## Appendix A—Legal Services Corporation Poverty Guideline

Note: Appendix A: The Corporation is not requesting comments on the current Appendix. The Appendix is revised annually, after the Corporation receives the new Federal Poverty Guidelines. Accordingly, the Appendix will be revised for 1995 at a later date.

Authority: 42 U.S.C. 2996e(b)(1), 2996e(b)(3), 2996f(a)(1), 2996f(a)(2).

### §1611.1 Purpose.

This part is designed to ensure that a recipient will determine eligibility for legal assistance according to financial and other criteria that take account of factors that influence an individual's or group's ability to obtain legal assistance, and to afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. This part also seeks to insure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

#### §1611.2 Definitions.

- (a) Applicable rules of professional responsibility means the rules of ethics and professional responsibility generally applicable to attorneys in the jurisdiction where the recipient either provides legal services or maintains its files.
- (b) Assets means, at a minimum, cash or other liquid assets or resources that are readily convertible to cash, which are currently and actually available to the applicant and which could be used to retain private counsel.
- (c) Governmental program for low income individuals or families means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.
- (d) *Income* means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to the support of a household or family unit.
- (e) Total cash receipts include, but are not limited to, money, wages and salaries before any deduction; net income from self-employment; regular cash payments from public assistance and other benefit programs; and other regular or recurring sources of financial support that are currently and actually available to the applicant for service.

#### §1611.3 Eligibility policies or guidelines.

(a) The governing body of a recipient shall adopt eligibility policies or guidelines, consistent with this part, for determining the eligibility of persons and groups seeking legal assistance under the Act. The governing body shall

review its eligibility policies or guidelines at least once every three years and make adjustments if necessary.

(b) In addition to consideration of income under §§ 1611.4 and 1611.5, the recipient's eligibility policies or guidelines shall provide that, before undertaking representation or providing services to an applicant, the recipient shall consider the existence of assets available to the applicant, and shall disqualify any applicant for service whose assets are in excess of the asset ceiling set by the recipient pursuant to § 1611.6, unless a waiver is granted pursuant to § 1611.6(c).

(c) The recipient's eligibility policies or guidelines may also provide for consideration of the following factors which may be used by the recipient to determine whether or not to provide services to a particular financially eligible applicant for service:

(1) The applicant's current income prospects, taking into account seasonal variations in income;

(2) The availability of private or other legal representation at low or no cost with respect to the particular matter in

which assistance is sought;

(3) The consequences for the individual or group if legal assistance is denied;

- (4) Other significant factors that affect an individual's financial inability to afford legal assistance, which may include evidence of a prior administrative or judicial determination that a person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment; and
- (5) Any other case acceptance criteria, in addition to the recipient's priorities established under Part 1620 of these regulations, that the recipient may utilize to determine which cases to accept from among cases of financially eligible persons or groups. Such criteria shall include, but are not limited to, consideration of the merits of the applicant's claim and any conflicts of interest that may exist.

## §1611.4 Annual income ceilings.

- (a) Every recipient shall establish an annual income ceiling. Unless disqualified on the basis of assets under § 1611.3(b), applicants for services whose income falls below the recipient's annual income ceiling will be considered financially eligible to receive legal assistance supported with funds provided under the Act, subject to the recipient's consideration of the factors described in § 1611.3(c).
- (b) Unless specifically authorized by the Corporation, a recipient shall not

- establish an annual income ceiling that exceeds a maximum of one hundred and twenty-five percent (125%) of the current official Federal Poverty Guidelines. The calculations of 125% of the current Federal Poverty Guidelines are set forth in Appendix A to this part as revised annually. The recipient's governing body shall review the recipient's annual income ceiling annually and consider any changes made in Appendix A to this part.
- (c) Before establishing its annual income ceiling, a recipient shall consider cost of living in the service area. The recipient shall also consider other factors that it determines are relevant. These factors may include, but are not limited to:
- (1) The number of clients who can be served by the resources of the recipient;
- (2) The population who would be eligible at and below alternative income ceilings; and
- (3) The availability and cost of legal services provided by the private bar in the area.
- (d) Unless authorized by § 1611.5, no person whose income exceeds the annual income ceiling established by a recipient shall be eligible for legal assistance supported with funds provided under the Act, but this part does not prohibit a recipient from providing legal assistance to an applicant for service whose annual income exceeds the annual income ceiling established by the recipient, if the legal assistance provided to the person is supported in whole by funds from a source other than the Corporation.

# § 1611.5 Authorized exceptions to the recipient's annual income ceiling.

- (a) Subject to the recipient's consideration of the factors described in § 1611.3(c), an applicant for service whose income exceeds the annual income ceiling established by a recipient, but does not exceed 200% of the Federal Poverty Guidelines, may be provided legal assistance supported by funds provided under the Act if the applicant would not be disqualified on the basis of assets under § 1611.3(b), above; and
- (1) The applicant is seeking legal assistance to secure or maintain benefits provided by a governmental program for low income individuals or families;
- (2) The applicant is seeking legal assistance to secure or maintain benefits provided by a governmental program for the disabled, but only if without those benefits the applicant's income would not exceed the recipient's annual income ceiling; or