, not the recipient, is representing the client, and any retainer agreement should be made between the client and the private attorney, subject to any appropriate standards governing pro bono practice. The Committee invites additional comments on this or other situations that may arise where other attorneys are involved in the representation of eligible clients.

Section 1611.10 Change in Circumstances

The Committee proposes two revisions to the current language. The first changes the phrase ''is sufficiently likely to continue'' to ''is sufficient and is likely to continue,'' in order to clarify what is meant by the phrase. The second revision expands the language regarding professional responsibilities. The recipient may have obligations to the client beyond those of the individual attorney and ethical concerns might be broader than professional responsibilities. In addition, the Committee invites comments from the public as to whether this provision is adequate to deal with the issue of when a change in a client's circumstances would require discontinuation of representation by the recipient and what procedures a recipient should follow to effect such discontinuation.

List of Subjects in 45 CFR Part 1611

Legal services.

For reasons set forth in the preamble, LSC proposes to revise 45 CFR part 1611 to read as follows:

PART 1611—ELIGIBILITY

Sec.