

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPERATIONS & REGULATIONS COMMITTEE

OPEN SESSION

Thursday, July 28, 2005

1:08 p.m.

Hyatt Regency Monterey
1 Old Golf Course Road
Monterey, California

COMMITTEE MEMBERS PRESENT:

Lillian R. BeVier, Acting Chair
Thomas R. Meites, Chairman (via telephone)
Michael D. McKay

OTHER MEMBERS PRESENT:

Herbert S. Garten
David Hall
Maria Luisa Mercado
Frank B. Strickland, ex officio
Florentino Subia

OTHERS PRESENT:

Patricia Batie, LSC Manager of Board Operations
Mattie C. Condray, LSC Senior Assistant General Counsel
Karen M. Dozier, LSC Executive Assistant to the
President
Victor M. Fortuno, LSC Vice President for Legal Affairs
Thomas A. Fuentes, Nominee, LSC Board of Directors
David C. Maddox, LSC Assistant Inspector General for
Resource Management
Bernice Phillips, Nominee, LSC Board of Directors
Thomas Polgar, LSC Acting Director, Government
Relations and Public Affairs
David L. Richardson, LSC Treasurer and Comptroller
Karen Sarjeant, LSC Vice President for Programs and
Compliance
Laurie Trantowicz, LSC Assistant Inspector General and
Legal Counsel
Richard "Kirt" West, LSC Inspector General

Linda Perle, CLASP
Don Saunders, NLADA
Jonathan Asher, Colorado Legal Services
Thomas F. Smegal, ABA/SCLAID
Janice Morgan, Legal Aid Services of Oregon
William G. Hoerger, CRLA
Emanuel V. Benitez, CRLA
Julie Clark, NLADA
Ana C. Garza, CRLA
Deborah Escobedo, attorney
Haydee Diaz, CRLA
Mary Jacka, CRLA
Jeannie Barrett, CRLA
Teri Scarlett, CRLA
Juliana Hevvera, CRLA
Maria Serena, CRLA
Maria L. Mendoza, CRLA
Michele Besso, Northwest Justice Project
Hector de la Rosa, CRLA
Lupe Quintero, CRLA
Jose R. Padilla, CRLA
Robert Sikin, CRLA

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MOTIONS: Pages 4 (2), 5, 52, 64, 84, 90

1 P R O C E E D I N G S

2 MS. BeVIER: I'd like to call the meeting to
3 order. This is a meeting of the Ops & Regs Committee,
4 and I'm sitting in for Tom Meites, who is with us on
5 the phone, but it's a little hard to run a meeting from
6 Chicago when the meeting is taking place in Monterey,
7 so he asked me if I would just sort of run the meeting.

8 APPROVAL OF THE AGENDA

9 MS. BeVIER: And the first item here is the
10 approval of the agenda.

11 M O T I O N

12 MS. BeVIER: Do I have a motion to approve the
13 agenda?

14 MR. McKAY: So moved.

15 MR. MEITES: Second.

16 MS. BeVIER: Thank you. The next item -- all
17 in favor?

18 (Chorus of ayes.)

19 APPROVAL OF MEETING MINUTES (4/1/05)

20 M O T I O N

21 MS. BeVIER: Do I have a motion to approve the
22 committee's meeting minutes of April 1st, 2005?

1 MR. McKAY: So move.

2 MR. MEITES: Second.

3 MS. BeVIER: All in favor?

4 (Chorus of ayes.)

5 APPROVAL OF MEETING MINUTES (4/29/05)

6 M O T I O N

7 MS. BeVIER: Do I have a motion to approve the
8 committee's meeting minutes of April 29th, 2005?

9 MR. McKAY: So move.

10 MR. MEITES: Second.

11 MS. BeVIER: Thank you. All in favor?

12 (Chorus of ayes.)

13 CONSIDERATION AND ACTION ON FINAL RULE

14 ON FINANCIAL ELIGIBILITY, 45 CFR, PART 1611

15 MS. BeVIER: Thank you. The next item on the
16 agenda is to consider and act on the Final Rule on
17 Financial Eligibility, 45 CFR Part 1611. And I
18 understand that Mattie Condray is going to help us
19 understand this, or help us through this or report to
20 us.

21 MS. CONDRAY: I'm going to try to do something
22 of the kind.

1 MS. BeVIER: This has been a long haul,
2 Mattie. You've done a great job and we're looking
3 forward to perhaps concluding our work on this rule.

4 MS. CONDRAY: Thank you. Yes, I'm thinking
5 that if the Board finally does approve this for
6 publication, there's a glass of champagne with my name
7 on it somewhere.

8 MS. BeVIER: Just one?

9 MS. CONDRAY: One for that, and then the day
10 it comes out in the Federal Register, then --

11 MS. BeVIER: Get another one?

12 MS. CONDRAY: -- that's the bottle.

13 MS. BeVIER: Oh, okay.

14 MS. CONDRAY: Just so you know that I have
15 handed something out to everyone that has examples of
16 group representation. At the last meeting there was
17 some request for some examples to kind of walk people
18 through the group representation portions. We've done
19 that. We can go over that to the extent you like. If
20 afterwards you would like us to incorporate that into a
21 draft final rule, we can do that, or we can leave it
22 out. That will be the committee's direction to us.

1 STAFF REPORT BY MATTIE CONDRAY

2 MS. CONDRAY: But I will start by saying on
3 May 24th, we published a draft -- we published a
4 proposed rule in the Federal Register with a 30-day
5 comment period. The comment period closed on June
6 23rd, and we received 13 comments on the proposed rule,
7 including 9 comments from individual LSC grantees, one
8 comment from a senior attorney with a recipient who was
9 commenting in his personal capacity, comments from
10 CLASP on behalf of the National Legal Aid and Defenders
11 Association, and comments from ABA's SCLAID.

12 We also received one comment from a member of
13 the general public.

14 With minor exceptions, all of the commentators
15 very strongly supported the proposed rule, supported
16 the changes in the proposed rule and support and urged
17 the Corporation to adopt the rule as final with a few
18 minor changes.

19 The report, staff report that you have in your
20 materials goes over some of the places that the
21 Corporation in fact took the comments of our -- from
22 our commentators and made some changes either in, mostly

1 in the preamble, although there were a couple -- there
2 was one change in the actual reg text.

3 I am at the committee's disposal about how
4 much you want me to go over what's in the staff report
5 and those changes.

6 MS. BeVIER: Mattie, I think it would be a
7 good idea for you to bring us up to date on or to
8 summarize the changes, just the specific changes that
9 you are recommending that we put in the rule itself.

10 MS. CONDRAV: Okay.

11 MS. BeVIER: That's for starters.

12 MS. CONDRAV: Absolutely. Let me -- 1611, I
13 will direct you then to the text, the regulatory text
14 for 1611.3, which I believe is on page 78 of your
15 materials. It's page 37 of the draft final rule. And
16 specifically, subsection (e) of that section,
17 1611.3(e), which actually I guess is on page 38. It's
18 the following page, page 79.

19 This refers to Section 506 of LSC's Fiscal
20 Year 118 appropriations law, which provided that in
21 establishing the income or assets of an individual who
22 is a victim of domestic violence under Section

1 107(a)(2) of the Legal Services Corporation Act to
2 determine if the individual is eligible for legal
3 assistance, a recipient described in such section shall
4 consider only the assets and income of the individual
5 and shall not include any jointly held assets.

6 The original language that we had proposed
7 pretty much tracked the statutory language. We
8 received a comment asking us whether we meant that to
9 say that when you have a domestic violence victim you
10 only consider that victim's assets and income and not
11 any of the income or assets of any other members of
12 that victim's household.

13 And in going back, we realized, no, that's not
14 exactly what we meant, and we don't think that's what
15 Congress meant. We meant that we believe what Congress
16 meant was that in domestic violence cases,
17 assets -- income of the perpetrator and assets of the
18 perpetrator and assets jointly held by members of the
19 household with the perpetrator are often unavailable to
20 the domestic violence victim and other household
21 members.

22 And we believe it's those assets and income

1 that was intended to be disregarded but that income and
2 assets of other members of the household, which would
3 otherwise be counted if the person was not a domestic
4 violence victim, was still intended to be counted.

5 So we have proposed changing the regulatory
6 text to reflect that; that it's the assets jointly held
7 with anybody in the household and the perpetrator and
8 the income of the perpetrator that must be disregarded.

9 MS. BeVIER: Thank you. Is that the only one?
10 What about the vehicle used for transportation?

11 MS. CONDRAY: Oh, you're right. I'm sorry.
12 Thank you very much for pointing that out. In 1611.5,
13 Authorized Exceptions to the Annual Income Ceiling.

14 MS. BeVIER: I thought it was 1611.2 --

15 MS. CONDRAY: Point 4?

16 MS. BeVIER: Point 2(d)(1). Assets -- no,
17 wait a second. No that can't --

18 MS. CONDRAY: No, because (d) is just the
19 definition of that.

20 MS. BeVIER: I was looking at the
21 section-by-section discussion.

22 MS. CONDRAY: Oh, it's 1611.3. It's that

1 same --

2 MS. BeVIER: 1611.3?

3 MS. CONDRAY: I would try (d)(1). I think
4 that was a typo in your -- Financial Eligibility
5 Policies.

6 MS. MERCADO: It would be (c)(2).

7 MS. BeVIER: (c)(2). Thank you.

8 MS. MERCADO: 1611.3(c)(2).

9 MS. BeVIER: No, there isn't --

10 MS. CONDRAY: No, no. It's (d)(1).

11 MS. MERCADO: It's (d)(1).

12 MS. CONDRAY: 1611.3(d)(1).

13 MS. BeVIER: Point 3(d)(1)?

14 MS. CONDRAY: Yeah. As part of its financial
15 eligibility policies, every recipient shall establish
16 reasonable asset ceilings for individuals and
17 households. In establishing asset ceilings, the
18 recipient may exclude consideration of a household's
19 principal residents, vehicles used for transportation,
20 assets used in producing income and other assets which
21 are exempt from attachment under state and federal law.

22 Originally, the proposed rule was vehicles

1 used for work. We received a number of comments
2 explaining that oftentimes vehicles are used for things
3 other than work or basic transportation, education.
4 And in reviewing that, it did seem that we were being
5 too narrow. And one of the commentators pointed us to
6 some recent changes in the Social Security
7 Administration's own regulations, their own eligibility
8 policies, which had made a similar change to just use
9 assets -- vehicles used for transportation. And we
10 think that will capture the importance of the asset,
11 but will not just mean that you can have a collection
12 of vehicles. I think that's what we're getting at.

13 MS. BeVIER: Okay. So those are the only two
14 specific changes in the text of the proposed rule that
15 you have made in response to the public comments?

16 MS. CONDRAY: I believe that is correct. The
17 other -- there are some other things that we address in
18 the preamble, one of which I will point out was the
19 definition -- well, we did not -- in 1611.5, Authorized
20 Exceptions to the Annual Income Ceiling, we included in
21 the proposed rule a category of current taxes.

22 As you may remember, there was a question of

1 whether to put that as a separate category or include
2 that as fixed debts and obligations, and we ended up,
3 we the Corporation, ended up proposing it as a separate
4 category but specifically asked for comment about what
5 the scope of that term should mean.

6 We received a number of comments. The
7 comments suggested that we should actually define
8 income as net after taxes, which staff does not
9 recommend doing, but kind of in the alternative,
10 keeping the current taxes but not including a
11 definition of current taxes, because taxes change, but
12 we do have preamble language describing what we propose
13 that phrase to mean, which would include local, state,
14 federal income and employment taxes, Social Security,
15 Medicare taxes, local property taxes, including special
16 property tax assessments, but that we don't intend the
17 phrase to include sales taxes or excise fees such as
18 airline ticket taxes, hotel occupancy taxes, gas taxes,
19 et cetera.

20 And we would recommend in terms of past tax
21 debts, those have traditionally been considered as a
22 fixed debt or obligation, and a past tax debt that is

1 owing I think most appropriately fits as a continuing
2 fixed debt and obligation.

3 There were a couple of other places, again,
4 with the authorized exceptions. One issue that had
5 been brought up was whether utilities should be
6 included as a fixed debt or -- I'm sorry -- as an
7 authorized exception. The management recommendation
8 that the Corporation proposed not including it but
9 asked for comment. The Corporation -- the management
10 still recommends that utilities not be listed as an
11 authorized exception, because that starts to creep too
12 much into standard living expenses.

13 But the point of a couple of commentators was
14 well take that there may be instances in which utility
15 bills for a particular applicant in a particular time
16 are unusually high. If you have an area, you know,
17 that's experiencing a very unusual heat wave or a
18 brutally cold winter, or where gasoline prices have
19 risen in response to international events, that in such
20 a case like that, it is well taken that the current
21 regulation as well as what we've proposed kind of has a
22 catch-all phrase of an ability for grantees to take

1 into account unusual circumstances that have a
2 considerable effect on the applicant's ability to pay.

3

4 And there are circumstances in which a utility
5 bill that is significantly out of the ordinary,
6 management believes would fall into that category and
7 therefore addresses that in the -- kind of makes that
8 point, picking up from the comment, in the preamble as
9 a reminder to grantees that they could avail themselves
10 of that in the correct circumstances.

11 I believe that hits the major changes. I will
12 say that in re-reading the draft propose rule, in
13 re-reading the draft final rule that we distributed to
14 you, we found a handful of small corrections that need
15 to be made. There's a word "not" that's missing.

16 MS. BeVIER: Ooh, that's very important.

17 MS. CONDRAY: Yeah. It's an important one.
18 It's like not a substantive policy issue, but it's like
19 oh that "not" really needs to be in there. And I can
20 say that I met with Linda Perle from the Center for Law
21 and Social Policy, and we talked about a number of
22 those small corrections, and that we're comfortable

1 with those places, that they didn't represent any sort
2 of major policy issues, just some little cleaning up of
3 language that was imprecise or missing words or things
4 like that.

5 I can go over those with you if you like, but
6 I'm not sure how fruitful that would be.

7 MS. BeVIER: I would like to know where the
8 "not" was supposed to go.

9 MS. CONDRAY: All right. Let me -- it's
10 pretty early on.

11 MS. BeVIER: Because I didn't pick it up.

12 MS. CONDRAY: On page 8 of the proposed -- the
13 draft final rule which I guess is page 49 in the
14 overall numbering system of the book, the
15 second-to-last paragraph on the page that begins
16 "Throughout the course." The very last sentence:
17 "While it is undoubtedly true that automatically
18 deducted taxes are not available to an applicant, LSC
19 agrees with the other commentor that the definition of
20 income is NOT the appropriate place in the regulation
21 to deal with this issue."

22 MS. BeVIER: Okay. Very good. So basically

1 what you have done for us is to describe the changes
2 that are proposed in the text of the rule itself and
3 the changes that are proposed, explicit changes that
4 are proposed in the preamble in response to public
5 comments. And apart from that, the recommendation is
6 that the rule, the final rule be adopted in its present
7 form?

8 MS. CONDRAY: That's correct.

9 MS. BeVIER: Having read your staff report,
10 which is very thorough and reminds me of many pleasant
11 days spent thinking about this issue, I was satisfied
12 with it personally. Tom and Mike -- or, Mike, do
13 either of you have questions for Mattie?

14 MR. McKAY: A couple of questions. First,
15 Mattie, you may recall at the last meeting, our dearly
16 departed Board member, Rob Dieter, asked a question
17 about 1611.6. And in the first paragraph, or .6(a): A
18 recipient may provide legal assistance to a group,
19 corporation, association or other entity if it provides
20 information showing that it lacks and has no practical
21 means of obtaining funds to retain private counsel.

22 He asked the question, would it not be

1 appropriate to impose an additional obligation that
2 that entity was unable to obtain pro bono counsel?
3 That is, an attorney in private practice who might be
4 able to step in and represent the entity, as a
5 condition; that is, we tried and we weren't able to,
6 and then turn to a recipient for support. Did you give
7 any consideration to making that change?

8 MS. CONDRAY: Not that I'm aware of, and we
9 received -- you know, the Board approved the text as it
10 was, and we didn't -- there was no direction to include
11 that discussion in the preamble text, to even raise the
12 issue. So it is actually -- technically, it's a
13 suggestion that's slightly outside the scope of the
14 current -- of what we asked people to comment on. And
15 so we received no comments on it.

16 I can tell you, I think it's a reiteration of
17 probably what we said at that meeting was it's not
18 something that the Corporation has ever asked a group
19 to specifically put in the rule, to try to scare up pro
20 bono counsel first. My understanding, and I'm sure
21 some of the folks from the field can talk to this a
22 little more specifically, but my understanding is that

1 by the point people are coming to grantees looking for
2 legal assistance, they probably know that they're not
3 finding pro bono legal counsel. But I don't want to
4 speak for people who can describe the real world
5 situation a little bit better.

6 MR. MCKAY: Well, I raise it to honor Rob's
7 suggestion, because I think I was standing in for Tom
8 at the time and said that we would take a look at it.
9 I'm actually attracted to that idea. I know we're
10 fairly late in the ball game. On the other hand, with
11 resources being as tight as they are, it might be
12 something we might want to discuss, and I throw it out
13 for suggestion.

14 I'm sensitive to the fact that it may be late
15 in the ball game, but to -- and the fact that it hasn't
16 been done before doesn't really dissuade me. I think
17 it should be openly considered. I guess I'd be
18 interested in knowing when we get to the public comment
19 period whether or not it would be a burden, whether or
20 not it might be fruitless, as you intimate. We don't
21 want to impose a fruitless obligation.

22 On the other hand, it seems to me the

1 representation of an entity as opposed to an individual
2 might be something a little more attractive to an
3 attorney in private practice to represent, as the
4 examples that you're about to discuss, a housing
5 tenant's association or a food bank. That might be
6 something you can attract a private attorney. And with
7 our resources being as tight as they are, I'm wondering
8 if we might want to consider this. So I suggest that,
9 and I do have one other comment, too.

10 MS. BeVIER: Please go ahead.

11 MR. McKAY: This is more of a technical
12 nature, going back to the section you were just
13 discussing, 1611.3, section (e). We refer to a
14 perpetrator of domestic violence. And I'm wondering
15 why we don't call this person an alleged perpetrator.
16 And I don't make that suggestion out of some level of
17 sensitivity. I'm a little concerned that there might
18 be some hair-splitting by someone who would read this;
19 that is, gee, it's my understanding we're dealing with
20 folks who come in and allege that he or she has been a
21 victim of abuse.

22 And I don't want someone to think, jeez, I've

1 got to know that this person is a perpetrator. Putting
2 in alleged perpetrator in there might make it easier
3 and avoid a hurdle. So the thought occurs to me we
4 might want to put alleged perpetrator in so that we
5 don't get someone splitting hairs, and thus avoid
6 giving representation or analyzing the financial
7 situation in a less positive way for a victim.

8 MS. CONDRAY: Point well taken.

9 MR. MEITES: Lillian?

10 MS. BeVIER: Yes, Tom?

11 MR. MEITES: Can you all hear me?

12 MS. BeVIER: Yes.

13 MR. MEITES: I have a question for Mattie.

14 Let's assume that our committee would like to recommend
15 that 1611.6(a) include the "and no practical means of
16 obtaining pro bono representation." Do we have to send
17 this out for public comment again and go through the
18 whole cycle, or can we just recommend it to the Board
19 and the Board adopt the proposed rule with that change?

20 MS. CONDRAY: I believe that portion of
21 the -- that particular change would need to be noticed
22 for comment, although the Board could adopt the entire

1 rest of the rule as a final rule. So you would open
2 that one piece up for additional comment, although you
3 could -- the Board could make the rest of the changes.

4

5 You'd end up publishing it as -- or what you'd
6 end up doing is publishing it basically as an interim
7 final rule where you publish it as a final rule, but
8 you acknowledge that there's a little bit -- there's
9 this one piece that you are requesting comment on. You
10 know, you could do it as a final rule and proposed
11 rule.

12 But anyway, my point is, you could adopt, the
13 Board could adopt the rest of it.

14 MR. MEITES: Let me try and understand --

15 MS. CONDRAY: And then just seek comment for
16 that one little piece and come back and meet on that
17 one little piece and make that final.

18 MR. MEITES: Well, let me suggest an
19 alternative. That instead of changing the text of the
20 rule, that the preamble states that it is the Board's
21 belief as a matter of policy that a recipient before
22 so-and-so should attempt to obtain pro bono

1 representation if it is practicable. Can we put that
2 in the preamble without having to go through this whole
3 thing again?

4 MS. CONDRAV: Yes. You could put a statement
5 to that effect in the preamble that the Corporation,
6 you know, believes that people will be going to find it
7 but it's not going to be a regulatory requirement such
8 that if there's not documentation that they went and
9 asked three attorneys and they didn't get it, that
10 that's going to turn into a violation.

11 MR. MEITES: I got you. All right, Mike and
12 Lillian, I'll throw those two possibilities out for
13 you. Because I agree with Mike. I agree with Rob's
14 sentiment. I kind of accept what Mattie says is that
15 most groups are going to either know their local legal
16 community and know it's hopeless or will try shaking
17 that tree before they go to legal assistance for group
18 representation. But putting in something in the
19 preamble, is that going to be effective, or is that
20 just window dressing? I don't really know.

21 MS. BeVIER: What's your view on that, Mattie?
22 Is it window dressing, or is it likely to have an

1 impact?

2 MS. CONDRAY: Well, I'd like to hear what the
3 public comment is, but I think in the -- it could
4 easily go into the preamble as kind of a discussion of
5 also why the rule is being changed that, you know, it
6 is in fact the experience that these groups have very
7 little recourse to other legal assistance. And that's
8 why they end up at the doorstep of our grantees.

9 And so I think adding a reference to, we know
10 these people don't have a lot of money and we know that
11 these people often, you know, cannot get any other
12 counsel, they've tried, I don't see that as
13 problematic. Again, I would like to hear the comments
14 from the field.

15 That would not be adding a regulatory
16 requirement, but it would be offering the sense that,
17 you know, before the group ends up at the doorstep of
18 the grantee that they've looked around, that they've
19 tried to see what else is out there, which I think
20 often happens, and they know what their situation is.

21 They know that there's nobody out there. And
22 so that may be a more appropriate way of dealing with

1 the issue of just kind of reminding people that it's
2 appropriate to look for pro bono counsel, and probably
3 these people either know that there isn't out there or
4 they've asked around.

5 MS. BeVIER: Yeah. Okay. We'll ask for
6 public comment on that when we get to the public
7 comment section. It's an important issue, and I am
8 inclined to agree, although it's almost implicit, but
9 maybe we -- you know, that -- oh, funds to retain
10 private counsel. I see. That's not implicit now in
11 the requirement, so.

12 MS. CONDRAY: Right. Because it's always been
13 focused on the finances.

14 MS. BeVIER: It's talking about -- right.

15 MR. MEITES: Lillian, in retrospect, a better
16 draft would have been simply to have obtaining private
17 counsel and leave out the phrase "funds to retain."
18 Because obtaining private counsel would have covered
19 both situations.

20 MS. BeVIER: It does. That's right. I
21 suppose if we made that change, it would be the same?
22 Do you see where we're going with this, Mattie?

1 MS. CONDRAY: I do where you're going, and to
2 the extent that it's a -- it creates a substantively
3 new requirement, then I think it's, from a procedural
4 standpoint, hard to say that that shouldn't be comment,
5 put for public comment.

6 MS. BeVIER: Okay. We could, if we decided we
7 wanted to do the rule that way, we could accomplish it
8 with just taking out the comma, "funds to retain," and
9 explaining that change in the preamble. But we have to
10 decide that we want to do that first.

11 MS. CONDRAY: Correct. That would be an easy
12 way to do it.

13 MS. BeVIER: Okay. Yes. All right.

14 MR. GARTEN: Maria Luisa has a question.

15 MS. BeVIER: Oh, Maria Luisa, yes?

16 MS. MERCADO: Yes. It would seem like that in
17 principle I guess the issue that Mr. Dieter was trying
18 to get at was to get more pro bono counsel for some of
19 these group representations, but most legal services
20 grantees have some active form of pro bono that they
21 do. And part of what -- the end result may still be
22 the same.

1 They may end up getting representation by pro
2 bono counsel for their group, but it is a process that
3 goes through the pro bono program that is set up by the
4 local LSD grantee so that you actually do have perhaps
5 a little bit more stricter look of qualifications or
6 eligibility of the group or the clients that are being
7 represented, but you also have a greater participation
8 with the grantee in the local office getting this
9 additional pro bono counsel for this group to do the
10 work, so that at the end result, it's still pro bono
11 counsel that's doing it, but it is being documented
12 better and is getting a greater relationship with your,
13 you know, local bar and grantee as well as the
14 individual.

15 So I think that if you allow it to read as it
16 states now, knowing that other grantees also refer a
17 lot of these cases, especially some of these cases like
18 representations to a particular counsel, they might
19 have, you know, maybe some transactional issue or
20 something that maybe the local grantee doesn't have,
21 might go to a pro bono counsel, and the end result will
22 be the same that Mr. Dieter wanted to accomplish, only

1 it's not necessarily putting the burden or a
2 pre-requirement before the grantee can ever look at
3 this group, if they're the ones that are having to go
4 out there and hustle for pro bono counsel instead of
5 going through the organized pro bono committee or group
6 or program that's set up by the local grantee in that
7 area.

8 Because with all attorneys --

9 MR. GARTEN: There is a limited number of
10 people in firms who do pro bono work. I think it would
11 be a mistake to make this as a condition. I have no
12 problem if a reference is made in the preamble, just
13 indicating something to the effect that where pro bono
14 counsel is available, that it is our suggestion that
15 such counsel be utilized.

16 I wouldn't make it a condition to this.

17 MR. MEITES: Lillian, this is Tom. Can you
18 hear me okay?

19 MS. BeVIER: Yes, Tom. Yes, I can.

20 MR. MEITES: I think maybe that's where I come
21 out, too. You would hate to have a group go through
22 some laundry list of 20 different law firms and so on

1 in the area of Chicago. There is a lot of
2 possibilities of pro bono representation. If we put it
3 in the regulation, they may have to call all those
4 numbers and talk to all those people before they can go
5 to Legal Assistance.

6 MS. BeVIER: Yes. There is always a problem
7 of putting it in a regulation, especially if it's
8 already essentially an established practice, so that
9 the regulation is redundant of what most people do, but
10 nevertheless, it provides additional hoops for them to
11 go through, that simply make it more cumbersome, time
12 consuming, and difficult.

13 I'm not interested in drafting that sort of
14 regulation. I do appreciate and share the sentiments
15 that to the extent there is pro bono private attorney
16 availability out there, that's the people that ought to
17 provide it because that's appropriate. It's a
18 responsibility of the legal profession to do that. We
19 should be simply trying to pick up the considerable
20 slack there is with respect to that effort.

21 I think we had better hear from the public,
22 after we have finished with you -- not finished with

1 you, Mattie. We will never be finished with you. On
2 this issue, if other people have issues to raise with
3 Mattie on this.

4 Tom?

5 MR. MEITES: I have sympathy with what you
6 just said, Lillian.

7 MS. BeVIER: We can bring to the Board, when
8 the Committee makes the report to the Board, we can
9 have some suggested preamble language to make sure that
10 reflects the Committee's considered opinion.

11 That sounds good. If that's what we decide,
12 we will no doubt take you up on that offer.

13 Other questions for Mattie with respect to
14 this?

15 (No response.)

16 MS. BeVIER: All right. Thank you, Mattie,
17 very much. We are going to invite public comment on
18 this now.

19 MS. CONDRAY: I have one other question before
20 you are done with me. The examples that I handed out,
21 a question whether to the extent you wanted me to kind
22 of walk people through the examples, and whether the

1 Committee would like to recommend that the examples be
2 incorporated into the preamble or if that's not
3 necessary.

4 MR. MEITES: Lillian, I've read the examples.
5 I think they should not be in the preamble. I don't
6 think you need to walk through them.

7 Doesn't the staff itself have some kind of
8 manual that they put together for guidance of the
9 grantees?

10 MS. CONDRAY: That's a good question. I
11 assume there is some. I'm not sure what it is. I feel
12 ignorant, and I apologize.

13 MR. MEITES: Something you have to help answer
14 grantee questions, I think these examples should be
15 there rather than the preamble.

16 MS. CONDRAY: I know OCE does compliance
17 trainings and stuff, and we would be happy to share
18 these examples with them, if it would help them in
19 their compliance trainings that they do out at
20 grantees.

21 MR. MEITES: There are lots of other things we
22 could give examples to, how to calculate the tax

1 issues. I don't think we need to put it in the
2 preamble.

3 MS. CONDRAY: Yes, you could get it awfully
4 cluttered.

5 MR. McKAY: The only problem though, this is a
6 particularly sensitive section. I think we need to be
7 sensitive to the way this particular provision could be
8 misconstrued, and I believe has already been
9 misconstrued by people who have not been involved in
10 this process, watching from afar.

11 MR. MEITES: Do you think it would help if we
12 put these in?

13 MR. McKAY: I believe -- I wouldn't be
14 troubled if we put them in a footnote, but I think it's
15 important that we put it in -- I see Mattie winching.
16 Tom, you can't see that.

17 It is a very helpful document. I have re-read
18 it, and it is helpful. Because this is such a
19 sensitive issue, I would feel more comfortable, in
20 fact, I would feel more comfortable -- these are good
21 examples of where we would and I think we should add
22 two examples of where we would not.

1 Again, there are people that are concerned and
2 indeed, upset, about what they think this rule says,
3 when it doesn't say it. I think we ought to go to
4 great efforts to make sure.

5 One way to convince those folks that it isn't
6 what they think it is, is by showing them examples. We
7 could do it verbally.

8 I think if we put it in the preamble, I think
9 it would take an extra two pages out of a pretty
10 lengthy document -- I'm inclined to recommend we put it
11 in there, for that reason.

12 MR. MEITES: This is different than the tax
13 example that I gave because essentially, although that
14 is technically complex, it's not controversial.

15 MR. McKAY: Correct.

16 MS. BeVIER: Right. I think I'm inclined to
17 agree, and in particular, with the suggestion that we
18 put in examples of where this rule would not permit
19 group representation. I agree with Mike that's
20 important for people reading this and concerned about
21 it to understand that not the whole universe about
22 which they are concerned is being included.

1 You know the concerns have been, well, this is
2 a back door class action idea. I think we have gone
3 out of our way to satisfy those concerns substantively,
4 but if we can make that clear by what we say in the
5 preamble, I think that's a good idea.

6 MS. CONDRAV: Okay.

7 MR. MEITES: Yes. Actually, I think I'm
8 persuaded by that. Mattie, footnote time.

9 MS. BeVIER: Footnote, do you say?

10 MR. MEITES: In the text. You are going to
11 have to have either an appendix or something. It is
12 going to take a considerable amount of text.

13 MS. CONDRAV: I can find the right place in
14 the body of the preamble.

15 MS. BeVIER: Can you find good examples, too?

16 MS. CONDRAV: I have no doubt that I can find
17 good examples.

18 MS. BeVIER: I think that's true.

19 I think what we will have to do, Mattie, with
20 that, do you want to hear Mattie go through these two
21 examples?

22 MR. McKAY: I've read them. They look great.

1 MS. BeVIER: Yes, I have, too. I think we
2 best leave it at that for now, and then perhaps when
3 the Board comes to consider it and we make our report,
4 we will have something to actually report to them
5 pursuant to the suggestions that I hear coming,
6 although before we take action, I think -- does that
7 conclude your presentation on this?

8 MS. CONDRAV: I believe that concludes my
9 presentation on this portion.

10 MS. BeVIER: Okay. Thank you, Mattie, very
11 much. Now, public comment.

12 MR. McKAY: I would just want to echo
13 Lillian's comments. Mattie, you've done a great job on
14 this.

15 MS. CONDRAV: Thank you.

16 PUBLIC COMMENT

17 MS. PERLE: I'm Linda Perle with the Center
18 for Law and Social Policy. As Mattie mentioned, she
19 and I did meet. We have talked a number of times about
20 the rule, but we met the other day to kind of work out
21 some little glitchy places in the language, as Mattie
22 put it out.

1 I think we reached agreement on all of those
2 little things that just needed some little tweaking to
3 make them clearer.

4 With regard to the particular question that
5 you asked about whether the preamble was window
6 dressing, I will tell you that from my perspective, I
7 think it was -- I just wanted to say from my
8 perspective, the preamble is a very, very important
9 guide to interpreting the regulation.

10 As a matter of fact, the Corporation always
11 used to include the preamble on its website when it
12 listed the regulations, and in the last go around, for
13 some reason, they got dropped.

14 I called Mattie and I said you must include
15 these preambles.

16 MS. CONDRAY: We are working on that.

17 MS. PERLE: I think it was just an error, it
18 wasn't done intentionally. It's the one place where if
19 people actually read it, they do understand what was
20 behind a lot of the language where you can't really
21 explain in great detail in the language of the rule.

22 It's something that when people call me to ask

1 a question, I say, well, have you read the preamble,
2 because the preamble explains X, Y or Z about what the
3 rule was intended to say.

4 I think just from that perspective generally,
5 the preamble is very important. I would say when there
6 is something that can't be easily explained in the
7 rule, that including it in the preamble is very
8 helpful. It is helpful to the field and helpful to the
9 Corporation for that matter, in interpreting and
10 ensuring compliance.

11 I will say that generally, we have worked hard
12 and for a very long time in putting this rule together.

13 I, for one, with one exception, which I will get to in
14 a minute, am very satisfied that this rule is going to
15 be a great assistance and help to the field.

16 I think it explains -- every time I read the
17 language of the rule, I'm more convinced that people
18 will read this rule and say, oh, that's what that
19 means, now I understand it.

20 This will be so much easier, both for the
21 programs and for the Corporation, to utilize in
22 determining eligibility.

1 I'm very happy. Obviously, not every single
2 decision that was made in the rule is one that the
3 field was happy about, but it's overall a terrific
4 compromise that I think addresses both the needs of the
5 field and the Corporation in a way that will be very
6 helpful.

7 The only issue that remains, I think, for me,
8 is the language that was added in the group
9 representation provision. It is in 1611.6(b)(1)(i) and
10 (ii), which talks about considering whether the
11 characteristics of the persons comprised in the group
12 are consistent with financial eligibility under the Act
13 or whether the characteristics of the persons served by
14 the group are consistent with financial eligibility
15 under the Act.

16 I think that language is sort of awkward.
17 It's confusing. I know that I'm going to be getting
18 lots of calls from people saying what does that mean.

19 I tried to work out some alternative language,
20 and I left it in the seat behind me. I can get it.
21 I'm not sure that it quite does it either. I think it
22 simplifies it a little bit. I'm going to give it to

1 you and pass it out.

2 I have it. You can see it sort of reiterates
3 what I think is the basic proposal under here, but it
4 does it in a way that I think is a little bit more
5 direct and less confusing.

6 Obviously, it's up to you to make the
7 determination. It is consistent with what was said in
8 the comments, so I think if you did want to change it,
9 it wouldn't require that there be any republication.

10 While you are looking at it, I think this was
11 a long and sometimes very tedious process both for you
12 and for us, but I think we are pretty happy with the
13 results.

14 MS. BeVIER: We are just going to take a
15 minute to try to parse this.

16 MS. PERLE: Okay. What I was trying to do was
17 just to say these are things that you have to consider.

18 I was concerned about this notion that -- I just
19 didn't think it was clear. I could just imagine
20 getting numerous questions about what that means.

21 I'm not sure this is better, but I think it
22 is.

1 (Pause.)

2 MS. BeVIER: Part of the difficulty I have
3 just on the initial look is that we wanted to be pretty
4 careful to distinguish two different kinds of groups.
5 Your language collapses them and treats them as if they
6 were the same.

7 MS. PERLE: No, I don't think it does. I
8 think in both situations, you have to look at the
9 nature of the group, and then when it says the
10 characteristics of the group's members is the governing
11 body or for groups serving the eligible population, the
12 characteristics of the persons served by the group, and
13 whether the legal assistance sought related to the
14 activities -- the second part of the sentence is for
15 those serving the eligible population, and the first
16 part of the sentence is for those of which the majority
17 of the members of the group are eligible.

18 We could certainly clarify it. We could put
19 an (1) or (i) and an (ii), I guess.

20 MS. CONDRAY: I was going to say it collapses
21 it visually but not substantively.

22 MS. BeVIER: I think the visual collapse makes

1 the difference. I understand it doesn't substantively
2 because of the comments and stuff. The separation is
3 important to me anyway, and I think it has been
4 important to the Committee as we have gone through
5 this, that these are two really quite different kinds
6 of groups, for purposes of eligibility, financial
7 eligibility.

8 MS. PERLE: I think that if you were concerned
9 about that, you could put in my proposal, the nature of
10 the group and (i) the characteristics of the group's
11 members or governing body members, or (ii) for groups
12 serving the eligible population and the characteristics
13 of the persons served by the group.

14 MR. GARTEN: Linda, what is troubling you
15 about the way it is presently proposed?

16 MS. PERLE: I think it's the language -- when
17 it says "are consistent with financial eligibility
18 under the Act," that bothers me. It's not clear to me
19 what that means.

20 I guess it's the term "consistent with" that
21 bothers me. People are going to say what does it mean
22 to say that the characteristics are "consistent with."

1 MR. MCKAY: That they qualify.

2 MS. PERLE: Every time I've read this -- let
3 me just say, every time I've read this language, it
4 seems to me that every time I read it, I still have the
5 same reaction, that it's confusing and that people are
6 going to look at this and they are going to scratch
7 their heads and say what does that mean.

8 Now, maybe what I have done is not any better,
9 but it makes more sense to me. Obviously, it's up to
10 you to make the determination of what you want to do
11 with this.

12 I always felt that this language, the
13 "consistent with," seems to me to be very unclear as to
14 what is intended by that, and how it is going to be
15 used. Maybe it's just an impression, but everybody
16 that I've read it to sort of feels the same way, and
17 has the same kind of difficulty with it as I have.

18 MR. GARTEN: Can I ask the same question of
19 Mattie? What advantage is there to putting "consistent
20 with financial eligibility" when they have to be
21 financially eligible to begin with?

22 MS. CONDRAY: Well, this is written this way,

1 kind of (b)(1)(i) and (b)(1)(ii), as paralleling (a)(1)
2 and (a)(2).

3 Paragraph (a) sets forth the basic eligibility
4 standard, and (b)(2) is what you have to look at to
5 determine that the standard has been met, and to the
6 extent that the standard is individuals who would be
7 eligible for legal assistance.

8 As I recall the discussion at the April 1st
9 Committee meeting, we talked about well, what is
10 consistent. Who are people who would be eligible for
11 assistance under the Act, and we talked about, as
12 reflected in the examples, you know, you look at the
13 characteristics of the group. The group are filled
14 with people who even if you don't do an individual
15 eligibility screening on them, you have a pretty good
16 sense that their socioeconomic status is consistent
17 with financial eligibility.

18 So, the phrase "consistent with" came out of
19 that wanting to capture the key element of financial
20 eligibility, that people who would be financially
21 eligible if they were individual applicants, or the
22 people being served by a group, if they happen to come

1 in, they would be financially eligible type people.

2 "Consistent with" is where that phrase came
3 from to pick up that key element of the eligibility
4 criteria. I'm not sure what other -- we did not want
5 to write it in such a way that we were implicitly
6 saying you have to do an individual eligibility
7 screening on every single person, or every single
8 person who is served by or even most of those people.

9 I think we were trying to avoid phraseology
10 that would end up implicating individuals.

11 MS. PERLE: My sense honestly is that we could
12 leave out all of this language, we could stop (b)(1)
13 after the word "obligations," and then just go to
14 (b)(2), which I think really captures that notion, that
15 you have to have information that reasonably
16 demonstrates that the group meets the eligibility
17 criteria set forth. For me, that would be more than
18 adequate to capture what Mattie was saying.

19 What I was trying to do was use some of the
20 language that had been proposed, trying to make it a
21 little bit more concise and a little more
22 understandable.

1 I would prefer in fact to leave it out
2 entirely.

3 MS. CONDRAY: That is what the November
4 2000 -- as you may recall from the previous discussion,
5 the November 2000 NPRM did leave --

6 MS. PERLE: Didn't have this language at all.

7 MS. CONDRAY: But at the Committee meeting, it
8 was discussed that the Committee definitely felt, and
9 the Board agreed, that it was more appropriate to have
10 more specificity in the determination portion.

11 MS. BeVIER: Right, the eligibility
12 determinations. I think that's right. I think Linda
13 is right that it is a little bit confusing, and it's
14 just impossible to draft it in Committee. I'm just not
15 willing to try to do that right now, to be honest with
16 you, although I also do not like the idea of holding up
17 this rule to clarify this language.

18 I'm a little bit at sea about what to do here,
19 and am sort of searching for suggestions.

20 To the extent that we would not be changing
21 the substantive meaning of this language, maybe you
22 could take a stab, Mattie, at trying to clarify, just

1 another stab at this precise language, and we can
2 perhaps present that to the Board.

3 MS. CONDRAV: Sure.

4 MS. BeVIER: When the time comes, as a
5 potential alternative. Does that work in terms of the
6 legalities of the Committee and everything?

7 MS. CONDRAV: I think there's nothing wrong
8 with that because we are looking at staying within the
9 confines of the substantive requirement, and looking to
10 wordsmith is not something that would have to hold it
11 up, if the Committee was comfortable and the full Board
12 was comfortable, to hold up the rule.

13 As kind of a back stop, I can say if my clever
14 drafting abilities fail me overnight, even if the
15 Committee is not thrilled with the language, if the
16 Committee and the Board are comfortable enough with the
17 language, there is always if the Corporation gets a lot
18 of questions, and Linda starts to get a lot of
19 questions, and it's clear that we have missed the boat
20 on what we intended this to mean, no one looks forward
21 to doing more rulemaking on 1611, God knows I don't,
22 but it is a legal possibility out there.

1 MS. BeVIER: Okay.

2 MS. CONDRAY: It's not like this rule will be
3 never, ever, ever touched again forever and ever.

4 MS. BeVIER: Right. Oh, that's too bad.

5 MS. CONDRAY: Or it doesn't have to be.

6 MS. BeVIER: Right.

7 MS. MERCADO: I think part of the reason this
8 rule is so confusing is because you are trying to
9 restate, but in a slightly different way, (a)(1) and
10 (a)(2) and (b)(1)(i) and (ii).

11 When you are reading it and you haven't spent
12 as many hours as you guys have spent rehashing and
13 re-doing this, when you are looking at it as a grantee
14 or member of the public and you look at it and you are
15 going, well, there must be a significance to that
16 (b)(1)(i) and (ii), but I can't quite figure it out,
17 because didn't they say that already in (a)(1) and (2)?

18 You are just adding a little bit to expand the
19 characteristics. I think that is what makes it
20 confusing. It reads better. It is clearer, if you
21 take those provisions out, and just leave (b)(1) and
22 leave (b)(2), and that little extra definition that is

1 already in (a)(1) and (2 is taken out of the little (i)
2 and (ii).

3 MS. CONDRAY: Perhaps also the examples that
4 we discussed that we are going to put into the preamble
5 will help people understand what it is we meant, too.

6 MS. MERCADO: I think so.

7 MS. BeVIER: They might, but as I understand
8 it, there are two things here. One, who you can
9 provide legal assistance to, and the other, how you get
10 it documented. The how you get it documented is an
11 important issue.

12 The Committee has decided that we can't just
13 sort of say here it is, go satisfy yourself, that we
14 have to be without imposing Draconian documentation
15 requirements. We have to be a little more specific
16 about what they have to satisfy themselves about.

17 As I say, they are two separate issues, two
18 separate requirements, and we need to specify them
19 both, I think.

20 MS. MERCADO: All I'm saying is that these two
21 provisions do not necessarily substantively give you
22 something new, other than the word "characteristics."

1 What is "characteristics?" Are we going to define what
2 "characteristics" are?

3 MS. BeVIER: Well, in order to make a
4 determination, here's what you have to satisfy yourself
5 about. That's where the difference is in (b)(1).

6 I think you are completely right, Maria Luisa,
7 that it is somewhat confusing, and if you hadn't sort
8 of spent time with this, you might not pick up on the
9 two different issues here and realize that they are in
10 fact separate.

11 One is who is eligible and the other one is
12 how you decide who is eligible. It is the how you
13 decide who is eligible language that is hard.

14 MS. CONDRAY: Right. As I recall that
15 Committee meeting, where we really talked about this in
16 detail, it was (a)(1) -- I'm just going to pick (a)(1).

17

18 "Primarily composed of individuals who would
19 be financially eligible for assistance," which then
20 begs the question how do you know whether the group is
21 primarily composed of people who would be financially
22 eligible.

1 The response was well, who is in the group.
2 Look at the group. Is the group people who
3 are -- getting back to the example -- who are eligible
4 for public housing. Who is in the group. What does
5 the group and the make up of the group tell you. I
6 believe that discussion led to the use of the phrase
7 "characteristics" and "consistent with."

8 I'm sure that's not the only way that perhaps
9 we can capture that begged question. I believe that is
10 in fact exactly what the Committee was getting at.

11 MS. BeVIER: Right. I propose that for the
12 time being, we leave it to you to see if you can come
13 up with a different way of capturing this concern,
14 which is to have this reg clarify what the grantee's
15 responsibilities are in terms of documentation. If
16 that's not the right word, in terms of making sure that
17 the groups to whom they are thinking about granting
18 money for legal assistance are indeed financially
19 eligible according to (a)(1) and (2).

20 MS. CONDRAY: I will be happy to put my little
21 drafting cap back on.

22 MS. BeVIER: Okay.

1 MR. McKAY: I guess my preference would be
2 that you not collapse it. I like having it broken out
3 by the two different groups that might be represented,
4 so that it's clear.

5 I'm a little concerned about collapsing it
6 into a paragraph. Frankly, if there is a clause in
7 small (i)/(ii) that is troublesome, I would encourage
8 you to focus on that and make the change rather than do
9 a re-write.

10 MR. MEITES: I agree with Mike's remarks.
11 There is some pride of authorship here, of course, but
12 we went through a lot of work to get it the way it is.
13 I would be reluctant to lose either detail precision
14 or confusion, whatever is in the eye of the reader that
15 we have now. I think the two subparagraphs really are
16 addressing different populations, and I think we should
17 keep it distinct.

18 MS. BeVIER: Right. I think we have
19 consensus. Thank you, Linda, very much, for your
20 input.

21 MS. PERLE: You are welcome. I have no other
22 comments.

1 MS. BeVIER: Thanks very much. Do you want to
2 address the pro bono thing at all or not?

3 MS. PERLE: With regard to that, my sense is
4 that addressing that some place in the preamble is the
5 appropriate way to do it, for all the reasons, I think,
6 that were stated.

7 I think as I said earlier, people do pay
8 attention to the preamble. I think most programs would
9 make an effort to help a group find pro bono
10 representation. Programs aren't looking for new
11 clients.

12 As I said before, they do take the language in
13 the preamble seriously. I think I would be troubled by
14 making that a requirement, mandatory requirement, for
15 all the reasons that were stated, both because in
16 places like Chicago, there might be so many potential
17 pro bono resources, and do they have to go through all
18 of them, and in places like rural Idaho, where they
19 would just be knocking their head against the wall, to
20 try to find somebody who could potentially handle it
21 pro bono.

22 I think that making it a mandatory requirement

1 would be a mistake. I think that suggesting that it be
2 the right thing to do in a preamble is absolutely
3 appropriate.

4 MS. BeVIER: Thank you.

5 MR. McKAY: I have a quick question for
6 Mattie. Is there a problem adding a legend to alleged
7 perpetrator in point three without having to --

8 MS. CONDRAY: No, I do not believe so.

9 MS. BeVIER: That's a very good idea.

10 MS. CONDRAY: I think that is appropriate and
11 does not change the substantive.

12 MS. BeVIER: No, it's a good idea.

13 MR. McKAY: Thank you.

14 MS. BeVIER: All right. Thanks again, Mattie.
15 You have done yeoman service on this.

16 MS. CONDRAY: My pleasure.

17 MS. BeVIER: John, I'm sorry. John Asher.

18 MR. ASHER: Madame Chair, I'm Jonathan Asher.

19 I thought I would make it through the weekend without
20 addressing the Board formally, but Mr. McKay's comment
21 about pro bono representation comes very close to home,
22 I think, in Charlottesville.

1 I shared with you the last group or whatever
2 that I personally met with, and it raises this issue
3 very clearly. A group of people dealing solely with
4 nutrition for low income people in the Denver metro
5 area, trying to get more people to apply for food
6 stamps for women, infant and children programs and
7 other nutritional supplement programs, made up of a
8 couple of staff people from the state welfare
9 department, a couple of non-sectarian food banks, and a
10 couple of faith based groups, the ministries who give
11 emergency assistance.

12 I received a call from this group asking
13 whether I would meet with them, because they had some
14 legal issues, and the question was they were not
15 incorporated. It was a very loose group. There was
16 now HHS grant funds available to expand the work they
17 were doing, and they simply wanted to know whether in
18 order to apply, did I read the grant requirements as
19 saying they had to incorporate.

20 I looked at the documents and said I think you
21 do. We referred that group then to pro bono counsel in
22 Denver to get them incorporated and the like.

1 Were this to be a formal requirement though, I
2 would think I might not have been able to provide that
3 initial assistance and counsel, but might need ab
4 initio to have tried to find pro bono counsel.

5 That should be best practices for those of us
6 who have scarce resources. I absolutely believe that
7 when possible, we can and we should secure pro bono
8 counsel. It should not be a regulatory requirement
9 which would require documentation in rural areas, as
10 Linda said, where it may not exist. In big cities,
11 there would need to be documentation of the efforts
12 made.

13 I absolutely support the idea, the inclusion
14 in the preamble, but we don't want to add a requirement
15 that would add to documentation problems and
16 compliance.

17 Lastly, I think this is a terrific effort to
18 increase compliance by making the regulation clearer,
19 better organized, and easier to understand.

20 I'm concerned that despite my infinite respect
21 for both Mattie and Linda, that we have not quite
22 gotten to the level of clarity in the (i) and (ii) that

1 any of us want, and that is one piece of the regulation
2 where we have not yet achieved our desired result of
3 making it easier for grantees to comply, as opposed to
4 continuing some ambiguity.

5 We have done an absolutely, I think, stellar
6 job in taking what has for over 20 years been if not
7 unintelligible, clearly confusing, and a difficult
8 regulation, and have made it much, much better.

9 MS. BeVIER: Thank you. We think Mattie might
10 be able to untie this Gordian knot some time in the
11 next day or so. We look forward to seeing her efforts.

12 If she can't, at some point, we will just have to
13 press on.

14 Thank you, Mattie. Is that all in terms of
15 public comment?

16 (No response.)

17 MS. BeVIER: We will move onto the next item
18 on the agenda, which is consider and act on the
19 adoption of our rulemaking agenda for 2005. 2006, I
20 guess that is. What is that, 2006?

21 MR. FORTUNO: For the record, Victor Fortunato,
22 general counsel of LSC. I don't know if I missed a

1 motion to make a recommendation to the Board, whether
2 you wanted to do that.

3 MS. BeVIER: I believe we do want to make a
4 motion to make a recommendation to the Board. I will
5 invite such a motion.

6 M O T I O N

7 MR. MEITES: Mike, do you want to go ahead?

8 MR. McKAY: I am fashioning it. I move that
9 this Committee recommend to the full Board adoption of
10 Rule 1611, subject to minor changes that might be made
11 by Ms. Condray, to section 1611.6(b)(1)(i) and (ii). I
12 should say section (b)(1).

13 MS. BeVIER: 1611.6(b)(1)(i) and (ii). As
14 part of that motion is also that the Board would
15 approve publication of the final rule with such other
16 minor changes as have been discussed.

17 MR. McKAY: Correct.

18 MS. BeVIER: Thank you.

19 MS. CONDRAY: Including the changes to the
20 preamble.

21 MS. BeVIER: Yes.

22 MR. MEITES: I second that motion.

1 MS. BeVIER: All in favor.

2 (Chorus of ayes.)

3 MS. BeVIER: Thank you. Thank you, Mr.
4 Fortuno, for keeping us on our toes.

5 MR. MEITES: Nose to the grindstone.

6 MS. BeVIER: Nose to the grindstone.

7 ACTION AND ADOPTION OF RULEMAKING AGENDA

8 MR. FORTUNO: Thank you. If I may, I'm here
9 to join Mattie Condray to make a short presentation on
10 the issue of a rulemaking agenda.

11 Actually, on the subject of a proposed
12 rulemaking agenda, management has carefully considered
13 and reviewed the seven comments that were received in
14 response to the notice posted on LSC's website and
15 published in the Federal Register on May 20th of this
16 year, 2005, and has a recommendation to offer this
17 Committee.

18 Management agrees that the process of
19 regulatory revision should not be entered into lightly
20 and initiated absent a compelling reason. The
21 regulatory revision process, as evidenced by efforts to
22 revise Part 1611, which are fresh in your memories, can

1 be very long and a difficult process, a process that
2 consumes a great deal of Committee and staff time, not
3 to mention the time of others, and considerable
4 resources.

5 For the most part, both LSC management and
6 grantees believe that the current regulations are
7 working reasonably well, are generally understood, and
8 that there are not significant compliance problems that
9 need to be addressed.

10 As one commentor noted, "LSC programs know the
11 regulations and have adapted to them."

12 And new uncertainties about compliance issues
13 would only detract from client services while yielding
14 little benefit for clients."

15 Given that caution, however, there are a
16 number of regulatory issues on which we would like to
17 touch a little more specifically, the first of which
18 would be Part 1614, the Corporation's private attorney
19 involvement regulation.

20 As the Committee may recall, there was a
21 petition received from Legal Action of Wisconsin,
22 seeking an amendment to LSC's PAI reg. Specifically,

1 the petition seeks to have the current 12.5 percent
2 requirement changed to a requirement that a reasonable
3 amount be expended by grantees to support the
4 activities.

5 Certainly, that is a matter currently before
6 the Board, and if the Committee determines to take that
7 up and act on the petition, management is prepared to
8 develop a specific recommendation on the petition, and
9 to present that recommendation to this Committee at its
10 next meeting, which is scheduled for October in Boise,
11 Idaho.

12 I hasten to add, however, that with regard to
13 the PAI regulation as a whole, management recommends
14 that no revision in the regulation be undertaken until,
15 as was requested by the ABA and CLASP on behalf of
16 NLADA, there is a full and frank conversation on the
17 broader issue of private attorney involvement and the
18 utility of regulatory changes in the context of that
19 broader conversation.

20 Another item that could be considered but we
21 would recommend against, and there was some discussion,
22 so we thought we would raise this as well, is Part

1 1610.

2 Some of the commentors -- you have in your
3 Board book all of the comments received, there were
4 seven, and you also have a summary of comments. I
5 believe the summary of comments appears at page 84, and
6 the comments themselves appear at page 88.

7 Some of the commentors requested that LSC
8 modify the regulation, that is Part 1610, to conform to
9 the District Court decisions in the Dobbins case.
10 Management would recommend that the Committee not
11 undertake to review 1610 for possible revision as the
12 litigation has not yet concluded, and it seems to
13 management prudent that any consideration of 1610 be
14 put off at least until the Dobbins litigation is
15 concluded.

16 There were a number of other points made by
17 commentors. There was some reference to Part 1624, the
18 prohibition against discrimination on the basis of
19 handicap.

20 The regulation, Part 1624, predates the
21 enactment of the Americans With Disabilities Act, and
22 of course, could be reviewed, revised, and

1 significantly updated to reflect changes in the law
2 since the adoption of the regulation in 1979.

3 LSC management would caution, however, against
4 duplicating enforcement mechanisms of other Federal
5 agencies that are specifically charged with enforcing
6 the anti-discrimination laws.

7 Two other regs that have been touched on, so
8 we thought we would very briefly comment on those. One
9 is Part 1621, the regulation governing client grievance
10 procedures.

11 There was a suggestion that increased
12 clarification would be a help with respect to that
13 regulation. Management is inclined to agree, and while
14 it's not crying out for additional work, it is
15 certainly one reg where the investment in terms of time
16 and resources would not outweigh the benefits. It
17 should be clearly straightforward.

18 If the Committee wished to look at regs that
19 provided that opportunity, that is to do some
20 measurable good without outweighing that with the
21 investment of time and resources, this might be a good
22 one for that.

1 In addition, there is Part 1631 on the
2 expenditure of grant funds, which is still on the
3 books, but it is a reg that was intended to cover all
4 funds expended in 1986, including funds preceding that
5 year, funds from prior years.

6 Those funds have long since been expended.
7 The regulation, while it remains on our books, is
8 outdated. Actually, it's obsolete, not outdated. It
9 could be deleted in its entirety.

10 If the Committee wanted to take a look at that
11 and determine whether or not it was appropriate to
12 delete that regulation from the Corporation's bank of
13 regulations, that, too, would be an appropriate one for
14 consideration.

15 With those few comments, unless Mattie has
16 something else to offer, I think that is the management
17 recommendation with respect to a proposed rulemaking
18 agenda.

19 MS. BeVIER: Are there questions for staff
20 from the Committee or from the Board members who are
21 here?

22 MR. MEITES: Lillian, I have a question for

1 Vic. Vic, has the ABA committed itself to undertake a
2 study of PAI, and if so, what kind of time frame is it
3 talking about?

4 MR. FORTUNO: I think they have offered to
5 engage in that discussion with LSC and other
6 stakeholders. Tom, actually, Tom Smegal is here on
7 behalf of the ABA. Bill Whitehurst was unable to make
8 it. Tom Smegal has been asked to appear today. Before
9 I speak to that, I think I should probably turn the
10 mike over to Tom in case he has something on that point
11 that he can offer.

12 (No audible response.)

13 MR. FORTUNO: As I say, the official word we
14 have from the ABA is their comments in response to the
15 notice that was published soliciting comments on the
16 proposed rulemaking agenda, I think they do make the
17 point that they don't think the PAI reg should be taken
18 up first order, but that if any consideration wants to
19 be given to the reg, that there be a broader
20 preliminary discussion that they are happy to take part
21 in.

22 I don't propose to speak for the ABA, but it

1 seems to me that they are more than willing to go ahead
2 and work with us on this and engage in the dialogue and
3 develop the kind of information that this Committee
4 might be able to use in order to set policy.

5 MR. McKAY: Madame Chair, if this broader
6 discussion is something beyond the 12.5 percent
7 obligation, we are talking about ways to get private
8 attorneys more involved in pro bono work.

9 MR. FORTUNO: Yes.

10 MR. McKAY: This kind of touches on provisions
11 as well, but still, a very important issue that I think
12 we ought to get involved in. I feel very strongly
13 about this.

14 Obviously, it's a provision issue, and it
15 might not be appropriately in this Committee, but we
16 certainly can be a catalyst for it. I think it's very
17 important.

18 MS. BeVIER: I agree with that. I think it
19 should be very high on our list of priorities as a
20 corporation.

21 Does anybody have other questions for Vic at
22 this point?

1 (No response.)

2 MS. BeVIER: May I invite public comment now
3 on the advisability of us undertaking a regulatory
4 agenda?

5 PUBLIC COMMENT

6 MS. PERLE: Just to say that what Vic just
7 said to you is consistent with the comments that we
8 submitted. I don't have anything in addition.

9 MS. BeVIER: In that case, are there other
10 comments from the Board or members of the Committee?

11 (No response.)

12 MS. BeVIER: I would invite a motion to accept
13 management's recommendations in this regard. Is that a
14 motion that makes sense, Vic, with respect to how we
15 proceed, which is essentially that we take a look at
16 Part 1621, that we consider deleting Part 1631, that we
17 leave the Dobbins' generated regs, if such, to a later
18 date when we find out what is the final decision, that
19 we defer consideration of the PAI issue until the ABA
20 and we have had a more thorough discussion of that.

21 Unless you were suggesting that we should take
22 up the 12.5 or reasonable issue. I sort of understood

1 you were saying maybe you could do that, but not the
2 whole PAI issue.

3 MR. FORTUNO: Yes. I think that is something
4 on which management can come back to the Committee with
5 a recommendation in Boise in October.

6 I suspect the ABA, if the Committee indicates
7 it is prepared to take up the petition in October,
8 would also like to address it. It could either wait
9 for a fuller discussion of PAI, or it could be dealt
10 with now, and not drive the larger fuller discussion of
11 PAI.

12 I would suggest that the Committee maybe take
13 up that piece, the petition, which seeks to substitute
14 a reasonableness requirement, reasonable amount, for
15 the 12.5 percent.

16 The Committee could take up that petition,
17 addressing that specific portion of the PAI reg in
18 Boise, Idaho. The ABA and anyone else who is
19 interested in appearing and presenting on that could do
20 so.

21 The Board could decide at that point either to
22 deny the petition or it could decide it wanted to go

1 ahead and pursue a rulemaking to consider changes to
2 that point.

3 I think the theme that has run across the
4 comments, and I think you will find in the management
5 recommendation, is that the rule as a whole not be
6 opened up at this time until there has been the
7 necessary groundwork laid by having those discussions
8 with the ABA.

9 MS. BeVIER: All right. I see that we have a
10 public comment just aching to be shared.

11 MR. SAUNDERS: Not aching, but very briefly.
12 I'm Don Saunders with the National Legal Aid and
13 Defenders Association.

14 We also would welcome the opportunity to
15 engage with you and the ABA in that dialogue.
16 Obviously, the field has a great deal of interest in
17 this issue as well. We have engaged in regular
18 conversations with the ABA. I know they do intend to
19 very quickly move to engage with us, with you, and with
20 other stakeholders in that dialogue.

21 Our regulations committee, which is very
22 representative of the field, considered the issue of

1 the petition, and I would urge you not to take up the
2 petition separate and apart from the entire regulation,
3 because it is that part of the reg that puts the field
4 and the ABA and others at odds with one another, an
5 entire infrastructure has developed around that
6 regulation.

7 We agree that it's time to review that, but to
8 look at that one and the most controversial part of
9 that, to me, seems to undermine that dialogue.

10 We would urge you not to take up the petition.

11 We talked with the petitioner at some length about it.

12 He understands our position on that.

13 We think that it is better addressed in the
14 context of an overall review of 1614.

15 MS. BeVIER: Thank you.

16 MR. MEITES: Lillian, my sense is that what I
17 would like is to get this discussion moving. I kind of
18 agree with Don that focusing on the 12.5 percent may
19 not be the way to do it.

20 Perhaps instead on our agenda for October, we
21 could put the PAI on as item number one and ask for the
22 stakeholders and the staff to at least come up with a

1 list of the issues that we ought to consider or think
2 about considering for PAI regulation, so we can at
3 least get the discussion started without really
4 committing ourselves to any one part of it.

5 MR. McKAY: I agree. I think that's a great
6 idea.

7 MS. BeVIER: I think that's a great idea. Do
8 I hear a motion to that effect?

9 M O T I O N

10 MR. McKAY: So moved.

11 MR. MEITES: It would just modify that we
12 adopt the staff recommendation with that adjustment to
13 it.

14 MS. BeVIER: All right. Are you moving the
15 whole thing about the management --

16 MR. MEITES: Yes.

17 MS. BeVIER: Accepting management's
18 recommendations accepting with the exception of putting
19 PAI on our agenda, inviting the stakeholders to
20 identify what the issues are for us.

21 MR. MEITES: Yes, at our October meeting.

22 MS. BeVIER: At our October meeting. That is

1 a comprehensive motion, Mr. McKay. Did you mean to
2 second the whole thing?

3 MR. McKAY: I second the whole thing.

4 MS. BeVIER: Okay. Is there any discussion of
5 that motion?

6 (No response.)

7 MS. BeVIER: All right. All in favor, say
8 aye.

9 (Chorus of ayes.)

10 MS. BeVIER: All opposed.

11 (No response.)

12 MS. BeVIER: So moved. Thank you.

13 We are now ready for our next item, and that
14 is our first staff report from Karen Sarjeant. Karen,
15 we are delighted to have you with us, and to hear your
16 staff report on the 2006 grant assurances.

17 STAFF REPORT ON 2006 GRANT ASSURANCES

18 MS. SARJEANT: Thank you very much. Good
19 afternoon. I'm delighted to be here. My name is Karen
20 Sarjeant. I am, for about six weeks or so, the vice
21 president for programs and compliance at LSC.

22 I want to thank the Board for the opportunity

1 to hold this position. Each day so far has been what I
2 consider a personal and professional gift. I think
3 that we are continuing to do the work that you would
4 like to see us do at Legal Services Corporation.

5 This afternoon, I am pleased to discuss with
6 you the proposed grant assurances for the 2006 grant
7 awards. As you know, the Corporation uses grant
8 assurances any time it makes grants with its funds to
9 programs, and we use these to establish guidance for
10 the programs and their use of the funds.

11 This year, our staff and staff from the
12 Inspector General's Office, participated in a review
13 process in which we looked at most of the grant
14 assurances together, and came up with the proposed
15 assurances.

16 I should note, just in the interest of
17 fairness, that Grant Assurance 25, which we will
18 discuss at the end of this presentation, for which you
19 also received an additional memo, that grant assurance
20 was sent to the Office of Inspector General and CLASP,
21 the Center for Law and Social Policy late in the
22 process.

1 We received written comments from CLASP on
2 Grant Assurance 25. We did not receive written
3 comments from the Office of Inspector General. I did
4 have the opportunity to speak with Laurie Tarantowicz.

5 We are certainly, as we move forward, going to be
6 taking the opportunity to try to meet a little bit
7 earlier in the process to talk through some of these
8 issues.

9 The comments that we did receive from CLASP,
10 we accepted some of them in our thinking about these,
11 as we looked at them the last time. Some of them, we
12 did not.

13 As I go through the grant assurances with you,
14 I will be happy to point out to you where we have added
15 in those suggested changes.

16 MR. MEITES: Karen, this is Tom Meites. I am
17 having quite a bit of trouble hearing you. Can you
18 make sure you speak directly into the microphone?

19 MS. SARJEANT: I'll pull it closer to me. Is
20 that better?

21 MR. MEITES: Much better. Thank you.

22 MS. SARJEANT: I will point out to you where

1 the changes are in the grant assurances. If that's
2 okay with the Chair, I'll walk through all of them, or
3 how would you like me to proceed? I can do it quickly.

4 MS. BeVIER: Do it quickly. As I read
5 through, they were mostly just clarifications, very few
6 of substance, but I could be wrong.

7 MS. SARJEANT: I think that's correct. Many
8 of them are just clarifications, minor changes in
9 grammar. I think that is true of Grant Assurance 1 and
10 Grant Assurance 2, and the Board should have both a
11 copy of the grant assurances with the changes shown in
12 green print, and a copy of the grant assurances with
13 the proposed language entered in.

14 I would suggest for this conversation that you
15 refer to the set where you can see the changes in green
16 print.

17 Grant Assurance 1 was a minor change in
18 grammar. Grant Assurance 2, which dealt with the use
19 of LSC funds, we added some language clarifying that
20 the use of funds was also governed by the LSC
21 regulations implementing the Appropriations Act.

22 Grant Assurances 3 and 4 were also minor

1 changes. In Grant Assurance 4, we changed the word
2 "contact" to "grant," to be consistent with the other
3 grant assurances.

4 In Grant Assurance 5 through 11, there were no
5 changes. In Grant Assurance 12, there was a very minor
6 change at the top of your page 106. We added the word
7 "to." It's very minor.

8 Grant Assurance 13, no change. Grant
9 Assurance 14, we corrected some references to LSC
10 offices, and we added the Office of Compliance and
11 Enforcement, and specifically in paragraph (f), we
12 changed the language so that we clearly stated what the
13 specific change was that would require notice, and that
14 change would be the replacement or termination of an
15 independent public accountant or any new IPA who was
16 doing the program's audit.

17 In Grant Assurance 15 and in several that
18 follow, you will see there were changes made between
19 calendar days, to clarify when we were speaking about
20 calendar days, and when we were speaking about work
21 days, with the difference being that calendar days
22 refer to one week or more, and work days refers to time

1 periods of less than one week.

2 In Grant Assurance 16, we made some minor
3 revisions to grammar and date changes.

4 Let me just step through those very quickly
5 for you. In the first part of the paragraph of 16, we
6 added "consolidation" to make sure that it was clear we
7 were referring to situations where programs both merged
8 or consolidated with other programs.

9 In paragraph (a), we changed it to calendar
10 days. In paragraph (b), calendar days. Paragraph
11 (b)(2), calendar days. These are just to clarify what
12 the appropriate time period is.

13 In paragraph five, we changed the language
14 there. You don't have the change in front of you.
15 This was one of the changes we received from CLASP that
16 we agreed with when we took a look at our
17 property -- it's PAMM.

18 MS. BeVIER: Property Acquisition and
19 Management.

20 MS. SARJEANT: Property Acquisition and
21 Management Manual. The language will read, when we
22 make this change, if it's approved, "An accounting of

1 each item of personal, non-expendable property
2 purchased after October 15, 2001, in whole or in part,
3 with LSC funds, that has a current market value
4 exceeding \$5,000."

5 The point there being that we wanted to be
6 clear that we were referring to an individual piece of
7 property that had a value of \$5,000, not an aggregate
8 amount.

9 In paragraph (b)(5)(6), we deleted the
10 reference to the 1981 property manual, since this
11 provision only deals with property that was acquired
12 after the date of the property acquisition manual.

13 In paragraph 16(c), we removed unnecessary
14 references to public laws.

15 In Grant Assurance 17, there were minor
16 changes. Grant Assurance 18, again, we made some
17 changes to specify calendar days, and we also -- this
18 is a grant assurance that deals with notice to LSC and
19 specifically to the Office of Compliance and
20 Enforcement.

21 We deleted the language arising from an "LSC
22 activity," because the thinking was we want programs to

1 notify LSC any time these situations come up, whether
2 they are judgments or sanctions, et cetera.

3 We also changed the language of EEO "claims"
4 to "findings," because it was more consistent with the
5 other types of reporting that was going on in that
6 paragraph, which were more decisional and final as
7 opposed to just claims being made.

8 MR. MEITES: Can I ask a question here,
9 Lillian?

10 MS. BeVIER: Of course, Tom.

11 MR. MEITES: Why limit it to EEO findings?
12 Most states and many municipalities and other
13 governmental entities have human rights investigatory
14 and fact finding bodies.

15 Wouldn't you also want to know, for example,
16 if the Illinois Human Rights Commission made an adverse
17 finding?

18 MS. SARJEANT: Let me just check. The
19 language of the grant assurance refers to EEO findings.

20 MR. MEITES: Right.

21 MS. SARJEANT: That could take in both the
22 Federal and state departments.

1 MR. MEITES: You read that as -- then it
2 probably should not be capitalized. "EEO" in common
3 parlance means "equal employment opportunity," which is
4 the name of the Federal program. State programs are
5 not designated by those letters.

6 MS. SARJEANT: Okay. We could make that
7 change.

8 MR. MEITES: I would suggest that you
9 generalize it to all adverse employment discrimination
10 findings. You don't need to know about ones that find
11 in favor of the grantee, but maybe you want to. That's
12 something to consider.

13 MS. SARJEANT: All right. Thank you.

14 In Grant Assurance 19, there are no changes
15 proposed. In Grant Assurance 20, there are some minor
16 changes made, and we corrected the name for GAO, which
17 is now the Government Accountability Office.

18 In 21, there were minor revisions. Grant
19 Assurance 22, there are minor revisions, and we added
20 in guidance for programs on new technology
21 acquisitions. Now, it's important to note that this
22 grant assurance does not require programs to purchase

1 new equipment. This language only gives them guidance
2 when they get ready to purchase new equipment, so they
3 would meet the technology requirements that we have for
4 programs.

5 Grant Assurance 23 clarifies programs'
6 responsibilities regarding state-wide websites. There
7 is a typo on the tenth line. It should read "barring"
8 instead of "bearing." In relation to the state-wide
9 websites, as you know, LSC has put significant funds
10 into the development of state-wide websites through the
11 technologies initiatives grant program.

12 We feel it is important to continue to
13 encourage programs to support and help develop and make
14 those websites as functional and useful for clients and
15 advocates as possible.

16 We have tried to clear up the language
17 somewhat in this grant assurance, but we do have the
18 expectations that programs will collaborate and be an
19 active participant in keeping these websites viable.

20 Grant Assurance 24. We made some minor
21 revisions and added a suggestion from CLASP where we
22 made the change to read "upon request." CLASP

1 suggested that we add "upon request by LSC." We have
2 accepted that revision, to help make it more clear.

3 I'm going to skip over Grant Assurance 25 for
4 the moment and come back to that.

5 For Grant Assurance 26, there were minor
6 changes made to clarify the recordkeeping requirements
7 after a merger or consolidation. There was no change
8 to Grant Assurance 27. To Grant Assurance 28, we
9 made a change which requires internal policies for file
10 retention of at least five years from the date of
11 closure. It was important that we set out the time
12 frame that we wanted programs to at least have a policy
13 on retaining records.

14 For Grant Assurance 29, there was no change.
15 In the final paragraph of the document, there were
16 minor revisions made, one to change the date, and there
17 is also a typo. You will notice there is a period
18 missing at the very end of the sentence, so that will
19 be corrected.

20 MS. MERCADO: Is that number correct?

21 MS. SARJEANT: I'm sorry. Yes, the number is
22 correct because it is a reference to saying that the

1 program has complied with the grant assurances of the
2 previous year.

3 MR. STRICKLAND: Do you mean it to read
4 "2004-5?"

5 MS. SARJEANT: If you look at the other set,
6 it reads "2005."

7 MS. MERCADO: So, the "4" should be deleted.

8 MS. SARJEANT: If you look at page 122, it has
9 been caught correctly on that one.

10 MS. BeVIER: Are there questions for Karen on
11 these so far?

12 MR. GARTEN: I have something. On page 106,
13 14(f), something is missing there.

14 MS. SARJEANT: No. All we did here is a "new
15 IPA." We left the initials "IP."

16 MR. GARTEN: In other words, we should insert
17 "IPA" after "new?"

18 MS. SARJEANT: Right. If you check -- that's
19 why we gave you both sets, both the one showing the
20 strike out and the one showing the proposed language.
21 It just was difficult to think of how to show these.

22 MR. STRICKLAND: At that same place there in

1 number 20, relating back to 14(f). This is a very
2 minor point. In 14(f), you say "independent public
3 accountant (IPA)." I suppose you could say here in 20
4 and 21 "IPA" as opposed to spelling out "independent
5 public accountant." Again, as I said, that is very
6 minor.

7 You started to shorten it to IPA earlier in
8 the document.

9 MS. SARJEANT: And then spelled it out.

10 MR. STRICKLAND: Yes. It's just a very minor
11 inconsistency. The typo you mentioned, "barring," that
12 is not corrected?

13 MS. SARJEANT: No, it is not. We caught that
14 after. That will be corrected.

15 MS. BeVIER: Karen, is what you would like us
16 to do is proceed then to 25?

17 MS. SARJEANT: Yes, because I think at the
18 end, hopefully, you will accept the whole set of
19 proposed grant assurances.

20 You have a memo that explains LSC's position
21 on Grant Assurance 25. This came up at a prior Board
22 meeting. There was discussion about this.

1 The recommendation that we are making to the
2 Committee is that the sentence that begins five lines
3 from the top be removed, and that sentence reads
4 "Non-renewal of a multi-year grant does not constitute
5 a termination or suspension under LSC regulations."

6 This is a grant assurance that deals with
7 competitive grants. I think we tried to lay out the
8 situation as clearly as we could in the memo that you
9 received. I'm going to try to paraphrase this, just so
10 everybody is clear, if that's necessary. If not, I'm
11 happy to go forward.

12 MS. BeVIER: It probably wouldn't hurt for you
13 to just do that a little bit for us, if you wouldn't
14 mind.

15 MR. MEITES: Thank you, Lillian. I'm lost!

16 MS. BeVIER: Okay.

17 MS. SARJEANT: Currently, the grant assurance
18 has the sentence in it. Here's what happens under our
19 competitive grants process now.

20 We make a multi-year grant award. At the
21 end -- let's say, for example, we make an award for
22 three years. When you read the grant assurance as it

1 reads now, with that sentence in there, at the end of
2 year one of a three year grant term, if LSC were to
3 decide not to renew the grant, the way the grant
4 assurance reads now, programs would have no true
5 recourse.

6 They would not be entitled to the hearing
7 provisions that are set out in Regulation 1606, because
8 the grant assurance says that does not apply.

9 It is our position, and I say to you honestly,
10 I don't know when or how this particular sentence got
11 into the grant assurances, but we think it is not
12 consistent with the Appropriations Act or with the
13 regulations.

14 What will happen if we take that sentence out
15 is this, and the way we do things now anyway; if we
16 make a three year grant award, and at the end of year
17 one, we go through a renewal process, and at that time,
18 we can attach new grant assurances, new grant
19 conditions, things like that.

20 If there is a problem with the program, we
21 will work with the program. If there is a problem with
22 compliance, we have procedures under 1630 to question

1 costs. We have other procedures to address
2 non-performance.

3 What LSC should not do is take away a grant in
4 the middle of a grant award term without giving the
5 program some element of due process, because the nature
6 of the interest at stake is too significant.

7 Our position is that we have -- the question
8 is, well, if a program begins non-performing in the
9 middle of a three year grant term, what can LSC do?
10 The answer to that is that LSC has a lot of tools at
11 its disposal to deal with that type of situation.

12 We have a very active and functioning
13 compliance staff that goes out and can do training, can
14 do assistance with programs. As I said, we can attach
15 grant conditions, special grant conditions to programs.

16 We can send our program staff out to work with them.
17 If the problem is they are potentially violating some
18 compliance issue, that can be taken care of with the
19 existing regulations that we have.

20 We feel that we have the kinds of tools we
21 need to manage our competitive grants process, and in
22 the middle of a grant award term, that if we were going

1 to propose to stop funding a grant, we should have to
2 meet certain standards, that we shouldn't just be able
3 to take a grant away without some due process standard.

4 When we read both the Appropriations Act and
5 our competition regulation, we think we are being
6 consistent with that language by saying that we will,
7 if we award a three year grant, that the program would
8 be entitled to use the 1606 hearing procedures if we
9 determined in the middle of that grant term to take
10 that grant away.

11 We are hoping that the Board will support the
12 removal of that sentence that is inconsistent with both
13 the Appropriations Act and our regulation.

14 We spent a lot of time talking as a staff
15 about this issue, and we feel that we do have the
16 tools, that the language is incorrect in that grant
17 assurance, and that is why we are proposing to the
18 Board that they agree to remove that sentence.

19 MS. BeVIER: That was very helpful. Are there
20 questions from the members of the Committee or the
21 Board? Mike?

22 MR. McKAY: If the sentence is deleted,

1 briefly tell us what the process is that would then be
2 afforded to a grantee.

3 MS. SARJEANT: If they get a grant award for
4 three years and they are performing fine, at the end of
5 the first year, they go through a renewal process, and
6 at that time, we can add new grant assurances like we
7 do each year. We can add special grant conditions,
8 whatever.

9 They would get their grant award money for the
10 second year. If they were doing fine in the second
11 year, they would go through a renewal process for the
12 third year.

13 Now, if we had a situation where the program
14 that had a three year award, say at some point in the
15 first or second year it began non-performing, there are
16 a series of things that we would do.

17 If it was of such significant non-performance,
18 or a major compliance violation or anything like that,
19 LSC always has the ability to stop the grant, but then
20 what we are saying is since we have said to the
21 program, you have a three year grant award, that would
22 trigger the program's ability and LSC's responsibility

1 to use the 1606 hearing procedures.

2 What might also happen, depending on what the
3 problem is in the grant term, if we come to a problem
4 at the end of the first year and we are in grant
5 renewal and there's a problem, we might do short
6 funding. We might do special grant conditions. We
7 might send a programmatic evaluation team or a
8 compliance team out to do some work. We may do some
9 technical assistance with the program.

10 If in the course of the compliance evaluation
11 there is a problem that they uncover, we might use a
12 question cost proceeding.

13 We currently have a lot of tools available to
14 us to work with programs that find themselves in a
15 situation where by our determination, they are not
16 performing at the standard we think they should be.

17 We really do think that once we say to a
18 program that you have a three year grant award, that
19 has to mean something, and that it would be
20 inappropriate for us to then, because of some problem,
21 just take the grant away without some process in the
22 middle of that term.

1 MR. McKAY: Thank you.

2 MS. SARJEANT: If we do an one year award or
3 even a three year award and they come to the end of the
4 three year term and no problem, they don't have a right
5 to re-funding or anything like that.

6 MS. BeVIER: In other words, you have a lot of
7 tools at your disposal and we want to make it clear
8 that we intend to be fair.

9 MS. SARJEANT: Exactly.

10 MS. BeVIER: Are there other questions for
11 Karen on this particular proposed change?

12 (No response.)

13 MS. BeVIER: Thank you, Karen. I think I will
14 invite public comment now. Is there public comment on
15 the grant assurances? Sorry, Laurie Tarantowicz.

16 MS. TARANTOWICZ: Thank you. Laurie
17 Tarantowicz, counsel of the OIG. As Karen alluded to,
18 she and I had a brief opportunity to speak yesterday on
19 the airplane.

20 Unfortunately, we were not aware that Grant
21 Assurance 25 was going to be proposed to be changed
22 until actually a couple of days ago, when I had the

1 opportunity to look in the Board book, although we had
2 requested the opportunity to discuss with management
3 the proposal, and I do appreciate Karen's assurance
4 that we will try to work this out more smoothly in the
5 future.

6 Unfortunately, what that means is, of course,
7 I'm not prepared to fully discuss with you our
8 concerns. I did have some. I understand now from what
9 Karen said earlier that they did a full consideration
10 of the Appropriations Act and the regulation, and
11 believe that taking this sentence out makes it more
12 consistent.

13 My sort of quick look at this, I would draw
14 the opposite conclusion. Of course, that is not a
15 conclusion for the OIG to make, it is a policy decision
16 for you. I just wanted to raise that issue so you are
17 aware and let you know that perhaps we might provide
18 comment to you in the future, although we didn't have
19 the opportunity to do so at this time.

20 MS. BeVIER: Questions for Karen? For Laurie,
21 I mean. I'm sorry.

22 (No response.)

1 MS. BeVIER: Thank you. I will invite public
2 comment now on the proposed changes to the grant
3 assurances. Is there any comment from members of the
4 public?

5 (No response.)

6 M O T I O N

7 MS. BeVIER: In that case, I will invite a
8 motion that we recommend to the Board the adoption of
9 the grant assurances for 2005/2006 as per management's
10 suggestion. Is that appropriate?

11 MR. McKAY: So moved.

12 MS. BeVIER: Is there a second?

13 MR. MEITES: I second the motion.

14 MS. BeVIER: All in favor.

15 (Chorus of ayes.)

16 MS. BeVIER: All opposed.

17 (No response.)

18 MS. BeVIER: That motion carries.

19 We have one more item on our agenda. I think
20 it ought not to take us a very long time, but it is on
21 the agenda. Is Vic here?

22 STAFF REPORT CONCERNING LSC'S IMPLEMENTATION

1 OF THE GOVERNMENT IN THE SUNSHINE ACT

2 MS. BeVIER: If you will recall, the Committee
3 invited management to just give us a recapitulation of
4 LSC's position and regulations with respect to the
5 Government and the Sunshine Act. This item was never
6 on our agenda, and we never sort of meant to say that
7 we are considering changing what LSC has done, but
8 because LSC's regulations do depart from the Act, and
9 are more stringent than the Act would require, we just
10 were interested in understanding the history of that.
11 We weren't meaning to try to make the Corporation and
12 its work less transparent by any means, but we were
13 interested in why what was done was done.

14 Vic will explain for us.

15 MANAGEMENT'S STATEMENT ON GOVERNMENT AND SUNSHINE ACT

16 MR. FORTUNO: I believe the Committee was
17 provided with a memo setting out the history of
18 implementation of the Government and Sunshine Act.

19 The establishment of LSC actually predates the
20 Government and Sunshine Act. There was a provision in
21 the LSC Act addressing open meetings. The Sunshine
22 Act, when it was promulgated, was made applicable to

1 LSC, not by its own terms, but by amendment to the LSC
2 Act.

3 There is some question as to whether the LSC
4 regulations, the implementing regulations, that is the
5 regulation that implements the Government and Sunshine
6 Act for the Legal Services Corporation, goes beyond the
7 Government and Sunshine Act.

8 The Government and Sunshine Act applies to the
9 governing body and any executive committees of the
10 governing body.

11 As that term "executive committee" is commonly
12 understood, that is, a committee that is authorized to
13 act on behalf of and bind the board, the LSC Board has
14 never established an executive committee.

15 If you will, the committees of the Board,
16 including the standing committees, Provision, Ops,
17 Regs, Finance, are in some respects study groups, where
18 issues can be aired, can be discussed, but no
19 definitive action can be taken because any definitive
20 action requires that the matter be brought to the Board
21 and that the Board act on the issue.

22 For example, the matters that have been taken

1 up by this Committee here today. The Committee did not
2 adopt as a final regulation 1611. Instead, the
3 Committee voted to recommend to the Board at its
4 meeting on Saturday that the Board adopt the regulation
5 as final. That action is up to the Board.

6 There being no executive committees, it would
7 appear that the Sunshine Act does not on its face
8 extend to the existing committees of the LSC Board,
9 because they are not executive committees.

10 The implementing regulation, however, has
11 extended Sunshine to the non-executive committees, to
12 all committees.

13 I think the history of that, the reasons why
14 it was done was, I understand, because it was felt that
15 it promoted transparency, that it was consistent with
16 what was intended in the LSC Act provision on open
17 meetings, not necessarily because the Government and
18 Sunshine Act actually required it.

19 That material has been provided to the Board.

20 I don't know -- to this Committee. I don't know how
21 detailed a discussion you want me to undertake now. I'm
22 prepared to respond to questions or to give you a

1 fuller treatment of the subject.

2 That's essentially it, whether the
3 implementing reg goes farther than the Government and
4 Sunshine Act requires the implementing reg to go, and
5 if so, to what extent and what options the Board would
6 have.

7 I don't know if you want to engage in that
8 discussion at this time.

9 MS. BeVIER: I think you have accomplished
10 what at least I had in mind when I asked for this
11 report. I don't think that there is anything for us to
12 actually move on. It seems to me that what we can do
13 is thank you for the information. Now we understand
14 better the history. It was very nice to have it
15 explained.

16 Certainly, in terms of the way the Board
17 functions, I guess I'm inclined to think myself we
18 wouldn't necessarily be less transparent, but we would
19 do our business differently. We would do the important
20 things at the Board meetings. Now, we do a lot of the
21 discussion at the Committee meetings rather than at the
22 Board meetings themselves. That's neither here nor

1 there.

2 The Corporation functions quite well under its
3 present regs, and I for one am doubtful our Committee
4 is likely to take up any action on changing the
5 Government and Sunshine Act -- our own regs with
6 respect to open meetings.

7 I would ask whether any of my Committee
8 members disagree with me, have comments.

9 (No response.)

10 MS. BeVIER: We do have an agenda item
11 inviting public comment on this issue. Is there any
12 public comment to be offered?

13 (No response.)

14 OTHER PUBLIC COMMENT

15 MS. BeVIER: In that sense, I think we can
16 proceed to the next item on the agenda, which is other
17 public comment. Does any member of the public have
18 more to say or want to raise an issue?

19 (No response.)

20 CONSIDERATION AND ACTION ON OTHER BUSINESS

21 MS. BeVIER: Is there other business to come
22 before the Committee?

1 MR. MEITES: Lillian, I just have one point.
2 If there is any additional language that Mattie or
3 anyone else drafts before the Board meeting, could you
4 make sure someone faxes it to me?

5 MS. BeVIER: Yes, we will certainly do that,
6 Tom.

7 CONSIDERATION AND ACTION ON ADJOURNMENT

8 MS. BeVIER: I would invite a motion to
9 adjourn.

10 M O T I O N

11 MR. McKAY: So moved.

12 MR. MEITES: Second.

13 MS. BeVIER: All in favor, aye.

14 (Chorus of ayes.)

15 MS. BeVIER: The meeting is adjourned. Thank
16 you, everyone.

17 (Whereupon, at 3:11 p.m., the Committee was
18 adjourned.)

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