

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS

OPERATIONS & REGULATIONS COMMITTEE

OPEN SESSION

Friday, June 11, 1999

10:10 a.m.

The Westin - Tabor Center  
1672 Lawrence Street  
Denver, Colorado

COMMITTEE MEMBERS PRESENT:

Laveeda M. Battle, Chair  
F. William McCalpin  
Ernestine P. Watlington

BOARD MEMBERS PRESENT:

Edna Fairbanks-Williams  
Maria Luisa Mercado

STAFF AND PUBLIC PRESENT:

Jay Brown, Office of Compliance and Enforcement  
Danilo Cordona, Acting Vice-President, Programs  
Victor Fortuno, General Counsel and Secretary  
Suzanne B. Glasow, Associate General Counsel  
James Hogan, Vice President, Administration

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## STAFF AND PUBLIC PRESENT (con'd):

Alan Houseman, CLASP

Joan Kennedy, Director, Administration and Human  
Resources

Len Koczur, Assistant Inspector General for Audit

David Richardson, Treasurer/Controller

Matt Tanana, Mutual of America

Laurie Tarantowicz, Counsel, Office of Inspector  
General

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MOTIONS: 5, 8, 10, 41, 63, 140

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

1  
2 CHAIR BATTLE: I would like to go ahead and  
3 call to order this meeting of the Operations and  
4 Regulations Committee.

5 You should have before you, in the board book  
6 that we were all sent, a copy of the agenda.

7 I would like to welcome, first of all, the  
8 members of the committee that are here, Ms. Watlington  
9 and Mr. McCalpin. Mr. Erlenborn, I spoke with before  
10 the meeting and he will be joining us for the board  
11 meeting on tomorrow, so he was unable to join us for  
12 today. And also two members of the board who are with  
13 us, Ms. Mercado and Edna -- thank you for being here  
14 with us -- Fairbanks-Williams.

15 What I would like to do is to reorder the  
16 items that we have on our agenda so that where we now  
17 have the consider an act on the Recipient Fund  
18 Balances, I would like to switch that particular time  
19 with the next item so that we consider the 403(b) Plan  
20 as Item 5 and the Fund Balances issue as Item 6.

21 Are there any questions about that?  
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## M O T I O N

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MR. McCALPIN: Move the agenda as amended.

MS. WATLINGTON: Second.

CHAIR BATTLE: Properly moved and seconded.

All in favor?

(Chorus of ayes.)

CHAIR BATTLE: All opposed?

(No response.)

CHAIR BATTLE: Motion carries.

The first item is the approval of minutes of the February 21st meeting. However, I have had a chance to look at those minutes. I know that we considered them at an earlier meeting and a question was raised about the reporting of the membership of the committee and the board present at the meeting. That problem has not yet been corrected.

Is Victor here? Is Victor in the room, our secretary?

A PARTICIPANT: He is just outside.

A PARTICIPANT: Should I get him?

CHAIR BATTLE: Yeah, you can get him.

I am not certain that we are going to go

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1 forward with the minutes because they have not yet been  
2 corrected. But if they can be corrected I think we can  
3 approve them as corrected.

4 Mr. McCalpin, did you have anything to add to  
5 that?

6 MR. McCALPIN: Not on this one, but I do when  
7 you get to the next one.

8 CHAIR BATTLE: Okay. Well, while they are  
9 retrieving Victor why don't we delay consideration --

10 MR. McCALPIN: Here he is.

11 CHAIR BATTLE: Oh, here he is.

12 Victor, on our February 21st minutes the issue  
13 here was the fact that you report as committee members  
14 all the members of the board instead of just those who  
15 are committee members and the board members.

16 MR. FORTUNO: I have made those changes in my  
17 copy already.

18 CHAIR BATTLE: Okay.

19 MR. FORTUNO: It's reflected accurately.

20 CHAIR BATTLE: It's?

21 MR. FORTUNO: In the second.

22 CHAIR BATTLE: But that's for this meeting?

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1 MR. FORTUNO: Yeah. This one, you are  
2 correct, and I have made those changes on my copy --

3 CHAIR BATTLE: Okay.

4 MR. FORTUNO: -- and we will go ahead and make  
5 them. You can go with that change. We will make the  
6 change and then put them in our files --

7 CHAIR BATTLE: Okay, all right.

8 MR. FORTUNO: -- if that's acceptable.

9 CHAIR BATTLE: Is that acceptable to the  
10 committee? Victor tells me that he has already --

11 MR. McCALPIN: Victor, don't go away.

12 CHAIR BATTLE: Victor tells us that he has  
13 already made the change that I have identified in the  
14 minutes of the February 21st, 1999 meeting so that the  
15 final minutes will reflect that change.

16 MS. MERCADO: And what is that change?

17 CHAIR BATTLE: And that change is to report  
18 committee members as identified for the Operations and  
19 Regulations Committee, and then report the rest of the  
20 board members that were present rather than reporting  
21 everybody as a committee member.

22

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## M O T I O N

1  
2 CHAIR BATTLE: I will entertain a motion to  
3 approve the minutes as corrected.

4 MS. WATLINGTON: So moved.

5 MR. McCALPIN: Second.

6 CHAIR BATTLE: And properly moved and  
7 seconded. All in favor?

8 (Chorus of ayes.)

9 CHAIR BATTLE: All opposed?

10 (No response.)

11 CHAIR BATTLE: Motion carries.

12 We can now move to what is under Tab 3 in our  
13 agenda book which is the draft minutes for the meeting  
14 of the Operations and Regulations Committee for Friday,  
15 April 16th, 1999. Are there any corrections?

16 MR. McCALPIN: Yes, Madam Chair.

17 CHAIR BATTLE: Mr. McCalpin.

18 MR. McCALPIN: Under the heading, Motion, at  
19 the bottom of the first page, I don't believe that you  
20 really moved. I think you may have asked for a  
21 motion --

22 CHAIR BATTLE: That's right.



1 MR. McCALPIN: -- but the minutes have you  
2 moving that the agenda be approved.

3 CHAIR BATTLE: That's right. I think you are  
4 right about that. That occurs somewhere else in these  
5 minutes as well. Okay?

6 MR. FORTUNO: That one I can handle.

7 MR. McCALPIN: What?

8 MR. FORTUNO: I have made that change on my  
9 copy and we will have that made on the official copy as  
10 it goes in the records.

11 CHAIR BATTLE: Also, if you look on the final  
12 page of those minutes the same error occurs. When I  
13 request an opportunity to entertain a motion it shows  
14 here that I move the meeting be adjourned, and then Ms.  
15 Watlington so moved. So it would be helpful to have  
16 someone review just a little bit. I know it's a mad  
17 dash at the last minute but review the minutes to make  
18 sure that these errors are caught.

19 MR. McCALPIN: I missed that one.

20 CHAIR BATTLE: Okay, I caught it.

21 Are there any other corrections to the minutes  
22 of Friday, April 16th, 1999?

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## M O T I O N

1  
2 CHAIR BATTLE: Hearing none, I would entertain  
3 a motion to --

4 MR. McCALPIN: I move approval of the minutes  
5 as corrected.

6 MS. WATLINGTON: I second it.

7 CHAIR BATTLE: It's been properly moved and  
8 seconded that the minutes be approved as corrected.  
9 All in favor?

10 (Chorus of ayes.)

11 CHAIR BATTLE: All opposed?

12 (No response.)

13 CHAIR BATTLE: Motion carries. Thank you.

14 The next item that we have on our agenda is  
15 consider public comment and consider an act on final  
16 rule, 45 CFR Part 1641, on Debarment, Suspension and  
17 Removal of Recipient Auditors.

18 You will find this information under the  
19 tab -- well, it's not under a tab, I don't think, in  
20 our Board book, but you should have received the  
21 materials concomitant with receiving the board  
22 materials for this meeting with the transmittal

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1 memorandum from Laurie Tarantowicz, dated June 4th,  
2 1999.

3 MS. MERCADO: On the board books that were  
4 passed out in the back it is Tab No. 7.

5 CHAIR BATTLE: Okay. Will the members of the  
6 staff of the Office of Inspector General identify  
7 themselves for the record and then begin your  
8 presentation?

9 MS. TARANTOWICZ: Good morning. I am Laurie  
10 Tarantowicz, Counsel to the Office of Inspector  
11 General.

12 MR. KOCZUR: I am Len Koczur, Assistant  
13 Inspector General for Audit.

14 MR. McCALPIN: Laurie, will you move the mike  
15 closer to you, please?

16 MS. TARANTOWICZ: You have before you a draft  
17 final rule, 45 CFR Part 1641, Debarment, Suspension and  
18 Removal of Recipient Auditors. To just give a little  
19 background: This committee considered the proposed  
20 rule in September of last year. It was published in  
21 the Federal Register for comment. Unfortunately, we  
22 didn't receive any.

1           The committee held public hearings last April  
2 and had some recommendations for changes. The draft  
3 you have before you should include those changes. In  
4 addition, I have some suggested changes for you today.

5           CHAIR BATTLE: So why don't we get started.  
6 The way that we are now receiving our final draft  
7 report on our regulations is to include the commentary  
8 footnotes which makes it easier for us to go through  
9 them. So as we go through and evaluate and review this  
10 rule, if you have questions about either the footnotes  
11 or the rule itself, we will take those up as we go  
12 through each today.

13           You can begin with the first change.

14           MS. TARANTOWICZ: The first change appears on  
15 page 4 in 1641.1. This is merely a change to clarify  
16 the meaning, changing "ands" to "ors."

17           The next change appears on page 5, 1641.2(b),  
18 the definition of audit services. This change is  
19 intended merely to clarify what is meant by the annual  
20 financial statement audit of a recipient.

21           The next change occurs on page 6, subsection  
22 (d). This change, again, is merely a clarifying change

1 to ensure that pleas will include but are not limited  
2 to nolo contendere.

3 The next change appears in subsection (f).  
4 Actually there are a number of changes to this  
5 subsection. First, I have a recommended change in the  
6 first line, to change the "and" to "or."

7 CHAIR BATTLE: Okay.

8 MS. TARANTOWICZ: The second change, language  
9 has been struck which I believe the committee thought  
10 was sort of unnecessary language. That would be "the  
11 staff person performing the function of legal counsel."  
12 It now just reads "the OIG legal counsel."

13 MR. McCALPIN: Madam Chair.

14 CHAIR BATTLE: Okay, Bill.

15 MR. McCALPIN: Laurie, do I understand that  
16 the footnotes that we have here will be picked up  
17 verbatim as part of the comment preceding the rule  
18 itself? Is that the intent? Or will there be some  
19 modification between the footnotes and the commentary?

20 MS. TARANTOWICZ: I think that there may be  
21 some additional language just to clarify -- if  
22 necessary, to clarify what each section is. Because

1 the footnotes appear right under the language, we  
2 thought it unnecessary to sort of repeat what the  
3 section was intended to do. But I think maybe we  
4 should do that in a commentary as it's published.

5 MR. McCALPIN: Okay, thank you.

6 CHAIR BATTLE: And as you know, Mr. McCalpin,  
7 before the commentary is finalized I generally review  
8 it because I have been delegated that responsibility by  
9 the committee.

10 MR. McCALPIN: Yes.

11 CHAIR BATTLE: Okay, all right. You may  
12 continue.

13 MS. TARANTOWICZ: The next change in  
14 subsection (f), we have added, as was discussed at the  
15 last committee meeting, a provision to allow the  
16 inspector general in his discretion to designate  
17 someone besides the OIG legal counsel, or an OIG staff  
18 person, or another individual to act as a debarring  
19 official in any given instance.

20 The next change appears on page 7, subsection  
21 (g), definition of indictment. This section actually  
22 has a recommended change to the change, so that the

1 first line would now read, "Indictment means a charge  
2 by a grand jury that the person named therein has  
3 committed a criminal offense."

4 MR. McCALPIN: Laurie, do we somewhere define  
5 the person to include an entity such as a firm? That  
6 may be somewhere more generally. But usually "person"  
7 means individual, firm, association, so on. Then you  
8 are dealing with CPA firms here.

9 MS. MERCADO: Usually in criminal language  
10 when they define a person it does mean a corporation,  
11 partnership kind of individual.

12 MR. McCALPIN: I am sorry I didn't even think  
13 of that yesterday, but just as you were reading it  
14 today it occurred to me that "person" could be limited  
15 to an individual does not necessarily include a CPA  
16 firm.

17 CHAIR BATTLE: That is true. You do have  
18 definition of IPA, and it raises the question if a  
19 person is named, and that person is named in their  
20 individual capacity separate from their  
21 responsibilities in an IPA, as to whether the two link.  
22 So I think that's a point well taken as to what is

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1 intended by the definition of indictment and who must  
2 be indicted in order for the operation of an indictment  
3 to have an impact on what kinds of action the inspector  
4 general might take.

5 MR. McCALPIN: I think it could be corrected  
6 with a simple definition of "person" includes an  
7 individual, corporation, association, the usual person  
8 definition.

9 MS. TARANTOWICZ: Right. We can add an  
10 additional definition of person to take care of that.

11 CHAIR BATTLE: Okay. Anything else on (g)?

12 (No response.)

13 CHAIR BATTLE: You may continue.

14 MS. TARANTOWICZ: The next change appears on  
15 page 8, subsection (m), definition of suspension.  
16 Again, this is merely a clarifying change to make clear  
17 that suspension may cover an IPA soliciting or entering  
18 into new contracts with all recipients or one or more  
19 specific recipients.

20 MR. McCALPIN: What page are you on now?

21 CHAIR BATTLE: Page 8.

22 MS. TARANTOWICZ: Page 8.



1 CHAIR BATTLE: At the bottom, under (m),  
2 Suspension.

3 MR. McCALPIN: Could I suggest a slight  
4 wording change in that sentence? "Suspension may cover  
5 an IPA." I just suggest "Suspension may prevent or  
6 preclude an IPA from soliciting" -- instead of that  
7 "may cover" is a fairly inartful way, it seems to me,  
8 of saying it. "May prevent or preclude" -- I don't  
9 care, one or the other -- "an IPA from soliciting or  
10 entering into new contracts with all recipients."

11 MS. TARANTOWICZ: That would be fine.

12 MR. McCALPIN: No change in meeting.

13 MS. TARANTOWICZ: Right. Okay.

14 CHAIR BATTLE: Anything else in (m)?

15 (No response.)

16 CHAIR BATTLE: You can move on.

17 MS. TARANTOWICZ: The next change appears on  
18 page 10, Section 1641.3(b)(1). We have added the  
19 underlined language. It now seems that the two  
20 sentences in this subsection really state the same  
21 thing in different ways, so we would suggest including  
22 the second sentence and eliminating the first sentence

1 of this subsection.

2 CHAIR BATTLE: Okay. Are there any questions  
3 about that?

4 (No response.)

5 CHAIR BATTLE: All right, you may move on.

6 MS. TARANTOWICZ: The next change appears on  
7 page 12, 1641.4(b). Here I have some recommendations  
8 that's not included in the language. And if I might  
9 just read to you what I would add.

10 CHAIR BATTLE: Okay.

11 MS. TARANTOWICZ: In subsection (1) we would  
12 recommend adding a sentence that states: "The  
13 debarring official may determine that a cause for  
14 suspension exists under 1641.13 but that an  
15 investigation or other legal or debarment proceeding  
16 should be completed before proceeding to debar. In  
17 that case," and then we pick up the language  
18 "Suspension shall be for a temporary period" and would  
19 continue.

20 CHAIR BATTLE: Could you read that again?

21 MS. TARANTOWICZ: Sure --

22 MR. McCALPIN: Is this a first sentence?

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1 MS. TARANTOWICZ: A first sentence.

2 CHAIR BATTLE: Okay.

3 MS. TARANTOWICZ: "The debarring official may  
4 determine that a cause for suspension exists under  
5 1641.13 but that an investigation or other legal or  
6 debarment proceeding should be completed before  
7 proceeding to debar. In that case, suspension shall  
8 be" and then we would continue as is written.

9 This is intended to clarify that because if we  
10 read this section in connection with 1641.13 there may  
11 be some apparent inconsistency, and it may appear from  
12 this section that you may suspend just because an  
13 investigation or other proceeding is in progress when  
14 in fact you can only suspend when a cause for  
15 suspension exists under subsection (13).

16 CHAIR BATTLE: Is there a limit on the amount  
17 of time for a suspension?

18 MS. TARANTOWICZ: Yes, there is.

19 MR. McCALPIN: Twelve months.

20 MS. TARANTOWICZ: Twelve months, and it may be  
21 extended up to an additional six months to make it 18.

22 CHAIR BATTLE: Okay. That's what I thought.

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1 So if the proceeding in one extends beyond that period  
2 of time, then the suspension is limited thereby? I  
3 know that that's the following paragraph, but I want to  
4 make sure that it's clear that there is a limit to the  
5 time.

6 MS. TARANTOWICZ: There is a limit to the  
7 time. And the possible extension for an additional six  
8 months would be if the official or government agency  
9 listed in (b)(1) would request an extension in writing  
10 for an additional six months.

11 CHAIR BATTLE: Go ahead, Mr. McCalpin.

12 MR. McCALPIN: Laurie, would you have an  
13 opportunity to have the additional language here and  
14 elsewhere, I suspect, in writing before the board  
15 tomorrow so that -- I wasn't able to copy down the  
16 added sentence as you read it, but I think it would be  
17 helpful if the actual language could be before the --

18 MS. TARANTOWICZ: Yes, I can do that.

19 CHAIR BATTLE: I think that's right. And,  
20 generally, the rule itself in final clean form is  
21 presented at the board meeting. I will not be here  
22 tomorrow, but Ernestine has graciously accepted the

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1 duty of making the presentation for the committee to  
2 the board tomorrow. I know that Mr. Erlenborn will be  
3 there, and Ernestine will. Bill and I will both not be  
4 there tomorrow. But, generally, when we have a final  
5 rule we have a final clean copy to present to the board  
6 so that they can adopt it because they are adopting  
7 this rule in total, so they need to have it; okay?

8 MS. TARANTOWICZ: Yeah, we will have that for  
9 them.

10 CHAIR BATTLE: Okay, thanks.

11 MS. TARANTOWICZ: The next change that I would  
12 recommended, that is not included in the written  
13 version you have before you, would be subsection (b)(3)  
14 on the same page. I will read to you the entire  
15 sentence as I would propose it to read.

16 "The OIG shall notify the appropriate official  
17 or organization conducting a proceeding referred to in  
18 paragraph (b)(1) of this section, if any, of the  
19 suspension within ten days of its implementation and  
20 shall notify such official or organization of an  
21 impending termination of a suspension, at least 30 days  
22 before the 12-month period expires, to allow an

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1 opportunity to request an extension."

2 This would eliminate the last sentence, which  
3 is probably better placed in the commentary, and would  
4 add additional language requiring that the OIG notify  
5 not just that the suspension is going to be terminated,  
6 but that in fact a suspension has been implemented.

7 CHAIR BATTLE: Is there anything else in  
8 1641.4?

9 MS. TARANTOWICZ: No, there is not.

10 The next change appears on page 14, Section  
11 1641.5(b). This, again, is merely to clarify, as was  
12 pointed out, that the term "such" as appeared in the  
13 proposed rule was unclear exactly what that referred  
14 to. So this was intended to clarify that.

15 CHAIR BATTLE: Okay.

16 MS. TARANTOWICZ: The next change appears on  
17 page 15, Section 1641.7(a). I am sorry, again I --

18 CHAIR BATTLE: Let's go back before you go to  
19 15. In 14, 1641.6 sets out the procedure for  
20 debarment. Essentially what it does is to relate back  
21 to the sections that pertain to suspension in 1641.7  
22 through 9, and --

1 MS. TARANOWICZ: Actually, it goes forward.  
2 It just states which sections apply --

3 CHAIR BATTLE: Oh, okay, I am sorry.

4 MS. TARANOWICZ: -- under debarment.

5 CHAIR BATTLE: Okay, all right.

6 MS. TARANOWICZ: There will be a section  
7 later that does that --

8 CHAIR BATTLE: Okay, all right.

9 MS. TARANOWICZ: We were on page 15,  
10 subsection (a). The underlined language was added to  
11 clarify what was meant by OIG audit guidance.

12 I had an additional recommended change so that  
13 it would now read: "OIG audit guidance, as stated in  
14 the OIG audit guide for recipients and auditors,  
15 including the compliance supplement for audits of LST  
16 recipients and in OIG audit bulletins."

17 CHAIR BATTLE: Okay.

18 MS. TARANOWICZ: The next change is in  
19 subsection (b). The term "suspended" has been  
20 eliminated because we would not debar merely because an  
21 IPA has been suspended from contracting with a federal  
22 agency, but only if they had been debarred.

1 CHAIR BATTLE: Okay.

2 MS. TARANOWICZ: The next change is in  
3 subsection (d) of the same page. This change is  
4 intended to clarify that we would only debar if a  
5 conviction, as stated in the subsection, is final. We  
6 will clarify in this commentary that a conviction is  
7 final when all appeals have been exhausted or the time  
8 for appeal has expired.

9 The next change is in subsection (e) on the  
10 next page, 16, and this is a similar change that  
11 indicates that we would only debar if a federal  
12 judgment is final.

13 The next change is 1641.8(a), page 16. This  
14 is intended to clarify the meaning and also to ensure  
15 that we will send a notice of debarment in a manner  
16 that provides evidence of its receipt so we are sure  
17 that the effective firm or individual receives the  
18 notice.

19 The next change is on page 17, 1641.9(c) --

20 CHAIR BATTLE: Let me just make mention of  
21 something relating to that notice. I know that part of  
22 our discussion -- it may be covered in the commentary.

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1 It talks about electronic mail and other means that are  
2 available now that may not have been available when we  
3 first envisioned this provision. And there may be  
4 other things that come on line.

5 MS. TARANTOWICZ: Right. We have had to  
6 clarify in the commentary that although we may send a  
7 notice via electronic mail, that will not be the only  
8 means by which notice is sent.

9 CHAIR BATTLE: And when you say evidence of  
10 receipt do you mean a signed receipt by the recipient  
11 to show that it has been indeed received?

12 MR. McCALPIN: Well, I believe if you send a  
13 fax you get back some sort of a notification, one, the  
14 fax has in fact been received. We get that if we send  
15 a fax out of the office. When the document comes back  
16 to us there is an indication on it that it was  
17 received.

18 MS. MERCADO: But the question is whether or  
19 not the individual, that is the specific person that is  
20 being notified, has received the notice. It's  
21 generally for a personal service. And the individual  
22 is better because then you know that they have. It's

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1 not some secretary misplaced it or it went to some  
2 other department. It actually went to the individual  
3 who is being questioned.

4 MR. McCALPIN: But basically you are going to  
5 require certified mail, return receipt requested.

6 CHAIR BATTLE: Well, Federal Express. I mean  
7 there are a number of different ways that you get  
8 signed notification of receipt. So when we say  
9 evidence of its receipt, I think what -- this being the  
10 point: I think there are a number of ways that you can  
11 provide notice, and I think that's good.

12 But the point that Maria is making is well  
13 taken. A debarment proceeding is a pretty serious  
14 proceeding. And we need to have sufficient evidence  
15 that it has been personally received so that all the  
16 time frames that begin to run are appropriate.

17 So we may want to, in the commentary, talk  
18 about the other methods of sending that notice that are  
19 available that give evidence that it has been properly  
20 delivered. But I think the personal service is still a  
21 key piece, particularly for the debarment proceedings.

22 MS. MERCADO: Generally, we are looking

1 whatever rules of civil procedure that are -- federal  
2 rules in this case. And you would cover yourself in  
3 making sure there is personal service.

4 CHAIR BATTLE: The only problem, the federal  
5 rules and some other rules rely upon certified return  
6 receipt. When you have got Federal Express, UPS, you  
7 have a number of different ways that you can get a  
8 personal signature showing receipt. So I want to --

9 MR. McCALPIN: Sometimes I have to sign for  
10 FedEx.

11 CHAIR BATTLE: Yes, that's right. And so  
12 that's my point. So not just by UPS, but by FedEx or  
13 any other service that will allow for a personalized  
14 receipt is evidence of receipt it seems to me, or  
15 should be set out in the commentary to explain evidence  
16 of receipt.

17 MS. MERCADO: Just as long as you are clear  
18 that if it is by another means other than personal  
19 service, you can factor having Federal Express or some  
20 other method. But it is the individual to whom it's  
21 being addressed that is signing for that because what  
22 happens -- again, it's some staff or somebody else that

1 signs for it, and not the individual.

2 CHAIR BATTLE: You could even use, I think, a  
3 fax if you require that they fax back some sort of  
4 written statement of receipt.

5 MS. TARANTOWICZ: We can clarify that, yeah.

6 CHAIR BATTLE: As long as you have something  
7 in writing, personal service, I think we are fine with  
8 the delivery.

9 Ernestine, did you have something to add in  
10 those?

11 MS. WATLINGTON: I am just listening.

12 CHAIR BATTLE: Try and stay with us.  
13 We can clarify that, I think, in the  
14 commentary.

15 MS. TARANTOWICZ: Yes.

16 The change next appears on page 17, subsection  
17 (c) of 1641.9. These are just language clarifying  
18 changes. No substantive change.

19 Next change on page 18 at the bottom,  
20 subsection (d) of 1641.10. This is just to clarify  
21 that if a fact finder is hired we would indeed want  
22 them to fact find.

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1           The next change does not appear in the written  
2 document you have before you, but it would be to  
3 page 19, 1641.11, subsection (b). We used  
4 incorporation by reference of prior sections in an  
5 effort to make the rule a bit shorter if possible. But  
6 in looking back at it, it doesn't seem that it works  
7 just substituting terms.

8           So we would recommend that instead of doing  
9 Section 1641.5, to which this refers, actually be  
10 written out and conformed to suspension, as the intent  
11 of this section was, but doesn't really work  
12 practically.

13           MR. McCALPIN: I don't think I understood what  
14 you suggested.

15           MS. TARANOWICZ: I am sorry. What we were  
16 doing, instead of incorporating here 1641.5 and  
17 proposing to substitute the term "suspension" for the  
18 term "debarment," instead, actually, rewrite Section  
19 1641.5, have it appear here under 1641.11, and actually  
20 substitute the terms as appropriate.

21           MR. McCALPIN: So, basically, you are  
22 proposing to rewrite 1641.11(b)?

1 MS. TARANTOWICZ: Right.

2 CHAIR BATTLE: And we will have that before  
3 tomorrow morning?

4 MS. TARANTOWICZ: Yes.

5 CHAIR BATTLE: Okay. Next.

6 MS. TARANTOWICZ: The next change appears on  
7 page 20, Section 1641.13. These changes in (a), (b)  
8 and (c) are to clarify the causes for suspension. We  
9 had previously had, again, mere incorporation by  
10 reference, but subsection (c) needed to be added  
11 because it didn't work for suspension.

12 We also have a typo change in subsection (c).  
13 "Agency" is misspelled.

14 The next change appears on the same page,  
15 Section 1641.14.

16 CHAIR BATTLE: Before we go further, I am  
17 going to move back to (b).

18 Bill, your point being well taken, here we  
19 have the IPA has been indicted or convicted of an  
20 offense described earlier, and we use the language  
21 "person" in our definition as opposed to IPA. So maybe  
22 we will clarify that by a definition of "person." Or

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1 maybe we would want to use IPA --

2 MR. McCALPIN: Yeah.

3 CHAIR BATTLE: -- in the earlier one because  
4 it really, it seems to me, has to be a conviction in  
5 the official capacity of being an IPA that triggers the  
6 actions hereunder.

7 MR. McCALPIN: Yeah. If you look at the  
8 definition on page 7, "independent public accountant,"  
9 which makes it sound like an individual and not a firm.

10 MS. TARANTOWICZ: Yeah. But when IPA is used,  
11 it's either used as an individual or a firm. In other  
12 words, it just doesn't say IPA. It says IPA --

13 CHAIR BATTLE: Well, do we need to clarify by  
14 saying "IPA may include an individual or a firm"?

15 MS. TARANTOWICZ: Okay, we can do that.

16 CHAIR BATTLE: Okay, all right, thank you.

17 MR. McCALPIN: Maybe what you ought to do is  
18 slightly modify. The definition of IPA means an  
19 independent public accountant or firm of accountants.

20 MS. TARANTOWICZ: Okay.

21 MR. McCALPIN: Then I think that cures the  
22 problem --

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1 CHAIR BATTLE: Yeah.

2 MR. McCALPIN: -- on (b).

3 CHAIR BATTLE: Okay.

4 MS. TARANTOWICZ: On page 20, 1641.14. Again,  
5 this had been an incorporation by reference to a prior  
6 provision, and what is set out here is actually writing  
7 out the provision with the appropriate changes from  
8 debarment to suspension.

9 The next change is on page 21, the very last  
10 line. Eliminates the word "contemplated" so that the  
11 proceeding that we refer to is not just contemplated  
12 but is actually pending.

13 The next change does not appear in your  
14 written document but would be recommended. On page 22,  
15 1641.17, subsection (a). Again, we had attempted the  
16 incorporation by reference of prior provisions. In  
17 this case substituting the word "removal" for the word  
18 "debarment."

19 Again, we have determined that that really  
20 doesn't work, so we would recommend actually writing  
21 out the sections referred to here.

22 Again, another change that doesn't appear in

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1 your document is on page 23, Section 1641.18,  
2 subsection (b). This section sets out what the  
3 administrative record would consist of. The changes  
4 that I would recommend would be in the first line to  
5 delete the words "the portion of" so it would start:  
6 "The administrative record consists of any information,  
7 reports, documents or other evidence identified or  
8 relied upon in the notice."

9 The next change would be the last phrase on  
10 this page. Change the word "material" to "relevant"  
11 and change the word "portions" to "material."  
12 Different meaning. "Together with any relevant  
13 material."

14 MR. McCALPIN: "Together with any" --

15 MS. TARANTOWICZ: I am sorry.

16 MR. McCALPIN: How does it read? Why don't  
17 you simply -- now that you have made "material" and  
18 "relevant" the same, "Together with any relevant  
19 material contained in the IPA's response or submitted  
20 by the affected recipient."

21 MS. TARANTOWICZ: Yes, that's --

22 MR. McCALPIN: You can squeeze them together.

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1 MS. TARANTOWICZ: That's what I meant to do.  
2 Thank you. "Together with any relevant material  
3 contained in the IPA's response or submitted by an  
4 affected recipient."

5 The next change would be to the next sentence  
6 which would now read, "In the case of debarment, when  
7 additional proceedings are necessary to determine  
8 disputed material facts, the administrative record also  
9 shall consist of any relevant material submitted or  
10 presented at such proceedings."

11 MR. McCALPIN: So, basically, you are taking  
12 out about the debarring official basing his decision  
13 on?

14 MS. TARANTOWICZ: That's correct.

15 MR. McCALPIN: You are going back to the  
16 administrative record?

17 MS. TARANTOWICZ: That's correct. So now this  
18 subsection would justify the administrative record.  
19 The other subsections talked about what the debarring  
20 official shall base his decision on. So this, I think,  
21 clarifies what we really intended which was to define  
22 what the administrative record consists of. And,

1 again, this will be in writing before the board meeting  
2 so you can take a look at it.

3 CHAIR BATTLE: So the information that will be  
4 deleted from subsection (b) will not appear anywhere  
5 else in the regulation; is that correct?

6 MS. TARANTOWICZ: Not in that form, but other  
7 sections of the regulation -- the previous section --

8 MR. McCALPIN: I think (d)(1), down below a  
9 little bit, really contains the decision on the facts  
10 -- bases his decision on the facts as found. I think  
11 (d)(1) pretty well covers that concept.

12 CHAIR BATTLE: Okay.

13 MS. TARANTOWICZ: And, in addition, subsection  
14 (a) on the previous page states that "Debarment or  
15 removal must be based on a finding that the cause or  
16 causes for debarment or removal are established by a  
17 preponderance of the evidence in the administrative  
18 record." So this just sets out what the next section  
19 would just set out what the administrative record is.

20 CHAIR BATTLE: Do we have a standard for  
21 removal? You have got debarment and suspension. Is  
22 there a --

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1 MS. TARANTOWICZ: Actually, subsection (a)(1)  
2 is debarment and removal.

3 CHAIR BATTLE: Okay, all right, you are right.  
4 Thank you.

5 MS. TARANTOWICZ: The next change is on page  
6 24 as well, subsection (c). This change appears in the  
7 document you have and just provides that the OIG may  
8 grant an IPA an extension of the time requirement set  
9 out in this part in extraordinary circumstances.

10 I have a final change that does not appear in  
11 the document you have but would be on page 26, on  
12 subsection (c), Reconsideration, sub-part (2). Because  
13 we have changed from the proposed rule to required  
14 convictions to be filed before debarment or removal, we  
15 would suggest in (i) adding a phrase, "in the case of a  
16 suspension, reversal of the conviction or civil  
17 judgment upon which" and then delete "debarment and  
18 removal." It would just be "on which the suspension  
19 was based."

20 CHAIR BATTLE: Could you read that again?

21 MS. TARANTOWICZ: "In the case of a  
22 suspension, reversal of the conviction or civil

1 judgment upon which the suspension was based."

2 CHAIR BATTLE: Okay.

3 MS. TARANTOWICZ: Similarly, in subsection  
4 (c)(3), "A request for reconsideration," we would add  
5 "other suspension based on the reversal of the  
6 conviction, civil judgment or sanction may be filed at  
7 any time."

8 MR. McCALPIN: So it reads, "A request for  
9 reconsideration of a suspension"?

10 MS. TARANTOWICZ: Yes.

11 MR. McCALPIN: "Based on" --

12 MS. TARANTOWICZ: Oh, I am sorry. Yes, "A  
13 suspension" -- it actually is, perhaps, "which was  
14 based;" "of a suspension which was based on the" --

15 CHAIR BATTLE: Which was based on a  
16 conviction --

17 MS. TARANTOWICZ: Right.

18 CHAIR BATTLE: -- that has been reversed.

19 MS. TARANTOWICZ: Yes, that's correct. So  
20 then it would read: "A request for reconsideration of  
21 a suspension which was based on a conviction, civil  
22 judgment or sanction that has been reversed may be

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1 filed at any time."

2 CHAIR BATTLE: In practical terms, how does  
3 one get a suspension reversed, in that a suspension is  
4 the extraordinary immediate action undertaken with an  
5 IPA. It seems to me that the suspension, by the time  
6 of the reversal of a conviction happens, has already  
7 been served.

8 So if a request for reconsideration of the  
9 suspension occurs -- there may be instances because you  
10 have got an 18-month time frame for the suspension to  
11 occur, that one could request that it end. But are you  
12 actually requesting that the suspension decision be  
13 overturned even though you have served the suspension?

14 MS. TARANTOWICZ: Yes. A reconsideration as  
15 though the suspension, if it was granted, as though the  
16 suspension had never been implemented although it had  
17 been. It would just end it, and the decision granting  
18 the reconsideration would basically state that.

19 CHAIR BATTLE: What kind of damages for that  
20 reversal, if reconsideration were granted, would be  
21 appropriate? In other words, a person who has served a  
22 suspension has been denied the opportunity to bid on

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1 prospective contracts with other recipients. They are  
2 out of the loop for that. They have lost revenue  
3 associated with not being able to bid and acquire  
4 contracts for that term, it seems to me, while they  
5 have served under that suspension.

6 So if in fact a conviction is reversed, and we  
7 go back and say the suspension never occurred, they are  
8 still out of having been able to participate in a round  
9 of bids for contracts.

10 I think we need to give some thought to what  
11 those implications might be and how we construct, how  
12 we handle reversals of suspensions, and when they can  
13 be granted, and what the expectation needs to be if  
14 they are.

15 MS. TARANTOWICZ: As far as damages is  
16 concerned we did not have the expectation that the IPA  
17 would be entitled to any compensation.

18 CHAIR BATTLE: Suzanne, did you want to  
19 address that?

20 MS. GLASOW: I would just raise the issue  
21 maybe use the word "end a suspension" instead of  
22 reverse it.

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1 CHAIR BATTLE: Right.

2 MS. GLASOW: That would take care of that  
3 problem.

4 CHAIR BATTLE: I think --

5 MS. GLASOW: I think that works for the IG's  
6 office.

7 CHAIR BATTLE: I think you may want to take a  
8 look at that because to reverse the suspension may  
9 raise this issue. But if you end a suspension, then  
10 it's only prospective relief that one can expect with  
11 reconsideration.

12 MS. TARANTOWICZ: That would affect an appeal,  
13 as well, where the inspector general may reverse the  
14 debarring official's decision.

15 CHAIR BATTLE: It has to be prospective, it  
16 seems to me, because you aren't going to be able to  
17 make the IPA whole.

18 MS. TARANTOWICZ: Well, that's true, but we  
19 never intended to. I mean I don't think there is a  
20 requirement that we do.

21 CHAIR BATTLE: If you, on reconsideration -- I  
22 guess the question -- I understand your point. You are

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1 not intending to make them whole. You may have grounds  
2 for an immediate suspension, but if the conviction is  
3 overturned and the reason for the suspension was the  
4 fact that there was a conviction, then your relief has  
5 got to be, I think, stated in the regulation to be  
6 prospective so that you don't leave open the question  
7 of may call.

8 MS. TARANTOWICZ: In other words,  
9 affirmatively state that the relief is just the  
10 reconsideration of the suspension and that no other  
11 relief would be --

12 CHAIR BATTLE: Well, and that the relief that  
13 would be granted is an earlier into the suspension than  
14 either the 12 months or the 18 months which is what the  
15 statute would allow.

16 MS. TARANTOWICZ: I see. We can add that.

17 CHAIR BATTLE: Is there anything else? Bill?

18 M O T I O N

19 MR. McCALPIN: Madam Chair, I move that Part  
20 1641, as submitted to us for this meeting, as amended  
21 this morning, and in the manner to be amended by  
22 counsel of the OIG and submitted to the board tomorrow,

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1 that this committee recommends approval of 1641 in that  
2 form to the board for approval as a final regulation  
3 subject to the condition that the final language of the  
4 commentary and the rule be submitted to and approved by  
5 the chair of this committee before it is published as a  
6 final rule.

7 MS. WATLINGTON: I second.

8 CHAIR BATTLE: It's been properly moved and  
9 seconded. All in favor?

10 (Chorus of ayes.)

11 CHAIR BATTLE: All opposed?

12 (No response.)

13 CHAIR BATTLE: Motion carries.

14 Thank you very much.

15 MS. TARANTOWICZ: Thank you.

16 CHAIR BATTLE: We will now move to the next  
17 item on our agenda, which is to consider an act on  
18 proposed amendments to the Corporation's 403(b) Thrift  
19 Plan that are intended to increase the Corporation's  
20 employer contribution level to match that of the Civil  
21 Service Retirement System.

22 MS. KENNEDY: Good morning, Chairperson

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1 Battle, committee members and other directors. I am  
2 Joan Kennedy, Director of Administration and Human  
3 Resources for the Legal Services Corporation. And  
4 joining me this morning is Matt Tanana of Mutual of  
5 America, which is the firm that handles our 403(b)  
6 Thrift Plan.

7 We come before you this morning to recommend  
8 an increase in the employer contribution level to our  
9 403(b) Thrift Plan. And I would like to give you just  
10 a brief overview of what has caused us to bring this  
11 item before you, and then respond to any specific  
12 questions that the committee may have of us.

13 Approximately one year ago we came before this  
14 committee, and subsequently to the full board, with a  
15 recommendation to approve entry into a full services  
16 agreement with Mutual of America which gave us some  
17 benefits that we had not had as a less than full  
18 services agreement participant. That full services  
19 agreement provided some consultative services from  
20 Mutual of America that we were not entitled to before.  
21 At that same time we came before the committee and the  
22 board to ask for a change in our plan to allow for

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1 participation on the part of temporary employees at the  
2 same level that regular employees participated. The  
3 committee and the board approved that recommendation.

4 At that time Chairperson Battle appointed Mr.  
5 Erlenborn, committee member Erlenborn, to work along  
6 with staff in our compliance review of our 403(b)  
7 Thrift Plan. So in the interim, since that time that  
8 we last came before the board, and the current date, we  
9 have been working with Mutual of America. We have also  
10 been working KPMG consultant to help us in our  
11 compliance review of our 403(b) Thrift Plan.

12 During that time the Federal Government  
13 increased the employer contribution of the CSRS or the  
14 Civil Service Retirement System, their plan, from that  
15 current level to 8.51 percent employer contribution  
16 level.

17 As a matter of history, when our plan was  
18 created in 1988, it was created with the intention that  
19 we would mirror to the extent possible the employer  
20 contribution level of CSRS, of the Civil Service  
21 Retirement System plan.

22 And since that time this is the first -- when

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1 the Federal Government increased its CSRS employer  
2 contribution level in October of 1997, it represented  
3 the first time that there was an increase in the  
4 employer contribution level for that plan.

5 We did not immediately mirror that increase at  
6 LSC. We had some budgetary constraints to do some  
7 analysis of our plan to see if in fact we could afford  
8 it, and what the implications would be, and how  
9 ultimately we were formatted. Those were the kinds of  
10 things that we have been doing over the last year.

11 With the assistance of Mutual of America and  
12 KPMG, we put together a proposal. Mr. Erlenborn,  
13 committee member, met with us, and we had an  
14 opportunity to review with him the implications of that  
15 change and increase in the employer contribution level.

16 We had an opportunity to talk with him about  
17 any other concerns that he may have. Mr. Erlenborn, as  
18 the committee members note, has occupied the relatively  
19 unique position in that he is an ERISA expert and has  
20 worked very closely on these kinds of --

21 CHAIR BATTLE: Just a minute. Mr. McCalpin,  
22 have you finished?

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1 MR. McCALPIN: Sorry.

2 CHAIR BATTLE: I am sorry, it was getting real  
3 difficult to hear and for Ms. Kennedy to continue her  
4 presentation because she wants to have everybody's ear.

5 MS. KENNEDY: Thank you.

6 CHAIR BATTLE: Okay.

7 MS. KENNEDY: Mr. Erlenborn, as I was saying,  
8 occupies a unique position on the committee in that he  
9 is a professor of ERISA law and he is uniquely  
10 qualified, as are other members of this committee and  
11 the board, I am sure, to share with us his expertise  
12 and to help guide us in the development of the  
13 proposal. So we met with him at great length. Matt  
14 Tanana joined us in that meeting that day, as did Jim  
15 Hogan; our controller, David Richardson; and some of my  
16 staff. We came up with a proposal which allows us to  
17 be consistent with the intent of our original plan,  
18 that is to mirror the contribution level, the employer  
19 contribution level of CSRS, and to increase our  
20 contribution to level to 8.51 percent.

21 One of the concerns that Mr. Erlenborn shared  
22 during that meeting was that we provide a mechanism

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1 that would be an incentive for our more lower  
2 compensated employees to maximize their participation  
3 in the plan.

4 As Dave Richardson shared with the Finance  
5 Committee members -- some of you were in that meeting  
6 earlier this morning -- we do have great participation  
7 in our plan. All of our employees, with the exception  
8 of one, participate in the plan. But not all the  
9 employees maximize their contribution.

10 And while those who do not maximize their  
11 contribution are both lower compensated and higher  
12 compensated employees, it tends more or less to be the  
13 lower compensated employees who do not maximize their  
14 contribution for whatever reason.

15 So when we structured this recommendation that  
16 we are bringing before you today, based upon Mr.  
17 Erlenborn's suggestion we are structuring it in such a  
18 way that we hope that it will be an incentive for lower  
19 compensated employees to maximize their contributions.

20 Our employees have now gone, since October of  
21 1997, without an opportunity to participate at an  
22 increased level that federal CSRS participants have.

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1           By the way, we have 13 employees at the  
2 Corporation now who are still CSRS participants. When  
3 we went to the 403(b) private plan back in 1988 our  
4 employees were given the option of remaining with CSRS  
5 or converting to the private plan. And we do still  
6 have 13 employees who opted to stay with the CSRS plan.

7           If the committee and the board approve this  
8 recommendation, all of our employees at LSC, whether  
9 they are CSRS participants or the private plan, 403(b)  
10 plan participants, will enjoy the same employer  
11 contribution level of 8.51 percent.

12           MR. McCALPIN: Could I ask, with respect to  
13 those 13 employees who are still in CSRS or whatever,  
14 do we contribute the extra 1.51 for them irrespective  
15 of whether they contribute up to 2.51 of their  
16 compensation?

17           MS. KENNEDY: Just a moment.

18           Dave?

19           MR. McCALPIN: In other words, are we matching  
20 for them, or are we giving it to them?

21           MR. TANANA: You are strictly giving it to  
22 them.

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1 MR. McCALPIN: Pardon?

2 MR. TANANA: There is no matching program with  
3 the CSRS system.

4 MR. McCALPIN: So that we will continue to  
5 discriminate between the CSRS people and the others,  
6 the others getting the 1.51 only as a match, but the 13  
7 get the 1.51 irrespective of whether it's a match or  
8 not; is that right?

9 CHAIR BATTLE: There is no matching in the CSR  
10 program at all.

11 MR. McCALPIN: Pardon?

12 CHAIR BATTLE: I don't think there is a  
13 matching requirement in CSR, so from the onset until  
14 today there has not been that requirement, Bill. So  
15 whether we change to a matching program under our  
16 403(b) plan or not, there was not a matching  
17 requirement for the Federal Government.

18 MR. McCALPIN: So those 13 people will get the  
19 2.51, continue to get it, whether it's a match or not?

20 CHAIR BATTLE: That's right. Yes, they will  
21 continue to get it because they have gotten it since  
22 October of 1997.

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1 MS. KENNEDY: Exactly. And there are two  
2 different kinds of plans as well. Our plan is a  
3 defined contribution plan and the other plan is a  
4 defined benefit plan.

5 MR. McCALPIN: The CSRS is a defined benefit?

6 MR. TANANA: Yes.

7 MR. McCALPIN: Oh, I didn't realize that.

8 MS. KENNEDY: So ultimately they are like  
9 apples and oranges.

10 MR. McCALPIN: Yeah.

11 MS. KENNEDY: The only thing that we can  
12 control is the contribution level of the employer. And  
13 so that we can come as closely as possible to  
14 equalizing, at least the employer contribution level  
15 benefit for our employees, we think that this will help  
16 us do that.

17 MR. McCALPIN: Of course, we would really do  
18 it if we gave them the 1.51 irrespective of match.

19 MS. KENNEDY: Right.

20 MS. MERCADO: Well, you know, while we have  
21 the controller up here, perhaps if you could tell us  
22 what that would mean budgetary-wise as far as the

1 increase both for this year and for next year.

2 MR. RICHARDSON: In our review of it, it looks  
3 like it's going to cost us approximately \$12,000 to  
4 \$15,000 more for this fiscal year. But now on the  
5 manual aspects it's just going to cost us about  
6 \$60,000.

7 There is in the back, and I don't have the  
8 page --

9 CHAIR BATTLE: If you look under your Exhibit  
10 Tab 9, the materials that are resources for the  
11 presentation that you have before you today are  
12 presented there. And I think that in those materials  
13 the funding is set out on page 3 of the comparison of  
14 Civil Service Retirement to the 403 plan.

15 MS. KENNEDY: It's next to the last page of  
16 your attachments.

17 MR. HOGAN: Madam Chairman?

18 CHAIR BATTLE: Yes.

19 MR. HOGAN: May I just say something about --

20 CHAIR BATTLE: Yeah. Identify yourself for  
21 the record.

22 MR. HOGAN: James Hogan, Vice President,

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1 Administration.

2 To clarify the answer to Mr. McCalpin's  
3 question, the Civil Service Retirement System, a  
4 defined benefit system, is no longer available to  
5 either federal employees or our employees. So the ones  
6 that are in there, that 13 employees, they are in a  
7 program that no longer exists.

8 Their contribution to that plan is 7 percent.  
9 It's withheld from the employee's salary, and the  
10 Federal Government's contribution is the 8.51 percent.  
11 And that has been since over a year ago the Federal  
12 Government increased from 7 to 8.51 percent, the  
13 government's contribution.

14 The system that federal employees have funded  
15 is now FERS, Federal Employees Retirement System, and  
16 it's a complicated system that there is matching, and a  
17 government defined benefit portion.

18 We really could not even afford -- we talked  
19 about this with Mr. Erlenborn and our Mutual  
20 representative. We could not afford to think about  
21 matching that system. It's just too expensive.

22 So what our position is here, we are trying to

1 match only the employer contribution portion in our  
2 plan that the Federal Government pays to other  
3 employees that are in CSRS. Thank you.

4 CHAIR BATTLE: Just a follow-up question of  
5 that. Since the Federal Government has moved to a new  
6 plan, but there are still people remaining in the CSRS  
7 plan, are there participants in the CSRS outside of  
8 Legal Services? In other words, our long-term  
9 employees, did they have the option of going with the  
10 new plan or staying with the old so that there is --

11 MR. HOGAN: That is correct.

12 CHAIR BATTLE: Okay.

13 MR. HOGAN: That is correct.

14 CHAIR BATTLE: Thank you.

15 You may continue your presentation.

16 MS. KENNEDY: With that historical background,  
17 we are coming before the committee this afternoon -- or  
18 this morning, I guess it's still morning -- to  
19 recommend that we increase the employer contribution  
20 level for our 403(b) Thrift Plan to 8.51 percent that  
21 mirrors the CSRS contribution that was increased in  
22 October of 1997. Mr. Richardson has explained to you

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1 what the financial implications are. And we ask your  
2 approval.

3 CHAIR BATTLE: A couple of other points I  
4 think that make this a very good recommendation coming  
5 from our staff. The idea of meeting the 8.51 so that  
6 we can mirror the CSRS plan is a good one. I think  
7 that Mr. Erlenborn's suggestion that we increase the  
8 opportunity for matching is also a good one.

9 There is a maximum amount that employees can  
10 contribute. My understanding is that it is \$10,000.

11 MR. TANANA: Or 20 percent of salary,  
12 whichever is less.

13 CHAIR BATTLE: Okay, or 20 percent of salary,  
14 whichever is less. So there is an opportunity to  
15 contribute much more than 1 percent, but we match a  
16 certain amount in order to increase the incentive for  
17 employees to make contributions to the plan.

18 The contributions that are made are pre-tax  
19 dollars which means that as you make the contributions,  
20 that has a net effect on your tax liability. To some  
21 degree, after you make certain contributions the net  
22 effect is that you are not really losing more of your

1 disposable income, but you are losing some of your tax  
2 liability.

3 Is that right, Mr. Richardson?

4 MR. RICHARDSON: That is correct.

5 CHAIR BATTLE: Yes. So I think that the idea  
6 of complementing our increase to 8.51, with an  
7 increased incentive to participate by going to 2.51  
8 rather than 1, is an added measure which I think will  
9 enhance the opportunity for employees to get a greater  
10 benefit in the long run from the plan.

11 MR. TANANA: Absolutely. And I think that in  
12 Mr. Erlenborn's absence the main idea of doing it with  
13 increasing the matching portion of the contribution,  
14 rather than the base contribution of 6 percent, which  
15 is currently provided to all eligible employees, is  
16 two-fold. One being that you will see from looking at  
17 some of the traits of LSC that the way you are going to  
18 have employees making contributions through salary  
19 reduction towards 20 percent are going to be your  
20 higher paid employees whereas your rank and file are  
21 going to be limited in their own minds thinking that  
22 they should only be contributing somewhere around the

1 1 percent and then getting the match.

2 So you are encouraging them to put in more  
3 money for their retirement which is very essential in  
4 this day and age. A major portion of our discussion  
5 with Mr. Erlenborn was around the fact although this  
6 plan is providing great benefits from employer  
7 contribution, that there should be somewhat more  
8 incentive for them to be putting in a little bit more  
9 of their own money.

10 The other side of it is although, as Dave  
11 Richardson has discussed, the proximate increase that  
12 it will cost, based on current salary figures, is  
13 somewhere around 60,000. That's your maximum exposure.  
14 You still will have some of your rank and file who will  
15 not contribute 2.51 percent. They may still contribute  
16 one. So you may --

17 CHAIR BATTLE: And if they do they will not  
18 get the 8.51 total; is that correct?

19 MR. TANANA: Exactly, exactly. And the way we  
20 structured it to increase it as 100 percent match, the  
21 2.51, you are not going to be required to provide any  
22 204H notices. There is no detriment benefit to the

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1 employees.

2 But you will still find people, most likely it  
3 may only be a handful, that do not contribute fully the  
4 2.51 percent. And therefore your maximum exposure may  
5 be less than 60,000 but never more.

6 If you were to do it on the base contribution  
7 side and increase an extra 1.51 percent, you would have  
8 that solid dollar amount every year that you would be  
9 putting it.

10 MS. KENNEDY: Sure.

11 MR. TANANA: At the same time you are  
12 increasing the benefit available to them to increase  
13 their own contributions.

14 CHAIR BATTLE: One of the things that we  
15 discussed in looking at this was the opportunity for  
16 our staff to have workshops and to have the opportunity  
17 to learn a little bit more about how this works and  
18 what the advantages are prior to the implementation day  
19 which I understand is in July of this year; is that  
20 correct?

21 MS. KENNEDY: July 1.

22 MR. TANANA: Absolutely.

1 CHAIR BATTLE: Can you tell us a little bit  
2 about what that will do?

3 MR. TANANA: Sure. Regardless of what changes  
4 were made, any increases or decreases, part of our  
5 service, and this is when you are under a modified  
6 services contract, and now a full services contract,  
7 the difference being that now under full services we  
8 provide in-depth document preparation such as providing  
9 an updated plan document, any legal and tax amendments  
10 that need to be made, and summary plan descriptions.

11 Before that date you were required to do that  
12 on your own, through your own legal department and so  
13 on, which was not that big of a problem here. At some  
14 of our other agencies, which are smaller, and don't  
15 have those capacities and so on, it was.

16 However, the main idea of these workshops is  
17 to educate the employee not only on the importance of  
18 the employer sponsored portion of the 403(b) Thrift  
19 Plan, but also a general education on to what's called  
20 the three-legged stool at the time, and that the  
21 importance of their own contribution is essential in  
22 this day and age.

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1           One of the things we provide in the very  
2 beginning of the presentation is a graph to show that  
3 there is a misconception that almost all of your  
4 retirement income should come from either an employer  
5 pension or a Social Security benefit. The reality is  
6 majority should be coming from your own contributions.

7           So no matter what decisions are made, we will  
8 go forward with the idea that we want to encourage them  
9 to put in as much as possible for themselves. And,  
10 also, whatever changes are made we will show it before  
11 the implementation date. It's as simple as myself or  
12 someone from our staff in our Washington office to come  
13 out to Legal Services and just give a day-long  
14 presentation or however long we can meet with people  
15 individually, and so on.

16           We also offer certified financial planners to  
17 come down, which we pay for out of our New York office.  
18 And they will educate them as far as the investment  
19 options and so forth. But we have already made some  
20 steps towards setting those meetings up sometime  
21 between now and the end of the month.

22           CHAIR BATTLE: Good. Mr. McCalpin.

1 MR. McCALPIN: May an employee change his or  
2 her contribution from year to year?

3 MR. TANANA: Absolutely. You can now change  
4 it every pay period, which I believe is --

5 MR. McCALPIN: Every pay period?

6 MR. TANANA: Every pay period.

7 MR. McCALPIN: So when we determine the  
8 contribution? At the end of the year based on how much  
9 has in fact been contributed by the employee during the  
10 course of the year?

11 MR. TANANA: No. As far as the matching it's  
12 based on per each pay period. The employee fills out  
13 what's called a salary reduction agreement. In the old  
14 days there was some sort of limitation on how many  
15 times you could do that. Some plan administrators  
16 still do limit just four.

17 MR. McCALPIN: So every pay period we match  
18 the contribution up to 2.51 percent --

19 MR. TANANA: For that pay period.

20 MR. McCALPIN: -- if this is adopted?

21 MR. TANANA: Yeah. And they can change it at  
22 any time. They can stop and recontinue it by simply

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1 just filling out a new reduction agreement and giving  
2 it to the Human Resources Department.

3 CHAIR BATTLE: Are there any other questions  
4 about the implementation of this change to our 403(b)  
5 plan?

6 Bill.

7 MR. McCALPIN: May I ask another question? I  
8 looked at the resolution which has been prepared. Just  
9 by way of explanation of the earlier interruption, for  
10 which I apologize. I understand that the carrier has  
11 proposed the amendment in Section 1 of the resolution.

12 I wonder if it would not read more smoothly if  
13 you took the phrase "for each plan year" in the second  
14 line on the second page and put that right at the  
15 beginning. "Subject to Section 5.2, for each plan year  
16 each participant shall be entitled to receive an  
17 allocation of employer matching contributions that  
18 equals 100 percent of the first 2.51 percent" and so  
19 on.

20 In other words, what I am suggesting is that  
21 it may read more accurately, it seems to me, if that  
22 phrase "for each plan year" preceded instead of being

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1 stuck in the middle.

2 MR. TANANA: I don't see a problem with doing  
3 that. This is taken directly from your plan document  
4 as far as the terminology. I would say this is the  
5 standard language. But I can check to see if that  
6 would be a problem to make that -- this is a general  
7 guideline. This is something that we provided to Legal  
8 Services and they were to amend it if --

9 MS. MERCADO: But if your whole intent is to  
10 have it for each plan year, this particular percent  
11 applies. So that in fact by defining it at the  
12 beginning, then everything else applies to it.

13 MR. TANANA: That should be fine.

14 MS. KENNEDY: That's fine. We can do that.

15 MR. TANANA: Yeah. I would just make those  
16 changes then.

17 CHAIR BATTLE: As you see, that is our job.  
18 We change. That is what we do.

19 MS. MERCADO: No one better than Bill.

20 MS. WATLINGTON: Mr. Brooks, too.

21 CHAIR BATTLE: Are there any other questions  
22 about it?

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1 (No response.)

2 CHAIR BATTLE: I think you all have done an  
3 outstanding job and we certainly do appreciate it. We  
4 certainly are going to also appreciate the workshops  
5 and additional training to get our staff educated about  
6 all the benefits that will flow from this change that  
7 you have done. So thank you very much.

8 MS. KENNEDY: Thank you.

9 MR. TANANA: Thank you.

10 MR. McCALPIN: Are we going to make the  
11 recommendations to the board?

12 M O T I O N

13 CHAIR BATTLE: Yes, we are. I will entertain  
14 a motion to that effect.

15 MR. McCALPIN: Why don't you make it.

16 MS. WATLINGTON: I move that it be, as I  
17 report to the board, that they adopt this motion to  
18 start with July 1.

19 MR. McCALPIN: Second.

20 CHAIR BATTLE: It's been properly moved and  
21 seconded. All in favor?

22 (Chorus of ayes.)

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1 CHAIR BATTLE: All opposed?

2 (No response.)

3 CHAIR BATTLE: The motion carries. Thank you  
4 very much.

5 Why don't we take a brief recess for about  
6 five minutes and then we will continue with another  
7 regulation that we have to undertake on fund balances.

8 (A brief recess was taken.)

9 CHAIR BATTLE: We can go on and get started.  
10 The room clears out as we go through our regulations.  
11 The more in-depth we become, the thinner our crowd.  
12 But the faithful few that are here, welcome back.

13 We now have the final item on our agenda,  
14 which is to consider public comment and consider an act  
15 on the final rule, 45 CFR Part 1628, which pertains to  
16 recipient fund balances.

17 You should have in your board book under  
18 Tab 4, actually 4, 5, 6 and 7 and 8, information that  
19 will be relevant to our discussion today. So starting  
20 with the memorandum that we received from Suzanne  
21 Glasow, dated June 1, which has a summary of the  
22 comments and the presentation, background information



1 to the presentation we will hear today.

2 MS. GLASOW: Thank you. I would like Danilo  
3 Cordona to give the overview of the rule and the status  
4 of where we are. Danilo has been appointed by the  
5 president as acting vice president of programs, and I  
6 believe that ratification of that appointment, it will  
7 be before the board tomorrow. So I will turn it over  
8 to Danilo for the overview and then I will take over  
9 for the specifics.

10 CHAIR BATTLE: Welcome.

11 MR. CORDONA: Thank you. Good morning, Madam  
12 Chair. Good morning, board members.

13 Finally we get to present you this proposed  
14 rule. The purpose of 45 CFR Part 1628 is to delineate  
15 LSC policies and procedures applicable to recipient  
16 fund balance and to ensure the expenditure of grant  
17 funds on a timely basis and the delivery of effective,  
18 economical and high quality legal assistance to  
19 eligible clients.

20 On October 22nd 1998 the board published  
21 proposed revisions to Part 1628. The revisions give  
22 more discretion on allowing fund balances greater than

1 10 percent and up to 25 percent of the recipients'  
2 annualized support. The revisions in the rule add  
3 other requirements and limitations and make structural  
4 and clarifying changes.

5 LSC received 19 comments on the proposed rule  
6 including two from CPAs. The LSC mailed the proposed  
7 rule to 163 IPA firms taken from the OIG's mailing  
8 list.

9 On February the 20th 1999 at the board meeting  
10 in Miami the LSC staff presented a report on this  
11 proposed rule. The Operations and Regulations  
12 Committee took no action to permit staff additional  
13 consideration of issues raised by comments.

14 Today staff is presenting a revised proposed  
15 rule. This revised proposed rule maintains the 10  
16 percent carry-over of fund balance and the corporate  
17 discretion to grant waivers between 10 and 25 percent.  
18 It proposes language changes in increase at the  
19 discretion when determining to approve a waiver between  
20 10 and 25 percent. It makes structural as well as  
21 clarifying changes.

22 So with this brief introduction I seek

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1 permission from the chair to ask to go into a  
2 discussion section by section of the proposed rule Part  
3 1628. Thank you.

4 MS. GLASOW: I would like to point out that  
5 Alan Houseman left me a phone message. I think he  
6 actually talked to several other people, too. He was  
7 unable to get here last night because of bad weather  
8 and his plane flight was held up. I have been told he  
9 is on his way and had expected him here.

10 However, as we go through this rule I do know  
11 what his two or three comments and I will raise them  
12 for the committee. He asked that they just be on the  
13 record for your consideration. And it is on the record  
14 what his comments are.

15 On page 3 of the memo I gave you we start with  
16 the rule. We made no changes to the purpose section.  
17 As you know, we revised this from the current rule. We  
18 restructured it so that it stated only the purpose, and  
19 was a working side statement.

20 And here is Alan.

21 MR. McCALPIN: The late Mr. Houseman.

22 MS. GLASOW: Alan, you got here at a very

1 timely moment. I just told them that you weren't here.  
2 So we are ready to start the rule.

3 CHAIR BATTLE: Just pull up a chair.

4 MR. McCALPIN: On your way to Shangri-la,  
5 Alan?

6 MR. HOUSEMAN: The one you think does exist.

7 MS. GLASOW: We are on the first page of the  
8 rule, Alan. We are talking about the purpose section.  
9 There are no more changes from the proposed rule, so we  
10 recommend keeping it the way it is.

11 Are there any questions on that section?

12 (No response.)

13 MS. GLASOW: Section 2 is the section on  
14 definitions. We have added a definition because we had  
15 several not written comments but comments both in-house  
16 and from interested parties that it was not clear what  
17 the term "excess fund balance" meant and that we should  
18 define it.

19 And so we have added a very simple definition  
20 that says the excess fund balance means a recipient LSC  
21 fund balance that is over the amount a recipient is  
22 permitted to retain under this part.

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1 Any questions on that?

2 MS. FAIRBANKS-WILLIAMS: I am looking at these  
3 sheets that have got all the names of the programs on  
4 it and it says LSC fund balance, and then it says non-  
5 LSC fund balance. And some of the LSC fund balances  
6 are in dog-ear brackets here. Why is that?

7 MS. GLASOW: Actually, we will be talking  
8 about that when we get to a section of the rule.

9 MS. FAIRBANKS-WILLIAMS: Okay.

10 MS. GLASOW: And maybe we can look at it in  
11 depth at that time.

12 MS. FAIRBANKS-WILLIAMS: Okay.

13 MS. GLASOW: Can we wait just a minute?

14 That's under one of the tabs. I want to see  
15 which one that is.

16 CHAIR BATTLE: That's Tab 8 of the materials.

17 MS. GLASOW: Tab 8, right.

18 CHAIR BATTLE: We will hold that question for  
19 now, but it will be responded to.

20 MS. GLASOW: It will make more sense, I think,  
21 if we hold it a few minutes.

22 On page 4 the definition of LSC support. We

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1 recommend taking out No. 1, and Footnote 3 explains  
2 that. We corrected this at the last committee meeting  
3 to add that language thinking it made no substantive  
4 change to the meaning. However, when our staff at the  
5 Corporation really looked into it, they discovered that  
6 in essence it really would be increasing an amount of  
7 fund balance over a period of time.

8           And because it is the Corporation's policy to  
9 only permit, absent a waiver, a fund balance up to 10  
10 percent, we recommend taking out the language in No. 1  
11 because it does substantively change the meaning of the  
12 term.

13           We recommend retaining with some revision the  
14 new No. subparagraph (1). So that basically we are  
15 saying LSC support means the sum of what amounts to the  
16 grant that the recipient gets each year. And it's the  
17 amount of financial assistance awarded by the  
18 Corporation to the recipient for the fiscal year.

19           And we did have the term "fiscal year" in  
20 question. There were several comments about the  
21 ambiguity of that term. So we have clarified it by  
22 saying the fiscal year covered in the recipient's

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1 annual audited financial statement.

2 And the clause, "not including one time in  
3 special purpose grants" is to clarify what has always  
4 been in this rule, the fact that one time in special  
5 purpose grants are not subject to the fund balance  
6 policy in this part. And we say that again later in  
7 this rule.

8 CHAIR BATTLE: Bill.

9 MR. McCALPIN: I have thought about changing  
10 the word "covered" in the second line to "included."  
11 If what we are talking about is the amount of financial  
12 assistance included in the annual report, or are we  
13 talking about the backing upward, the annual audit  
14 report covered?

15 I thought that the subject of that is  
16 financial assistance. And that would be the grant, as  
17 you say, included in the recipient's annual audited  
18 statement. I guess it could go either way, but it  
19 seemed to me that we were talking about the amount of  
20 financial assistance, and that would be included in the  
21 audit.

22 MS. GLASOW: I think that's okay unless I hear

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1 an objection from our accounting folks.

2 (No response.)

3 MS. GLASOW: I am not hearing it so I think  
4 that would be okay.

5 CHAIR BATTLE: We are going to knock out every  
6 single cupboard we find; aren't we? But I think that's  
7 right, it is included, so that should fix that problem.

8 MS. GLASOW: In subparagraph (2) basically it  
9 is saying that LSC derivative income is also included  
10 in the definition of LSC support. And we refer to the  
11 definition of derivative income which is in Section  
12 1632(c).

13 And, again, in that following clause we have  
14 the term "fiscal year" in question. We made a  
15 different fix here which we would like to change  
16 because what we really should be doing is making the  
17 same fix we made up above for the fiscal year in  
18 question and say it's the fiscal year included in the  
19 recipient's annual audited financial statement and  
20 cross out the term "in which the excess fund balance  
21 occurred."

22 CHAIR BATTLE: Okay. Any questions about that.



1 change?

2 (No response.)

3 CHAIR BATTLE: You may move on.

4 MS. GLASOW: I would also like to point out  
5 that in Footnote 6 it should say "See Note 4" instead  
6 of 3.

7 The next definition is the LSC fund balance.  
8 Bill McCalpin actually raised the issue that we were  
9 interchangeably using the terms "fund balance" and  
10 "fund balance amount." And it wasn't clear if we had  
11 different meanings. We meant them to mean the same  
12 thing.

13 And so we have tried to go through this rule  
14 and we have decided to use the term "the LSC fund  
15 balance." And the definition of that is "the excess of  
16 LSC support over LSC expenditures including capital  
17 acquisitions, plus the priority of carry-over amount as  
18 each is reported in the recipient's annual financial  
19 statements in accordance with the accounting guide."

20 MR. McCALPIN: Madam Chair.

21 CHAIR BATTLE: Yes.

22 MR. McCALPIN: We have defined LSC support in

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1 effect as the grant to the recipient. When we talk  
2 about LSC expenditures we may be referring to the  
3 expenditures of the Corporation rather than of the  
4 recipient.

5 I suggest that it ought to be over  
6 expenditures of LSC funds.

7 MS. GLASOW: Or we could say recipient  
8 expenditures of LSC --

9 MR. McCALPIN: Well, except it's --

10 MS. GLASOW: You are right, you are right.

11 MR. McCALPIN: -- the recipient's expenditure  
12 of LSC funds.

13 MS. GLASOW: Is that okay? I think that's  
14 correct because it's the recipient's expenditure of LSC  
15 funds. We were trying to make it clear --

16 MR. McCALPIN: You take the grant in, and the  
17 expenditures of those funds out, and the balance is  
18 what you are talking about.

19 MS. GLASOW: Right. That's correct. Because  
20 we were just trying to clarify that it was not an  
21 expenditure of non-LSC funds.

22 CHAIR BATTLE: Do we need the additional

1 language in (c) "in accordance with the accounting  
2 guide for LSC recipients"? Aren't the annual financial  
3 statements supposed to be done in accordance with the  
4 accounting guide anyway?

5 MR. CORDONA: Yeah, they are supposed to be  
6 done.

7 CHAIR BATTLE: So at this point that language  
8 is really superfluous; isn't it?

9 MR. CORDONA: Not necessarily. But we can  
10 take it out. It's always been understood that annual  
11 financial statements have to meet the criteria, LSC's  
12 accounting guide for recipients, yeah.

13 CHAIR BATTLE: Right.

14 MS. MERCADO: So you will be taking out that  
15 last --

16 CHAIR BATTLE: Yes.

17 MS. MERCADO: -- sentence, "in accordance with  
18 the accounting guide"?

19 MS. GLASOW: The accounting guide requires it.  
20 The next definition is the fund balance  
21 percentage. This is the definition we put in the  
22 proposed rule to clarify that it's the amount of the

1 LSC fund balance expressed as a percentage of the  
2 recipient's LSC support.

3 MR. McCALPIN: May I raise at this point the  
4 question I raised yesterday and you deferred to the  
5 gentleman on your left. Is there a significance in all  
6 of this if the fiscal year of the recipient differs  
7 from the grant year?

8 In other words, you may be granted for a  
9 calendar year but you are on a fiscal year of six or  
10 nine months in that calendar year. I have trouble  
11 piercing through the groove of that question and I am  
12 just not sure whether it makes a difference.

13 MS. MERCADO: Well, are you talking about the  
14 fiscal year for the FY congressional --

15 MR. McCALPIN: No. I am talking about the  
16 fiscal year for the recipient.

17 MS. GLASOW: We have a few recipients who have  
18 a fiscal year that is different from the fiscal year  
19 of --

20 MS. MERCADO: No. I understand that part.  
21 What I am asking is that in the regulation when you  
22 speak to fiscal year, are you talking the fiscal year

1 of the recipient or the fiscal year of LSC funding?

2 MS. GLASOW: Recipient.

3 MR. CORDONA: The recipient.

4 MS. MERCADO: Well, you are going to have some  
5 inconsistencies though with recipients that have a  
6 different funding cycle than what we do if they have a  
7 yearly --

8 MR. McCALPIN: Everybody is on the calendar  
9 year funding cycle.

10 MS. MERCADO: So that the question of carry-  
11 over -- everyone is going to have carry-over because  
12 they would not have expended all those funds according  
13 to the LSC fiscal year.

14 MR. CORDONA: Jay, can you respond to it?

15 CHAIR BATTLE: Mr. Brown, would you come to  
16 the mike, please, and see if you can provide us some  
17 assistance in responding to this question?

18 MR. BROWN: My name is Jay Brown. I work in  
19 the Office of Compliance and Enforcement. I have the  
20 responsibility for administering this rule on a day-by-  
21 day basis.

22 In answer to your question, there is no

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1 difference whatsoever, in computing the fund balance,  
2 whether the recipient operates on a calendar year or a  
3 fiscal year, because they all are calculated on a 12-  
4 month basis.

5 For example, if a recipient's fiscal year ends  
6 on June the 30th, let's say we are calculating that  
7 fund balance for June 30th 1999, we would take their  
8 annualized funding from June 1, 1998 to June 30th 1999.  
9 So we will still be using the 12-month period for it.

10 MR. McCALPIN: You would take the annualized  
11 funding or what in fact they received in the last six  
12 months of '98 plus what in fact they received for the  
13 first six months of '99?

14 MR. BROWN: That is correct. we would use the  
15 annualized funding for 1998 and the annualized funding  
16 for '99. If in 1998 they received one million dollars,  
17 we would take half of that in 1998 and half of the 1999  
18 grant. And then we would work it that way.

19 MR. McCALPIN: But then you are talking about  
20 the fiscal year --

21 MS. GLASOW: We are looking at the fiscal  
22 year --

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1           MR. McCALPIN: -- in which the excess fund  
2 balance occurred.

3           MR. BROWN: Yes.

4           MR. McCALPIN: Okay.

5           MR. BROWN: Well, let me see if I can put into  
6 perspective for you. If a recipient's audit comes on  
7 June 30th 1999, that fund balance would be for the  
8 period from June 1, 1998 to June 30th 1999.

9           MR. McCALPIN: July 1 would be --

10          MR. BROWN: Right. So it would cover the  
11 12-month period.

12          MR. McCALPIN: Okay.

13          CHAIR BATTLE: Maria.

14          MS. MERCADO: Is there any -- let's assume  
15 it's a one-million-dollar budget and they are in a  
16 calendar year and you are doing your review of the  
17 fiscal year on June 30th, what have you. When you are  
18 saying you prorate the balance of it in the 12-month  
19 period of time, are you prorating based on what they  
20 have already expended?

21                 Let's assume that they have expended 30  
22 percent of their budget because part of their budget is

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1 incorporating new office furniture and new personnel  
2 that still hasn't been hired yet that will be in the  
3 second six months. But if you are projecting that the  
4 expenses will be similar to the first six months, as  
5 they will be in the second six months, is that taken  
6 into account, or do you just automatically divide  
7 equally that million dollars in the 12 months?

8 MR. BROWN: We are not using estimates. We  
9 are actually using audited figures, actual expenses for  
10 a 12-month period. We are actually using actual  
11 expenses for a 12-month period.

12 MS. MERCADO: So you are not ever projecting  
13 that they are going --

14 MR. BROWN: No.

15 MS. MERCADO: -- to expend X amount of money  
16 in the future?

17 MR. BROWN: No.

18 MS. FAIRBANKS-WILLIAMS: So if they had a  
19 contract to buy so many computers and so on and so  
20 forth, and would expect to pay for those in the next  
21 six months, you would honor that contract?

22 MR. CORDONA: The contracts for expenditure of

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1 funds to purchase computers, for example, that is done  
2 under another regulation. That is done under  
3 Regulation 1630, Prior Approval. So the approval will  
4 be granted already for the expenditure of those funds  
5 to buy those computers.

6 MS. FAIRBANKS-WILLIAMS: So that money  
7 wouldn't be listed in this --

8 MR. BROWN: It depends on whether they have  
9 expended the money, if they have expended it.

10 CHAIR BATTLE: Suzanne.

11 MS. GLASOW: If I understand this correctly, I  
12 think it boils down to that some recipients annual  
13 audited financial statement covers a different period,  
14 whatever their fiscal year is, and it's that statement  
15 that we look at that has been audited.

16 Then another recipient, whose fiscal year  
17 covers a different period, but their annual audit  
18 financial statement covers that period. And that again  
19 is what we look at for the fund balance statement.

20 So recognizing that different recipients have  
21 different fiscal years, however, their financial  
22 statement covers that period of time, and that's why we

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1 can -- the definition of LSC support is the fiscal year  
2 and the annual audit financial statement. So that's  
3 why there is no problem if their fiscal year varies.

4 CHAIR BATTLE: Sure.

5 Does that explanation clarify the concerns  
6 that members have raised?

7 MR. McCALPIN: I think so.

8 CHAIR BATTLE: Okay, all right, we can move on  
9 to the next.

10 MS. GLASOW: No changes to the definition of  
11 recipient which pretty much follows the definition we  
12 have been putting in most of our rules.

13 Section 3, Policy. This section has been  
14 structurally revised from the current rule to basically  
15 try to put only policy statements in this section. And  
16 we have taken some procedural provisions out, putting  
17 them in the procedural section.

18 The Corporation's policy continues to be we  
19 have neither recommended nor do we recommend now  
20 changing the policies of keeping the 10 percent cap for  
21 automatic carry-overs. We have changed the term "year  
22 to year" to "from one fiscal year to the next" to be

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1 more clear in paragraph (a).

2 Paragraph (b) continues to recommend that  
3 under a waiver a recipient may retain a fund balance up  
4 to a maximum of 25 percent of their support.

5 And (c) basically explains that a waiver may  
6 be granted at the discretion of the Corporation  
7 pursuant to the criteria in 4(d).

8 Paragraph (d) talks about in the absence of a  
9 waiver, and this goes into the fact that recipients  
10 must return any excess fund balances to the Corporation  
11 absent a waiver to do otherwise.

12 We have crossed out language in paragraph (d).  
13 "Pursuant to comments" is better placed in the  
14 procedural section.

15 Paragraph (e) states that recovery of an  
16 excess fund balance is not to constitute a termination.  
17 And paragraph (f) is the direct statement that one time  
18 and special purpose grants are not subject to the fund  
19 balance policies of this part. It goes on to explain  
20 how those grant funds will be treated, the end of the  
21 grant term.

22 And in the footnote I pointed out that we

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1 recommend that the directives in processing this  
2 provision be included in the Corporation's accounting  
3 guide to ensure appropriate accounting of funds so that  
4 this information is available both in the rule, which  
5 refers to the accounting guide, and in the accounting  
6 guide which will clarify what is in this rule. So the  
7 recipient can look at either document and be fully  
8 informed.

9 Section 4 is the section on procedures. And  
10 we took out the old paragraph (a) and we just moved it.  
11 The new paragraph (a) says "Within 30 days of the  
12 issuance of the recipient's annual audited financial  
13 statement." We would like to change that term  
14 "issuance" which several people have commented is too  
15 vague to "Within 30 days of the submission to LSC of  
16 the recipient's annual audited financial statement  
17 recipient may request a waiver."

18 CHAIR BATTLE: Now, when you say submission,  
19 is it the date that it is submitted or the date that it  
20 is received by LSC?

21 MS. GLASOW: It is the due date because they  
22 can be late. So it wouldn't be the date we receive it.

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1 It's the date -- and we can clarify that in the  
2 commentary.

3 CHAIR BATTLE: Okay.

4 MS. GLASOW: There is specific due date in the  
5 accounting guide that their audits are due.

6 CHAIR BATTLE: Okay.

7 MR. McCALPIN: May I suggest that because you  
8 say "the recipient" in the first line and "a recipient"  
9 in the second line, that it might clarify if instead of  
10 using "recipient" twice you simply say in the first  
11 line "Within 30 days of the submission to LSC of its  
12 annual audited statement a recipient may."

13 MS. GLASOW: Okay. The request for a waiver  
14 shall include, number one, the LSC fund balance as  
15 reported in the financial statement; the reason the  
16 excess fund balance was attained, the recipient's plan  
17 for disposition of the excess fund balance, the amount  
18 of fund balance that they project to be carried forward  
19 at the close of the current fiscal year, and the  
20 special circumstances justifying the retention.

21 So, basically, the recipient has to tell the  
22 Corporation why they ended up with this fund balance,

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1 how they want to use it, and what they project for the  
2 next year because one of the main purposes of this rule  
3 is to encourage recipients to plan fiscally and to know  
4 where their funds are and what they plan to do with  
5 them.

6 CHAIR BATTLE: Okay.

7 MS. GLASOW: I would like to point out in  
8 Footnote 14 on page 9 several comments raised the issue  
9 that the Corporation put something in the rule about  
10 giving advance approval before the audits are looked at  
11 by the Corporation before they are absolutely sure how  
12 much fund balance they will have. It would permit them  
13 to do better planning.

14 But then the Corporation bases all its  
15 decisions on real numbers instead of speculative  
16 numbers. We felt that it was not appropriate to  
17 require the Corporation to grant prior approval.  
18 However, we have in the past and will continue to do  
19 so, according to Danilo, we work with recipients, and  
20 if they want us to look at what they have at any one  
21 point and talk to us about it, and give some guidance,  
22 we can continue to do that.

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1 CHAIR BATTLE: Okay.

2 MR. HOUSEMAN: Madam Chair, how are you  
3 proceeding? Because I don't want to -- I have got a  
4 couple of comments on the points she just made, but I  
5 can wait.

6 CHAIR BATTLE: I would rather that we cover  
7 them at the same time --

8 MR. HOUSEMAN: Okay.

9 CHAIR BATTLE: -- so that we don't have to go  
10 back through the entire rule when we are finished. So,  
11 now, if you have got a question or a concern you can  
12 raise it.

13 MR. HOUSEMAN: It's not a concern. It seemed  
14 to me if something like what's in Footnote 14, not the  
15 whole thing, but something like it, could be spelled  
16 out in the preamble, I think it would address at least  
17 the concerns that we raised about this.

18 I agree with the policy. I don't have any  
19 problem with the policy, and I don't have any problem  
20 with it not being in the rule. But if it were  
21 mentioned in the preamble I think it would be helpful.

22 MS. GLASOW: We should mention that most of

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1 what's in these footnotes will be in the preamble.

2 Just reworded to be better stated.

3 CHAIR BATTLE: Okay. You may continue.

4 MS. GLASOW: Page 10, paragraph (b): "Within  
5 45 days of receipt of the recipient's waiver request,  
6 submitted pursuant to paragraph (a), the Corporation  
7 shall provide written notice to the recipient."

8 We would like to add some language here  
9 because it doesn't say that we will provide written  
10 response to the request. It just says we will let the  
11 recipient know if they have a fund balance due. We  
12 would like to affirmatively state that we will respond  
13 to that request.

14 So we would like to say "The Corporation shall  
15 provide written response to the request and written  
16 notice to the recipient of any fund balance due," et  
17 cetera.

18 MS. MERCADO: What part is that going to be  
19 on?

20 MS. GLASOW: It's on the fourth line in  
21 paragraph (b), "Corporation shall provide written" and  
22 add the language "response to the request and written"

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1 and it goes on to say "notice to the recipient."

2 CHAIR BATTLE: Okay.

3 MS. GLASOW: Paragraph (c). In the event  
4 repayment is required this paragraph requires the  
5 Corporation give written notice three days prior to the  
6 payment date for the recipient, and explains how those  
7 payments may be done.

8 MS. MERCADO: Did you say three or 30?

9 MS. FAIRBANKS-WILLIAMS: She said three, but  
10 it says 30 here.

11 A PARTICIPANT: Thirty. It's 30 days.

12 MS. GLASOW: Thirty days. Did I say three?

13 A PARTICIPANT: Yes.

14 MS. GLASOW: Sorry.

15 MS. FAIRBANKS-WILLIAMS: That would be real  
16 quick.

17 MS. GLASOW: That's not sufficient notice.

18 The cross-out language --

19 MR. McCALPIN: Suzanne --

20 MS. GLASOW: Yes.

21 MR. McCALPIN: -- I am wavering back and  
22 forth. Footnote 20, the fourth line, you say during

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1 the current fiscal year. Is there any doubt about what  
2 you are talking about there? Basically, what you are  
3 talking about is the year following the year in which  
4 the excess fund balance was accumulated.

5 MS. GLASOW: It's the year that they are  
6 permitted to retain the fund balance and use it.

7 MR. McCALPIN: Okay. I guess that's clear  
8 enough --

9 MS. GLASOW: I can spell that out.

10 MR. McCALPIN: -- but the current -- if the  
11 thing drags on it could be difficult. In the current  
12 fiscal year --

13 CHAIR BATTLE: Well, fiscal year problems may  
14 come in given the point that we made earlier about the  
15 differing fiscal years that are not necessarily  
16 calendar years. So I think a better explanation of  
17 this would clarify the concern.

18 MS. GLASOW: Okay.

19 MR. HOUSEMAN: You could also have a  
20 situation, which is why I think you need an  
21 explanation. With the audit, you gave the program  
22 permission to file a later audit and then run into real

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1 trouble getting it all done within the fiscal year in  
2 essentially the next fiscal year. So you need to  
3 explain that a little bit more, I think. I mean that's  
4 an unusual situation --

5 CHAIR BATTLE: Sure. But the fact that we  
6 have different fiscal years, we have those extensions.

7 MS. GLASOW: Okay.

8 MS. FAIRBANKS-WILLIAMS: We have got one  
9 already here in New York. They don't have their fund  
10 balance here.

11 MS. GLASOW: Whoops.

12 CHAIR BATTLE: It's not on the list?

13 MS. FAIRBANKS-WILLIAMS: Legal Services of New  
14 York State. "See Footnote" it says. It says "Awaiting  
15 breakdown of Legal Services for New York City fund  
16 balances."

17 MR. BROWN: Oh, may I explain that? At the  
18 time --

19 CHAIR BATTLE: Would you come to the mike,  
20 please?

21 MR. BROWN: At the time we computed those  
22 figures the audit report from the Legal Services of New

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1 York were not completely reviewed. We had some  
2 questions. Until we received answers to them we could  
3 not supply those figures at that time. That's all that  
4 means. It does not mean that they had an excess fund  
5 balance. In fact they did not --

6 MS. FAIRBANKS-WILLIAMS: Yeah, I understand  
7 that, but the other thing that I wondered about here in  
8 these, it says "(Neighborhood Legal Assistance  
9 Program)" and that's in brackets. And there's one  
10 other one here that's in brackets. I didn't understand  
11 what the brackets were.

12 The other one is Gila County Legal Services.

13 MR. BROWN: What that means is that they did  
14 not have a fund balance. They had a deficit.

15 MS. FAIRBANKS-WILLIAMS: Well, it lists a  
16 deficit for Neighborhood Legal Services Association,  
17 and it lists a deficit for others, but those two were  
18 in brackets. But these others listed as deficits.  
19 There is a deficit listed for Western Arkansas and down  
20 through.

21 So I wondered what the difference was with the  
22 brackets --

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1 MR. BROWN: Oh, I see. They actually meant  
2 the same thing. I believe in the beginning, when I was  
3 computing those figures, whenever I saw a deficit --  
4 since we were talking about what fund balances they  
5 had, the total fund balances, the deficits I did not  
6 think were pertinent in that scheme. But afterwards I  
7 said, well, let's put in the deficits just for --

8 MS. FAIRBANKS-WILLIAMS: Okay. So the ones in  
9 brackets are deficits?

10 MR. BROWN: If I say deficit it means deficit.  
11 Brackets is also deficit. I just used a different  
12 terminology.

13 MS. GLASOW: As long as we are looking at that  
14 I would actually like to go back to page 6.

15 MR. McCALPIN: Page 6?

16 MS. GLASOW: Page 6, I am sorry. This is  
17 under the policy section. This is part of the reason  
18 we did this chart. So maybe we can discuss this policy  
19 and the chart, see if there are any questions on that.  
20 It's in Footnote 11. This basically states the policy  
21 of having an automatic cap at 10 percent and a cap of  
22 25 percent if there is a waiver.

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C-09059

1           Many of the comments -- we asked particularly  
2 for comments on what was the norm for non-profit  
3 organizations in terms of fund balance. We had  
4 responses from everything to a month's worth to a  
5 year's worth, but there was no real clear authority  
6 given for any of that other than references to it was  
7 their auditors' advice.

8           That is the time that we then asked Danilo's  
9 office to look at the situation with our grantees and  
10 found that not only did they have fund balances from  
11 their non-LSC funds -- well, why don't I let you  
12 explain this, Danilo, basically the background of the  
13 chart.

14           MR. CORDONA: Basically, the background of the  
15 chart was what funds were available to recipients that  
16 were there. We came up with a chart that says their  
17 non-LSC funds, there were available about \$40 million,  
18 if I am correct, in fund balances permitted by non-LSC  
19 funds.

20           MS. GLASOW: Actually had more from their non-  
21 LSC funds than their LSC funds.

22           MR. CORDONA: About 50, yeah. Forty-nine

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1 million, five hundred and sixty-seven thousand versus  
2 17 million, and nearly \$18 million in LSC fund  
3 balances.

4 CHAIR BATTLE: Many of those are carry-overs,  
5 though, of 10 percent or less, so you are really  
6 looking at an annualized if you compare it to the total  
7 LSC grants. Just a broad base kind of picture of what  
8 we are really talking about.

9 Edna, you had a question about these graphs.  
10 Has that question gotten answered?

11 MS. FAIRBANKS-WILLIAMS: Oh, yeah. He said  
12 that it wasn't bracketed with deficits.

13 The only other thing, talking about having a  
14 waiver, and so on and so forth. LAF of Chicago has a  
15 large fund balance and a large non-LSC fund balance.  
16 It seems like it's pretty near a third of their LSC  
17 grant as of 6/30/97. Did they have a waiver to do  
18 something?

19 MR. CORDONA: Yes, they did. They probably  
20 had a waiver. These figures, you are right, are from  
21 1997 because those were the audited financial  
22 statements that we have in hand in the Corporation.

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C-09061

1 Now the 1998 audited financial statements are coming  
2 in.

3 MS. FAIRBANKS-WILLIAMS: So when you do  
4 another one of these and there is a large number there,  
5 could you just put in over here on the side somewhere  
6 if there is a waiver so that we would know that there  
7 is a waiver?

8 MR. CORDONA: Okay. I see what you are  
9 saying. You want that chart updated to see that all  
10 these waivers were granted or what is the situation  
11 with regards to those fund balances. Is that what you  
12 are asking?

13 MS. FAIRBANKS-WILLIAMS: Yes.

14 MR. CORDONA: Okay, we can provide you that.

15 MR. McCALPIN: Actually, the Legal Aid Fund of  
16 Chicago is over 25 percent.

17 MR. CORDONA: Right.

18 MS. FAIRBANKS-WILLIAMS: Yeah, that's what I  
19 said. I said it's beyond a third. I couldn't do the  
20 arithmetic in my head, but --

21 MR. McCALPIN: But it's over 25 percent.

22 MS. GLASOW: This chart does not state what

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1 they are allowed to maintain. It just states what  
2 their fund balance amount was. So if it was over 25  
3 percent I am assuming they were asked to return the  
4 excess to the Corporation.

5 MR. CORDONA: They didn't have over 25  
6 percent.

7 CHAIR BATTLE: Okay, now, if we have covered  
8 all of the concerns that relate back to page 6 of the  
9 policy, and also related to what we have under Tab 8,  
10 then we can move on to -- I think we were completing  
11 page 11 on to 12.

12 MR. HOUSEMAN: I have a substantive plan I  
13 want to raise but I was going to wait until the end.  
14 It's a policy issue that relates to this, but it's a  
15 substantive plan.

16 MS. GLASOW: Actually, you may want to bring  
17 that up when we talk about the standards. Special  
18 circumstances --

19 MR. HOUSEMAN: Yeah, okay. I disagree with  
20 that but --

21 MS. GLASOW: Okay. Whenever you like.

22 All of the language that is deleted on page 11

1 is either restated somewhere or moved with the  
2 exception on top of page 12 we have deleted entirely  
3 paragraph (d). And the reason we did that is because  
4 this rule already makes it abundantly clear that  
5 recipients must first receive a waiver before they can  
6 extend excess fund balances, and we felt that was  
7 redundant.

8 CHAIR BATTLE: Okay.

9 MS. GLASOW: Paragraph (d), we are not  
10 recommending any changes to this. This paragraph, the  
11 beginning part of paragraph (d), there is no changes.  
12 This paragraph basically explains the standards the  
13 Corporation uses to grant a waiver up to 25 percent.

14 Subparagraph (1), I would like to take out  
15 that first "or." I don't think it's necessary. It  
16 says, "The fact that the Corporation will consider is  
17 if there are emergencies, unusual or unexpected  
18 occurrences, or special circumstances giving rise to  
19 the existence of a fund balance in excess of 10 percent  
20 of LSC support."

21 The current rule uses the standard  
22 "extraordinary circumstances" and we felt that was too

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1 high a standard. The proposed rule just had  
2 "circumstances," and we feel that's too low a standard  
3 because it's no standard at all. It just sounds like  
4 any circumstance would give rise to a reason to  
5 maintain a fund balance.

6 So we use the word "special circumstances."  
7 It's not really defined. It's really a matter of the  
8 Corporation looking at the facts of the particular  
9 request and deciding whether that is an appropriate use  
10 of funds by the recipient. And by and large if it's a  
11 use that is appropriate for a grantee's activities  
12 under the LSC grant, and they have done a good job of  
13 managing their funds. Otherwise these requests are  
14 normally granted. So we recommend adding the word  
15 "special circumstances."

16 No. 2 is the special needs of clients, and  
17 that is just maintained from the current rule.

18 No. 3 we have reworded. This is something  
19 that has been in this rule since the beginning. The  
20 way we reworded it is to clarify that we will permit  
21 recipients to retain a cash reserve so that they can  
22 pay private attorneys who are participating in a PIA

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1 program.

2 And the way that the amount of the reserve is  
3 calculated is we give them the amount up to 25 percent  
4 of the direct payment they made to attorneys under that  
5 program that is reported in the last audit. So that's  
6 one factor we look at. If they meet that standard then  
7 we will allow them to --

8 MS. FAIRBANKS-WILLIAMS: And this would be on  
9 top of their other 10 percent, or is this included in  
10 their 10 percent?

11 MR. McCALPIN: This is the difference between  
12 10 and 25.

13 MR. CORDONA: Correct.

14 MS. GLASOW: Right.

15 MS. MERCADO: The max they can have is 25  
16 percent.

17 MS. GLASOW: Right.

18 MR. McCALPIN: Let us raise some questions.  
19 Suppose that you are looking at a financial statement  
20 for a 12/31/98. There is an excess fund balance  
21 greater than 10 percent, somewhere between 10 and 25,  
22 and the recipient is looking for a waiver. Now, as I

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1 read this, you would consider up to 25 percent of what  
2 that recipient paid in its PAI program in the year  
3 ending 12/31/97.

4 I don't understand the relevance of allowing  
5 for '98 25 percent of what was paid in '97 where the  
6 situations between '97 and '98 may be very different.

7 MS. GLASOW: I am going to let Danilo's office  
8 speak to this. This is a policy decision of the  
9 Corporation. He will give you the information, how  
10 this has worked, and then you can decide whether you  
11 want to maintain that policy or not.

12 CHAIR BATTLE: And as you are answering that  
13 question, up to 25 percent, are there any instances in  
14 which the amount of direct payments to attorneys is  
15 inordinate and gets to be more than 25 percent of the  
16 grant?

17 MR. McCALPIN: Of the excess.

18 CHAIR BATTLE: right.

19 MR. McCALPIN: Of the excess fund.

20 CHAIR BATTLE: Right.

21 MR. BROWN: What was the first question? The  
22 first question was --

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1 MR. McCALPIN: What is the relevance --

2 MR. BROWN: Okay.

3 MR. McCALPIN: -- of getting 25 percent of a  
4 1997 expenditure to determine how much fund balance you  
5 are going to permit a carry-over from '98.

6 MR. BROWN: Well, the way it works is that if  
7 we have the audit report for 12/31/98 we would be using  
8 the payments made in 1998, not 1997.

9 MR. McCALPIN: Well, it says the last audit.

10 MR. BROWN: Meaning the last audit we received  
11 which is the one we are dealing with. That might be  
12 confusing to say the last audit.

13 CHAIR BATTLE: Why don't we say the most  
14 recent audit submitted to the LSC?

15 MS. MERCADO: Prior to the waiver of --

16 CHAIR BATTLE: Prior to the request.

17 MR. BROWN: Yes, I see your point. I have  
18 been saying last audit. It gives the impression it  
19 might mean the audit for the prior year.

20 MR. McCALPIN: Judging '98 by what's happened  
21 in '97.

22 MR. BROWN: In fact it's '98 audit and '98

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1 expenses.

2 MR. McCALPIN: Okay. so what in effect you  
3 are doing is limiting -- there may not be much involved  
4 in the '98 audit. And the anticipated greater  
5 expenditure in '99. And, conceivably -- why would you  
6 not accept a good faith estimate of what the  
7 anticipated liability unto the PIA program is for '99.

8 MR. BROWN: I believe by the time we get to  
9 the end of 1998 we would have actual payments, number  
10 one. No. 2, any outstanding amounts due to the  
11 attorney would be recorded as a payable. The only  
12 thing that would not be reported in the financial  
13 statement would be further commitments.

14 MR. McCALPIN: That's right. You would have  
15 accounts payable --

16 MR. BROWN: Right.

17 MR. McCALPIN: -- but if the program knows  
18 that there is ongoing substantial representation which  
19 will incur larger fees for '99 than were incurred in  
20 '98. It seems to me you have put kind of a false limit  
21 on here.

22 CHAIR BATTLE: Does the language in the last

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1 part of paragraph (3) help with that? It says "or for  
2 other expenditures which are reasonable and necessary  
3 for the performance of the LSC grant."

4 So if in a request --

5 MR. McCALPIN: I would think that since you  
6 have the specific above --

7 CHAIR BATTLE: Does that limit it --

8 MR. McCALPIN: -- you couldn't include it in  
9 the general below, I would think.

10 CHAIR BATTLE: That's my question.

11 MS. GLASOW: I think the committee has several  
12 choices here. We can maintain a language to retain a  
13 cash reserve to pay for the PAI program and drop the  
14 formula language which would give the Corporation  
15 discretion to choose an amount like we are doing for  
16 the other reasons that we would grant a waiver.

17 This really is a very particular -- it's only  
18 for this PAI program that we have this particular --  
19 it's been in the rule for many years. It's a matter of  
20 policy as to whether we want to maintain the formula or  
21 make this reason subject to the same discretion the  
22 Corporation has to go up to 25 percent.



1 CHAIR BATTLE: I think the "reasonable and  
2 necessary" is all you need. The 25 percent, I think  
3 Bill's point is well taken. We will fluctuate from  
4 year to year based on case load and a lot of other  
5 things that the 25 percent restriction might not get  
6 at.

7 MS. MERCADO: But you can never go beyond 25  
8 percent, so it doesn't matter --

9 CHAIR BATTLE: Right, it doesn't matter the  
10 reasons. We can't go beyond 25 percent anyway. So if  
11 it happens that a program happens to have substantial  
12 PAI coming up for the next year, they ought to be able  
13 to report that and the Corporation make a determination  
14 as to whether that's appropriate.

15 MR. McCALPIN: I see no reason to put that  
16 limit on the discretion.

17 CHAIR BATTLE: Okay.

18 MS. GLASOW: The other part of the standard is  
19 "or for acquisition of equipment or property." This is  
20 included because we dropped the special section on  
21 technology enhancement and because as we looked at  
22 request over a period of years we didn't see a need to

1 have a particular provision for that, but this would  
2 allow us discretion to grant a waiver if there was a  
3 need with a particular client.

4 And the others are for other expenditures  
5 which are reasonable and necessary for the performance  
6 of the LSC grant. This is language that is really  
7 taken out of 1630 for allocations of LSC funds. So  
8 it's very consistent with the Corporation's discretion  
9 to allow allocation of funds that are appropriate under  
10 an LSC grant.

11 CHAIR BATTLE: Okay.

12 MS. GLASOW: No. 4 on the next page is the  
13 recipient's financial management record. We look at  
14 that to ensure ourselves -- I am assuming that they  
15 have sound financial management.

16 Paragraph (e) on page 14 basically says that  
17 the Corporation has written approval. Will require  
18 recipient to use the funds that we permitted to retain  
19 within a particular time period and for the purposes  
20 approved by the Corporation. So this paragraph  
21 basically states the Corporation will regulate the use  
22 of fund balances that recipients are able to maintain.

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1           We will allow them to use it for particular  
2 purposes and for whatever time period. And that time  
3 period may go over a particular fiscal year, but that  
4 would be at our discretion.

5           CHAIR BATTLE: Okay.

6           MR. HOUSEMAN: There is a small issue here. I  
7 wouldn't have changed the language at all. It's not  
8 clear what happens if the recipient doesn't follow the  
9 parameters of the waiver that the Corporation gave it  
10 because it didn't expend all the funds or it spent them  
11 for other purposes that weren't specified in the  
12 waiver.

13           And I think somewhere, not in the rule -- I  
14 think somewhere there has got to be some explanation or  
15 some preamble comment about what happens in those  
16 circumstances so that the recipients are clear that  
17 they have to follow this. They have to, for example,  
18 seek LSC approval of any changes in it or something  
19 like that just so they know what to do.

20           I am not talking about policy here. I am  
21 talking about just guidance on how to deal with that  
22 situation so there can be no lack of clarity to anybody

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1 that if they are not working within the framework of  
2 the written waiver they have to seek LSC approval.

3 CHAIR BATTLE: Okay, okay. That is actually a  
4 point well taken because what we have done here is to  
5 establish rules to allow for the retention of the 25  
6 percent. But once it's retained and the next financial  
7 audit is taken, comes in for the next year, there is no  
8 review to determine whether or not those funds were  
9 expended in accordance with the reasons for which it  
10 was approved to be retained. I don't know how you  
11 determine that.

12 MS. GLASOW: Actually, I have asked Danilo to  
13 think about that, and I think he will explain what they  
14 do in those types of situations.

15 CHAIR BATTLE: Okay.

16 MR. CORDONA: We always ask for an explanation  
17 because --

18 MR. McCALPIN: I can't hear you, Danilo.

19 MR. CORDONA: We ask for explanations from the  
20 recipients when that happens because we can determine  
21 from the financial audits, since that thing is  
22 separately recorded, if I am correct, in their audited

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1 financial statements, what they have been doing with  
2 the prior excess fund balance. So we do enquire and  
3 find out exactly what is going on.

4 MS. MERCADO: Doesn't your Section (f) speak  
5 to that question you just had a minute ago about the  
6 reporting, as to the expenditures of the excess fund  
7 balances? Section (f) deals with that.

8 CHAIR BATTLE: So you have a natural line  
9 item?

10 Go ahead, Bill.

11 MR. McCALPIN: Alan, if the implication of  
12 your comment is that there ought to be some sort of  
13 sanction or penalty for a recipient that does not  
14 expend the excess fund balance within the time or for  
15 the purposes for which the waiver was granted, I don't  
16 think that belongs in the preamble.

17 I think if there is going to be a sanction or  
18 a penalty that's got to be in the rule if that's the  
19 implication of your remarks.

20 MR. HOUSEMAN: Well, that's in part. The  
21 other thing is to try to prevent that from happening so  
22 that they have guidance about what to do if they can

1 expend it within the year or the purposes that they  
2 thought of haven't worked out.

3 For example, suppose they had a fund balance  
4 over 10 percent and the way the Corporation frame the  
5 purchases was for technological purchases. And suppose  
6 for some reason that wasn't true, they determined later  
7 on in the year to make those technological purchases.  
8 That's the kind of situation.

9 So there is both a preventative aspect of it  
10 which is what should they do if that happens during the  
11 year in order to work with the Corporation. Then there  
12 is the aspect if they hadn't done that at the end of  
13 the year what happens to them. There is both aspects  
14 of it.

15 CHAIR BATTLE: Mr. Brown, can you help us by  
16 telling us what has happened in the past when you have  
17 found that a request has been made for an excess fund  
18 balance up to 25 percent and later it's been determined  
19 that the uses for which the approval was granted are  
20 not uses to which the excess fund balance was put?

21 MR. BROWN: We do in fact monitor the  
22 expenditures of the excess fund balance through the

1 annual audit. However, we have not found it to be a  
2 problem at all.

3 CHAIR BATTLE: Okay.

4 MR. BROWN: The fact is that in most instances  
5 the excess fund balance waiver is to provide regular  
6 program services. And so if we see that the excess  
7 fund balance was spent on attorney salaries or office  
8 furnishings, or what have you, they would fall within  
9 the ambit of --

10 CHAIR BATTLE: I understand.

11 MR. BROWN: -- program services.

12 CHAIR BATTLE: Yeah.

13 MR. BROWN: The only exception would be if  
14 they asked for a waiver to use the funds to purchase  
15 capital items. And in that case we would expect that  
16 they would use the funds for that purpose.

17 If they have not been able to spend the money  
18 during that year to purchase those specific items, then  
19 they would ask us for additional time in which to spend  
20 it.

21 CHAIR BATTLE: Okay. Suzanne, and then Maria.

22 MS. GLASOW: Basically, Danilo's office has

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1 informed me they are continually working with  
2 recipients. If we need something in the rule we may  
3 want to add some language at the end of paragraph (f)  
4 that says something like "The recipient shall inform  
5 the Corporation and seek guidance if it needs any  
6 changes in the Corporation's approval of the use or  
7 timing of its fund balance."

8 CHAIR BATTLE: That's fine. I think that  
9 covers it. We are not really looking to penalize. We  
10 just simply want to make sure that the use is  
11 appropriate under whatever portion of the grant that  
12 the funds need to be used for, it seems to me.

13 Maria.

14 MS. MERCADO: It would also seem that under  
15 our existing procedures you could also have it under  
16 questioned costs, 45 CFR Part 1630 as well.

17 MS. GLASOW: That would be a situation if they  
18 just totally misused the funds.

19 MS. MERCADO: Right.

20 MS. GLASOW: We gave them money to buy  
21 property and they used it for something totally  
22 different.



1 MS. MERCADO: Right. So that would answer  
2 Alan's question about if there is some preamble  
3 language as to what happens if you expend funds in a  
4 different manner than what you wanted, then I think  
5 45-1630 would deal with that without creating any new  
6 procedural system to deal with.

7 MR. HOUSEMAN: I wasn't proposing that. But I  
8 think just make sure in the preamble to spell this out.  
9 I think this addition is good.

10 CHAIR BATTLE: This addition puts recipients  
11 on notice that if they find that they have to spend the  
12 money for something different than what they ask for it  
13 for, they need to get back in contact with the  
14 Corporation to get approval for that. If they don't do  
15 it, I think that's what we can cover in the preamble.  
16 Then it may become a questioned cost in some subsequent  
17 evaluation.

18 Next.

19 MS. GLASOW: Paragraph (f) is the natural line  
20 item paragraph. Paragraph (f) basically says that  
21 excess fund balances approved by the Corporation shall  
22 be separately reported by natural line item in the

1 current fiscal year's audited financial statements.

2 I am told by our accountant that natural line  
3 item is an accountant's term. I also spoke to Gerry  
4 Singsen, who had called in with several comments on  
5 this rule, and he agreed that was an accounting term.  
6 It was well recognized.

7 The reason we put it in here was to make it  
8 clear that we just didn't want the bottom line number  
9 of a fund balance but the calculations that lead up to  
10 that. Hopefully, it does that job.

11 MR. McCALPIN: Let me say that Footnote 25  
12 says that the addition of natural line item is intended  
13 to clarify. It doesn't clarify a damn thing to me. I  
14 never saw it before. I haven't the remotest idea what  
15 it meant when I saw it. I don't know what --

16 CHAIR BATTLE: Can we have in the commentary a  
17 brief explanation of what a natural line item is?

18 MS. GLASOW: Okay.

19 MR. McCALPIN: I hope so.

20 MR. BROWN: May I just say something here?

21 CHAIR BATTLE: Yes, Mr. Brown.

22 MR. BROWN: Where it says that it shall be

1 reported separately by a natural line item, as Suzanne  
2 just said, they didn't want to just show -- the excess  
3 fund balance was \$100,000 and they report that as one  
4 item. They wanted a breakdown of how that \$100,000 was  
5 spent. So you would have a natural line item for --  
6 attorney salaries would be one line item, office  
7 purchases would be another line item, and so on. So  
8 you give a breakdown of the expenditure by natural line  
9 item.

10 CHAIR BATTLE: Maria.

11 MS. MERCADO: But by having a term of art as a  
12 natural line item, wouldn't your auditors know that  
13 that is what you meant by it, to define it  
14 specifically? And if you want for the general lay  
15 public out there that is not acquainted with auditing  
16 standards, then we might do a little line just to  
17 explain what it is. But your auditors, if they are  
18 high in your IPA, should know that's what it means.

19 MR. McCALPIN: But it seems to me the program  
20 director has got to know what he is required to do.

21 MS. MERCADO: Auditors don't understand why  
22 the rest of us don't know these terms.

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1           MR. McCALPIN: I suggest you take a poll of  
2 program directors to see whether they know what it  
3 means.

4           MR. HOUSEMAN: It could just be spelled out in  
5 the preamble.

6           CHAIR BATTLE: Well, that's what I have  
7 already suggested, that we add some language to define  
8 the line item. We define legal terms all the time that  
9 have a specific meaning to us because we know that  
10 laypeople also read our regulations. So if we get a  
11 definition in the preamble, that takes care of this  
12 problem.

13           MS. GLASOW: Okay. Section 5 is the section  
14 on deficits. We made really only a few technical  
15 changes in this section.

16                   Nothing in paragraph (a).

17                   In paragraph (b) we would like to, in the  
18 first line, again, change the word "issuance of the  
19 recipient's annual audit" to mirror the same language  
20 that we did for the issuance language for fund  
21 balances.

22           CHAIR BATTLE: Submission to LSC then?

1 MS. GLASOW: right.

2 CHAIR BATTLE: Okay.

3 MS. GLASOW: We changed the word "cost" to  
4 "expenses" in paragraph (b). Thought that was a better  
5 word.

6 MR. CORDONA: Mr. McCalpin thought it was a  
7 better word.

8 MS. GLASOW: Yes.

9 We corrected the references to 1628 in  
10 paragraph (d).

11 I skipped (c). We added a reference to Part  
12 1630 in paragraph (c).

13 In paragraph (d) I think we should say "The  
14 recipient's request must specify the same information  
15 relative to the deficit" -- no, I am wrong. Scratch  
16 that.

17 MS. MERCADO: Just leave it as is?

18 MS. GLASOW: Yes.

19 In paragraph (e), the last line you see the  
20 bolded word "special" -- goes over the page --  
21 "circumstances." In the current rule we have  
22 extraordinary circumstances. In the proposed rule, as

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1 we did with the standard under fund balances, we had no  
2 language. We would like to use the same standard for  
3 deficits which is special circumstances.

4 CHAIR BATTLE: Well, we used the term "a  
5 deficit balance" there. Earlier we called it "a  
6 deficit LSC fund balance." Is that the same thing? I  
7 am looking at (d) and (e).

8 MS. GLASOW: Yes.

9 CHAIR BATTLE: Okay. Let's call it the same  
10 thing.

11 MS. GLASOW: Okay.

12 MS. MERCADO: Well, we do mean it to be LSC  
13 fund balance because we are talking about LSC funds as  
14 opposed to any other funds from other --

15 MS. GLASOW: Yeah, that's correct.

16 CHAIR BATTLE: Okay. Now, were there any  
17 other questions or concerns about the rule, policy  
18 concerns?

19 Alan.

20 MR. HOUSEMAN: Yes. First of all, thank you  
21 for your patience and flexibility here. The plane was  
22 cancelled last night and the first one out this morning

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1 was at 8:55. They had another one that they cancelled  
2 at 6:45, so I am a tad bit tired, but here I am.

3 And, secondly, I just want to make it clear  
4 that we have worked very closely with the staff from  
5 the beginning on this rule and we are very comfortable  
6 with virtually everything in it at this point,  
7 including keeping the 10 percent additional limit. And  
8 we are comfortable with the special circumstance  
9 language.

10 There is one sort of significant issue, which  
11 I have raised with staff and with John McKay and which  
12 they have not agreed with us, but I want to raise.  
13 It's a very fundamental policy question. We raised it  
14 in our comment previously, and I am sure Linda has  
15 talked about it when she was here before. And that is  
16 the question of the 25 percent maximum.

17 And I know we have been through this and I  
18 don't want to belabor this. But I do want to try to  
19 address a few of the issues around it just so everybody  
20 understands what our position is on it and why we think  
21 you ought to give some thought to this change whether  
22 now or maybe the next time you take the reg up.

1 Obviously, I would prefer now.

2 By the way, Linda sends her best. She is not  
3 feeling real well, but she is doing fine. Nothing life  
4 threatening. But I am here instead of her. She  
5 probably would have got here on time.

6 In any case, let me make the points on this  
7 and sort of respond to some of the concerns that I have  
8 heard either from John, who is not here, or from  
9 Suzanne or Danilo about this in our sort of internal  
10 discussions.

11 What I would do would in fact add a new  
12 section in 28.3, which is the policy section. It would  
13 be 1628.3(d). It would simply say, "Under  
14 extraordinary and compelling circumstances LSC may  
15 grant a waiver to the 25 percent maximum."

16 I know it's not in there, and you haven't seen  
17 this language before --

18 CHAIR BATTLE: Would you do that under --

19 MR. HOUSEMAN: There may be other places to do  
20 it, but --

21 CHAIR BATTLE: Well, actually you have got it  
22 all the way up to (f). So if you are talking about a

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1 new section it would be a (g).

2 MR. HOUSEMAN: Okay, (g), fine. We could  
3 place it anywhere in there.

4 Let me explain why I think we ought to have  
5 some thought about this. This isn't totally new.  
6 First, I want to give three examples of when this has  
7 come up. The first is a real example that's taken from  
8 our comment. And I am going to just summarize it  
9 briefly.

10 There was one program, actually I know of at  
11 least five, a sale of a building that was LSC money  
12 that bought the building. The sale and the money  
13 unexpectedly came in in December, in a fiscal year that  
14 ended in December. They couldn't purchase the new  
15 building until the next fiscal year because it was the  
16 sale of a building -- it was a significant amount of  
17 money, and it put the program over the 25 percent  
18 limit.

19 The question was what did the Corporation do  
20 in that circumstance. And the question for you would  
21 be what should the Corporation do in that circumstance.  
22 So that's one example of that. What the Corporation

1 actually did in that circumstance was it refused to  
2 enforce the regulation, so it used its enforcement  
3 discretion. I'll talk to that in a second.

4 A second example, which is admittedly rare  
5 nowadays, but still possible, is a large attorney fees  
6 award come in and is derivative LSC income. Now, there  
7 is a prohibition on attorneys' fees but there is a date  
8 that if you were doing work up until April 26th, you  
9 can still get attorneys' fees.

10 There are in fact some cases still going on  
11 that have been 10, 15 years old, and they haven't got  
12 any attorneys' fees, where there may be a huge amount.  
13 This is a real circumstance that in the past has  
14 occurred on several occasions. And it may bring you  
15 over the 25 percent.

16 A third example, again a real example, is  
17 where a program faces an earthquake, or a hurricane, or  
18 something like that, a real serious emergency. The  
19 consequence ultimately of that is for a lot of  
20 different reasons they create a fund balance that is  
21 over 25 percent in a year or they get a large insurance  
22 check. This is one example that a large insurance

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1 check comes in in December. They tried to get it to  
2 come in January, it came in December. Those kinds of  
3 things. So --

4 MS. FAIRBANKS-WILLIAMS: Or a flood.

5 MR. HOUSEMAN: So the question is how should  
6 you approach these kinds of circumstances. We are  
7 dealing, again, with LSC funds here, so I am not trying  
8 to deal with non-LSC funds issue.

9 Now, as everybody knows by now, the federal  
10 policy on this is that agencies have the discretion to  
11 establish their own limits. I just want to start  
12 there. And what LSC is faced with when it deals with  
13 this situation is either to do something like it did in  
14 the past, which was refuse to enforce the 25 percent  
15 maximum. That is the way to use its discretion not to  
16 enforce.

17 It could, of course, stick to the 25 percent  
18 under the circumstances and not give a waiver and not  
19 refuse to enforce. There is another consequence  
20 sometimes. You could recapture the fund balance and  
21 then consider making a grant back to the program  
22 assuming that was possible. There are some limitations

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1 on that now although that had been done in the past,  
2 not recently.

3 So when you look at this it seems to me the  
4 better approach to this problem, which will not arise  
5 very often, maybe once every ten years, once every five  
6 years, we are not talking about a significant problem  
7 here, but a potential problem, seems to me the better  
8 approach is right up front to permit LSC to have the  
9 discretion not to waive it up front and make it above  
10 board and everything clear and everybody aware of this.

11 Now, the arguments against it that I have  
12 heard are essentially two. One, that there is a  
13 greater likelihood of fraud or embezzlement when you  
14 have larger fund balances. I am not sure what that's  
15 based on. I have seen no factual basis for that  
16 assertion. Maybe there is some.

17 The embezzlement and fraud cases that I know  
18 about were not programs that had large fund balances.  
19 And I know about most of them. I don't know about all  
20 of them. So I am not sure there is any relationship  
21 between embezzlement and fraud and large fund balances.

22 I think the more fundamental problem, which

1 John McKay and I have talked about, is the fear of  
2 adverse congressional reaction if this 25 percent  
3 maximum was changed or some kind of very tightly  
4 controlled discretion was provided. I don't know if  
5 this would be a big problem. We really don't know.

6 My guess is if you had very tight language, it  
7 was very clear this was an extraordinary kind of  
8 situation, that this would not lead to any major  
9 congressional difficulties. But I don't want to for a  
10 minute suggest it might not. It might, it could in  
11 this environment. But I don't think this is a huge  
12 risk we are taking if we did something like this.

13 Finally, I just want to make clear how we got  
14 this here in the first place. We need to understand  
15 how we got this 25 percent in the first place. This  
16 didn't come through some GAO recommendation. This came  
17 from a board in the early eighties that distrusted the  
18 staff and wanted to curtail their discretion. They did  
19 a number of other regulations that curtailed their  
20 discretion. It was motivated because they didn't want  
21 the staff to have discretion, including the president,  
22 beyond certain things.

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1 I don't think we deal with that situation now,  
2 by the way. I don't think we have for a number of  
3 years, but certainly not now.

4 So I would urge that at least some  
5 consideration -- I don't want to press this too hard,  
6 we have made the points before -- some consideration be  
7 given to thinking about this 25 percent maximum. Maybe  
8 my language isn't good enough. I am not worried about  
9 the language.

10 But I do think there will be a circumstance or  
11 two over the course of the rule where there will be a  
12 really extraordinary compelling situation where  
13 discretion needs to be exercised. And I think it's  
14 better exercised up front and with authority clearly  
15 laid out. So I wouldn't eliminate the 25 percent  
16 maximum. I would make it clear that on very  
17 extraordinary and compelling circumstances there could  
18 be a waiver. You could spell it out maybe it's the  
19 president that has to make it, something like that.

20 This issue, I think, would give the  
21 Corporation some discretion that it may need in certain  
22 circumstances to act. And I would urge that we give

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1 some consideration to this. If you are predisposed  
2 against it I don't want to belabor the point, but  
3 that's our concern, and we have raised it before, and  
4 it's a concern that we still have.

5 But otherwise we are very comfortable with  
6 this rule. It's been a terrific relationship to get  
7 here, and we think it should be adopted.

8 CHAIR BATTLE: One question that I have, and  
9 you have, I think, quite eloquently laid out the  
10 reasons why one might want to consider a lever in this  
11 to allow for extraordinary circumstances to be  
12 addressed, is the fact that we are not the only agency  
13 providing for grants and having an excess fund balance  
14 issue to arise, and whether anyone has looked at how  
15 other agencies have responded to the GAO evaluation of  
16 fund balance issues.

17 I know that we did our response to it, but I  
18 know likewise that HUD makes grants to agencies that  
19 have fund balance issues and a lot of other Federal  
20 Government agencies do the same. It would be helpful  
21 to know whether they have responded with caps as we  
22 have or whether they have responded by allowing any

1 kind of facient consideration for extraordinary  
2 circumstances in our discussion.

3 MS. GLASOW: We did not look at that  
4 particular issue. We do know that the GAO disapproved  
5 of fund balances for LSC recipients that were above 20  
6 percent.

7 We do know that the federal regulations are  
8 pretty strict. It may just depend on the particular  
9 grants and the agencies and how much funds they have  
10 put out and what it is they are using the funds for.  
11 But, no, we have not done a study to see how the GAO  
12 responds to other agencies' fund balance standards. If  
13 they have, I don't know what the standards are in all  
14 those.

15 I do know that federal agencies, their  
16 grantees are allowed to carry over fund balances in  
17 certain circumstances. I do know that the GAO, in  
18 looking at our fund balances, they are always looking  
19 at the federal standard when they are looking at us.  
20 So I would assume that they would apply somewhat the  
21 same standard to federal agencies depending on what  
22 their criteria would be for granting fund balances.



1           Most likely the Federal Government had federal  
2 acquisition standards and fund balance standards. We  
3 didn't at the time the GAO looked at our fund balances,  
4 and they were encouraging us to establish regulations  
5 and the corporation set the amounts based on the  
6 disapproved amounts from the GAO report at that time.

7           I think Danilo wants to explain management's  
8 view on this.

9           MR. CORDONA: If I may.

10          CHAIR BATTLE: Yes.

11          MR. CORDONA: We are fundamentally in  
12 management opposed to the proposal that CLASP is making  
13 here. First of all, the proposition that allowing  
14 excess fund balances above 25 percent increases the  
15 risk of fraud with federal funds is a proposition that  
16 was advanced by our Office of the Inspector General.

17          I at this particular moment don't recall what  
18 the basis for that was, but that is what our OIG says.  
19 And I tend to render him certain credence in that  
20 particular matter.

21          Second of all, the management of this  
22 regulation at least for the last eight years has been

1 completely stellar. We have never faced these kind of  
2 problems of super duper extraordinary circumstances.  
3 In the Corporation whenever that particular example  
4 that Mr. Houseman explains it was dealt with within the  
5 constraints of the regulation and so forth.

6 So we don't consider at this point prudent,  
7 politically and otherwise, to go and break that ceiling  
8 of 25 percent because we believe that it will open the  
9 gates and it will be very serious to administer such a  
10 particular policy.

11 CHAIR BATTLE: It is couched in terms of  
12 discretion, though. In hearing at least what's being  
13 proposed, that you would have to have standards for any  
14 kind of evaluation over and above the 25 percent. And  
15 my only interest in saying what does everybody else do  
16 is because this is not a unique issue. This is an  
17 issue that every entity that gives funds has to face.  
18 And if we look and find that in order to have clear  
19 definition out there that by and large most funding  
20 agencies have a cap, and that's it, and extraordinary  
21 measures are handled with some semblance of some of the  
22 examples that we have about how we have had to handle

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1       them, then that gives me a level of comfort that what  
2       we have put in place is pretty much because we are  
3       dealing with federal grant funds what is the standard  
4       throughout the system.

5               But at this point, absent having any  
6       information that tells me that, I don't know that there  
7       is a problem with what we have.

8               Go ahead, Bill.

9               Maria, did you have your hand up?   Okay.

10              MR. McCALPIN:   Well, I must say that I think  
11       that the idea that it increases the risk of fraud is  
12       minuscule in my view.   If you take the whole \$300  
13       million federal money that we get and you think about a  
14       program with a fund balance in excess of 25 percent, it  
15       has to be an insignificant addition to the risk of  
16       exposing federal funds to the problem of fraud.

17              Secondly, I think that the congressional  
18       reaction, if there is any, is not likely to come to the  
19       language of a rule but only to the exercise of that  
20       discretion by a president under circumstances which  
21       would give rise to criticism with respect to the  
22       exercise of the discretion.

1           I hadn't thought before about the examples  
2 that Alan raised. It seems to me certainly those  
3 things can happen. The sale of a building in December  
4 and the carry-over, as he says, I suppose we could  
5 simply refrain from enforcing. I suppose that there  
6 could be criticism for that as well as there could be  
7 for the exercise of the discretion.

8           With respect to the payment of insurance  
9 proceeds, I have practiced law long enough to know that  
10 it is the practice of insurance companies to clear  
11 their books of claims in the month of December, and  
12 they try to wash out as many claims as they can in the  
13 month of December which increases the prospect, I  
14 think, of a hold-over excess fund balance.

15           The obvious concern is whether we could write  
16 limits on the exercise of discretion so tight as to  
17 preclude the unwise exercise of that discretion by a  
18 future president or, conversely, whether by acceding to  
19 this request, we would open the door to the possibility  
20 of what we sitting here at this table would consider to  
21 be inappropriate exercises of discretion in those  
22 circumstances.

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1           That it seems to me is the trouble, whether we  
2 crack this door open and permit the unwise exercise of  
3 discretion to walk through. I am not impressed by the  
4 arguments against it. I am somewhat impressed by the  
5 examples which Alan has given. I am not clear what the  
6 result should be.

7           CHAIR BATTLE: Suzanne.

8           MS. GLASOW: I would like to make a few  
9 comments on that. In terms of the fraud I think with  
10 the tight controls that we have in this rule, and  
11 knowing now how closely our staff works with recipients  
12 and watches what's going on, I too doubt that that is  
13 an issue that needs concern.

14           I also do not recommend not enforcing the  
15 rule. I think that one particular instance was an  
16 anomaly and is not normally done. Enforcement  
17 discretion usually comes in when you are determining a  
18 sanction, not whether you comply with your rule or not.  
19 There is a lot of law on -- and the agencies are going  
20 to be looked at, and they are expected to follow their  
21 own rules.

22           I think all of this needs to be balanced with

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1 the idea that we are in a competition era and there is  
2 always the chance that a particular recipient will be  
3 replaced by another. So part of the reason that Danilo  
4 didn't mention that we are hesitant to allow too large  
5 a fund balance carry-over is it may be difficult to get  
6 money back if someone is not an LSC recipient. We have  
7 the right to that money back, but it's not always as  
8 easily done as we would like it to occur, so that's  
9 just one factor to --

10 CHAIR BATTLE: However, that factor plays in  
11 only in the last year of the grant. If you have got a  
12 four-year grant and you have got a carry-over issue in  
13 year two --

14 MS. GLASOW: That's correct.

15 CHAIR BATTLE: -- then you really don't have  
16 the issue of competition coming into it until the  
17 end --

18 MS. GLASOW: That's correct.

19 MR. McCALPIN: Suppose we provided that the  
20 excess over 25 percent be placed in escrow with the  
21 Corporation.

22 MS. GLASOW: Well, how could they then use it

1 for what they want to use it for?

2 CHAIR BATTLE: Well, purchase of a building,  
3 if you got a building in December, and you have sold  
4 it, and you are out of the door until you make you  
5 payment on your building in January, attempting to send  
6 the money up because it's going to be in excess of the  
7 25 percent to the Corporation only to have to request  
8 it right back, I think could cause some hardship  
9 depending on how soon the funds need to be used.

10 Maria.

11 MS. MERCADO: A couple of points. The factor  
12 of whether or not we should consider extraordinary  
13 circumstances, I think we go back to looking at the  
14 fact that staff recommended, along with CLASP and  
15 NLADA, change in the standard now to special  
16 circumstances rather than extraordinary circumstances,  
17 which brings it to a higher level in which discretion  
18 would be used.

19 And I would feel more comfortable with having  
20 some guideline in our rules that allows for those  
21 extraordinary circumstances which have a greater  
22 stricter performance requirement by the grantees than

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1 the ones that we have for the other ones right now  
2 under special circumstances as opposed to allowing LSC,  
3 at its discretion, to not enforce the rules which I  
4 believe, like Bill has stated, would create greater hue  
5 and cry on the Hill than following our regulations.

6 I don't believe that it opens the door when in  
7 effect we have rarely ever used that circumstance.  
8 However, the fact that the circumstance does stand to  
9 occur, and even though we have a competitive basis, if  
10 a new grantee in a competition basis is awarded the  
11 grant, any of the buildings or properties or whatever  
12 else the old recipient would have, would go to the new  
13 one.

14 So I don't know that LSC as an entity would  
15 lose that funding because a new competitor has received  
16 a grant. I would be more inclined to have either some  
17 language or some regulation that allow for  
18 extraordinary circumstances since we have changed the  
19 standard on everything else to just a special  
20 circumstance.

21 MS. GLASOW: If the committee does decide to  
22 add that language, I think "compelling" and



1 "extraordinary" are two very strong words --

2 MS. MERCADO: I think so.

3 MS. GLASOW: -- and as you stated, because we  
4 have lowered --

5 CHAIR BATTLE: To avoid a hardship.

6 MS. GLASOW: -- the special circumstance --

7 CHAIR BATTLE: Right, that's really what we  
8 are talking about.

9 MS. GLASOW: -- would be a strong indication  
10 and we could put in the preamble the types of  
11 circumstances we are talking about.

12 CHAIR BATTLE: The specific examples that we  
13 have discussed today --

14 MS. MERCADO: I think are really good  
15 examples.

16 CHAIR BATTLE: Yeah. Ernestine.

17 MS. WATLINGTON: Given that amount of thought  
18 we did when we discussed it before when we set that  
19 limit, and given my years of involvement in Legal  
20 Services, and with the competitive bidding now which  
21 makes people don't put everybody at the same level, I  
22 am inclined to think that sometimes -- I think that 25

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1 percent -- you have the 10 percent, but then you have  
2 the -- but I think a limit should be on how much that  
3 can go. In that way you get out of that.

4 I have found, in my years of working, and you  
5 start making exception, there is no point in having a  
6 rule, because then you start making so many exceptions  
7 and everybody feels you -- you don't do it by -- then I  
8 am not treated right, and it's a lot of -- the  
9 competitive bid is making it very, very difficult out  
10 there.

11 You know how the Corporation makes that with  
12 Pennsylvania when you had that time and how it caused  
13 so many problems, you know, what decision end up being  
14 present at that time. The board didn't have to make  
15 that decision, making that exception of that. It  
16 worked it out, but I think that -- you know, I really  
17 do believe that there should be a limit. And when you  
18 start making exceptions on exceptions you get into --  
19 you open a Pandora's box.

20 CHAIR BATTLE: Well, why don't we as a  
21 committee -- we need to make a decision, because this  
22 has to go before the board tomorrow.

1 MR. McCALPIN: Doesn't have to.

2 CHAIR BATTLE: Well, I tell you what my  
3 thought is. I really would like to -- and I know I am  
4 just throwing this out -- I really would like to see  
5 how other granting agencies handle this issue. I think  
6 it would be instructive to us if we know that there are  
7 other granting agencies that have a limit or a cap in  
8 response to GAO's evaluation.

9 If they have handled it by either setting a  
10 cap and maintaining a cap, and that's it, then that  
11 gives me some guidance as to how Congress looks at  
12 grant funds.

13 If we find that there is language that allows  
14 for extraordinarily handling of grant funds under  
15 certain circumstances, then we can look to that for  
16 some guidance as to what we need to do.

17 And I would almost think that if there is not  
18 a pressing need at this point for this to go before the  
19 board tomorrow, that we take the time to look at it.

20 MR. CORDONA: I think it is an excellent  
21 suggestion, Madam Chair.

22 CHAIR BATTLE: Okay.

1 MR. CORDONA: I think we can still very fairly  
2 say, and I can assure you, that we can continue to  
3 operate under the current rule, 1628, on the books.

4 CHAIR BATTLE: And take a look at what happens  
5 with other grant funds under the circumstances of  
6 carry-over, and make sure that what we do is consistent  
7 with what government does.

8 M O T I O N

9 MR. McCALPIN: I move we defer further  
10 consideration of 1628 to the next meeting of this  
11 committee.

12 MS. WATLINGTON: I second.

13 CHAIR BATTLE: It's been properly moved and  
14 seconded. All in favor?

15 (Chorus of ayes.)

16 CHAIR BATTLE: All opposed?

17 (No response.)

18 CHAIR BATTLE: That makes your load light  
19 tomorrow, Ernestine.

20 Well, thank you very much. I think that's it.  
21 Unless there are other items or public comment to come  
22 before the committee, at this point, then, we now stand

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1 adjourned.

2 No vote for the adjournment, because it will  
3 show up as a motion in the minutes.

4 (Whereupon, at 1 p.m., the meeting was  
5 adjourned.)

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