

ORIGINAL

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPERATIONS AND REGULATIONS COMMITTEE MEETING

OPEN SESSION

Friday, November 19, 1999

10:50 a.m.

750 First Street, N.E.
9th Floor Conference Room
Washington, D.C. 20002-4250

COMMITTEE MEMBERS PRESENT:

LaVeeda Morgan Battle, Chair
Ernestine P. Watlington

F. William McCalpin
John N. Erlenborn

BOARD MEMBERS PRESENT:

Edna Fairbanks-Williams
Douglas S. Eakeley, ex officio

Maria Luisa Mercado

STAFF AND PUBLIC PRESENT:

Linda E. Perle, CLASP
Alan W. Houseman, CLASP
John McKay, President
Danilo Cardona
Victor M. Fortuno, VP Legal Affrs, GC & Corp Sect

Suzanne B. Glasow, LSC
Laurie Tarantowicz
Joan Kennedy
Ted Faris

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P R O C E E D I N G S

1
2 CHAIR BATTLE: I'm going to go ahead and call
3 to order this meeting of the operations and regulations
4 committee. This is November 19th, 1999. We have with
5 us three of the four members of this committee, John
6 Erlenborn and Ernestine Watlington are with us. Good
7 morning to you.

8 MS. WATLINGTON: Good morning.

9 CHAIR BATTLE: And Bill McCalpin is here. He
10 has not yet joined us, but I'm certain he will be
11 joining us shortly.

12 This meeting is running contemporaneous with
13 the provisions committee meeting, so we don't have a
14 lot of additional board members participating with us
15 this morning.

16 We have before us an agenda and I believe that
17 I will entertain a motion to approve the agenda. What
18 I'd like to do is change the agenda around a bit and
19 delete one of the items on the agenda.

20 Item number seven, which is consider and act
21 on proposed procedures to handle grievances filed
22 against the corporation's president or its inspector

1 general is one that I'd like to delete for purposes of
2 our discussion today. I understand that at a later
3 time we are going to be addressing a personnel manual
4 revision, and this item can be considered along with
5 our consideration of the employee personnel manual and
6 handbook.

7 Secondly, what I'd like to do is to move up
8 item eight to item one. And item eight is, of course,
9 consider and act on a proposed program of cash awards
10 to individual corporation employees in recognition of
11 their outstanding performance. I'd like to defer until
12 after that, consideration of our minutes and the other
13 items that we have on our agenda.

14 And with those changes, I'll entertain a
15 motion to adopt an agenda.

16 M O T I O N

17 MS. WATLINGTON: I'll so move.

18 CHAIR BATTLE: Okay, it's been moved. And
19 with that nod seconded --

20 MR. ERLENBORN: Second.

21 CHAIR BATTLE: -- that we adopt the agenda as
22 revised. All in favor?

1 (Chorus of ayes.)

2 CHAIR BATTLE: All opposed?

3 (No response.)

4 CHAIR BATTLE: The motion carries. So we have
5 before us Joan Kennedy, who will present to us our now
6 item one, which is consider and act on proposed program
7 of cash awards to individual corporation employees for
8 recognition of outstanding performance.

9 MS. KENNEDY: Good morning, Ms. Battle, and
10 members of the committee. For the record, my name is
11 Joan Kennedy, I am director of administration and human
12 resources here at the corporation.

13 Thank you for allowing me to come before you
14 this morning. I want to share with you the latest
15 piece of our continuing efforts to develop a
16 professionalized human resources program for the Legal
17 Services Corporation.

18 As I mentioned to some of you earlier in a
19 briefing that we had, one of the goals of the
20 corporation is to move toward professionalization of
21 its staff, move toward providing an employee-friendly
22 workplace, a family-friendly workplace, and we're in

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1 the process of developing a number of initiatives which
2 move us closer to that goal.

3 You will recall we have come before you before
4 with our initiative to undertake a comparability study
5 to look at the salaries inside the organization and how
6 they compare internally, as well as how they compare
7 externally in the marketplace.

8 We've also brought before you a number of
9 other initiatives that we have implemented here at the
10 corporation to improve working conditions for our
11 employees, to include the transportation allotment and
12 a comprehensive benefits program.

13 The program that I'm going to be presenting to
14 you today is yet another step, it's just one step in
15 that whole process of moving us toward that ideal
16 employee-friendly workplace that I speak about.

17 For several months now, we've been working as
18 a team here, at the corporation, in the development of
19 an awards and recognition program. We've worked both
20 with managers and directors as well as received
21 feedback from the Office of Inspector General. And
22 what I plan to present to you today is an overview of

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1 what we're calling our awards and recognition program.

2 You will recall that in our personnel manual
3 currently, we have a special awards initiative. And
4 that awards program allows for the presentation of
5 awards for outstanding performance up to \$500. That is
6 a program that's been in existence for some time now.
7 The program that we're talking about today replaces
8 that program, but yet includes that part of the program
9 that has existed in the past.

10 We have a number of initiatives in the
11 corporation which our employees are implementing. We
12 are in a market in the Washington, D.C. area that is
13 competitive.

14 If you will recall from some of the
15 information that has been shared with you about our
16 comparability study results, while our salaries are
17 generally competitive externally, there are some
18 features which the consultant has recommended that we
19 add to make our salaries more competitive.

20 And one of the things that we're doing to
21 enhance that is the creation of this awards program,
22 which allows for employees to be recognized in several

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1 different categories for outstanding performance.

2 Those categories are the Spot Awards, which
3 replaces our current special awards program. The Spot
4 Awards allow for the awarding of cash up to \$500, as
5 does our current special awards program. And this
6 award can be presented by managers and directors
7 directly. It does not have to go through the selection
8 committee, which I will speak with you about very
9 shortly.

10 And any member of a director or manager staff
11 who performs outstandingly, either on a special project
12 or a project of some shorter duration, is eligible with
13 the eligibility period to be recognized on the spot
14 with a cash award.

15 The next award is the LSC Image Award, which
16 recognizes staff for community service which improves
17 the quality of life for the clientele that we serve,
18 specifically the poor and needy, for example, through
19 pro bono work, or through literacy volunteerism and
20 those kinds of things, mentorships. And that award,
21 too, can be awarded up to \$500.

22 The third award is the personal achievement

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1 award, and the cash range for that award is \$501 to
2 \$1,500. And it recognizes employees who perform
3 exceptionally and improve themselves such that they are
4 better employees or more valuable employees to the
5 corporation, for example, by completing a degree
6 program that helps them bring additional skills to the
7 corporation.

8 And next is the Sustained Excellence Award.
9 And as the name implies, it's awarded to an employee
10 who performs outstandingly for an extended period of
11 time during the eligibility period. And that award
12 ranges from \$1,501 up to \$5,000.

13 And finally, the President's Award recognizes
14 individuals who have performed in an unparalleled way,
15 whose contributions are transcendent and on some
16 special long-term project such as an improvement to the
17 delivery system or developing an innovative project
18 that they've had an opportunity to work on and such
19 that it makes a major difference to the corporation.
20 And that award ranges from \$5,001 to \$10,000.

21 I mentioned to you that the procedure for
22 awards includes, with the exception of the Spot Awards,

1 that nominations can be made by the manager and
2 director and the nominations are then forwarded to the
3 selection committee.

4 On the selection committee sits the president,
5 sits the vice president for programs, the vice
6 president for administration, and the director of
7 administration and human resources serves as an ex
8 officio advisory member to the committee, specifically
9 for facilitating the processing of the nominations and
10 seeing that the connectivity between the nominations
11 process and the final award process occurs.

12 Many different agencies use cash awards as
13 incentives to attract highly qualified employees, to
14 retain highly qualified employees. It is more
15 commonplace in the market now, particularly when you
16 are in a very competitive environment, such as the one
17 that we find ourselves located in.

18 The nature of our work is that we require
19 highly skilled employees in the delivery system, and in
20 this market, the political capital of the world,
21 lawyers and people who are skilled in those areas are
22 much sought after.

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1 So we see this as another step in helping us
2 to be able to attract those kinds of employees and to
3 retain those kinds of employees.

4 The eligibility period, or nomination period,
5 is the fiscally year, October 1 through September 30.
6 And the selection committee will meet three times
7 during that eligibility period to review nominations
8 that have been made, and to act upon them.

9 And thereafter, if approved by the selection
10 committee, the awards are made through the assistance
11 of the office of administration and human resources, in
12 conjunction with the controller's office.

13 As I said earlier, this kind of program is
14 standard in the industry. I brought some materials
15 with me today to share with you about the federal
16 government. The Department of Energy has a special
17 awards program too, whereby it awards both cash
18 incentives as well as non-cash incentives. And they
19 award in various categories which include the ones that
20 we award. Personal achievement, for example, they have
21 what they call an on-the-spot award, a performance
22 award, a special act of community service award, and so

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1 forth and so on.

2 So I make that point merely to share with you
3 that it is common in the industry in general, it's also
4 common in the federal government. And while we are not
5 able to mirror the programs, because of budgetary
6 constraints here at the corporation, that the federal
7 government has, we do think that, again, this is one
8 step in helping us to be able to attract and retain
9 highly qualified employees.

10 CHAIR BATTLE: Okay. Are there any questions
11 from members of the committee about the program?

12 MR. ERLNBORN: Or comments?

13 CHAIR BATTLE: Or comments?

14 MR. ERLNBORN: I'm not sold on the idea, let
15 me say that. I think it may be a bit too ambitious. I
16 served on the board of a corporation that has an awards
17 program, and there are three people who get the
18 president's award that's determined by the president of
19 the corporation, and then there's one who get the board
20 award. The board of directors makes that
21 determination. No spot awards, just these four awards
22 in the course of any fiscal year.

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1 And this corporation has about 4,000
2 employees. Now I think with a small group of employees
3 that we have, this is a rather ambitious program, and I
4 think there are too many awards.

5 I think maybe the Spot Award, which could be
6 for more than one. I understand that. In the course
7 of the year, there seems to be no limit as to the
8 number of Spot Awards.

9 But it's also made -- a determination by one
10 individual, a supervisor. Just as a suggestion, I
11 think rather than put it through the committee, if the
12 president of the corporation would have to sign off on
13 this, the supervisor could determine that someone is
14 eligible for the award, and the supervisor would make
15 that award subject to the approval of the president of
16 the corporation.

17 And then, as I say, there apparently would be
18 no limit as to the number of those, because the
19 different segments of the administration of this
20 corporation and the various supervisors could make a
21 number of these awards.

22 Just as kind of thinking off the top of my

1 head, maybe there should be some limit in a particular
2 division of the administration, so that you wouldn't
3 have one generous supervisor making a lot of awards in
4 that particular division.

5 And although we may not want to have an
6 absolute number for the entire administration, maybe
7 within a division of the corporation. There should be
8 some constraint with a limitation.

9 And then the other award that I would think
10 would be sustainable is the President's Award. Now,
11 this is my suggestion, but you have the Spot Awards and
12 the President's Award, and forget the others, which
13 seem to, in a way, be awards for something that may not
14 be directly advantageous to the corporation.

15 For instance, the personal achievement award
16 recognizes individual employees for exceptional
17 personal accomplishments attained independently through
18 personal resources which bring benefit to the
19 corporation. A relative college degree? Well, I'm not
20 sure there's a direct relation between obtaining a
21 college degree and an advantage to the corporation.
22 Professional certification? Publication of a book or

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1 professional journal?

2 Well, I'm not going to go on and on, but let
3 me just say that would be my suggestion, we only have
4 the two awards, Spot Awards and the President's Award,
5 and not the other two.

6 CHAIR BATTLE: Any other questions?

7 MR. MCCALPIN: I'm sorry, Madame Chair, I have
8 not been goofing off. I have been in a very difficult
9 session.

10 CHAIR BATTLE: Okay. We take that, and we'll
11 give you an excused absence for now.

12 MR. MCCALPIN: The awards program?

13 CHAIR BATTLE: We're dealing with the awards
14 program first now, so what I'd like to do, is let's
15 find out what the present circumstance is with regard
16 to how the corporation, or if the corporation has an
17 awards program, and how it has operated, and whether
18 some of the concerns that have been raised here about
19 the operation of such a program have been experienced,
20 if you can help us with that.

21 MS. KENNEDY: Currently we have what we call a
22 special awards program and it's been in existence for

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1 some time. It allows for cash awards of up to \$500.
2 And I've been at the corporation for four years, and in
3 that four-year period, we've seen four cash awards
4 made. Four nominations, four nominations were
5 accepted, four persons were awarded --

6 CHAIR BATTLE: How much do we really have in
7 our budget for awards at present, over the four
8 years --

9 MS. KENNEDY: At this current time, we don't
10 have it budgeted over the four-year period.

11 CHAIR BATTLE: Okay.

12 MS. KENNEDY: The policy allows for the
13 implementation of the program on a year-to-year basis,
14 as budgetary constraints allow. That's very clear in
15 the policy language. This year we've identified
16 \$50,000 maximum for cash awards under the new
17 guidelines that we're developing and proposing to you.

18 Our experience -- I think you make a very
19 important point -- our experience has been that
20 nominations are not rampant. They do not come
21 regularly or routinely from the workplace. I think
22 managers have been judicious in the implementation of

1 the existing policy, and quite frankly, cautious about
2 making those kinds of nominations because I think they
3 realize some of the implications of making several
4 awards, and some of the perceptions that could be
5 created or developed if there's a strong --

6 CHAIR BATTLE: Let me ask a question. Is the
7 present special awards program organized exactly the
8 way the Spot Award is? That is, that it is initiated
9 by an employee's manager and approved by the office
10 director or VP and that's as far as it goes. Is that
11 the way it's organized?

12 MS. KENNEDY: No, it's not exactly organized
13 that way. Right now the special awards program, anyone
14 can nominate. Any employee can nominate any other
15 employee. So the proposal that is contained in this
16 policy guideline narrows the nomination process
17 considerably, and allows only for the director or
18 manager to make nominations for Spot Awards.

19 And there is a standard process for doing
20 that, standard forms, with considerable justification
21 required for even making a Spot Award. So there is
22 some difference. The dollar amounts are the same.

1 CHAIR BATTLE: Okay. Did you have a question?

2 MR. MCCALPIN: I have one question. I worry
3 that at the \$5,000 and \$10,000 level there's more
4 incentive or temptation to do things, but I see that
5 those are awarded to teams. How would you divide an
6 award within a team?

7 MS. KENNEDY: Before I respond directly to
8 that question, a team is not a requirement, it can be
9 an individual or a team.

10 MR. ERLENBORN: I understand that.

11 MS. KENNEDY: But you would divide it equally
12 among the members of the team.

13 MR. ERLENBORN: Even if one person is a leader
14 of the team and the others are members of the team?

15 MS. KENNEDY: Yes. That is the intent.

16 MR. ERLENBORN: I assume that the one
17 nominating could choose either the individual or the
18 team.

19 MS. KENNEDY: Absolutely.

20 MS. WATLINGTON: LaVeeda, I guess I'm still
21 from the feeling that teachers and people in service
22 organizations, I always felt that you're there because

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1 you like what you're doing, or doing it because you
2 know you're applying a service. You're not making
3 money there. And today's salaries are much more
4 liveable to me than they used to be. And with the
5 economy the way it is, and you have so many programs
6 being defunded or having to cut there.

7 Well, we've always looked as the top programs
8 as being so different in all ends of it, not just a
9 place where the money's coming in. The people in the
10 field are doing the work, you know, as the money comes
11 through. And when you see that top level having that
12 kind of money, letting those attorneys just out there
13 working with the clients, you know, getting money for
14 the programs, you know, there's not enough people there
15 that I find these kind of programs kind of difficult to
16 even have their existence.

17 I mean I guess just the way I look at it. You
18 don't change some things.

19 MS. KENNEDY: I understand.

20 CHAIR BATTLE: We've had two at least thoughts
21 from board members. One is that we look at the program
22 and maybe streamline it to consider Spot Awards and the

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1 Presidential Awards as opposed to --

2 MR. MCCALPIN: That's true. I came in as John
3 was making that proposal.

4 CHAIR BATTLE: Right, right.

5 MR. MCCALPIN: Which two did you suggest?

6 CHAIR BATTLE: I was just about to tell you.
7 It's the Spot Award for extraordinary performance and
8 the President's Award. And so that you would have the
9 opportunity for, you know, a spot cash award for an
10 excellent or extraordinary performance, and then for
11 those transcendant and unparalleled activities, the
12 President's Award would be awarded.

13 And the President's Award as presently
14 designed would go before the committee, and the Spot
15 Award would not be required to go before the committee,
16 is the way that that's organized. That's at least one
17 proposal.

18 Then Ernestina has basically said she doesn't
19 believe in these kinds of programs and people make
20 their money --

21 MS. WATLINGTON: But if it's something
22 workable. But \$10,000, I think, is an awful lot of

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1 money when you're talking about our budgets and that
2 type of thing, just for an incentive to do your job
3 better.

4 CHAIR BATTLE: But you've got a team, as well
5 as individuals, so probably the way that that's
6 designed is so that if there's a team that has worked
7 on something, you would be able to have sufficient
8 dollars to divide it up among those members of the
9 team.

10 MR. ERLNBORN: That might explain the reason
11 that I suggest those two and not the other two. Those
12 two are directly related to the job performance here in
13 the appropriation. The other two can be pro bono work,
14 literacy tutoring, mentorships, and so forth, which is
15 apart from job performance.

16 The other one, personal achievement, could be
17 getting a college degree, or things like that. Again,
18 apart from performance on the job. So that was really
19 the reasoning that I had in choosing the Spot Award and
20 the President's Award.

21 CHAIR BATTLE: Let me, John, I'd like to just
22 say particularly about the image award, that one of the

1 things that I think Legal Services has worked hard to
2 do in order to multiply the effect of its ability to
3 reach as many clients as possible has been to encourage
4 pro bono activity in the private sector.

5 And so I can see a job-related connection
6 between awarding that kind of conduct within our own
7 offices, if we are to encourage law firms and other
8 people to value that as part of how they do their work.
9 So they're --

10 MR. MCCALPIN: Yes, but the law firms don't
11 get any additional compensation for pro bono. They
12 consider it as part of the regular obligation of the
13 members of the bar in that firm.

14 CHAIR BATTLE: That may be true, but I guess
15 what I'm saying is, in terms of whether it is job-
16 related, that was particularly the point that he was
17 making, whether this particular award is job-related.
18 I can see that doing something to recognize someone for
19 doing that because we do raise that issue, makes it
20 job-related, in my view.

21 MR. MCCALPIN: But suppose you have everybody
22 here on the staff doing pro bono? Are you going to

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1 give it to all of them?

2 CHAIR BATTLE: I think it's for extraordinary
3 performance, so you --

4 MS. KENNEDY: That's how it's set up.

5 MR. MCCALPIN: "Personal, voluntary community
6 service to improve the quality of life for the poor."
7 So every member of the staff that did pro bono work
8 would be entitled to that award.

9 MS. KENNEDY: The intent of the policy is,
10 just as Ms. Battle suggested, that it's for outstanding
11 and exceptional performance --

12 MR. MCCALPIN: It doesn't say that.

13 MS. KENNEDY: -- around. It doesn't say that,
14 but that is the intent. And so that is an area where
15 we need to make that clear in the language.

16 CHAIR BATTLE: Well, did you have any -- I'm
17 sorry, I didn't mean to --

18 MS. KENNEDY: That's okay.

19 CHAIR BATTLE: Did you have any other comments
20 about the program? Have you had a chance to review it?

21 MR. MCCALPIN: Well, it's the same comment
22 that I made yesterday, and that is I think you're being

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1 optimistic that it will be more helpful than divisive.

2 MS. KENNEDY: May I just add a couple of other
3 things?

4 CHAIR BATTLE: Okay.

5 MS. KENNEDY: I want to speak to Mr.
6 Erlernborn's point about no limit on-the-spots. There
7 is a ceiling of 20 percent to 25 percent per office.
8 That's in the language earlier, under administrative
9 guidance on page three.

10 MR. ERLENBORN: That would be 25 percent of
11 the staff?

12 MS. KENNEDY: Of that division, of that
13 office, yes. So there is a ceiling there.

14 And then the other thing, the other point that
15 I wanted to share with you is that this program is
16 intended to be implemented only when budget permits.
17 So there is the flexibility, if the budget does not
18 permit it, that the program may not be implemented.

19 And finally, as we shared on yesterday, there
20 is no requirement that an award be made in each
21 category that exists annually. So if there is not
22 someone who performs up to the criteria that are listed

1 -- for example, in the President's Award, there may not
2 be an awardee in that category. So it requires a lot
3 of -- it relies a lot on the judgement of the selection
4 committee, the president, the vice president, upon the
5 advice of human resources. And that flexibility does
6 exist.

7 So it is not intended that there will be a
8 guaranteed awardee in each program from year to year.
9 It's intended that management will study the program,
10 will review it each year, annually, and will be
11 reported to the board.

12 So this program has built into it the
13 opportunity for the board to review its operations and
14 to make recommendations or requirements for change upon
15 that review and the provision of that information.

16 MR. ERLNBORN: Would there be contemplated a
17 budgetary allocation for Spot Awards separate from the
18 others?

19 MS. KENNEDY: Yes, exactly, but not this year.
20 Because we are just now proposing to implement the
21 program, we did not have an opportunity to budget for
22 the Spot Awards in this current fiscal year. So we're

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1 looking to see the experience of this first year of
2 implementation and use that as a base line for
3 budgeting for 2001. So yes, there is an expectation
4 that there will be a seperate budgetary allotment in
5 that office budget for the Spot Awards program.

6 MR. ERLENBORN: I can see the pros and cons to
7 that. Number one, I think it is good that there would
8 be a limitation, monetary limitation, for the Spot
9 Awards, a budgetary allocation.

10 On the other hand, if it's solely within the
11 discretion of the manager, there might be the tenancy
12 to make these awards early in the year, before the
13 budget runs out.

14 MR. MCCALPIN: Or to then make sure you expend
15 100 percent of the budget.

16 MR. ERLENBORN: Yes, but each manager will not
17 have an allocation, as I understand it. It would be
18 just overall allocation for Spot Awards?

19 MS. KENNEDY: No, no. Each office will
20 have --

21 MR. ERLENBORN: Oh, each office will have a
22 seperate -- I see.

1 MS. KENNEDY: That's the expectation.

2 MR. MCCALPIN: So there wouldn't be that
3 tendency to be in competition with other divisions of
4 the --

5 MS. KENNEDY: I wouldn't expect so. I think
6 our managers will be judicious in their use of the
7 funds that are made available for the Spot Awards. And
8 I say that based upon the experience of the last
9 several years with the existing special awards program,
10 which in general mirrors the Spot Awards program. We
11 have not found that to be the case.

12 But of course, as I said again, and again, we
13 will be reviewing this closely, we will be looking at
14 it at the end of the year, we'll be making reports to
15 the president, we'll be making reports to the board
16 about its operations, and then if we need to step back
17 and adjust some things, and we'll have an opportunity
18 to do that on an ongoing basis.

19 CHAIR BATTLE: So essentially where we are,
20 the corporation already has an award program -- we'll
21 call it special award program -- and we have a proposal
22 before us to expand that program to include a number of

1 other awards beyond the special award.

2 And I'm hearing feedback from members of the
3 committee about this expansion of the awards program.
4 Are there any other questions about this, or are we
5 prepared to vote on this? We need to vote if we're to
6 implement this at this meeting. What I'm hearing is
7 some significant revision may, if done, secure an
8 expansion of the program from the existing special
9 awards program, but that it may make sense to take into
10 account the discussion that we've had here today and to
11 come back with a program that includes some of the
12 thoughts from the board, maybe at the next board
13 meeting.

14 And the effect of that would be,
15 unfortunately, that we wouldn't have a program for this
16 year, but we would be able to get it implemented for
17 later on in this fiscal year. Am I hearing that
18 correct, or --

19 MS. WATLINGTON: Also, like don't we have,
20 within our employment practice, that -- what is it --
21 the awards or raises that is given for if you do a good
22 job, or --

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1 MS. KENNEDY: Well, merit increases are
2 completely separate from these cash awards.

3 MS. WATLINGTON: I know that, but don't we
4 already have -- but do we have one set up in our --

5 MS. KENNEDY: We do, I think we do.

6 MS. WATLINGTON: Okay, so you know, it's --
7 that's an incentive to do your job good.

8 MS. KENNEDY: That is, that's right.

9 MS. WATLINGTON: Still questioning the sense
10 of an award program along with that.

11 CHAIR BATTLE: Well, we have an existing
12 awards program, I think the question is --

13 MS. WATLINGTON: Right, but --

14 CHAIR BATTLE: The question is whether we will
15 expand this awards program to include these areas.
16 At least my thoughts are that I think that the Spot
17 Award, the Image Award, the Sustained Excellence Award,
18 and the President's Award have merit. The concern
19 about the budget, I think, is a legitimate one, in
20 terms of how much money we have available in order to
21 make awards in different areas.

22 And we may need to revisit and reconstruct a

1 program that the board would accept, that takes into
2 account the discussion that we've had today and how to
3 present --

4 MS. KENNEDY: May I just make one
5 clarification about the budget?

6 CHAIR BATTLE: Okay.

7 MS. KENNEDY: Funds have already been
8 identified for Fiscal Year 2000 to accommodate the
9 awards program.

10 CHAIR BATTLE: Okay.

11 MS. KENNEDY: So there are no budgetary
12 constraints for the program that we've identified for
13 this current year. And of course, each year, as we go
14 into the fiscal year, we would have to re-evaluate and
15 determine if, in fact, there are funds available during
16 that year to implement the awards program.

17 But the constraints which may exist for this
18 year are not related to the budget, and therefore we
19 had hoped that if the board were to approve this
20 program, we could go ahead and begin to implement in
21 whatever format was approved, the awards for this year,
22 and we had expected to be able to do that within the

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1 first nomination period, which would be by the end of
2 this calendar year.

3 CHAIR BATTLE: Okay, well I at least heard
4 from John Erlenborn a proposal which would include the
5 Spot Awards and the presidential award. Is there any
6 other suggestion about --

7 MR. MCCALPIN: I'd be more comfortable with
8 the monetary value if the President's Award was \$5,000
9 instead of \$10,000.

10 MR. ERLENBORN: I would agree.

11 MS. WATLINGTON: I would agree to that.

12 CHAIR BATTLE: Well, what about teams? Are
13 you setting a \$5,000 max for individuals and if you're
14 awarding a team, the team would then split up the
15 \$10,000?

16 MR. MCCALPIN: No, the \$5,000.

17 CHAIR BATTLE: Split a \$5,000?

18 MR. MCCALPIN: Well, but I'm just making this
19 comment with respect to the suggestion that John made.

20 CHAIR BATTLE: Okay, okay. John, I think what
21 I'm hearing is in order to meet the fiscal realities of
22 what we're trying to do, if we have a proposal that we

1 can accept today, then it makes sense to go forward
2 with that, rather than have it completely revamped.

3 MS. KENNEDY: Yes.

4 CHAIR BATTLE: Is there anything else about
5 this program that we need to look at? The types of
6 awards is what our discussion is focused on the most.
7 Is there anything else about it?

8 MR. MCCALPIN: Well, yesterday we raised the
9 issue of to whom the program ought to be available, and
10 I think there was some unease about making a \$5,000 or
11 \$10,000 available to highly paid employees, employees
12 who are highly paid anyway.

13 But I think that was just a concern that was
14 raised yesterday, and we were told that it's applicable
15 to everybody except, I assume, the president, who's
16 already at the compensation limit.

17 And I suppose if there's only very little room
18 between the compensation of the IG and the statutory
19 limit.

20 MS. WATLINGTON: There's a committee that also
21 -- other than just the -- there's someone else that
22 they'd have to take it through to make the --

1 CHAIR BATTLE: Awards committee, yes.

2 MS. KENNEDY: The selection committee includes
3 the president, the vice president for programs, and the
4 vice president for administration. Those are the three
5 voting members of the selection committee.

6 Presumably by the time it gets to the
7 selection committee, however, it has gone past the
8 manager and the director, and each of them has approved
9 it and then it's finally at the point where the
10 selection committee is essentially reviewing the
11 recommendation of the director and the manager.

12 MR. MCCALPIN: I assume it's clear that the
13 selection committee could not vote to award this to one
14 of the members of that committee.

15 MS. KENNEDY: No, that is not clear. If the
16 president nominates one of the vice presidents for an
17 award, then the decision of the president is final in
18 that instance.

19 MR. MCCALPIN: Oh, no. No, no, no.

20 MR. ERLNBORN: How about excluding corporate
21 officers?

22 MR. MCCALPIN: That has some appeal. I

1 haven't thought of all the implications of it, but it
2 has some appeal.

3 And let me say this. I certainly don't want
4 to leave in the hands of the president alone the right
5 to make this award to a vice president.

6 MS. WATLINGTON: He makes a final decision --

7 MR. MCCALPIN: Pardon?

8 CHAIR BATTLE: After a selection committee
9 did.

10 MS. WATLINGTON: -- after the selection
11 committee will review and forward a document and make
12 recommendations for award approval, then the president
13 will make a final decision. But it's very important
14 who's on that selection committee.

15 MR. ERLNBORN: Well, as to corporate
16 officers, that really is --

17 MR. MCCALPIN: Four vice presidents, the
18 treasurer --

19 MS. KENNEDY: That's it. The four vice
20 presidents and the controller/treasurer.

21 MR. MCCALPIN: And the president.

22 MS. KENNEDY: And the president.

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1 CHAIR BATTLE: Those are all the officers,
2 right?

3 MR. FORTUNO: The vice presidents, the
4 president, the secretary, and the treasurer.

5 MR. MCCALPIN: Well, but the secretary and the
6 vice president were the same office. The IG is not a
7 corporate officer.

8 MR. FORTUNO: No.

9 CHAIR BATTLE: How would this work, with
10 respect to the IG's office? I assume with the
11 selection committee, that the IG would make a selection
12 for the OIG, but will the OIG, will the office have a
13 selection committee as well?

14 MS. KENNEDY: I will defer to Laurie on that,
15 because I think they're working on their own setup
16 procedures for implementation.

17 MS. TARANTOWICZ: Good morning. We don't have
18 a formal -- I don't think we have a process that covers
19 the OIG, but we contemplated using the awards program,
20 and of course given the situation, we would be using
21 the selection committee as outlined here, because it
22 wouldn't be appropriate for management --

1 CHAIR BATTLE: Sure, we understand that, but
2 we were wondering what you were going to do in the IG
3 shop on this.

4 MS. TARANTOWICZ: As far as who would be on
5 the committee?

6 CHAIR BATTLE: Yes. How do you do your
7 special awards now? I mean, in other words, there's a
8 program already in place that allows for selection of
9 people to receive special awards.

10 MS. TARANTOWICZ: I don't recall recently a
11 special award being awarded within the OIG. I believe
12 under the current -- I mean, it hasn't happened, so
13 it's hard to say.

14 CHAIR BATTLE: Sure, I understand.

15 MS. TARANTOWICZ: I mean, I know it's happened
16 in the past, and I think that it was recommended either
17 by the direct supervisor and approved by the IG, or if
18 the IG is the direct supervisor, just approved by the
19 IG.

20 CHAIR BATTLE: It would be important for us to
21 know exactly how that's going to be organized, so that
22 the board, just as it's voting on the management's

1 proposal with regard to how to organize this awards
2 program, could vote on the proposal as to how the IG
3 would organize its awards program as well.

4 MS. TARANTOWICZ: I would imagine if, in
5 management it was going to be the president and the
6 vice presidents, it would be the IG and the assistant
7 IGs in the OIG.

8 CHAIR BATTLE: But you all don't have a
9 program as of yet, so it's in progress. When you get
10 it, let us see it.

11 MS. TARANTOWICZ: Oh, I'm sorry, we weren't
12 under the impression that we had to draft our own, but
13 we can do that.

14 CHAIR BATTLE: Well, I guess what I'm saying
15 is however you organize your selection committee so
16 that it's clear, I think this is going to ultimately go
17 in our manual, and it needs to be clear how that whole
18 process takes place, corporation-wide. So we do need
19 to have that.

20 MS. TARANTOWICZ: I should also say that the
21 IG has determined that if the five categories of awards
22 listed here are approved by the board, that his

1 intention would be not to award an Image Award or a
2 Personal Achievement Award for reasons similar to those
3 that Mr. Erlenborn stated earlier.

4 MS. WATLINGTON: I think we've eliminated
5 those two.

6 CHAIR BATTLE: Those two are really not under
7 discussion right now. I think we have under discussion
8 the special award and the President's Award, those two.

9
10 MR. MCCALPIN: Spot.

11 CHAIR BATTLE: Spot, it's Spot to replace the
12 special, I'm sorry, Spot Award.

13 MS. KENNEDY: And is it also under
14 consideration the Sustained Excellence? There are
15 five, and I understand that you eliminated two, the
16 Image and the Personal Achievement. That leaves the
17 Sustained Excellence, the Spot Award, and the
18 President's Award. Is that correct?

19 MR. MCCALPIN: I think John's suggestion was
20 only --

21 MS. WATLINGTON: His suggestion was just the
22 two.

1 MS. KENNEDY: Okay.

2 MR. ERLLENBORN: I don't think I was really
3 clear. I was talking about eliminating two.

4 The Sustained Excellence Award and the
5 President's Award seem to me to be pretty much the same
6 thing, however, based on the same sort of performance.

7 And I can't say that I've clearly decided
8 whether we ought to have both of them or combine them
9 into the President's Award.

10 MS. KENNEDY: Well, the intent is that they be
11 considerably different. The Sustained Excellence is
12 award is generally for outstanding performance of your
13 regularly assigned duties and responsibilities, whereas
14 the President's Award is intended to be applied to
15 special projects, innovative projects that may not be a
16 part of your routine day-to-day duties and
17 responsibilities, but some special project, one-time
18 project, that may have lasted over a sustained period
19 of time, however.

20 CHAIR BATTLE: It looks like what's happened
21 is the Sustained Excellence Award and the President's
22 Award for different performance items.

1 MS. KENNEDY: Yes.

2

3 CHAIR BATTLE: But the amounts are about the
4 same, based on what's being recommended.

5 MS. KENNEDY: Well, actually --

6 MR. MCCALPIN: Well, let me ask you, I don't
7 remember what are the different marks that you get in
8 the performance review, but what's the top one?

9 MS. KENNEDY: Exceeds fully successful.

10 MR. MCCALPIN: Would you think that everybody
11 that gets that mark gets the Sustained Excellence
12 Award?

13 MS. KENNEDY: No, no, that is not the intent
14 of the program. The intent of the program is that some
15 outstanding performance above and beyond what's implied
16 in the performance management system, the performance
17 appraisal system, is what would warrant consideration
18 for Sustained Excellence Award. So they're not
19 intended to lay over on top of each other.

20 M O T I O N

21 MR. ERLNBORN: To help bring this to a
22 conclusion, let me move, if that would be in order at

1 this time, to approve the program, with the exception
2 of the Image Award and the Personal Achievement Award.

3 I would also like to move to -- and I offer
4 this secondly -- I'd like to move to exclude corporate
5 officers from the program. They're, in a way, they're
6 the ones that are going to be making the final
7 determination anyhow.

8 CHAIR BATTLE: Okay.

9 MS. WATLINGTON: Is that also the \$5,000?

10 MR. ERLBORN: Well, let me just offer the
11 one to exclude the Image and Personal Achievement
12 Awards, and then I'll offer that other one separately.

13 MS. WATLINGTON: I will second that.

14 CHAIR BATTLE: Okay. You've heard the motion.
15 All in favor?

16 (Chorus of ayes.)

17 CHAIR BATTLE: All opposed?

18 (No response.)

19 CHAIR BATTLE: All abstentions?

20 (Laughter.)

21 CHAIR BATTLE: All here?

22 MR. MCCALPIN: Well, you know, I would

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1 approve, just reserving the right to vote against the
2 whole thing when it comes up.

3 CHAIR BATTLE: Okay. Well, a majority of the
4 members of the committee have voted to exclude to adopt
5 the award recognition program with the following
6 modifications to it: that we would exclude the Image
7 Award and the Personal Achievement Award, and that
8 corporate officers would be excluded from consideration
9 for the awards.

10 MR. MCCALPIN: I thought he was going to make
11 that separate.

12 MR. ERLENBORN: Let me offer that separately.

13 CHAIR BATTLE: Oh, okay.

14 MR. ERLENBORN: It probably will get the same
15 vote, I guess.

16 CHAIR BATTLE: Okay.

17 MR. ERLENBORN: Rather than spending --

18 CHAIR BATTLE: Oh, I'm sorry. So these are
19 two separate motions. I'm sorry.

20 MR. ERLENBORN: Yes, all right.

21 CHAIR BATTLE: I didn't do that correctly.

22 MR. ERLENBORN: Better give people an

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1 opportunity of voting opposite ways on those two.

2 M O T I O N

3 But anyhow, I would move now to exclude corporate
4 officers. And for, I think, a very good reason. If
5 the corporate officers, who are already the highest
6 paid, get these awards, I don't think it necessarily
7 would set very well with the other people in the
8 corporation who are not as highly compensated.

9 CHAIR BATTLE: Okay, it's been properly moved.
10 Is there a second?

11 MS. WATLINGTON: I'll second.

12 CHAIR BATTLE: Okay, we moved and seconded
13 that the awards program be recommended to the board
14 with the express caveat that corporate officers would
15 be excluded from consideration under the awards
16 program.

17 All in favor of that motion?

18 (Chorus of ayes.)

19 CHAIR BATTLE: All opposed?

20 (No response.)

21 CHAIR BATTLE: Motion carries.

22 MR. ERLBORN: Let me just say this. I don't

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1 know, Bill, if you want to do anything about the
2 President's Award. I'm of two minds about that.
3 Monetary limitation --

4 MR. MCCALPIN: Well, if you've got the other
5 one in at \$5,000, maybe you want to have some monetary
6 differential between them.

7 I thought that you were only going to have the
8 Spot and the President, and nothing in between, when I
9 said that I thought it ought to go down to \$5,000.

10 But if you're going to have both of them, and
11 I can see a reason for a monetary differential.

12 MR. ERLNBORN: Let me just finally say that I
13 think the board should and will take a special effort
14 to monitor the implementation of this over the course
15 of the next year or so. I think there's some
16 reluctance on the part of some of us, but --

17 CHAIR BATTLE: I'd like to also say that the
18 board really does appreciate the work and performance
19 that is over and above the call of duty, and we have
20 seen that happen on many occasions in some of our
21 darkest hours over the last six years.

22 The fact that the existing awards program,

1 which allows for special awards and special cash
2 amounts of \$500 to employees has been implemented over
3 the last four years at least, only in four instances,
4 tells me something about how judicious the staff will
5 probably be if we have a more expanded program which
6 will allow for awards.

7 But I certainly would applaud our human
8 resources person and also the staff for the work that
9 has been done, for the vision to see that it is
10 important, that people be rewarded other than with
11 their salaries for the work that they do that is really
12 outstanding and above the call of duty.

13 So with that, and with the point that I think
14 Mr. Erlenborn just made about the fact that we do want
15 to monitor this and make sure that it is a positive
16 impact and not one that creates a problem for our
17 employees, I think that's where we are on this program.

18 MS. WATLINGTON: I just wanted to say, I think
19 people know where I'm coming from. If I change that --
20 we do what we do and we don't know what money is. You
21 have to be there and in the trenches every day, as I
22 am, to know, and I'm also applauding the field, because

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1 they're the ones that's there in the trenches doing all
2 that work all the time, and they don't even get the
3 amount of salaries they should be getting. But the
4 corporation staff is doing a lot for their clients and
5 the clients that the -- everything, people, and in the
6 community.

7 Things are getting worse, not better, so I
8 just advocate that way and I hope the time comes when I
9 don't have to feel that way, but it isn't that I don't
10 admire or appreciate the staff and their commitment.

11 MS. KENNEDY: We thank you for your support.
12 And we certainly will keep you both informed and
13 involved throughout this process.

14 There was one clarification I'm seeking with
15 respect to the inspector general. Laurie and I were a
16 little bit unclear about that. Is the inspector
17 general omitted along with the corporate officers, or
18 not?

19 MS. TARANTOWICZ: He's not covered by your --
20 obviously, he wouldn't nominate himself for an award
21 and he wouldn't take an award, just wanted to clarify.

22 CHAIR BATTLE: Why don't we do that, just to

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1 exclude the inspector general as well?

2 MR. ERLNBORN: Yes, I think that it's
3 probably not necessary, but I think it has good
4 publicity value.

5 MS. KENNEDY: Thank you very much.

6 CHAIR BATTLE: Let's take a vote on that
7 inspector general motion as well.

8 M O T I O N

9 MR. ERLNBORN: I'll so move.

10 MS. WATLINGTON: Second.

11 CHAIR BATTLE: Okay. It's been properly moved
12 and seconded that we also exclude the inspector general
13 from consideration for the awards recognition program.
14 All in favor?

15 (Chorus of ayes.)

16 CHAIR BATTLE: All opposed?

17 (No response.)

18 CHAIR BATTLE: Let me just clarify for the
19 record what it is I think we have now voted on and what
20 it is we're going to recommend to the board on
21 tomorrow. And that is after our careful review of the
22 awards and recognition program proposal that's been

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1 made to the board, that this committee would recommend
2 tomorrow to the board the adoption of the awards and
3 recognition program with the following changes to it.

4 One, that the program would exclude the LSC
5 Image Award and the Personal Achievement Award.

6 Two, that the awards program would exclude
7 corporate officers and the inspector general.

8 MR. ERLNBORN: Could I ask, just for
9 clarification, what are the corporate officers? I
10 think -- was there only four?

11 CHAIR BATTLE: The vice presidents,
12 president --

13 MR. MCCALPIN: President, four vice
14 presidents --

15 CHAIR BATTLE: -- secretary and treasurer.

16 MR. ERLNBORN: Oh, okay. And that --

17 MR. MCCALPIN: And the secretary is also a
18 vice president. So they're not two separate
19 individuals.

20 MR. ERLNBORN: At this time.

21 MS. WATLINGTON: And the human resources, they
22 administer the program?

1 MS. KENNEDY: Human resources will serve as
2 advisory to the selection committee.

3 MS. WATLINGTON: No, no, the selection
4 committee act in the place of the --

5 MS. KENNEDY: Ex officio.

6 CHAIR BATTLE: One thing that I'd like to
7 mention, we've approved the program, so the program
8 itself can go forward. But I also know that we are
9 going to be looking at the personnel manual later on
10 down the line.

11 At that point in time, I really would like to
12 see the selection committee's section, as it pertains
13 to the inspector general, clarified so we know exactly
14 how that process is going to work.

15 MS. KENNEDY: Sure.

16 MR. ERLENBORN: Let me ask this for
17 clarification. The Office of Inspector General
18 implementing this program, will they use funds
19 allocated to that office, rather than general project
20 funds?

21 MS. TARANTOWICZ: Yes, of course.

22 MR. ERLENBORN: All right. Okay.

1 MS. KENNEDY: Thank you very much.

2 CHAIR BATTLE: Any other questions? Thank you
3 very much. We have next on our agenda -- we waited,
4 Bill, for you, before we approved our minutes because
5 we wanted to make sure that if you had any corrections
6 or suggestions for changes to our minutes, that you
7 were present.

8 You should have in your board book a copy of
9 the committee meeting's minutes for the meeting on June
10 11, 1999.

11 MR. MCCALPIN: Yes, on the third page of the
12 minutes, which has a five in the lower right-hand
13 corner, the motion says that I moved .1641 as amended
14 by the committee.

15 The problem is that the preceding paragraph
16 does not really amend. It says, "Ms. Tarantowicz
17 suggested the following changes. Board clarified the
18 definition -- in addition, to clarify the following --"
19 but there's no action amending, so that the motion
20 which says we approve the amended motion, the amended
21 part, it doesn't refer to an actual amendment.

22 CHAIR BATTLE: Okay. I think the process that

1 we have used -- and Suzanne, will you help me with
2 this?

3 We have, in our deliberations, suggested
4 changes to the language of a proposed rule when we'd
5 gotten it, and made it clear to the staff what those
6 changes are, and then moved for the adoption, subject
7 to those changes.

8 Now, I don't know that we have ever voted on
9 every single change, Bill, I just --

10 MS. GLASOW: It might help if you just change
11 the word to revised, because you're in the process of
12 making the revisions one by one, and then you vote on
13 it at the end, so --

14 MR. MCCALPIN: Yes.

15 MS. GLASOW: -- it's the end vote that
16 actually amends everything that you've changed in the
17 language.

18 CHAIR BATTLE: So use the word revised?

19 MS. GLASOW: Would that help, Bill?

20 MR. MCCALPIN: Yes.

21 CHAIR BATTLE: Okay. All right. Please don't
22 make us vote on every single "and" and "or."

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1 MR. MCCALPIN: No. On the following page,
2 three, four, five lines down, this, "Ms. Kennedy
3 recommended the board approve an amendment that would
4 increase the level of employer contribution."

5 Is that what we're talking about, an employer
6 contribution level to the plan? It seemed to me that
7 that left some ambiguity, unless we said, "increase the
8 level of employer contribution to the plan."

9 CHAIR BATTLE: You're suggesting that we say
10 increase the level of employer contribution to the
11 plan?

12 MR. MCCALPIN: To the LSC 401 --

13 CHAIR BATTLE: Okay, we can do that.

14 MR. MCCALPIN: Then it says, "The
15 contributions level to 8.51 percent." Of what?

16 MR. ERLENBORN: I'm trying to recall now -- I
17 think that refers to --

18 CHAIR BATTLE: Of the employee contribution.

19 MR. ERLENBORN: -- that's of the employee's --

20 CHAIR BATTLE: Contribution.

21 MR. ERLENBORN: Contribution --

22 CHAIR BATTLE: Right.

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1 MR. ERLENBORN: -- to the plan.

2 MR. MCCALPIN: Or employee compensation.

3 MR. ERLENBORN: Contribution.

4 CHAIR BATTLE: Contribution?

5 MR. MCCALPIN: Compensation.

6 MS. WATLINGTON: Compensation.

7 CHAIR BATTLE: Compensation.

8 MR. MCCALPIN: Base compensation --

9 MR. ERLENBORN: Oh, this is the base
10 allocation, not the one that's tied to the contribution
11 that the employee makes? There are two. There's an
12 automatic allocation to the 403(b) plan, and then if
13 the employee chooses to make an additional
14 contribution, then there is an additional contribution
15 made by the employer, a magic contribution.

16 MR. FORTUNO: And I think the two combined
17 could go as high as 8.51 percent.

18 CHAIR BATTLE: Joan was the one that presented
19 this to us. Do we need clarification from her?
20 Because I think your point is well taken. We need the
21 minutes to reflect what that 8.51 percent relates to.

22 MR. ERLENBORN: I think that this should say

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1 it. I think this is a good point, Bill. It should say
2 the maximum contribution level. It's not automatically
3 the 8.51 --

4 CHAIR BATTLE: Employer's maximum.

5 MR. ERLENBORN: -- it's the maximum
6 contribution cannot exceed 8.51 percent of the
7 employee's compensation.

8 MR. FORTUNO: Right, correct.

9 MR. ERLENBORN: Now, is that total
10 compensation? Would that include overtime and various
11 other things, or is it just the base compensation?

12 MR. FORTUNO: Base compensation.

13 MR. MCCALPIN: Base compensation? So the
14 employee may actually get more compensation in a year
15 than the base compensation?

16 MR. FORTUNO: And it would not include special
17 awards --

18 MR. ERLENBORN: fringe benefits --

19 MR. MCCALPIN: Like this bonus that we're
20 talking about.

21 MR. FORTUNO: Pardon?

22 MR. MCCALPIN: Like this bonus that we've just

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1 been talking about?

2 MR. FORTUNO: It's just a base compensation.

3 MR. ERLBORN: Maybe we should add that.

4 MR. MCCALPIN: Yes.

5 CHAIR BATTLE: Employee's base level of
6 compensation?

7 MR. MCCALPIN: Base, yes.

8 CHAIR BATTLE: Okay, so the change would read,
9 "Ms. Kennedy outlined the proposal and explained the
10 necessity of increasing the employer's maximum
11 contribution level, so that it cannot exceed 8.51
12 percent of the employee's base compensation.

13 MR. MCCALPIN: I think that's correct.

14 MR. ERLBORN: I think that does it.

15 CHAIR BATTLE: Okay.

16 MR. MCCALPIN: I think that does it.

17 CHAIR BATTLE: Any other changes to the
18 minutes?

19 (No response.)

20 M O T I O N

21 CHAIR BATTLE: Okay, and with those
22 corrections, I will entertain a motion to approve the

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1 minutes of the committee meeting of June 11, 1999.

2 MR. ERLENBORN: So moved.

3 MR. MCCALPIN: Second.

4 CHAIR BATTLE: Properly moved and seconded.

5 All in favor?

6 (Chorus of ayes.)

7 CHAIR BATTLE: All opposed?

8 (No response.)

9 CHAIR BATTLE: Motion carries. Okay, we
10 now --

11 MR. ERLENBORN: Thank you, Bill, for your
12 contribution.

13 MR. MCCALPIN: Thank you for waiting.

14 (Laughter.)

15 CHAIR BATTLE: We can now move to, I guess,
16 consider and act on -- we've got two regulations.
17 We've got the timekeeping regulation and recipient fund
18 balance. Why don't we start with timekeeping, 45 CFR
19 1635, the timekeeping requirement.

20 MR. ERLENBORN: What's the page number --

21 CHAIR BATTLE: Timekeeping?

22 MS. GLASOW: Twenty-seven.

1 MR. ERLENBORN: Twenty-seven?

2 CHAIR BATTLE: Twenty-seven.

3 MR. ERLENBORN: Thank you.

4 CHAIR BATTLE: Suzanne, would you come to the
5 table, please? Because I think in order for us to get
6 through this, we're going to need your help.

7 Is there someone from CLASP working on this as
8 well?

9 MR. PERLE: Yes.

10 CHAIR BATTLE: Linda, would you come forward?

11 MR. ERLENBORN: Bill, would you like a folder?

12 MR. MCCALPIN: No, I specifically reject them.

13 (Laughter.)

14 MR. MCCALPIN: I don't want to have to carry
15 them around. That's why I have all this in one file on
16 1635.

17 CHAIR BATTLE: We have judiciously seen
18 timekeeping requirement many times over the last six
19 years, and we have now probably our final revision to
20 this, based on an issue that came up during the audit
21 process.

22 And we have a couple of issues that I think

1 were presented through the comments that we received on
2 this, and we need to hear about what they are, so that
3 we can make a final decision on this one. Okay?

4 MR. FORTUNO: I think the Chair is correct.
5 You've seen this rule any number of times. I think the
6 rule was republished so that a proposal to require
7 attorneys and paralegals to provide a date, in addition
8 to the time span, which is not something which had
9 heretofore been required, was published and comments
10 were received to that.

11 In addition, and possibly more significantly,
12 the proposed rule asks that part-time attorneys and
13 paralegals who work for the program and engage in
14 restricted activities submit a certification concerning
15 the time spent on the program's work and time spent on
16 restricted work -- or just the program work, not the
17 restricted work.

18 MS. GLASOW: It's if they're working part-time
19 for another organization. They have to certify that
20 while they're being compensated by the recipient, that
21 they have not engaged in any restricted activity.

22 CHAIR BATTLE: Okay.

1 MR. FORTUNO: And there is, in the proposal,
2 an exception for de minimus activity, which we can get
3 to as we approach that point in the regulation itself.

4 I don't know how the Chair would propose to
5 proceed, whether just taking up the revisions one by
6 one as they occur in the regulation?

7 CHAIR BATTLE: I think that makes sense,
8 because we've already approved everything else in the
9 regulation, and the only issue before us right now is
10 the issue of how we're going to address this issue of
11 certification for part-time work.

12 MS. GLASOW: And we did it in the footnotes,
13 as you requested.

14 CHAIR BATTLE: Yes. Okay, I've got a warped
15 member with a dissent.

16 MR. MCCALPIN: Every time you go through it,
17 you know, we think of something else, but let me ask
18 you, in connection with 1635.(2)(B), in the last full
19 line, we have PAI recruitment. And previously we
20 talked about a case -- what about working with a PAI in
21 education program, assisting, because PAIs do other
22 things than direct representation of plants.

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1 Is that covered in the language of community
2 education presentations -- not necessarily presentation
3 -- providing, implement, develop written materials, and
4 so on. Do we include as a matter assisting a private
5 attorney in a non-case situation?

6 MS. GLASOW: I think we would, because for one
7 thing, these are examples. They're not all --

8 MR. ERLNBORN: Not limitations.

9 MS. GLASOW: Inclusive, right. And since
10 community legal education and general supervision of
11 program services, et cetera, all of these would be a
12 matter because it's clear that a case is defined as
13 giving direct legal assistance to somebody.

14 MR. MCCALPIN: And then right after that we'll
15 use the work intake. Does that necessarily include
16 referral to a PAI, to another service agency? Or does
17 intake simply taking it into the program, or does it
18 also include referral out of the program?

19 And there may be some involved in that. You
20 may have to look around for another service agency to
21 assist the client. You may have to spend some time,
22 and I know they do spend time trying to find a private

1 attorney who will take the case by referral. So that
2 does intake include referral?

3 CHAIR BATTLE: I think it does. My view, at
4 least, is that the only limitation on intake here is
5 when no case is undertaken. All other intake is a
6 matter.

7 MR. MCCALPIN: But is it intake if you don't
8 really take it in to the program, but just send it out?

9 MR. ERLENBORN: I'm not clear on this, but
10 doesn't intake also involve determining whether the
11 client is eligible?

12 CHAIR BATTLE: Right.

13 MR. MCCALPIN: Oh, yes. Oh, sure.

14 CHAIR BATTLE: So you --

15 MR. ERLENBORN: So I would think that that is,
16 going through all of the same processes as you would if
17 the matter was handled by an in-house attorney.

18 MR. MCCALPIN: It may very well be that in
19 your preamble to this you can make sure that intake
20 includes those other activities, John's and mine, and
21 so on.

22 CHAIR BATTLE: Well, is intake defined

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1 anywhere in our reg? Because we're using the term, and
2 then we're asking the question what is encompassed in
3 that term, and then we're trying to determine what's
4 excluded from it, based on what we have here, and it's
5 really two things.

6 One, we're listing examples, so we're trying
7 to say what is a matter? We're distinguishing a matter
8 from a case, we're saying what a case is, and then
9 we're saying a matter is going to be all those things
10 that are not a case.

11 MS. GLASOW: Actually, the way I would
12 interpret this is I would include referral as a matter,
13 but it's not the same as intake, necessarily. We've
14 used those terms separately in many different ways in
15 the corporation, in our CSR handbook, and in different
16 regulations.

17 But definitely, looking at the definition of
18 matter, as opposed to the other definitions, and
19 opposed to case, if anybody asks for an opinion on it,
20 I would definitely say referral was included as a
21 matter, but it's not exactly the same as intake.

22 MR. MCCALPIN: As intake?

1 MS. GLASOW: Right.

2 MR. MCCALPIN: Well, then maybe we ought to
3 make sure that it's included.

4 CHAIR BATTLE: I just don't --

5 MS. GLASOW: Okay, well actually, if the
6 committee likes, we could throw that term in the
7 examples --

8 CHAIR BATTLE: That's fine.

9 MS. GLASOW: -- of what a matter is.

10 MR. ERLENBORN: While you're doing that, maybe
11 you want to say, "such as, but not limited to community
12 education and so forth," to make it clear that that is
13 not limiting, but just examples.

14 CHAIR BATTLE: But such as right at the point
15 -- on page 29, in about the one, two, three, four --

16 MR. ERLENBORN: Third line? Third full line,
17 yes.

18 CHAIR BATTLE: Third full line?

19 MR. FORTUNO: Before "community education"?

20 MR. ERLENBORN: Yes, it would go, "such as --"

21 MR. FORTUNO: But not limited to.

22 CHAIR BATTLE: But not limited to.

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1 MS. PERLE: What about four lines down? You
2 were talking about direct services, and then you also
3 want to talk about indirect services.

4 CHAIR BATTLE: Such as but not limited to can
5 be --

6 MR. ERLNBORN: Yes, I think it would be along
7 there as well. It may not be necessary. I think "such
8 as" indicates that it is only an example.

9 CHAIR BATTLE: But I think the point that
10 you're raising is well taken, that when you say, "such
11 as," and you don't list it, then there's a question as
12 to whether or not this is fully --

13 MR. FORTUNO: Inclusive of --

14 CHAIR BATTLE: Yes, yes, fully inclusive.
15 Right.

16 MR. FORTUNO: At the very least it reinforces
17 the point and maybe more than that, it eliminates an
18 ambiguity.

19 CHAIR BATTLE: Bill?

20 MR. MCCALPIN: Top of the next page, the
21 second line.

22 CHAIR BATTLE: Okay, can we do this --

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1 MR. ERLENBORN: There's a word missing over
2 there.

3 MR. MCCALPIN: What does general mean?

4 MR. ERLENBORN: I think there's a word
5 missing.

6 CHAIR BATTLE: Where?

7 MR. ERLENBORN: D, top of page 30, the second
8 line, it's on a partial line, "Management and general,
9 and fundraising."

10 MS. GLASOW: That's a term of art, and I don't
11 think it's a mistake.

12 MR. MCCALPIN: Really? What does it mean?

13 MS. GLASOW: You know what?

14 MR. ERLENBORN: Refers back to action?

15 MS. GLASOW: No, but I have the original
16 publication of this rule. Let me see if they explained
17 it.

18 MR. ERLENBORN: I read that and I thought
19 there has to be a word missing.

20 MR. MCCALPIN: Yes.

21 MS. PERLE: I think it's a term of art in the
22 accounting trade, but I'm not sure I know exactly what

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1 it means.

2 MS. GLASOW: I didn't do the original
3 publication of this rule, so I'm not as familiar.

4 MR. MCCALPIN: Well, you know, I don't care
5 whether it's in the original publication or not, if it
6 doesn't make sense, we ought to make it make sense.

7 MS. GLASOW: I know, I just don't know why
8 it's in there. Okay, original publication, 1635. This
9 is the definition of what?

10 MS. PERLE: The definition of supporting
11 activity.

12 MR. HOUSEMAN: Oh, general?

13 MS. GLASOW: Mm-hmm.

14 MR. HOUSEMAN: It's an accounting term that's
15 used in GAAP accounting.

16 CHAIR BATTLE: Okay, you may need to, just for
17 the record, say who you are --

18 MR. HOUSEMAN: Okay. She has my name, but
19 it's Alan Houseman.

20 CHAIR BATTLE: Okay.

21 MR. HOUSEMAN: And in accounting, and GAAP --
22 you know, generally accepted accounting practices --

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1 when you get an audit back -- I don't think I have mine
2 with me -- but management and general are one term, and
3 the way the audit reads is management and general, and
4 then fundraising over here, and then your programmatic
5 audits, you know.

6 CHAIR BATTLE: Okay, mm-hmm.

7 MR. HOUSEMAN: So in an accounting sense,
8 management and general is a term of art that would
9 include stuff that you put in sort of like
10 administrative, but the accounting term is management
11 and general.

12 MR. FORTUNO: And just a note, the LSC
13 accounting guide for LSC recipients, promulgated in
14 August of 1997, defines it page 18. In discussing
15 financial audits, says that, "Supporting activities
16 include both management and general and fundraising
17 expenses." I think it's --

18 CHAIR BATTLE: It comes straight out of the
19 accounting guide, and is it defined anywhere in the
20 accounting guide, so that people know what management
21 and general is?

22 MS. GLASOW: It is actually talked about in

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1 the preamble to that rule, and it says it's a name of a
2 subcategory in accounting.

3 CHAIR BATTLE: Okay, so it is at least
4 explained in the preamble.

5 MR. ERLENBORN: I still wonder if it belongs
6 here, because we're not talking about a budget, we're
7 not talking about numbers or accounting, we're defining
8 an activity. I don't think you --

9 MR. MCCALPIN: Then why don't we put a period
10 after "matter"?

11 MR. ERLENBORN: Well, fundraising, maybe you
12 want to include that.

13 MS. PERLE: I just afraid that people will
14 read something into that, to the change.

15 MS. GLASOW: We can put in the preamble that
16 no substantive change was intended.

17 MR. ERLENBORN: Does this really have any --
18 this accounting term -- have any relevance to the
19 definition?

20 MS. GLASOW: It's just an example.

21 MR. ERLENBORN: No, does it have any
22 relevance? I mean, how do you determine what is

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1 management and general activity?

2 CHAIR BATTLE: And is that on your timekeeping
3 sheet? I mean, in other words, when you're trying to
4 determine how to keep time, are you trying to determine
5 whether it's a case, whether it's a matter, or whether
6 there's a supporting activity, and is there any
7 subcategory of management in general?

8 MS. PERLE: And the fact is, if it's not a
9 case or a matter, it's got to be supporting activity.

10 CHAIR BATTLE: Okay, Alan?

11 MR. HOUSEMAN: Yes, I mean, I don't think it
12 matters how you resolve this, probably, but in your
13 GAAP accounting and A110 accounting, you have to keep
14 time based on LSC's thing, but you also have to -- your
15 audit report will show management and general, and you
16 have to have a way of timekeeping to get the management
17 and general.

18 CHAIR BATTLE: How much time is actually spent
19 on management on general.

20 MR. HOUSEMAN: Yes.

21 CHAIR BATTLE: Okay.

22 MR. HOUSEMAN: And we do it by lumping

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1 supporting activity for LSC purposes and fundraising
2 together, but somehow they get sorted out. If you look
3 at audits, you'll see it sorted out.

4 CHAIR BATTLE: How does this play out in
5 practical terms?

6 MR. HOUSEMAN: I mean, everybody knows what
7 this means. It's not --

8 CHAIR BATTLE: Okay, so in the field, even
9 though we don't --

10 MR. ERLENBORN: Not everybody.

11 (Laughter.)

12 CHAIR BATTLE: Even though we're not familiar
13 with it, you're telling me that the significance of
14 breaking out matter to include management and general
15 and fundraising separately has some significance from
16 an accounting standpoint of view, ultimately?

17 MS. PERLE: I think that's true, and I think
18 Alan's right, that this has been a rule and people
19 pretty much understand what it means.

20 CHAIR BATTLE: I say leave it in.

21 MR. ERLENBORN: I guess if it ain't broke,
22 don't fix it.

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1 CHAIR BATTLE: Yes, I say leave it in. I say
2 if it's been in there from the beginning, and people
3 understand it, and it has accounting significance, and
4 you can accord for a time, if people in the field may
5 have that particular section on their timekeeping
6 records, it makes sense to leave it in, now that we
7 understand it, with the preamble information explaining
8 what it means.

9 MR. ERLBORN: I still don't understand it,
10 but --

11 CHAIR BATTLE: Okay, let's do this, though.
12 Just for purposes of our discussion, let's go back. I
13 know that Bill had some initial concerns that he wanted
14 to raise, but let's go back and go in order through the
15 rule, and we had stricken in subsection C to the
16 definition section, 1635.2, some language and made some
17 changes to it. So we need to go back and discuss that
18 change.

19 And it looks like what we essentially did, was
20 rather than breaking out certain specific parts of
21 1610, we've just referred everybody back to 1610, which
22 has all the restrictions so that there's no question

1 that we're talking about when we say restricted
2 activities, be versed in 1610 so that you understand
3 that term and what it means. Is that basically what
4 that change is all about?

5 MS. GLASOW: Yes.

6 MR. FORTUNO: Yes.

7 CHAIR BATTLE: Okay. All right. Okay,
8 anything else on page 30?

9 MR. MCCALPIN: Yes.

10 CHAIR BATTLE: Okay.

11 MR. MCCALPIN: (B)(2), "Each record of time
12 spent must contain, for a case, a unique client." Now,
13 do you have to have a unique client, or a specific
14 client.

15 MS. GLASOW: We only serve unique clients.

16 MR. MCCALPIN: Unique makes it sound like this
17 is an oddball client.

18 MS. GLASOW: Specific?

19 MR. MCCALPIN: I think specific would be
20 better, because somebody may say, "I don't have any
21 unique clients, they're all just normal clients."

22 CHAIR BATTLE: That's old language coming out

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1 of the old rule.

2 MR. ERLNBORN: Yes, I don't think it's
3 terribly important, but I would read into this that if
4 you have two Robert Smiths, you must identify them
5 separately somehow. That's what would make it unique.

6 CHAIR BATTLE: If it's not broke, don't fix it
7 on that one, too. Because I think there's a point to
8 be taken about that. And I know when we do our -- we
9 have to do conflict checks. Some of those names that
10 come up, like a Robert Smith, or something like that,
11 it is tough to keep them distinguished.

12 MR. ERLNBORN: Those common names could be,
13 in any program, could be duplicated among the client
14 population. And you have to be able to identify them
15 separately in some way.

16 MS. PERLE: Case numbers, so --

17 CHAIR BATTLE: A unique client name or a case
18 number, so you've got -- sometimes people keep their
19 database based on names, alphabetically, or whatever,
20 and then sometimes numbers. So --

21 MS. PERLE: Some programs use social security
22 numbers. I mean, there are a variety of ways they can

1 make that unique.

2 MR. ERLNBORN: And is unique, in your opinion
3 then, a --

4 MS. PERLE: I think it's probably --

5 MR. ERLNBORN: A good word?

6 MS. PERLE: I don't have any objection to
7 unique. I never heard that that's a problem, and I
8 think it conveys the notion that there, you know, that
9 there's something special about --

10 MR. ERLNBORN: It's different.

11 MS. PERLE: It's different in terms of --

12 CHAIR BATTLE: The client's don't all of them
13 have to be named LaVeeda. We don't have to make up
14 names like that for them.

15 Okay, do we have anything else on page 30?

16 (No response.)

17 CHAIR BATTLE: Page 31?

18 MS. GLASOW: Yes, yes, the date, the issue.

19 MR. MCCALPIN: Yes. For one thing, you've
20 taken out C --

21 MS. GLASOW: And not renumbered.

22 MR. MCCALPIN: And not renumbered D.

1 MS. GLASOW: Yes, relettered, I should say.

2 MR. MCCALPIN: Relettered. But then let me
3 direct your attention to that. "The timekeeping system
4 must be able to aggregate time record information from
5 the time of implementation --" Implementation of what?
6 Of the whole system? Or are they really talking about
7 commencement of the particular representation?

8 MS. GLASOW: I'm sorry, where is he?

9 CHAIR BATTLE: He's at C, right after the
10 stricken C, the new C, "The timekeeping system must be
11 able to aggregate --"

12 MR. MCCALPIN: "From the time of
13 implementation." It would seem to me that would say
14 from implementation of the system, and I think you're
15 really talking about from the commencement of the
16 representation.

17 CHAIR BATTLE: Well, no. Look at the line
18 that's been right before that, and it will make sense.
19 "The timekeeping system must be implemented within 30
20 days of the effective date of this regulation."

21 Then you go on to say, "Timekeeping system
22 must be able to aggregate time from the time of its

1 implementation on both closed and pending cases."

2 MS. GLASOW: Oh.

3 CHAIR BATTLE: And so you're really talking
4 here about something that's been stricken and it
5 doesn't make sense, once you strike the earlier
6 paragraph.

7 So we need to -- that's the change I think we
8 need to make.

9 MS. PERLE: Stricken from the time of
10 implementation, because you want to say, "Must be able
11 to aggregate time record information on both closed and
12 pending --"

13 CHAIR BATTLE: Implementation of the system.

14 MR. MCCALPIN: I thought what they were trying
15 to say was that it had to aggregate the time record on
16 each individual representation from the time of the
17 commencement of the representation.

18 CHAIR BATTLE: Well, we could repeat --

19 MR. FORTUNO: I think it's intended --

20 CHAIR BATTLE: -- "of the timekeeping system"
21 there.

22 MR. FORTUNO: -- to aggregate kinds of cases,

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1 so that you have -- you're able to aggregate time
2 record information to come up with a total for a
3 specific kind of legal problem.

4 MR. MCCALPIN: Oh, I don't think that -- I
5 wouldn't read that into it at all.

6 MS. PERLE: No, it's on a case-by-case.

7 MR. ERLENBORN: I think what's missing is what
8 was taken out above. We should just add that in.
9 "Implementation of the timekeeping system."

10 CHAIR BATTLE: Timekeeping system, and that
11 takes care of it. Yes, yes.

12 MR. ERLENBORN: Because that's what was --

13 CHAIR BATTLE: Yes, that's right.

14 MR. ERLENBORN: That's what it meant before
15 that was taken out.

16 MS. PERLE: Well, except the timekeeping
17 system isn't implemented. You know, this was in the
18 original regulation, because it was referring to the
19 effective date of the regulation. That doesn't really
20 make any sense.

21 CHAIR BATTLE: So shouldn't we just say, "The
22 timekeeping system must be able to aggregate time

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1 records on both closed and pending cases by legal
2 type?"

3 MS. PERLE: I think that's really all that we
4 need now. I don't know what --

5 MR. MCCALPIN: You might have a system
6 longstanding, implemented years ago, which didn't have
7 this capacity, and they'd have to go back and redo it.

8 CHAIR BATTLE: Right, yes, yes. And we're
9 getting new service areas, new recipients over time,
10 so --

11 MS. GLASOW: LaVeeda?

12 CHAIR BATTLE: Mm-hmm?

13 MS. GLASOW: Ted just informed us that Victor
14 was right. The timekeeping guide that we have that
15 went out to the field to implement this rule basically
16 does interpret this as saying that you need to be able
17 to aggregate cases by case type.

18 And that doesn't deal with the implementation
19 issue, but it does deal with why this is required.

20 CHAIR BATTLE: Well then, this is my
21 recommendation. "The timekeeping system must be able
22 to aggregate time record information on both closed and

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1 pending cases by legal problem type." And that's the
2 way it needs to read now, okay?

3 All right, so in doing that you strike "from
4 the time of implementation" out of it.

5 MS. GLASOW: We need to go back to page 30.
6 There's an issue that needs to be resolved.

7 CHAIR BATTLE: Okay, all right, let's go back
8 to page 30.

9 MR. FORTUNO: This would be 1635.3, subsection
10 B, time spent by attorneys and paralegals -- I'm sorry,
11 (B)(1) -- "Time records must be created
12 contemporaneously and account for time by date."

13 The proposed rule does require both full-time
14 and part-time attorneys and paralegals to provide the
15 date as well as the amount of time spent on each case,
16 matter, or supporting activity.

17 And it's our recommendation that the date
18 requirement be retained in the final rule.

19 MR. MCCALPIN: Oh, yes.

20 CHAIR BATTLE: Okay, yes.

21 MS. GLASOW: We don't have any problem with
22 that.

1 CHAIR BATTLE: Okay.

2 MR. FORTUNO: And then I guess there needs to
3 be, on page 31, some revision of the subsection labels
4 there. We need -- what is now D should be C, what is E
5 should be D, and so on.

6 MR. MCCALPIN: Right.

7 MR. FORTUNO: And then we get to what is here
8 labeled E, but should be D, which is the other
9 significant change that we talked about at the very
10 outset, which has to do with certification.

11 MR. MCCALPIN: Where are you, Victor?

12 MR. FORTUNO: This is page 31, and it's
13 1635.3, subsection B.

14 MR. MCCALPIN: D, as in dog?

15 MR. FORTUNO: Pardon?

16 MR. ERLENBORN: That's after the change. It's
17 E here, right?

18 MR. FORTUNO: It's E on what you have, but it
19 actually should be D.

20 MR. MCCALPIN: D? Okay, all right. Well,
21 you're not talking about the --

22 MS. GLASOW: No, not yet.

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1 MR. FORTUNO: No, no, not yet.

2 MR. MCCALPIN: Oh, okay.

3 MR. FORTUNO: Why don't you go ahead and --

4 MS. GLASOW: Okay. A comment, basically, said
5 that using the term time period in this paragraph could
6 suggest that we're requiring someone to -- could be
7 referring to the specific hours for an entire pay
8 period, such as a week or two-week pay period. And
9 that during that pay period, they couldn't be involved
10 in restricted activities.

11 What we're really trying to say is any time in
12 that period that you're being compensated by the
13 recipient, you cannot be engaged in restricted
14 activities.

15 CHAIR BATTLE: So if your start period --

16 MS. GLASOW: So what we've done is take out
17 the word period.

18 CHAIR BATTLE: Yes, and that clears it up.

19 MS. GLASOW: Right.

20 CHAIR BATTLE: Okay. What about in that
21 paragraph, "Recipients shall require any attorney or
22 paralegal who works part-time --" substituting the word

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1 "employed part-time" for recipient and part-time "for
2 an organization that engages in restricted activity,"
3 because a person can work pro bono. And I think that
4 the distinction here that we're intending is if a
5 person is employed in both instances.

6 MS. GLASOW: I don't think we have a strong
7 feeling about either word. We will make it clear in
8 the preamble that basically what we're trying to say,
9 if you are doing work for which you're being
10 compensated by the recipient, then you cannot be
11 engaged in restricted activity.

12 MR. ERLNBORN: And employed --

13 MS. GLASOW: Employed would do it, works would
14 do it, as far as we're concerned, so --

15 MS. PERLE: And also, I don't have a strong
16 feeling one way or the other about that, but the
17 certification refers to time for which you're
18 compensated by the recipient.

19 CHAIR BATTLE: Right. Okay.

20 MS. GLASOW: Does anyone have a preference on
21 the word? Is it employed?

22 CHAIR BATTLE: I think employed is a better

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1 word than works.

2 MS. GLASOW: "Who is employed."

3 CHAIR BATTLE: "Who is employed."

4 MR. FORTUNO: And then the last full sentence,
5 it starts in the text on that page, is where we get to
6 the de minimus exclusion from certification
7 requirements.

8 CHAIR BATTLE: Okay.

9 MR. FORTUNO: And that's discussed the
10 following couple pages.

11 MS. TARANTOWICZ: I'm sorry, I haven't thought
12 this through, but I'm wondering whether changing works
13 to employed would cover people that work on a contract
14 that are not regular employees. Do you know what I
15 mean?

16 MR. FORTUNO: The consultants as opposed to
17 employees?

18 MS. TARANTOWICZ: Mm-hmm.

19 MS. GLASOW: We could clarify it in the
20 preamble. I mean, basically what I've said in this
21 footnote we can say in the preamble and say, "Whether
22 the program considers it being employed or working for

1 the program, if they're being compensated for a job
2 being done, you cannot be involved with that," solve
3 the problem.

4 MS. PERLE: Well, I have a question about
5 that, with respect to consultants. Does that mean that
6 someone who is a management consultant for the program
7 and also does consulting for a program that does --

8 MR. FORTUNO: Restrictive work?

9 MS. PERLE: Restrictive work, I'm sorry, I
10 don't think that you need to include that.

11 CHAIR BATTLE: This is really attorneys really
12 working on cases, I believe. But you're saying if an
13 attorney is a management consultant?

14 MS. PERLE: Laurie used the words consultants.

15 MS. TARANTOWICZ: I didn't say that.

16 MS. PERLE: Oh, you didn't?

17 MR. FORTUNO: I did.

18 MS. PERLE: Oh, I'm sorry.

19 MS. TARANTOWICZ: What I really mean is
20 somebody who does the job, the same job as an attorney
21 or a paralegal, but isn't a regular employee. In other
22 words, he's a -- I don't know. We have contract

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1 employees that aren't employees in the strict sense.

2 MS. GLASOW: Well, for instance, if you had a
3 particularly difficult case or you didn't have enough
4 staff to handle a case, but you have the funds, you
5 could find an attorney, contract with that attorney to
6 do that one case for your program. That would be
7 covered in here.

8 MS. TARANTOWICZ: Right.

9 MS. GLASOW: But it would be a contract
10 situation, rather than, you know, "You're one of our
11 regular employees."

12 CHAIR BATTLE: Okay. I don't feel that
13 strongly about it. I thought employed works well if --
14 taking the word "employee" or "employed" somehow means
15 employee when we have people on contract, then go ahead
16 and go with "worked."

17 MR. FORTUNO: Go with "works" but provide some
18 explanation of that in the --

19 CHAIR BATTLE: Exactly.

20 MR. FORTUNO: -- preamble so that --

21 CHAIR BATTLE: Yes, okay. The de minimus is
22 the last sentence on that page, and it moves on to the

1 next. We've had a long discussion already about de
2 minimus. Are there any questions about the changes?

3 (No response.)

4 CHAIR BATTLE: Hearing none -- I'm sorry,
5 Linda.

6 MS. PERLE: Mr. McCalpin?

7 MR. MCCALPIN: If you start with the sentence
8 that begins on 32 and goes over, "Such de minimus
9 actions would include activities such as answering the
10 phone, opening or briefly screening mail." What about
11 e-mail, which is --

12 CHAIR BATTLE: You do that the same way, you
13 open it and screen it.

14 MR. MCCALPIN: Yes, but does it prohibit
15 responding to e-mail?

16 MR. ERLENBORN: Again, this is not meant to be
17 limiting, because it does say "such as."

18 MR. MCCALPIN: Yes, but for instance, can
19 somebody get an e-mail which seems to demand an
20 immediate response and respond to it and still have
21 that considered de minimus?

22 MR. FORTUNO: I think that if you received a

1 letter asking to meet or asking that you immediately
2 contact someone, same would be true of e-mail. You
3 could not engage in any substantive activity.
4 Certainly the fact that you get something
5 electronically or in written form, you don't know what
6 it is until you open it, and it's that involuntary
7 piece of it, open it to see what it is. Once you see
8 what it is, you should not be taking any substantive
9 action other than setting aside a time outside of
10 program-compensated hours when you can deal with the
11 matter. Is that right?

12 MS. PERLE: Well, I think that the examples
13 that are included here are much too limiting. I mean,
14 and you know, they suggest a very limited activity.
15 And I would prefer to leave the examples out and put
16 some discussion in the preamble of examples.

17 Alternatively, in the language that came up in
18 the discussion here, page 32, the corporation staff has
19 suggested some standards that deal with those things
20 that are of little substance, require little time, not
21 initiated by the employee, or generally are
22 unavoidable. My suggestion is that I would prefer that

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1 we just leave the examples out of the language of the
2 rule and discuss it in more detail in the preamble or
3 failing that, that we put in those standards than the
4 specific examples.

5 Because I have a great deal of problem with
6 answering the telephone and establishing another
7 program time with the caller to discuss the restricted
8 activity. I mean, what if the judge calls you and he
9 wishes to change the time of a hearing? You're not
10 going to say to the judge, "I'm sorry Judge, I can't
11 talk to you right now," or, "I can't talk to the clerk
12 right now, you have to come back in another -- you have
13 to call me after 5:00 at home, or in my other office
14 tomorrow."

15 I think that in terms of the practical
16 realities of practicing law, that really doesn't make a
17 lot of sense.

18 CHAIR BATTLE: Okay. Laurie, I should have
19 invited you up when I invited everybody else up. I'm
20 glad you joined us at the table. So if you've got some
21 input that you want to do, you can do it
22 contemporaneous with us going through the rule.

1 And Linda, in response to your point, I really
2 think not putting anything there doesn't give
3 sufficient guidance to people of what we intend de
4 minimus to mean, so we are going to have to address the
5 issue of de minimus in the rule itself.

6 MS. PERLE: Well, I'm suggesting that we put
7 in either examples in the preamble or the kind of
8 standards that Suzanne talked about in the written. My
9 suggestion would be that we add -- we take out the
10 examples but we put in something to the effect, "De
11 minimus actions are considered to be those that are of
12 little substance and require little time, and are not
13 initiated by the part-time employee, or are generally
14 unavoidable."

15 I don't have any problems with the notion that
16 we --

17 CHAIR BATTLE: Tell me where you're reading
18 from, because I --

19 MS. PERLE: I'm sorry, I'm reading -- it's
20 something that I put together.

21 MS. GLASOW: It's in the footnote, and it's
22 the second paragraph up from the bottom, and it's one,

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1 two, three, four, five lines down.

2 MS. PERLE: I have a couple of extra copies of
3 this.

4 MS. GLASOW: "Actions which would meet the
5 standard --"

6 MS. PERLE: My line, which is a little bit
7 different, but it's the gist of it -- I'm sorry I
8 didn't have extra copies of it. I did it just as I was
9 heading out the door. I mean, I didn't print out
10 copies, but I do have some -- one of the reasons I did
11 this is because I noticed I had a typo in it and I was
12 a little embarrassed.

13 CHAIR BATTLE: We will forgive you.

14 MS. PERLE: I've actually given away mine.
15 And what I'm reading from was an alternative one.

16 MR. MCCALPIN: I think the alternate one --
17 it's a standard.

18 MR. ERLBORN: Yes.

19 CHAIR BATTLE: A standard may be able to help
20 within that example, actually.

21 MS. PERLE: Pardon me?

22 CHAIR BATTLE: I said a standard may be more

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1 helpful for the reason that I think one other example
2 in the question does become if we give just these two
3 examples, how informed will people be of what
4 parameters replacing on what we mean by de minimus.

5 And then secondly, you're asking lawyers in
6 the field to certify. And in doing that certification,
7 I think it's fairer to have some sort of standard for
8 them to be able to assess how that's supposed to work,
9 rather than to just give them two examples out of the
10 multitude of examples of contact that a person has
11 during the course of the day.

12 I mean, and the way that the practice of law
13 works, I mean, I've been practicing law since I've been
14 here. I've gotten calls from my office and I've had to
15 step out in the hall and respond and then come back in,
16 and that's just the nature of the way it works.

17 So I think the standard is a clearer way to
18 inform people of what we intend by de minimus.

19 MS. PERLE: And this makes it clear that if
20 you get a long e-mail on another case, you know, you
21 should a, probably not read the whole thing, put it off
22 to another time, and b, not spend a lot of time

1 responding to it. But if the e-mail is, you know, "We
2 have to change the hearing to such and such a time,"
3 and it's on a case that you're doing for -- you can
4 respond to that and say, "Okay," or, "No, 10:00 doesn't
5 work for me," something like that. And the same thing
6 on a phone call.

7 MS. GLASOW: So are you suggesting what I said
8 in here? Is that the language --

9 MS. PERLE: I'm suggesting the language here.

10 MS. GLASOW: Right here?

11 MS. TARANTOWICZ: So what you're suggesting
12 goes beyond the examples in the rule. In other rule,
13 the examples in the rules state basically you can't
14 avoid the contact, and you say, "I can't talk to you
15 now, I can talk to you at X time." But what you're
16 suggesting is that you do talk to them now.

17 MS. PERLE: Briefly. Very briefly, and that
18 it not be a discussion about the substance of the case.
19 That's what we've suggested, basically, all along. I
20 mean, this is not a change in our position.

21 MR. FORTUNO: It just seems that to the extent
22 that you look to see what it is you've been sent. Say,

1 for example, in a e-mail message or in a letter, or
2 answer the phone to see who it is and who's ringing it
3 off the hook. You don't know in advance to not take
4 that action.

5 But it seems that once you see, once you hear
6 who's on the other end and what it's about, or you get
7 far enough down the letter or the e-mail message to see
8 what it's about, you then have some discretion as to
9 whether to proceed or not. And it seems that that's
10 the pivotal point, is what you do then.

11 And I think that what's been proposed is such
12 that once you reach that point, you need to say
13 essentially the law doesn't -- whether you say it this
14 way or not, you know, depends on the individual -- but,
15 "The law doesn't permit me to do this just now. I need
16 to speak with you, you know, tomorrow. I'll call you
17 tomorrow, I'll call you after I leave here," however
18 you want to do it.

19 And I think that's really where we are, is are
20 we going to require folks to cut it off then, or allow
21 some additional leeway?

22 CHAIR BATTLE: What are your thoughts about

1 using a standard as opposed to the two examples we have
2 in that language?

3 MR. FORTUNO: I think I don't have a problem
4 with using a standard, and I too believe that if we
5 could craft it so that folks understand what it is
6 that's meant, and then maybe use examples in the
7 preamble, that would work better than the reverse,
8 having the examples in the text and the standard in the
9 preamble.

10 It's just that the standard that we would be
11 more inclined to go with is more than just that one
12 sentence in the middle of the third full paragraph of
13 footnote six. That sentence in the middle says,
14 "Actions which would meet this standard are those that
15 meet all or most of the following criteria: actions
16 that are of little substance, require little time, are
17 not initiated by part-time employee, and for the most
18 part, are unavoidable."

19 It wouldn't end there. The discussion here
20 goes on to say that actions would not meet this
21 standard -- "Actions which would not meet the standard
22 include researching, preparing legal documents, meeting

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1 with or providing advice to a client, and conferring
2 with third parties on behalf of the client."

3 MS. PERLE: Why isn't that --

4 CHAIR BATTLE: Well, what you do is why not
5 have the standards set out in the rule and then
6 examples of what meets the standard and examples of
7 what does not meet the standard in the preamble.

8 MS. PERLE: That's exactly what --

9 CHAIR BATTLE: And that way, what you've got
10 is a standard that's set. You're asking lawyers to
11 certify on a quarterly basis based on that standard,
12 and you've given them examples. So if there is a
13 problem, at least they've had a chance to look at the
14 standard and look at its application in the preamble as
15 well. I think that's a fair way to resolve this
16 particular issue.

17 MS. GLASOW: So you want to use the language
18 that I have in footnote six, that sentence starts with,
19 "Actions which would meet as the standard --"

20 CHAIR BATTLE: Yes.

21 MS. GLASOW: And then we would put examples in
22 the preamble?

1 CHAIR BATTLE: In the preamble, both of what
2 meets the standard and what does not meet the standard.

3 MS. GLASOW: This is consistent with our
4 program integrity analysis too, it's a case by case
5 basis and we you know, look at the particular facts.

6 MR. FORTUNO: I do think that we need to
7 provide as by-the-line rule as we can, since there's a
8 requirement for certification by management and
9 liability involved.

10 So I think that we can discuss a standard
11 along the lines that the chair suggested. That is, the
12 general language then, would be examples of what meets
13 or doesn't meet the standard in the preamble.

14 MS. GLASOW: So we can discuss?

15 MR. ERLBORN: I'm not certain when we get to
16 the real world that what we do here is going to be all
17 that important.

18 (Laughter.)

19 MR. FORTUNO: So that language --

20 MS. GLASOW: That is the standard?

21 MR. FORTUNO: That would be the standard up in
22 the text. Okay, I think that moving that up to the

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1 text as the standard with ample explanation in the
2 preamble on which we would consult with the OIG and
3 CLASP, we can do that.

4 CHAIR BATTLE: Okay. This is our final read
5 on this, and we really need to have this language
6 before it goes in to the board tomorrow.

7 MS. GLASOW: I'll have it ready.

8 CHAIR BATTLE: Okay, all right. Okay, we've
9 gotten through de minimus with more than de minimus
10 time. Let's move on to the next issue. Do we have any
11 issue with anything on page 33 or 34?

12 MS. GLASOW: Yes, 33.

13 CHAIR BATTLE: Okay.

14 MR. MCCALPIN: Thirty-four opens the whole
15 Pandora's box.

16 CHAIR BATTLE: Tell us about 33 first. We
17 talked about these dates being established by the
18 corporation.

19 MS. GLASOW: Yes. There are basically two
20 issues here. There were some comments that did not
21 want to have to do quarterly reports, but we don't feel
22 that's too onerous or too large an administrative

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1 burden, and also an employee's recollection of what
2 they've done within a quarter would be fresher if they
3 did it in a quarter's time. So we recommend
4 maintaining, keeping the requirement for quarterly
5 reports.

6 There was also a comment on the language we
7 had about when the reports would be due. And we
8 recommend revising that language so that there may be a
9 difference when the person actually makes their
10 certification and when the quarterly certifications are
11 due, because there might be an instance where an
12 employee's leaving the program, so he needs to make the
13 certification before he or she leaves, but that
14 quarterly report is due at the program on a particular
15 date, and that's the date the corporation will make
16 clear.

17 The other issue is one comment -- assume that
18 the language required that the certifications be sent
19 to the corporation on a regular basis, and we're making
20 it clear that this is not a reporting requirement, it's
21 a record-keeping requirement. So the certifications
22 will be kept at the recipient's place, but they would

1 be available for us to look at, or any auditors, or
2 anybody who came in.

3 MS. PERLE: I'm not sure that it's clear from
4 the language.

5 MR. ERLENBORN: Does the use of the word "do"
6 have the implication of filing with somebody, or --

7 MS. GLASOW: That may be the ambiguity.

8 MS. PERLE: I think that's ambiguous. I don't
9 think that the rule has stated as clear that they don't
10 have to be sent into the corporation. "Shall be made -
11 -"

12 MR. ERLENBORN: Something like "completed,"
13 or --

14 CHAIR BATTLE: Submitted to the recipient on
15 dates established --

16 MS. GLASOW: Available at the recipient, or --
17 I don't know.

18 MR. HOUSEMAN: Shall be submitted to the
19 recipient on dates established.

20 CHAIR BATTLE: Shall be submitted to the
21 recipient on dates established.

22 MS. PERLE: Well, except that that's really

1 the problem. That was the problem before --

2 MS. GLASOW: Yes.

3 MS. PERLE: -- that you didn't want to say
4 that everybody had to do their certification on June
5 30th, you know, the person wasn't there that day or you
6 know, they had left on June 15th, or it was a Saturday
7 or Sunday.

8 CHAIR BATTLE: The other question I had is are
9 we establishing what those quarterly due dates are, or
10 are we allowing the programs to establish their
11 quarterly due dates? If we're going to establish them,
12 then it seems that everybody across the country the day
13 before is going to be getting their reports in.

14 MS. PERLE: Now that I'm thinking about it, I
15 don't see why it just doesn't say, "Certification
16 should be made on a quarterly basis and shall be in a
17 form determined by the corporation." Do we really need
18 the business about the dates?

19 CHAIR BATTLE: I would prefer not to put
20 another date deadline on a lawyer if I can help it. As
21 long as it's done quarterly and everybody has the
22 quarterly statements and the record-keeping is there,

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1 I'd say it doesn't matter to us which dates you get
2 them, as long as they do them on a quarterly basis.

3 MS. TARANTOWICZ: Isn't quarterly pretty much
4 the same everywhere?

5 MS. GLASOW: And we'll just send other
6 guidance at some point and say, "Here is where the
7 first quarter starts," and you know, start from there.

8 MS. PERLE: And if the first quarter ends
9 March 30th, and they do them on April 30th, but they're
10 certifications for the period from January 1 to March
11 30. Is there a problem with that? As long as the
12 auditors come to look we'd have the certifications done
13 for the period.

14 CHAIR BATTLE: Right. I don't think that we
15 need a deadline. I think we just need quarterly
16 certification.

17 MS. PERLE: Okay.

18 CHAIR BATTLE: Okay. All right?

19 MS. PERLE: Well, that's good work. The
20 lawyers across America will be happy when they see
21 that.

22 MR. FORTUNO: Lawyers rejoice.

1 CHAIR BATTLE: Okay, 1635.4, administrative
2 provisions. Any questions there? Bill? No?

3 MR. MCCALPIN: I say it opens the whole
4 Pandora's box that we're wrestling with. Well, there's
5 nothing we can do about it here now, but --

6 MS. GLASOW: This really --

7 MR. MCCALPIN: -- I'm just telling you that it
8 raises the whole issue.

9 MS. GLASOW: There were no revisions in the
10 proposed rule to this, and have been no public comments
11 on it, so we are not recommending any changes. So --

12 MR. HOUSEMAN: Let me say one thing on Bill's
13 point, because we should address it, which is time
14 records in legal services may be different than the
15 private practice. Most people keep time records based
16 on case numbers and they don't put client-identified
17 information in the time records. They're very careful
18 about that.

19 MR. FORTUNO: In legal services.

20 MR. HOUSEMAN: In legal service.

21 CHAIR BATTLE: Okay.

22 MR. HOUSEMAN: Not saying everybody, but most

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1 of the systems are designed so that you don't have the
2 client identity hooked up with --

3 CHAIR BATTLE: Okay.

4 MR. HOUSEMAN: -- necessarily with the
5 activities. It could be a case number in there.

6 CHAIR BATTLE: Okay.

7 MR. ERLENBORN: Should the corporation take
8 some action to recommend that this be done for those
9 grantees who do not use case numbers?

10 MR. HOUSEMAN: Actually, the time guide does
11 that. You have a guide, a timekeeping guide, that --

12 MS. PERLE: And in a number of things that
13 we've sent out to field programs we've also encouraged
14 them not just in time records, but in financial records
15 as well, to not have any information in them that
16 identifies the particular client.

17 CHAIR BATTLE: Okay. So if there are no
18 changes to that, then I will entertain a motion to
19 adopt the timekeeping record regulation with the
20 changes that have been discussed and revisions
21 discussed today.

22 MR. MCCALPIN: Wait a minute. This is a final

1 rule?

2 CHAIR BATTLE: Yes, that's right.

3 MS. GLASOW: Yes.

4 MR. MCCALPIN: Don't we, in a final rule,
5 simply recommend that the board adopt it --

6 CHAIR BATTLE: Final rule.

7 MR. MCCALPIN: -- as a final rule and then it
8 becomes published and effective in 30 days and so
9 forth?

10 CHAIR BATTLE: Yes, yes.

11 MR. MCCALPIN: I think we simply, with respect
12 to final rules, recommend adoption by the board.

13 CHAIR BATTLE: That's right. I want us to, as
14 a committee, adopt the final -- then if the
15 recommendation to the board comes tomorrow --

16 M O T I O N

17 MR. MCCALPIN: I move you will recommend to
18 the board an adoption of 1635 as before us with
19 amendments as a final rule.

20 MR. ERLNBORN: Second.

21 CHAIR BATTLE: And properly moved and
22 seconded, that we adopt 1635 as revised today. All in

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1 favor?

2 (Chorus of ayes.)

3 CHAIR BATTLE: For approval by the board as a
4 final rule. Okay, somebody help me with my time. How
5 much time do we have for our committee? It's 12:30.

6 MR. FORTUNO: I think 12:30 is lunch.

7 CHAIR BATTLE: Do we have time to continue
8 this afternoon?

9 MR. MCCALPIN: Oh, yes. Why don't we come
10 back at 1:30.

11 CHAIR BATTLE: At 1:30?

12 MR. HOUSEMAN: I have a small problem. I
13 guess I just assumed we'd move faster. I have a
14 meeting at 2:00 with a number of other folks somewhere
15 else, and is there any way we could get to property in
16 time that I could try to get to the meeting at 2:00, or
17 give it a shot at least?

18 CHAIR BATTLE: Yes, if it's 12:30, do we need
19 a full hour for lunch, or can we do that in --

20 MR. HOUSEMAN: I'm just doing property, so
21 that --

22 MR. MCCALPIN: A property guide?

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1 MR. HOUSEMAN: Yes.

2 MS. PERLE: I'm going to do the fund balance,
3 so --

4 CHAIR BATTLE: How long is your meeting? I
5 mean, can you get back and if we start --

6 MR. HOUSEMAN: Normally they go two hours.

7 CHAIR BATTLE: Oh. That's --

8 MR. HOUSEMAN: I mean, maybe I could get it in
9 an hour and a half.

10 MS. GLASOW: Because we've got the Erlenborn
11 commission thing at 5:00.

12 CHAIR BATTLE: At 5:00? Okay.

13 MR. FORTUNO: Well, I'd be happy to do the
14 property manual without Alan.

15 (Laughter.)

16 MR. FORTUNO: And maybe we can just get back
17 from lunch early --

18 CHAIR BATTLE: Why don't we get the property
19 manual first --

20 MR. FORTUNO: And pick it up first.

21 CHAIR BATTLE: -- off this afternoon, and let
22 you --

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1 MR. HOUSEMAN: Yes, I mean I can lay it out --

2 MR. ERLÉNORN: Why don't we try and get back
3 here at 1:15?

4 CHAIR BATTLE: Yes. We'll be back at 1:15,
5 we'll start with property manual, that will give you a
6 chance to --

7 MR. HOUSEMAN: Sure, sure, that's fine.

8 CHAIR BATTLE: Okay? We will do that for you.

9 MR. FORTUNO: And for those who don't know,
10 lunch is being served in the OIG party room.

11 CHAIR BATTLE: We are now in recess until 1:15
12 this afternoon.

13 (Lunch recess taken at 12:40 p.m.)

14 CHAIR BATTLE: One of the participants in the
15 discussion on the next item that we have on our agenda,
16 which pertains to the now fourth item listed, consider
17 and act on proposed property manual acquisition
18 procedures and property standards.

19 You should have in your board book a little
20 history of what has happened in the past, as it relates
21 to property and as well, as proposed manual.

22 And it's, I think, appropriate to note that in

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1 the past, we have had a collection of opinions and
2 other interpretations of our responsibility as it
3 relates to personal property, real property, and a
4 manual was put together at one point, but we're at a
5 point now where pulling all of that information
6 together on one specific place seems to make sense and
7 so the staff has proposed that this committee review
8 these procedures and incorporate them in a manual.

9 We would put this out for public comment as we
10 have in the past for rules, and the fact of putting the
11 manual out for public comment will give us the
12 opportunity to receive public comment before we make a
13 final decision with regard to the provisions of this
14 manual.

15 Can we get just briefly on the record as to
16 the history leading up to this? Because this is a
17 little bit different from what we've been handling so
18 far, as it relates to changes in our regulations that
19 will appear in the CFR.

20 MS. GLASOW: Basically, the corporation, in
21 1975 and again in 1979, we published instructions in
22 the Federal Register setting out procedures for

1 procurement, inventory, control, and disposal of non-
2 expendable personal property by LSC recipients.

3 In 1981, the 1979 instruction was superseded
4 by the property management manual for LSC programs, and
5 that's what we've been using. But it only covers, in
6 our view, non-expendable personal property.

7 And if the committee would like to refer to a
8 chart, at the end of the rule it basically is a chart
9 we put together showing how the federal government
10 normally looks at the types of property.

11 So there's two types of property, real
12 property and personal property. Under personal
13 property it can be either tangible or intangible.

14 And tangible property also has two types. It
15 can be expendable and non-expendable. Expendable
16 property is considered normally to be supplies. And
17 this manual that we're offering to you today does not
18 cover supplies. So it doesn't cover expendable
19 property.

20 In our view, there was really no clear
21 guidance in any one document covering our regulation of
22 real property. It has variously, over the years, been

1 dealt with through some letters that went out to field
2 programs and interest agreements between the
3 corporation and programs when they did use LSC funds to
4 purchase real property.

5 Much of the documentation of that has been
6 lost when we closed our regional programs who were
7 handling those issues for us in the different regions.
8 Much of that documentation is lost.

9 We have done an extensive review of all our
10 grantees, and we now know with which grantees we do
11 have interest agreements and which ones we do not. And
12 we're basically dealing with that.

13 And because of the lack of a clear document,
14 in lack of having copies of any interest agreements, if
15 they do exist, we have felt for some time that there
16 was a need to put all this together into one manual
17 guidance or something of some sort so that both the
18 corporation and the grantees would have a clear
19 indication of how they can use LSC funds to purchase,
20 use, and dispose of property that is purchased with LSC
21 funds.

22 CHAIR BATTLE: Okay. Are there any questions

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1 about the background and history of how this particular
2 item comes before the board? If not, why don't we go
3 forward with an explanation of the actual property
4 manual.

5 MS. GLASOW: I guess there's one point we
6 should talk about before we get into the provisions of
7 the manual, is the applicability of the manual and both
8 the legal reasons and really just fairness reasons.

9 We clearly intend for the manual to be
10 prospective and to only apply to purchases made after
11 the effective date of this manual, and that it will
12 apply to real and non-expendable personal property, but
13 not to supplies.

14 We also highly recommend that this will be
15 discussed and clarified in the preamble to the
16 publication of this manual, and also that when the
17 manual is published, it would be right up front in the
18 introductory section, a statement of the applicability,
19 so it's very clear to people, you know, what our intent
20 is in that sense.

21 CHAIR BATTLE: Okay.

22 MR. ERLNBORN: To your knowledge, are there

1 any grantees who have purchased real property where
2 there is no agreement?

3 MS. GLASOW: We suspect that exists, however
4 we're not terribly concerned. We're working with those
5 grantees. But some of the purchasing happened many,
6 many, many years ago, too, so it's -- I mean, the funds
7 have been wisely used and they've been grantees for
8 many years, so it certainly was worth the expenditure.
9 We just don't have any clear agreement as to what our
10 interest is, and therefore cannot really assert it,
11 other than to negotiate with the grantee about what
12 would happen when that period of time is over.

13 MR. MCCALPIN: In view of the fact that Alan
14 has a meeting, could I suggest that we let him take up
15 whatever issue is important to him, even out of turn,
16 so that he --

17 CHAIR BATTLE: That's fine. Alan?

18 MR. HOUSEMAN: Okay. Thank you, Bill. I'm
19 Alan Houseman, on the record, representing National
20 Defenders' Association and its member programs.

21 I want to say first, our most significant
22 issue was the issue that Suzanne just addressed, and

1 the applicability of the manual, and we worked that
2 out. Just one other introductory comment. At the last
3 time we considered a proposed regulation on this and
4 sent it back to staff, you essentially suggested that
5 we all sit down and try to work this out, and I sat
6 down with the vice president for operations, Danilo
7 Cardona, who is here, and we worked through this and we
8 reached an agreement on all of the major issues.

9 So I am in agreement with the substance of
10 what is here in the manual. And we worked through a
11 number of issues that I raised, and worked them out to
12 my satisfaction. Some issues that I wanted to change,
13 LSC wasn't willing to -- Suzanne was in this
14 negotiation too -- but I thought it made sense to
15 compromise and, you know, it was a very good exchange.

16 Now, that doesn't bind the board or anything,
17 I understand that, but in terms of trying to present
18 sort of a unified face before the committee, I want to
19 make it clear that we tried our best to do that, and I
20 think we reached agreement on that.

21 The only area where I actually have what I
22 would call a relatively minor problem is -- I had it

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1 marked, it was about the purchasing --

2 MS. GLASOW: Real or --

3 MR. HOUSEMAN: -- hang on.

4 CHAIR BATTLE: Tell us which page you're
5 referencing.

6 MR. HOUSEMAN: Well, I'm trying to find it,
7 that's the problem.

8 MS. GLASOW: Real or personal?

9 MR. HOUSEMAN: It's personal, and it's the
10 staff issue -- it's on a different page than I was
11 looking at.

12 MS. PERLE: That would be --

13 MR. HOUSEMAN: Fifty on B.

14 MR. MCCALPIN: What?

15 MR. HOUSEMAN: On page 50, on B, says that,
16 "Recipient board members or employees involved in the
17 decision to disclose may not purchase or otherwise
18 acquire personal property." And if you look at the
19 footnote 37, it says that a, it's inconsistent with the
20 old property management manual, and b, there is no
21 limitation in the federal guidelines on sale to
22 employees.

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1 And my recommendation would be to delete that
2 section. I don't see what the problem is if other
3 staff of a recipient can purchase personal property,
4 whether board members or some employees involved in a
5 decision might not be able to purchase personal
6 property too.

7 Again, it's not different than you know, in my
8 terms, when I'm thinking about running a program, if we
9 have to downsize, and we get a whole set of new
10 property in and we're trying to sell it, we can't sell
11 some of it, there's some left over, and some staff
12 wants to purchase it, I don't see what the problem is
13 with that.

14 And if it happens to be a member of my board,
15 or if it happens to be some administrative person in my
16 office, say my office manager, who had something to do
17 with it, to say well, she couldn't purchase it, but you
18 know, Linda could purchase it doesn't make any sense to
19 me.

20 And so I just don't see why we need this
21 limitation here now. It's not a big issue, I want to
22 be clear, but I don't understand the limitation that's

1 here. And as said, it's not consistent with federal
2 standards, it's inconsistent with our prior standards,
3 and to my knowledge, there hasn't been any use of this
4 in the past and there's no specific information that I
5 know of that suggests that there's been some problem
6 that you need this kind of a measure. So I would just
7 strike the whole paragraph, section.

8 MR. FORTUNO: I don't think we're familiar
9 with any instance of abuse. And it's not something
10 about which we feel terribly strongly. It's here
11 largely because the inspector general's office has a
12 concern about conflicts, self-dealing, more the
13 appearance than anything else.

14 Nobody's suggesting that there have been
15 instances of it, but the issue -- and for this reason,
16 the corporation, LSC itself, doesn't take excess
17 property and make it available to employees when we're
18 unloading the property.

19 MR. MCCALPIN: You do or do not?

20 MR. FORTUNO: Do not, do not. It's because of
21 concerns expressed by the IG. I think that the reason
22 here for limiting it, one, it doesn't limit it

1 altogether. It's not a broad ban. It's narrow, and
2 it's limited to the decision-makers. That is, those
3 who decide we've got some property and we want to
4 dispose of it. Let's make it available to ourselves
5 and anyone else who's interested.

6 There is a potential for conflict there. And
7 I think that's what the OIG was concerned about, and
8 that's why it's aimed at the decision-makers.

9 CHAIR BATTLE: Help me to understand this
10 about the way it's written. It says, "Unless the
11 property has no current fair market value." Are we
12 talking zero, you know, so if it's trash and it's worth
13 zero, then you can sell it to --

14 MR. MCCALPIN: You can give it.

15 CHAIR BATTLE: Well, it says, "May not
16 purchase or otherwise acquire," so I'm assuming you'll
17 figure out what to do with it and if it has a fair
18 market value, but it's de minimus.

19 And the reason I ask that question, we just
20 underwent a huge renovation in my office and we had
21 carrels that were built into the walls that we took
22 down and we put up compartmentalized little areas. And

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1 so all of the little desk areas that we had we couldn't
2 use anymore. We took them up to another floor in the
3 building, called up the staff, and said, "Anybody want
4 these?"

5 Because really they were just salvageable
6 half-desks that only would be useful to somebody who
7 sat at that desk and said, "Hey, I could use this in
8 the basement at home," or we would have had to sell
9 them as salvage to some used furniture company, and I
10 don't know that that would have had much value.

11 So under those circumstances, where it's not a
12 question of, "Aha, this is a brand new computer. Let's
13 now sell it," but just salvage material, I don't see
14 that there's a conflict issue that would be of any real
15 moment.

16 MR. MCCALPIN: Let me give you the same list.
17 We had much the same thing. Within the last month,
18 there came out a list. More than 300 items that were
19 available for disposal. People in the office bid on
20 them. They had an auction. You put in the written bid
21 on it and whoever bid the highest got it.

22 CHAIR BATTLE: Yes, so I guess the one issue

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1 that really precipitated this is an issue of self-
2 dealing. As long as the decision that's made that it's
3 time to dispose of the property is made by a forum,
4 that assures that surely this is property that needs to
5 be disposed of, I'm wondering about where the conflict
6 would come in. I'm trying to understand the conflict.

7 For example, if the board makes a decision
8 we're going to dispose of this property, then it's no
9 longer useful to the recipient, then we're -- other
10 than the valuation of it, I mean, if it has --

11 MR. FORTUNO: Under this particular wording,
12 if the board or the body that made the decision, then
13 it would be available for purchase by all staff, just
14 not the board.

15 CHAIR BATTLE: Okay.

16 MR. FORTUNO: This proposes to exclude only
17 the decision-makers.

18 CHAIR BATTLE: Involved in the decision to
19 dispose.

20 MS. GLASOW: Or the board. It's always the
21 board.

22 CHAIR BATTLE: Is it always the board

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1 that's --

2 MS. GLASOW: It's always the board and staff,
3 if they've been in the decision-making process.

4 MR. FORTUNO: So that you're fully informed,
5 there was a time -- not all that long ago, either --
6 when the corporation, if it had excess property, would
7 try to sell it and then eventually make it available to
8 employees on a sealed bid basis. Put it all in a large
9 room, you could go in and take a look at it.

10 CHAIR BATTLE: Same kind of thing as Bill was
11 talking about.

12 MR. FORTUNO: Take a number off it, and offer
13 a sealed bid. I think that the IG expressed some
14 concern over that over time, and the result was, for
15 example, when we purchased new computers recently, we
16 had the old computers, which were certainly still
17 usable, and some staff was interested in purchasing
18 those and I know the decision, at least internally, was
19 not to make it available to staff, but simply to donate
20 it to things like schools and other non-profits.

21 MR. MCCALPIN: What was the concern over the
22 prior example?

1 MR. FORTUNO: The IG's concern was, I think --
2 oh, here, in fact, is Laurie, but I think it's a matter
3 of appearance of potential conflict.

4 MR. MCCALPIN: But if they put in sealed
5 bids --

6 MR. FORTUNO: No, I think that the -- yes,
7 you're right, with a sealed bid, it's not as though by
8 making a decision to put something up for sale, you're
9 necessarily putting it into your own pocket, because
10 others can bid on it as well, but you do now have an
11 opportunity which you would not have otherwise. That
12 is, it's now up for bid and you may be able to purchase
13 it and get a good deal on it.

14 As I said, it's not something about which we
15 have strong feelings, but I think that the IG has
16 expressed some concern over it, and for that reason, I
17 thought that we ought to call that to your attention.
18 And now that Laurie Tarantowicz is in the room, maybe
19 have her come up and --

20 CHAIR BATTLE: Laurie, come join us at the
21 table.

22 MR. MCCALPIN: Come defend yourself.

1 MS. TARANTOWICZ: Yes, if I knew we were --

2 CHAIR BATTLE: Turn to page 50, at the top of
3 page 50, section B, there's a provision in the property
4 manual which pertains to the disposition of property.
5 And it addresses the issue of a concern evidently we've
6 been told that the inspector general's office had about
7 the possible conflict of interest in having either
8 board members or employees who have been involved in
9 the decision to dispose of the property being able to
10 purchase it or acquire it.

11 MS. TARANTOWICZ: Right. That was a --

12 MR. MCCALPIN: And the suggestion was that
13 that be eliminated.

14 MS. TARANTOWICZ: We were just concerned with
15 the potential conflict of interest. I mean, you say
16 somebody that makes the decision to sell the property,
17 then turns around -- it may have a potential self
18 interest, if they're going to turn around and purchase
19 the property. I think that was our concern.

20 MR. MCCALPIN: Well, if you put it up for
21 sealed bids, would you still have the same problem?
22 Again, and let everybody bid on it?

1 MS. TARANTOWICZ: All employees?

2 MR. MCCALPIN: Yes.

3 CHAIR BATTLE: You have a provision for
4 selling the property after it's advertised for and
5 received quotes where -- but that provision only
6 pertains to when it's worth more than \$15,000. But
7 it's not a strong burning issue either way, I don't
8 think.

9 MR. HOUSEMAN: Well, I just think first, there
10 may be a distinction between LSC and recipients, but I
11 just think most non-profits don't operate with this
12 kind of a restriction on how they dispose of property.
13 And I don't see any justification for it here.

14 MS. TARANTOWICZ: You don't see a conflict?

15 MR. HOUSEMAN: No, I mean I don't see that
16 there's a potential for much of a conflict in this
17 area, and you know, I don't know how to say it any
18 other way. I just don't --

19 MS. TARANTOWICZ: I don't see --

20 MR. HOUSEMAN: -- talking about -- I don't see
21 the problem with employees or board members having an
22 opportunity to purchase property of a recipient that

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1 they're disposing of.

2 MS. TARANTOWICZ: Because they make the
3 decision of whether or not to dispose of it.

4 MR. HOUSEMAN: They may, but they make all
5 kinds of decisions all the time about --

6 MS. TARANTOWICZ: And that's something that
7 involves their own interest, potentially, as a personal
8 interest.

9 MR. HOUSEMAN: Well, I think it's building way
10 up a personal interest. It seems to me, when you're
11 disposing of old personal property, which is normally
12 the case, you want to get rid of it, and you get rid of
13 it fast, if you want to get some money for it you can,
14 and if you can't, you want to get people that are --
15 you know, know about it, have a chance to get it and
16 get some money out of it that way. It's just --

17 MS. TARANTOWICZ: Do you think we wouldn't be
18 able to sell it if they didn't offer it to --

19 CHAIR BATTLE: So often, it's hard to find
20 somebody to sell old stuff to. I mean, other than the
21 people around the office who know about it, it's -- I'm
22 trying to figure out, Laurie, help me to understand,

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1 and give me an example of the conflict of interest that
2 is embodied in this particular provision.

3 MS. TARANTOWICZ: If --

4 MR. FORTUNO: I think, just to maybe give
5 Laurie a second to get her thoughts together, since she
6 walked in and was sandbagged with this -- for which I
7 apologize, Laurie --

8 MS. TARANTOWICZ: No, it's my fault for coming
9 late.

10 MR. FORTUNO: If, for example, over lunch I
11 said something like, "Yes, my system blew up. I really
12 need a new computer system. I'm going to have to go
13 out and buy, and you know, prices, while they're not
14 bad, I'm still not crazy about it." And then you heard
15 that at the following senior staff meeting I proposed
16 for consideration that we consider replacing all our
17 computers and making those that we currently have
18 available to employees and staff, you might wonder
19 about my motivation.

20 And I think although that is not likely to
21 happen, or happen very often, I think it's that kind of
22 thing that the OIG seems to be concerned about, as I

1 understand it.

2 MR. ERLNBORN: It would seem to me if you can
3 look back and say, "Without this restriction, we have
4 not run into any conflicts of interest," that's kind of
5 instructive. I can think of scenarios where there
6 might be a conflict, but it's just pure speculation.

7 For example, if at the grantee's office they
8 have a printer or a copier that collates and throws out
9 100 pages a minutes, or something like that, great big
10 thing like that, probably there would be nobody among
11 the employees who would want to buy it. And maybe a
12 board member who has an office could use that. And so
13 there's a potential.

14 But if it hasn't been happening, why do we
15 have to throw this up to prohibit other situations
16 where there isn't really that kind of a conflict?

17 MS. TARANTOWICZ: Well, I don't know that we
18 know that it hasn't been happening.

19 CHAIR BATTLE: We've been using the, "If it
20 ain't broke" kind of philosophy. Tell me -- okay, is
21 the genesis of this provision in anything that we
22 already have in writing in the corporation? So this is

1 new?

2 MS. GLASOW: It only reflects what the
3 corporation's policy is for its own property. And now
4 we're about to apply that out.

5 CHAIR BATTLE: Well, but we haven't in the
6 past applied this to all the programs?

7 MS. GLASOW: That's correct.

8 CHAIR BATTLE: The only thing -- now, I'm just
9 looking at it from a practical standpoint of view.
10 Generally speaking, when you get down to salvage and
11 getting rid of stuff when you buy new stuff, it's real
12 hard to get rid of it. And only the people that are
13 right there and around it are even interested, and you
14 know, you generally will end up with zero.

15 In other words, for example, that collating
16 machine he was talking about. Only somebody near
17 enough to it could even have an interest in it, is even
18 going to bid on it, and be willing to pay a penny for
19 it. And the prospect of selling this stuff -- I'm just
20 talking about the implications out there -- will be
21 really low.

22 And what we might do with this is create a

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1 circumstance where you end up having to trash a lot of
2 stuff, because the people that are closest to it can't
3 bid on it and so -- and there's no place you can go and
4 really sell it, so it just has to go in a trash heap.
5 And I'm not sure that that's what we intend. We just
6 intend for there to be no conflict of interest.

7 So maybe what we can do is draft a section
8 that says we intend that there be no conflict of
9 interest in how it's disposed of, and let that be it,
10 without prohibiting the possibility of people who are
11 close enough to this property being able to bid on it.

12 MR. ERLNBORN: I'd counsel against doing
13 that, because it sounded to vague to me. I think if we
14 just remove this and leave the regulations as they are
15 now, we're probably better off.

16 MS. TARANTOWICZ: Would you have any
17 objections to putting it out for comments?

18 MR. FORTUNO: This is something which has not
19 yet been published for comment, and what you're doing
20 is reviewing a document and then directing us to
21 publish some version of this, whatever you agree on at
22 the end of the meeting.

1 So if you wanted, you could leave this
2 provision in there for comment purposes, understanding
3 that it could be revisited later, and the final
4 decision would be made with additional information.

5 CHAIR BATTLE: I think that's fair. I don't
6 have a problem with that. Okay.

7 MS. GLASOW: Something I just thought of is in
8 1630, the standards for allocation and cost, include
9 basic standards that apply to non-profits, in the sense
10 that you have to do things in an ethical manner.

11 I don't have the wording in front of me, but I
12 think some of the standards may cover that. But it's
13 something we can look into and think about.

14 CHAIR BATTLE: Okay. All right. If we leave
15 it in for comment, we haven't lost anything.

16 MR. ERLENBORN: I would suggest if you leave
17 it in for comment, for clarity, it may be wise to put a
18 comment after "members," and on the next line after
19 property. Because the way I read this, it seemed to me
20 that board members involved in the decision, which is
21 not what you meant. You mean the board members --

22 CHAIR BATTLE: Period.

1 MS. GLASOW: Right.

2 MR. ERLLENBORN: -- period, yes. And I think
3 those comments might help to --

4 CHAIR BATTLE: That's right.

5 MS. GLASOW: Okay.

6 MR. ERLLENBORN: -- read it properly.

7 CHAIR BATTLE: Good enough.

8 MR. HOUSEMAN: Thank you. I'm going to now
9 drop this in Linda's lap and go to my other meeting,
10 which Linda may never forgive me for, but --

11 CHAIR BATTLE: Okay, all right, now we can go
12 through the entire manual, starting at page 40.

13 MR. FORTUNO: I should probably state, for the
14 record, that what you have before you, and what appears
15 in the board book, and was made available to the
16 public, does throughout have some spacing which is --
17 and it's because of our technology. Probably us, as
18 operators, not the technology.

19 I'm sure the technology is fine, but in
20 transferring it from one person's machine to another,
21 over to network, and then having the pagination added,
22 and it printed out, we ended up with these spaces

1 glitches. You will see it throughout.

2 MR. ERLLENBORN: I think you probably should
3 make a decision to sell that, but nobody here is going
4 to buy it.

5 MR. FORTUNO: Okay, how would the chair like
6 to proceed with this?

7 CHAIR BATTLE: Well, normally we just take
8 section by section, and if we've got questions, cover
9 it. So let's start with the definition section. Are
10 there any questions about the purpose and definition?

11 I do have a question, in H, about the
12 reversionary interest agreement. When you think about
13 a reversionary interest, a reversionary interest is an
14 interest that one has which is transferred or conveyed
15 to another retaining some portion of an interest and an
16 opportunity to receive back the property under certain
17 circumstances.

18 But usually a reversionary interest is one
19 held by a previous owner of the property. And in the
20 context that we're talking about now, we're really
21 talking about being able to trace the source of funds
22 to purchase the property. And I'm wondering if we need

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1 to use the term reversionary interest agreement to
2 describe what we're doing.

3 MS. GLASOW: Actually, we haven't had a chance
4 to ask Danilo, but reversionary interest agreement is a
5 term that's in our accounting guide, and we've been
6 using it for many years, but you are correct. It
7 really suggests something other than what we're trying
8 to portray in this rule.

9 And we could change the term to LSC's property
10 interest agreement, if -- Danilo, are you okay with
11 that?

12 MR. CORDONA: The only reason we have a
13 reversionary --

14 CHAIR BATTLE: Why don't you come to the mic
15 and tell us who you are, so we can have you identified?

16 MR. MCCALPIN: There's no mic.

17 CHAIR BATTLE: I'm sorry -- there is a
18 microphone.

19 MR. CORDONA: My name is Danilo Cardona, I am
20 the acting vice president for programs. Madame Chair,
21 we don't have any objection of, you know, changing the
22 term of original interest agreement. The only reason

1 we left it there was not to confuse programs who are
2 used to that term.

3 MR. ERLNBORN: It would seem to me that as
4 long as you're using it in a sense of defining what the
5 term means for this purpose, you can continue to use
6 it. If it were standing alone, it would be confusing.

7 CHAIR BATTLE: Yes, yes.

8 MS. PERLE: Of course, there's something to be
9 said for the notion that since this manual is
10 prospective, it would be a problem to use a different
11 term, because it sets an example --

12 MS. TARANTOWICZ: I don't feel very strongly
13 about this, but I would think you really would want to
14 define a sort of term that's commonly known to mean
15 something else as something it's not commonly known to
16 mean, but --

17 MR. FORTUNO: Certainly for the record, I
18 agree that what we're talking about here is not what's
19 ordinarily thought of as a reversionary interest.
20 We're talking about recording an interest so that the
21 public is on notice that it's not free and
22 unencumbered, the property, that is, that we have an

1 interest in it.

2 So it need not be reversionary interest, and I
3 agree that that does create some confusion, since it's
4 a term thought of in a slightly different way.

5 MR. MCCALPIN: Well, why not just simply --

6 CHAIR BATTLE: Why not "LSC property interest
7 agreement," as an alternative? Why don't we do that?
8 I think prospectively, even though we can get used to
9 using a term that has a different meaning, if you have
10 an opportunity to clarify it and bring clarity to what
11 you mean, I think this is the time to do it. And we
12 can rumble that through our other places where this
13 term was used to make it accurate. I mean, that would
14 be my choice.

15 MR. FORTUNO: My purpose is --

16 CHAIR BATTLE: I know we normally say if it's
17 not broke, don't fix it, but in a sense, this term is a
18 little bit broke, because it's a misnomer.

19 MR. MCCALPIN: I was going to suggest redo
20 used by so many people over such a long period of time,
21 but add to the ending, "There's a formal written
22 agreement between the corporation and the recipient

1 setting forth the terms of the corporation's approval
2 of the recipient's use of corporation funds to acquire
3 real property and the corporation's right to recoup
4 funds in the event of a sale of the property."

5 In other words, spell out what it really is.
6 We've talked about yesterday, I'm not wedded to those
7 words, but spell out that it's not just approval of the
8 use, but it's specifically reserving the right to
9 recapture, recoup all or part of the purchase price in
10 the event of disposition.

11 MS. GLASOW: I understand that concern, but we
12 actually say that in a later provision, when we get
13 into that, by just using this term. I mean, we say
14 what you want to say in the definition later, when we
15 get into the substantive provisions.

16 MR. ERLENBORN: But I tend to agree with Bill
17 because here, the definition doesn't --

18 CHAIR BATTLE: Talk about reversionary at all.

19 MR. ERLENBORN: It doesn't have anything in
20 the context of the definition that would justify
21 anything like reversion being used in the title.

22 MS. GLASOW: I know I sort of struggled with

1 this too. I think we were basically copying the
2 federal government's definition for this type of entry,
3 so --

4 MR. ERLNBORN: They're not --

5 MR. MCCALPIN: Does the federal government use
6 this term?

7 MS. TARANTOWICZ: No.

8 MS. GLASOW: No.

9 CHAIR BATTLE: Ted's going no.

10 MS. PERLE: My husband's a real estate lawyer,
11 and I was talking about not this provision, but some
12 other thing about the corporation's reversionary
13 interest -- this was some time ago -- and he looked at
14 me like I was crazy. He says, "Well, what do you mean
15 by that?" And I explained what they were talking
16 about.

17 CHAIR BATTLE: That's the point. Lawyers are
18 going to think this means one thing, when it means
19 something else. So I really think --

20 MR. FORTUNO: Can I just add that the purpose
21 of this rule is to reduce to writing in one place,
22 integrated, updated document. And if that's what we're

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1 going to do, it seems like this presents the ideal
2 opportunity to -- it may not be quite broke, but it's
3 limping along -- that's the way I am -- and could
4 probably use a little aid there.

5 CHAIR BATTLE: "LSC property."

6 MR. MCCALPIN: Give it a cane.

7 CHAIR BATTLE: My suggestion is that we go
8 with "LSC property interest." I mean, I think people
9 in the field will, if it's used in this context in this
10 manual, understand what we mean. This rule will only
11 have prospective application anyway, so if we got
12 reversionary in some of our previous agreements, that's
13 fine. It won't be affected, I mean, this won't affect
14 those agreements.

15 MR. FORTUNO: And again, this is just for
16 comment --

17 MR. MCCALPIN: Put "LSC," or just "property
18 interest agreement"?

19 MS. GLASOW: "LSC's property interest
20 agreement."

21 MR. MCCALPIN: If you're going to call it LSC,
22 then you got to move it up to B.

1 MS. GLASOW: Okay. It's in alphabetical
2 order?

3 MR. MCCALPIN: Yes.

4 CHAIR BATTLE: That's fine. You catch
5 everything for us, Bill, that's why we love having you
6 here. Okay, we move it up.

7 MR. FORTUNO: And again, this is for a
8 publication for comment, so if the field believes that
9 it creates some unnecessary confusion --

10 CHAIR BATTLE: They can let us know.

11 MR. FORTUNO: -- we may hear that.

12 CHAIR BATTLE: Okay.

13 MS. GLASOW: I would like to make a correction
14 to footnote seven on page 40. It's missing some words
15 in the second line, the sentence that says, "An
16 acquisition can be through a --" should be, "a purchase
17 of real property or a purchase or lease of personal
18 property."

19 CHAIR BATTLE: That's fine.

20 MR. FORTUNO: Okay.

21 MS. GLASOW: I would --

22 MR. MCCALPIN: The sentence that starts, "An

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1 acquisition"?

2 MS. GLASOW: "An acquisition can be through a
3 purchase of real property or a purchase or lease of
4 personal property." And then a new sentence starts,
5 "It can consist --" We just dropped language in here.
6 Somehow it got messed up.

7 MR. ERLNBORN: Why would you treat a personal
8 property lease differently than a real property lease?

9 MS. GLASOW: Danilo?

10 MR. CARDONA: What was the question?

11 MS. GLASOW: Why are we regulating leases of
12 personal property, but not leases of real property? We
13 had it in the --

14 MR. CARDONA: Leases of personal property come
15 out of the 1630. They need prior approval. 1630
16 requires --

17 MR. MCCALPIN: Then it makes even less sense,
18 that you have to get prior approval of a lease of
19 personal property, but not a real property.

20 MR. ERLNBORN: Yes, why would that be?

21 MR. MCCALPIN: I don't know. It doesn't make
22 any sense.

1 MR. FARIS: Well, if I may, my name is Ted
2 FARIS. This policy dates from 1986, when the
3 corporation initially promulgated 45 CFR 1630. As
4 you've heard, that regulation requires the
5 corporation's prior approval for certain purchases or
6 leases of personal property over a threshold value,
7 which is \$10,000.

8 At the time, the field sought and got
9 clarification from LSC, that LSC's review and approval
10 of leases of real property is not required.

11 My understanding of the basis for this is that
12 the leases of personal property over \$10,000 are fairly
13 infrequent, but that leases of real property are a
14 common, every day occurrence for most legal services
15 programs, and therefore, should not have to go through
16 a bureaucratic review process before they could occur.

17 MR. ERLBORN: Probably involved more money,
18 the personal property lease.

19 MR. PERLE: They're --

20 CHAIR BATTLE: But I guess what happens is, if
21 you're leasing space, you're going to have to --
22 throughout the country, they're going to be renewing

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1 those leases either on a biannual basis, every three or
2 four years, and the question is, what interest would
3 LSC have in being involved in that process of
4 renegotiating that lease, or even if they have to move
5 from one space to the other. All of it has to be done
6 within whatever budget they have.

7 But actually, when you look at that, then I
8 raise the question of if the \$10,000 amount was the
9 amount set back in 1986, what is our interest today,
10 and whether that \$10,000 is still consistent with what
11 our interest is in a purchase, because we have some
12 thought given, after reviewing this regulation, to the
13 number of times now that one has to replace computers
14 and printers and other items.

15 And at what level does LSC have an interest in
16 assuring that these procedures are utilized in those
17 acquisitions? And I guess we need a response to that.

18 MR. MCCALPIN: I can tell you that leases of
19 personal property were infrequent in 1986. That is not
20 the case in 1999. General electric has a whole
21 business which is leasing any kind of equipment you can
22 possibly be interested in.

1 CHAIR BATTLE: People lease computers today.

2 MR. MCCALPIN: Oh, sure.

3 CHAIR BATTLE: They lease their telephone
4 equipment, they lease --

5 MR. MCCALPIN: Automobiles.

6 CHAIR BATTLE: You know, so today I think
7 there have been some changes that we might want to just
8 take pause and note about this process to just
9 determine exactly what the interest was at the onset,
10 and where we are today, in terms of our interest in and
11 the review of it.

12 MS. GLASOW: Actually, Ted knows this.

13 MR. FARIS: Madame Chair, if I could
14 illuminate this a bit. This particular committee, in
15 its infinite wisdom, saw this in 1997 and addressed it.

16 In the 1986 version of part 1630, the prior
17 approval requirement for personal property applied to
18 any combined purchase or lease of personal property
19 where the value exceeded \$10,000.

20 So if a program was going to lease a whole lot
21 of computer equipment, and all together, printers,
22 cable, and all the whole gamut ran over \$10,000, then

1 the program had to come to LSC for prior approval.

2 What you did in 1997 was eliminated that
3 combined purchase or lease requirement, so that the
4 standard which is in place now is any single item of
5 personal property with value exceeding \$10,000 requires
6 an exchange with LSC.

7 CHAIR BATTLE: Okay. So we had infinite
8 wisdom then. What have we got now?

9 MR. FORTUNO: You can't do any better than
10 that now.

11 MR. MCCALPIN: If we made a mistake, we're
12 going to stick with it.

13 CHAIR BATTLE: Okay. All right. Anything
14 else in the definition section? The next section has
15 to do with acquisition procedures for personal
16 property. Now we talk about aggregate costs over
17 \$10,000. Is this consistent with the change that we
18 made in the accounting guide?

19 MR. FORTUNO: This is personal property with
20 an aggregated cost of over \$10,000. We talking about
21 section (3)(A)?

22 MS. TARANTOWICZ: Yes.

1 MS. PERLE: That's actually not consistent --
2 is that 1630?

3 MS. TARANTOWICZ: 1630 says --

4 MR. FORTUNO: Each individual item?

5 CHAIR BATTLE: Let's see what we say in 1630.

6 MS. GLASOW: We're talking about, I believe,
7 different actions. One is prior approval and one is
8 types of acquisition.

9 CHAIR BATTLE: Oh, this is like bidding?
10 Okay, all right.

11 MR. FARIS: The prior approval doesn't show up
12 until the top of page 43.

13 CHAIR BATTLE: Okay, all right. Thanks for
14 joining us. We now have with us the president of the
15 corporation.

16 MR. MCCALPIN: The corporation is --

17 MR. MCKAY: Yes. And they've eaten, so
18 we're --

19 CHAIR BATTLE: We're on page 42.

20 MR. FORTUNO: We're discussing the procedures
21 to be followed in the case of acquisition of personal
22 property.

1 CHAIR BATTLE: Okay, this is basically a
2 bidding procedure.

3 MR. MCCALPIN: What page are we on?

4 CHAIR BATTLE: Page 42 --

5 MR. FORTUNO: 42.

6 CHAIR BATTLE: -- section three --

7 MR. MCCALPIN: 42?

8 MR. FORTUNO: Yes.

9 CHAIR BATTLE: -- acquisition procedures for
10 personal property, 42.

11 MR. MCCALPIN: Okay.

12 MR. FORTUNO: Basically what it does is
13 requires competitive quotes to ensure that the
14 recipient has a reasonable basis for determining
15 whether it's a fair deal. D does provide for sole
16 source acquisitions, where appropriate, but A sets out
17 the procedure to be followed in purchasing personal
18 property where the aggregate cost exceeds \$10,000.

19 CHAIR BATTLE: Okay, yes.

20 MR. MCCALPIN: Do you really mean three
21 written requests, or do you mean a written request to
22 at least three vendors? You could publish a request

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1 which would go worldwide, really. You don't really
2 mean you have to write three separate letters to three
3 separate vendors. Can't you just make a request that
4 goes broadly?

5 I think what you want is you make a request to
6 at least three vendors, not necessarily three written
7 requests.

8 MR. FORTUNO: Yes. No, that certainly sounds
9 reasonable. I don't see that anybody would take issue
10 with that.

11 MR. ERLBORN: If it were taken the way it's
12 written now, you'd have different terms on those
13 requests. You have to be very fair to the people
14 you're sending them out to.

15 CHAIR BATTLE: Well, make a request to
16 three --

17 MR. FORTUNO: The idea is to get three quotes.
18 The request can be one request --

19 MR. MCCALPIN: That's right.

20 MR. FORTUNO: -- but what we're asking folks
21 to get is three quotes.

22 CHAIR BATTLE: Three competitive quotes for

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1 the property. Okay, so we're proposing a change that
2 would read, "A recipient shall make a request to at
3 least three vendors for competitive quotes for the
4 property." Okay?

5 MR. MCCALPIN: Now, I raise with you the issue
6 that we wrestled with a good deal yesterday. And that
7 was that if what you want to buy is 20 pieces of
8 equipment at \$900 each -- personal property -- you
9 don't have to do this, because it's not property unless
10 it's \$1,000.

11 MR. FORTUNO: That's correct. Because of the
12 way property has been defined --

13 MR. MCCALPIN: That's right.

14 MR. FORTUNO: -- in the definition section.
15 It doesn't meet the threshold, so it doesn't come up at
16 all under this formulation.

17 MR. MCCALPIN: So you divide \$18,000 worth, 20
18 years, \$900 each, and you don't have to go through
19 this.

20 MS. PERLE: It says as an aggregate cost.

21 MR. FORTUNO: No, no, but --

22 CHAIR BATTLE: But property is --

1 MR. FORTUNO: But property is defined as --

2 CHAIR BATTLE: -- defined as something that is
3 valued over \$1,000, \$1,000 or more.

4 MR. MCCALPIN: It's not the piece of property
5 if it's \$900.

6 CHAIR BATTLE: I see, yes.

7 MR. MCCALPIN: Now, do you want to leave it
8 that way?

9 CHAIR BATTLE: I think so. I think you're
10 going to have to set a threshold for your definition.

11 MR. FORTUNO: Yes, whether it's \$1,000 or
12 \$500.

13 CHAIR BATTLE: If you set it at five, somebody
14 would buy a \$1,000,499 item.

15 MR. FORTUNO: And again, this is being
16 published for comment, so that hopefully some of the
17 comments we receive will help to clarify the issues
18 surrounding this and enable us to come back with a
19 better formulation.

20 But for now, \$1,000 -- any other number would
21 be -- I don't want to say it's over, because it
22 certainly isn't, but I don't know that there would be a

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1 much stronger case for some other number, unless what
2 we're proposing doing is having a definition that
3 doesn't incorporate a number.

4 CHAIR BATTLE: I think we put it out for
5 comment and see what comes back on this particular
6 formulation, because it kind of closely is similar to
7 other governmental bid procedures.

8 MS. GLASOW: You're trying to meet which
9 computers were at that \$1,000 threshold.

10 MR. ERLNBORN: I just wonder what kind of
11 comments we're going to get back. Do you suppose that
12 grantees out there are going to say, "Oh, wait a
13 minute. We need more regulation, and so change that."

14 CHAIR BATTLE: It probably will go in the
15 other direction, and say \$1,000 is too low.

16 Okay, is there anything else about at least
17 section A through D? Because they all pertain to the
18 bid procedure?

19 If I don't see any other questions, E then
20 moves on to the prior approval provisions of the
21 acquisition procedure for personal property. Are there
22 any questions about the prior approval provision?

1 And Bill, just following up, the three written
2 quotes, the way that it's stated in (E)(1), is that
3 okay?

4 MR. MCCALPIN: Yes.

5 CHAIR BATTLE: Okay.

6 MR. MCCALPIN: Sure.

7 MR. ERLBORN: Now this applies only to
8 purchases, not the leases.

9 CHAIR BATTLE: That's right.

10 MR. FORTUNO: Yes.

11 CHAIR BATTLE: Okay. No questions about that?
12 We can move on to four, which has to do with
13 acquisition procedures for real property.

14 MS. GLASOW: Excuse me.

15 CHAIR BATTLE: Mm-hmm?

16 MS. GLASOW: It's an acquisition, and
17 acquisition is defined as including a purchase or lease
18 of personal property. And since we are talking about
19 personal property, it would include --

20 MR. ERLBORN: You're responding to my
21 comment? Well, I read this to say funds to purchase an
22 individual item. It doesn't say acquire.

1 MS. GLASOW: On what? Maybe I'm looking at
2 the wrong sentence.

3 MR. ERLENBORN: This is 43(E), page 43(E) at
4 the top.

5 MS. GLASOW: Okay, you're right. I'm sorry.

6 CHAIR BATTLE: So do you want to use the word
7 acquire instead of purchase?

8 MR. ERLENBORN: Well, I can't --

9 MS. GLASOW: No, purchase is okay. As long as
10 we're not using acquisition.

11 MR. ERLENBORN: Is there some reason that
12 they're treated differently.

13 MS. GLASOW: Well, they're not all -- okay.

14 MR. ERLENBORN: Is the word acquisition used
15 properly there?

16 MS. GLASOW: Yes, Ted just told me it is,
17 because 1630 applies to both. So --

18 MR. FARIS: And we've defined acquisition as
19 purchase of real property or a purchase or lease of
20 personal property.

21 MR. ERLENBORN: Well, then --

22 CHAIR BATTLE: You used the word acquisition.

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1 MR. FARIS: It would be acquisition.

2 MR. MCCALPIN: It says purchase at the top.

3 CHAIR BATTLE: Acquire?

4 MR. FARIS: Yes.

5 MS. GLASOW: Okay.

6 MR. ERLNBORN: It's acquire an individual
7 item.

8 MS. GLASOW: Thank you.

9 CHAIR BATTLE: That was a good catch, John.
10 Okay, anything else in section three? Any other
11 questions? Section four? Then we can move on to
12 acquisition procedures for real property.

13 Now, this acquisition procedure is pretty much
14 aligned with where we -- what the corporation now
15 requires for the acquisition of real property.

16 MR. FORTUNO: Yes.

17 CHAIR BATTLE: Okay.

18 MR. FORTUNO: We do, when you get to F, have a
19 couple of points to make, but I'm not sure if you're
20 ready to reach that yet.

21 CHAIR BATTLE: Okay. All right, anything A
22 through D? Any questions? Let's move on to E. In

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1 E(3), there was a question --

2 MR. FORTUNO: I ask that the record reflect
3 that was the counsel of the inspector general's phone
4 going off just now.

5 (Laughter.)

6 MS. TARANTOWICZ: That is not true.

7 CHAIR BATTLE: In E(3), which reads, "An
8 agreement by the recipient to place appropriate
9 language in the deed to the property to record the
10 corporation's interest in the property," there's a
11 question about how do you record that LSC interest, and
12 whether the deed is the appropriate instrument for that
13 recordation.

14 And my guess is that many states have
15 different requirements with regard to how that is done,
16 and particularly as we look at this and understand that
17 it is not a reversionary interest, and therefore
18 wouldn't ordinarily be recorded in the deed, but
19 possibly in a separate instrument like a mortgage or
20 some other security interest.

21 MR. FORTUNO: Certainly the corporation's
22 interest is to have some public recordation of our

1 interest in the property, and it need not -- you're
2 right, that it need not be in the deed. And in fact,
3 in some jurisdictions, maybe it couldn't even be
4 recorded in that fashion, but we could probably work up
5 some language that accomplishes the goal of recording
6 our interest, so that the public is on notice that
7 there is a lean or encumbrance of some sort.

8 MS. TARANTOWICZ: What if it just reads, "An
9 agreement by the recipient to record the corporation's
10 interest in the property"?

11 CHAIR BATTLE: To record, in accordance with
12 state law, the corporation's interest in the property.

13 MS. TARANTOWICZ: Right.

14 CHAIR BATTLE: Does that work?

15 MR. ERLENBORN: Well, I don't know about the
16 accordance with state law. I know what you mean,
17 but --

18 MS. TARANTOWICZ: In accordance with law?

19 MR. ERLENBORN: It sounds too broad.

20 CHAIR BATTLE: In accordance with appropriate,
21 applicable state law.

22 MR. ERLENBORN: Okay.

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1 CHAIR BATTLE: Okay.

2 MR. MCCALPIN: Look at the second line of
3 paragraph E, right at the end.

4 CHAIR BATTLE: Written reversionary interest
5 agreement.

6 MR. MCCALPIN: Yes.

7 CHAIR BATTLE: We've already changed the name
8 of that.

9 MR. MCCALPIN: Yes.

10 CHAIR BATTLE: It's going to be a written LSC
11 interest agreement.

12 MR. MCCALPIN: Property?

13 CHAIR BATTLE: Property interest agreement.
14 Okay? Anything else in E? Any other questions or
15 concerns about E. Do we have any from any other
16 members of the committee or the board present?

17 (No response.)

18 CHAIR BATTLE: Hearing none, we can move on to
19 section five, retention and use of property purchase
20 with corporation funds.

21 MR. FORTUNO: Along the lines of Mr.
22 Erlenborn's comment earlier, I think that if we refer

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1 back to the definition, we find that we don't need to
2 use in F the \$10,000 figure, because that's already in
3 the definition so that the use of \$10,000 in F is
4 redundant to the definition.

5 MS. TARANTOWICZ: Of capital improvement.

6 MR. FORTUNO: Because that, the capital
7 improvement definition, means any expenditure of an
8 amount exceeding \$10,000 to improve real property.

9 MS. TARANTOWICZ: So you need to use the term
10 capital improvement.

11 MR. FORTUNO: So we would have, instead, it
12 would read, "Expenditures for capital improvement
13 require the corporation's prior approval, pursuant
14 to --" and go on. So we would be striking --

15 CHAIR BATTLE: More than \$10,000 of
16 corporation funds to improve -- yes.

17 MR. FORTUNO: Of, all the way through
18 property.

19 CHAIR BATTLE: Yes, that makes sense.

20 MR. FORTUNO: Okay?

21 CHAIR BATTLE: Okay.

22 MR. FORTUNO: And then actually, the last

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1 sentence could read --

2 CHAIR BATTLE: Okay, that same section? F?

3 MR. FORTUNO: Yes.

4 CHAIR BATTLE: Okay.

5 MR. FORTUNO: It could read, "When requesting
6 the corporation's prior approval of --" insert "such"
7 before the word "expenditures," have it come after
8 that, and strike, "to improve real property."

9 MR. MCCALPIN: Say that again? "When
10 requesting the corporation's prior approval --"

11 MR. FORTUNO: "Of such expenditures,
12 recipients shall provide to the corporation, in
13 writing, the following."

14 CHAIR BATTLE: Okay. We can always do it a
15 little bit better. Anything else in F? Any other
16 changes to F?

17 Okay, then we move on to section five, which
18 has to do with retention and use of property purchase
19 with corporation funds. Any questions? Comments?

20 Section six, disposal of personal property
21 purchased with corporation funds. With the exception
22 of the one issue that we've already discussed in this

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1 particular regulation, is there anything else?

2 Hearing none, section seven, disposal of real
3 property purchased with corporation funds.

4 Section eight, documentation and record-
5 keeping requirements. And recipient policies and
6 procedures.

7 M O T I O N

8 MR. MCCALPIN: Madame Chair, I move that the
9 committee approve the proposed property manual as
10 revised for publication with comments to be received in
11 -- we do it 60 or 30?

12 CHAIR BATTLE: It's going to be 60 before we
13 get back together, at least.

14 MR. MCCALPIN: Comments to be received in 60
15 days.

16 CHAIR BATTLE: Yes.

17 MS. WATLINGTON: Second.

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

20 (Chorus of ayes.)

21 CHAIR BATTLE: All opposed?

22 (No response.)

1 CHAIR BATTLE: Motion carries. Okay. Let us
2 take a break for five minutes. Let's take a five
3 minutes break. Ten minutes, let's take ten minutes and
4 we'll get back.

5 MR. MCCALPIN: You've got to call the office.

6 CHAIR BATTLE: Yes.

7 (Laughter.)

8 (A brief recess was taken.)

9 CHAIR BATTLE: Okay, I'm missing at least one
10 or two board members. Do we have water in the back?

11 MR. FORTUNO: Actually, Madame Chair, before
12 we move on, one other thing with respect to the
13 property manual, which actually is just one word, but
14 may well be significant. It is at page 52. I don't
15 know if you would be willing to entertain any comment
16 with respect to that?

17 CHAIR BATTLE: Fifty-two? Tell us what it is.

18 MR. FORTUNO: Fifty-two. It's a paragraph,
19 it's C, and it's the second line. It currently reads,
20 "When a recipient owning real property purchased with
21 corporation funds ceases to receive funding from the
22 corporation, the recipient may, with the approval of

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1 the corporation, dispose of the property," and then it
2 goes through three scenarios that require corporation's
3 approval.

4 I think what was intended there, and I've
5 consulted the program folks on this, and they've
6 confirmed that, in fact, what was intended was "shall,"
7 where "the approval of the corporation to dispose of
8 the property, according to one of the following --"

9 CHAIR BATTLE: So the word "may" should be
10 "shall"?

11 MR. FORTUNO: Yes.

12 CHAIR BATTLE: Okay. We'll take that
13 amendment.

14 Recipient fund balances contained on page 14
15 of the board book, and Linda, we're going to take a few
16 things out of order, because I know that you have a
17 time deadline. So if you would like to address your
18 concerns first?

19 MS. PERLE: Thank you. Well, this is a
20 concern. I mean, I think this is a concern that has
21 been expressed all along, and I understand that Alan
22 raised this at the last meeting, when I wasn't there,

1 where we thought that there would be, and have, in
2 fact, heard a few times in the past, at least,
3 circumstances which are, you know, unusual but very
4 compelling, where a program had acquired a fund balance
5 in excess of 25 percent and we recommend, just as we're
6 not committed to keep a balance -- the two places that
7 -- I know that the LSC staff discussion talked about
8 that one case, but I know that there was another
9 situation which happened maybe prior to the time they
10 were looking at the records.

11 One of the situations was insurance payments
12 when a program was the victim of some type of disaster,
13 maybe a flood or a fire, and got a large insurance
14 award. That was the one that the corporation staff
15 picked up.

16 And I was aware of another situation where a
17 program had owned for many years a building which they
18 were not using for their own offices, they were renting
19 to tenants. The market was good, they decided to sell
20 the building and put the money in a fund for future
21 acquisition of real property. But they didn't want to
22 buy at that time, and nobody needed the space for their

1 own needs.

2 And the corporation, at that time -- this was
3 probably 10 years ago -- made some machinations but
4 they did permit them to do it. But I think that the
5 result -- the way that it was finally worked out, they
6 were allowed to keep it, but I don't think it was
7 consistent with the rule. They were making -- but
8 there wasn't that kind of discretion within the
9 corporation's rule, and I think there really should be.

10 MS. FAIRBANKS-WILLIAMS: So they were allowed
11 to keep it as a capital fund for acquisition in the
12 future, but not to spend on something else?

13 MS. PERLE: I believe that's right, as I
14 recall. And we're not talking about a situation where
15 they just allowed to keep it, like they can with the 10
16 percent. They have to have the corporation's approval
17 for keeping it, and the corporation would -- you know,
18 what we do, the corporation, should have the discretion
19 in those very unusual circumstances to permit a program
20 to keep funds of 25 percent.

21 Now, we tried to think of other examples. One
22 of the examples that I put in here, which I'm not

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1 saying has actually happened -- but that I wasn't aware
2 that it happened over 25 percent -- where the program
3 was involved in a lawsuit on their own behalf, and was
4 given an award that would bring them over.

5 Or there are situations, which I think Alan
6 raised last time, where programs involved in cases
7 which began before April, 1996, where there were large
8 attorney's fees. And you know, maybe they were
9 involved in a case for 10 years before that, and
10 they're under our rules.

11 MS. FAIRBANKS-WILLIAMS: Yes, we were involved
12 with a migrant's case for over six.

13 MS. PERLE: But so maybe the case is over now,
14 and there has been a large attorney's fee award. And
15 you know, given a lot of other circumstances, it could
16 well put them over the 25 percent.

17 Anyway, I'm not saying that there are a lot of
18 examples, that I have a lot of examples, or that there
19 are likely to be lots of situations, but I think that
20 there has been a reason, occasionally, that it
21 certainly could arise in the future, and I think that
22 the corporation should have the discretion to do that.

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1 You know, given that it was done only under a narrow
2 set of circumstances.

3 CHAIR BATTLE: Okay, John?

4 MR. ERLNBORN: I would appreciate if someone
5 would articulate the purpose for the rule? I see what
6 it's addressing, that is, the fund balance that if it
7 exceeds 25 percent of the total for the year, but why?
8 What is the reason that we're doing this?

9 MR. FORTUNO: The articulated reason, it said
10 on the rule, is to ensure timely expenditure of LSC
11 funds for the effect of an economical provision of high
12 quality legal assistance to eligible clients.

13 The rule has built into it a provision that
14 allows the grantee to automatically, without LSC's
15 consent, to carry over an amount up to 10 percent of
16 its grant.

17 That would not include other funds received
18 from other entities and special purpose grants, but it
19 does cover LSC's support to them, Basic Field support,
20 and some others. But they can also carry over above
21 that, up to 25 percent, with LSC's approval.

22 MR. ERLNBORN: Did I understand you correctly

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1 when you said it does not apply to sources other than
2 LSC?

3 MR. FORTUNO: That's correct.

4 MR. ERLNBORN: Now, how would that then apply
5 in the case of the insurance claim for damage in a
6 hurricane, flood, whatever it might be, the source of
7 that money is the insurance company.

8 MS. PERLE: I think we have to look at the
9 definition, but I think that's probably -- assuming
10 that the property that was destroyed was property that
11 was purchased with LSC funds, then it would -- I mean,
12 we all know that many LSC programs have their LSC share
13 of their overall budgets is less and less, but we also
14 know that in some areas of the country, particularly in
15 the South, that many programs have almost all of their
16 funds coming from LSC, and that any property that
17 they've purchased, real or personal, would probably
18 have been purchased with LSC funds.

19 CHAIR BATTLE: I think that's a good question,
20 John, and I think that one of the things when we last
21 looked at this rule that we asked the staff to do is to
22 go back and look across government at how -- this fund

1 balance is not unique to LSC. Any entity that has
2 government funds has a balance at the end of the year
3 that either has to be carried over or can be recouped.

4 And we wanted to find out what the experience
5 across government was for this. And we found that the
6 25 percent cap that we have is actually stricter than
7 most in other places.

8 So we have historically had a 10 percent
9 carryover without having to request any kind of
10 approval from LSC, and when it gets above that to 25
11 percent, we establish that cap.

12 And so that's a little bit of the history of
13 it, and I think you're right, it is important to know
14 the history of it before we begin to talk about what
15 the future needs to be.

16 MR. ERLNBORN: I wonder if again, using an
17 insurance claim as the example, if that's received late
18 in the year, and has not been expended, does the 25
19 percent cap really do what is intended, and that is to
20 assure the timely expenditure of funds?

21 It seems to me that it would be untimely
22 expenditure, if in the last two months they had to

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1 somehow or other spend the money that they got in that
2 insurance claim.

3 CHAIR BATTLE: That's right. And so that's
4 why I think the proposal that Linda is making is to
5 only cover those very extraordinary circumstances so
6 that LSC will have the authority, under the rule, to
7 give approval for those extraordinary circumstances
8 where the funds come in in December. That's, I think,
9 the nature of the proposal.

10 MS. PERLE: Yes, that's one example. My
11 proposal does not have a particular time, because I use
12 the example of the sale of a building where they didn't
13 want to spend the money right away, they wanted to hold
14 on to it until the market was better, whatever, they
15 didn't need the space for their own operations.

16 And so say that they sold that property in
17 March, and wanted to buy another a year later. I don't
18 think that's -- if they could convince the corporation
19 that it was a good idea, why should the corporation not
20 be able to approve that. So my proposal does not have
21 an end-of-the-year or last-month --

22 CHAIR BATTLE: And in the suggestion that you

1 made about a carryover of real estate proceeds, any
2 amount over 10 percent would have to be approved by the
3 corporation. So if that program carried it over for
4 more than a year, we would know it. Because they'd
5 have to request a waiver more than one time in order to
6 do it. Go ahead, Bill.

7 MR. MCCALPIN: You know, as I understand it,
8 the problem, the resistance to authorizing carryovers
9 in excess of 25 percent doesn't have anything much to
10 do with effective management, but simply the clinical
11 reality of big carryovers, when you're looking to the
12 congress for more appropriation.

13 And I suggest to you that while efficient
14 management may decide to hold on to the fund until the
15 market improves, that's a little dicey, clinically. I
16 think it would be, if we're going to do it, we'd be on
17 sounder ground to say that if it comes up toward the
18 end of the year, where we don't have an opportunity to
19 expend it wisely and effectively, then we may get away
20 with it. But if we're just hanging on to it, waiting
21 for the real estate market to improve, I don't think
22 we're on the stronger ground.

1 MS. PERLE: But the corporation would have the
2 authority to not grant that waiver if they thought that
3 under those circumstances it wasn't an appropriate
4 thing to do.

5 We all know that, you know, there are lots of
6 things -- you could plan to, you know, settle on a
7 property in December and something could happen where
8 you couldn't settle on it. And that happens all the
9 time. Especially in commercial situations.

10 Or what if you're using the money to construct
11 a new facility?

12 MR. ERLNBORN: It takes time.

13 MS. PERLE: It takes time, and there's all
14 sorts of things that, you know, may intervene that
15 causes you not to have control over that.

16 MR. EAKELEY: I have a slightly different
17 view. We have a GAO report of some vintage now, but
18 nonetheless, that points fingers at fund balance
19 retention. We have a continuing general issue in the
20 congress, we have a recommendation by management and
21 the OIG that relates not only to those sensitivities
22 that are more heightened in this agency than perhaps

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1 others, but also the concern that in a competitive
2 grant-making environment, not every current grantee
3 will continue to receive funding in the future, and
4 that there is a loss of control associated with that,
5 and a policy of recapture when that happens, and a
6 greater risk of not being able to recapture if there
7 are larger fund balances.

8 And it seems to me that this is an area where
9 we should be guided by the recommendation of management
10 and look to work or to make work the extraordinary
11 event when and if it happens internally. This has only
12 happened twice in 25 years?

13 MS. PERLE: No, I don't know that it's only
14 happened --

15 MR. EAKELEY: Well, we're only aware of twice
16 in 25 years --

17 MS. PERLE: No, I'd say in 10 years. We're
18 only aware of --

19 MR. EAKELEY: Okay, but if, for example, the
20 real estate example, I mean if the funds are obligated,
21 they don't need to be expended, I think, in order to
22 have a -- now, that's just within the 25 percent on the

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1 waiver, Suzanne?

2 MS. GLASOW: It would be counted as a fund
3 balance, not --

4 CHAIR BATTLE: You know, the problem becomes
5 this.

6 MS. GLASOW: You'd have to close on the
7 property for it to be obligated, I think.

8 MR. EAKELEY: Well, in any event, my thought
9 was if there is something that had to be recaptured
10 because it's in excess of 25 percent in those very
11 unusual and rare events, that there ought to be some
12 capacity to regrant those funds in an appropriate
13 circumstance.

14 But it just doesn't seem to me to be an issue
15 that we should be raising a flag about at this time.

16 MS. PERLE: I guess my response to that is if
17 someone found out that we did this regranting process
18 to basically void the operation of our own rules, that
19 would be more of a political problem.

20 CHAIR BATTLE: I think that that's --

21 MR. EAKELEY: I wouldn't call it a voidance.

22 CHAIR BATTLE: Well, the concern I have is

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1 that I think that we're faced with a situation where
2 we've got a cap that assures that we don't have
3 programs taking grant money and not using it, which is
4 essentially what we're trying to do.

5 And we have the possibility of some
6 extraordinary circumstances that do not happen very
7 often, and we're trying to figure out what the
8 appropriate, above-board way to address those issues
9 might be and we have before us this recipient fund
10 balance rule.

11 The issue that you raised, Doug, about the
12 fact that we do now have a competitive process, it
13 seems to me that since any of these requests for a fund
14 balance would have to come before the corporation,
15 certainly internally, we would know and be able to
16 address where and when we might want to grant that
17 waiver, and when we might not want to grant that waiver
18 of anything over 10 percent.

19 So we'd have an opportunity to review that
20 particular issue, but it doesn't resolve this one or
21 two exceptional question. And my view is, a very
22 strictly drawn statement that addresses those

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1 exceptions keeps us honest with what the rule is and
2 the requirements are, and it gives notice to the
3 programs if that circumstance comes up, as to how it
4 ought to be addressed.

5 Now, we don't have any language that does that
6 in 1628, that addresses the issue, Linda, that you
7 raised. Do we have --

8 MS. PERLE: I gave --

9 CHAIR BATTLE: Okay, I'm sorry.

10 MR. MCCALPIN: And you have my letter.

11 CHAIR BATTLE: Okay. Bill, did you want to
12 address that?

13 MR. MCCALPIN: Well, I think everything -- I
14 might just say she'll understand the political
15 realities, you know, the problem part. That reminds me
16 of a saying that was rampant around the Hill among some
17 members, and that was, "If you want to get re-elected,
18 never cast a vote you have to explain."

19 That's not something that I followed myself.
20 I always had the concept that somebody who was elected
21 had an obligation of educating their constituency, not
22 just blowing with the political winds.

1 My point is that if there's possible criticism
2 of what we've done, it ought to be explainable if we
3 draft the exception carefully. For instance, instead
4 of saying that the funds are attributable to LSC
5 funding, it might say that the funds are not
6 attributable to the current year's funding, or
7 something to that extent.

8 In other words, saying that it's insurance
9 recovery, it's the sale of property. It isn't current
10 funding. These are not funds that were given to the
11 recipient and unused during the year, but it was some
12 exceptional circumstance that brought money into the
13 recipient that could not be spent in a timely fashion.

14 But I think if we draft this carefully to meet
15 those contingencies, we ought to be able to explain to
16 somebody who asks the questions.

17 CHAIR BATTLE: I think that's a good --

18 MS. PERLE: The language that you suggested,
19 and obviously you can use whatever language you want,
20 but it says, "The corporation may grant a waiver to
21 retain a fund balance over 25 percent only in
22 extraordinary and compelling circumstances such as

1 insurance reimbursements, proceeds from the sale of
2 real property, settlement of a lawsuit."

3 You know, you obviously have the authority to
4 do it however you want. I think that meets the kinds
5 of concerns that you were talking --

6 MS. TARANTOWICZ: Linda? May I ask -- I'm
7 sorry -- may I ask a -- how does the standard for the
8 waiver of the 25 percent differ really from the
9 standard for the waiver from the 10 percent? I thought
10 the understanding that they were supposed to be
11 emergencies unexpected -- I can't remember the exact
12 wording --

13 MS. PERLE: This says, "emergencies unusual or
14 unexpected occurrences."

15 MS. GLASOW: The standard for 10 to 25 percent
16 of special circumstances and the factors you look at in
17 determining that include emergencies. It doesn't
18 necessarily make a lot of sense.

19 MS. PERLE: What this does, you know, the way
20 it's structured, the rule is structured, it's a lot of
21 kind of repetition. But I think that the suggestion is
22 that for the 25 percent, you look at all the things

1 that you look at for the 10 percent. But in addition,
2 there has to be an extraordinary, rather than a special
3 circumstance. And you know, maybe we need to think of
4 other language. This is language that we've used
5 before.

6 MS. GLASOW: The language we would suggest, if
7 the committee wants to go that way, is to take out the
8 "extraordinary and compelling" and just put the exact
9 circumstances you want to cover and certainly to
10 through in the year-end language to limit it to year-
11 end, you know, money coming in at the year-end.

12 MS. PERLE: Well, I think if you want to use
13 examples -- I'm not wild about examples as a rule, as
14 was clear from our last discussion of the last rule,
15 but I don't think you can just use one circumstance,
16 because there are going to be more than one
17 circumstance where it's going to really wreak havoc
18 with a program or you know, impose a serious injustice
19 if the corporation is forced to take back the money,
20 because it doesn't have the discretion under the rule
21 to take into account that circumstance, which is
22 slightly different from whatever is there.

1 CHAIR BATTLE: Maria?

2 MS. MERCADO: No, my preference would be for
3 you not to limit it to one circumstance, because just
4 the examples alone that are given in Linda's example
5 show that there's more than one circumstance, and we
6 can probably think of others if we actually sat down
7 and worked on it for a little while. There would be
8 circumstances, not something that's under the --

9 MS. PERLE: Can I say something about the fact
10 that we've only found two circumstances in the last 10
11 years? That may be because in the particular
12 situation, instead of \$100,000 insurance reimbursement,
13 the program got \$90,000, and so they were at 24 percent
14 rather than 28 or 29 percent.

15 And so I think that there are probably lots of
16 circumstances that have arisen where if the dollar
17 amount was slightly higher, it would have put them
18 above the 25 percent. But as it was, it was between 10
19 and 25 percent, and so the corporation had the
20 discretion to permit it.

21 CHAIR BATTLE: What we're really talking about
22 now is having specific, concrete language with

1 limitations so that it fully, on its face, explains
2 what the exceptions are and how it might apply in
3 extraordinary circumstances.

4 And we've got at least one proposal -- I think
5 Suzanne suggested that we take out the standard of
6 extraordinary and compelling and put instead, the
7 example of -- what did you say?

8 MS. GLASOW: Whatever situations this
9 committee decides on. Year-end insurance payments, or
10 year-end sale of a building.

11 MS. PERLE: But that limits you to those
12 particular --

13 CHAIR BATTLE: If you take out the words "such
14 as," and say, "only in extraordinary and compelling
15 circumstances when the recipient receives a large
16 insurance reimbursement, proceeds from the sale of real
17 estate, or --" then you're not using those as examples,
18 but you're saying these are the circumstances.

19 MS. PERLE: Well, I mean, I --

20 MR. MCCALPIN: I don't think you want to do
21 that.

22 CHAIR BATTLE: Okay, what do you think?

1 MR. MCCALPIN: I think it's too restrictive.
2 Because something's going to come up inevitably that
3 will not be one of these.

4 MS. PERLE: Yes, exactly.

5 MS. FAIRBANKS-WILLIAMS: There's another
6 problem too, is what you think about the year end.
7 When they make their requests, they will probably make
8 a request in November and something might happen
9 between November and December.

10 Now, some programs are rather clever about
11 spending their year-end money that might go over the 10
12 percent. Vermont, in times past, has had two
13 disasters. One a fire, and one we flooded out the
14 whole capital. And you know, when you get this money,
15 you have to figure out what you're going to do.

16 When we had the fire, we moved to different
17 quarters and so on, and although we spent the money
18 where we should and how we should, and in a timely
19 fashion, it still took a lot of jockeying in order to
20 do it. Whereas, if we'd had a little more time, we
21 could have done better, you know.

22 MR. MCCALPIN: My recollection is it says here

1 you have to make your request within 30 days after you
2 submit your year-end financial statement. So you're --

3 MS. PERLE: It's afterwards.

4 MR. MCCALPIN: It's after the year's all over.

5 MS. PERLE: And you're not allowed to spend
6 the money during that period.

7 MR. MCCALPIN: Pardon?

8 MS. PERLE: You're not allowed to spend the
9 money during that period, if you --

10 MR. MCCALPIN: So then the problem you raise,
11 I don't think exists.

12 MS. FAIRBANKS-WILLIAMS: But if you are
13 planning -- what I'm saying, you are planning in
14 November and December what you're going to report at
15 the year end, and then something suddenly comes in --

16 MR. MCCALPIN: Well, you've got 30 days after
17 your financial report is finished, which is probably
18 two or three months after the year is over anyway. You
19 really can't spend it.

20 CHAIR BATTLE: It might be helpful in this
21 discussion to know what have been the complaints and
22 concerns so that we know, as we look at drafting this

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1 language, precisely what concerns have been raised and
2 what critics might think about this.

3 MR. CARDONA: We have no complaints regarding
4 the administration on the regulation. I'm only aware,
5 presently, of one instance that this happened, and the
6 program is Northwest Florida Legal Services. Back in
7 1995 -- I wasn't even managing this project -- but here
8 is Jay Brown, who -- I mean, it's just one little rule,
9 and he can tell you if there have been any complaints
10 regarding the administration of this rule.

11 CHAIR BATTLE: No, I don't think you
12 understood my question, Danilo. My question to you had
13 to do with us understanding, as we're drafting these
14 rules, what complaints people have had or could -- you
15 mentioned to me that there were complaints about this
16 particular cap in the past. And I think it's important
17 for the committee to understand why it's important for
18 us to make sure that we draft and craft this carefully.

19 MR. CARDONA: I have no complaints in the past
20 of a 25 percent. What there has been is a GAO report
21 that put the cap on 25 percent because programs before
22 this -- this rule is not statutorally mandated.

1 CHAIR BATTLE: We understand.

2 MR. CARDONA: And I understand that before,
3 you know, programs were -- and this is prior to when
4 I've been working here -- they were accumulating huge
5 fund balances, above and beyond 25 percent.

6 And a report came from the GAO saying that you
7 know, it shouldn't be -- didn't say 25 percent.
8 Between 21 and 25 percent, or something. The
9 corporation chose 25 percent.

10 CHAIR BATTLE: Have there been any other
11 inquiries about this at all?

12 MR. CARDONA: There have been inquiries about
13 it, with regards to fund balances themselves, and what
14 the corporation is doing with regards to fund balances.

15 CHAIR BATTLE: Okay.

16 MR. CARDONA: Yes.

17 MR. FORTUNO: I think it's -- if there's a
18 problem that we seek to address -- we've heard a little
19 bit about that -- it doesn't sound like it's
20 overwhelming, and in fact, in some respects, to borrow
21 an expression from our earlier discussion of earlier
22 rules --

1 CHAIR BATTLE: De minimus.

2 MR. FORTUNO: -- if it ain't broke, don't fix
3 it. But if the problem sought to be remedied is
4 significant, then it's weightier. And I haven't heard
5 anything that strikes me as particularly compelling.

6 On the other side of the scale, we have the
7 political implications and the perception. And we've
8 seen over time that that does tend to carry a fair
9 amount of weight.

10 The chair is right, this fund balance issue is
11 not one that's unique to LSC, but the level of scrutiny
12 to which LSC is subjected is relatively unique.

13 MS. PERLE: But the GAO --

14 MR. EAKELEY: I have a little -- I'm sorry,
15 Linda --

16 MS. PERLE: No, that's all right.

17 MR. EAKELEY: And I don't come here often, and
18 I apologize -- I don't apologize for not coming often,
19 because I'm doing everyone a favor by not -- we
20 published a rule, we had comments, we're at the final
21 stages of approval, but we're doing a debate now
22 between the recipients of the funds and our management?

1
2 MR. MCCALPIN: No, this is a comment we got
3 post-publication.

4 MS. PERLE: I wasn't at the last board
5 meeting, but as I recall from Alan's reports was this
6 issue was brought up and discussed at the last meeting,
7 and --

8 CHAIR BATTLE: The meeting before the last
9 meeting.

10 MS. PERLE: -- the last meeting of the
11 committee. And the committee asked that the
12 corporation and CLASP to come up with some information
13 about what other federal agencies did with respect to
14 fund balances, and that's in your materials.

15 And so this really is the point at which there
16 needs to be a decision, I think, on this issue, before
17 it's published.

18 I just want to say, with respect to the GAO
19 report, that was a situation where programs had been
20 just accumulating their grant, as Mr. Erlenborn said
21 before, and not spending them in anticipation that they
22 might be refunded. That's, I think, a very different

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1 set of circumstances than what we're talking about in
2 terms of the examples, and the corporation -- we're
3 still giving the corporation the discretion to deny a
4 waiver.

5 MR. EAKELEY: I think the way the congress
6 looks at it is that we're conferring more discretion,
7 and I -- if the committee is going to bump the
8 recommendation of management, then I would feel more
9 comfortable at least specifying and not leaving open-
10 ended the discretionary issue, and hitting the
11 situations where we know there could be an injustice or
12 that such as -- but not in the such as, but deal with
13 insurance proceeds, deal with sale of real estate
14 towards the end of the year, and possibly add recovery
15 in a lawsuit of which the recipient is a party.

16 But that may not cover every conceivable
17 alternative, but from a -- it certainly covers the most
18 likely sources, and it provides -- it addresses some of
19 the political sensitivity of the issue at the same
20 time.

21 CHAIR BATTLE: I think that John made a
22 suggestion and we added year-end language to that. I

1 think we're at a point where we need to go ahead and
2 talk about what proposal we're going to approve as a
3 committee.

4 And we have Linda's proposal, we have the
5 proposal we received from the staff, and we also have
6 what we've just been passed out as an alternative.
7 We'll take a look at these and make a decision.

8 MS. MERCADO: The one the IG just passed out?

9 MS. TARANTOWICZ: Actually, it's management.
10 Management's doing --

11 MR. ERLBORN: No, that was management.

12 MR. MCCALPIN: Is this IG?

13 MS. TARANTOWICZ: No.

14 MR. FORTUNO: No, no, that's management. We
15 think they enlisted the aid of counsel for the IG in
16 its distribution.

17 MR. EAKELEY: She can leap out of her chair
18 more rapidly than Victor can.

19 MS. GLASOW: Actually, the structure of
20 Linda's I like a little better, because mine's a little
21 redundant. But the actual language of the standard,
22 ours is better.

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1 CHAIR BATTLE: My one point was I didn't want
2 to see us revise a whole lot of stuff. I'd like to
3 have one section that deals with the extraordinary
4 circumstances, and let that be it, and not -- and when
5 I looked at this before, there was another change that
6 I thought made sense. So 1628.3 --

7 MS. GLASOW: Are you looking at staff's?

8 CHAIR BATTLE: Yes, I'm trying to see if I can
9 look at the -- 1628.3 --

10 We have two different changes proposed in B.
11 They really say the same thing.

12 MS. GLASOW: Says the same thing.

13 CHAIR BATTLE: C would be revised and the
14 staff, the management, and IG recommendation reads as
15 follows. "Recipients may request a waiver to retain a
16 fund balance over 25 percent of the LSC support. If
17 the recipient receives a year-end insurance payment,
18 such a request for a waiver may be approved at the
19 discretion of the corporation's -- pursuant to the
20 criteria that's set out earlier in 1628(4)(D).

21 MS. MERCADO: This only deals with the
22 insurance payment.

1 MS. GLASOW: We were only recommending the
2 insurance payment as a fall-back position.

3 MS. PERLE: We might want to use something
4 similar to the idea that Mr. McCalpin suggested. In
5 other words, that if during the year they receive an
6 unusual infusion of funds that are LSC derivatives in
7 some sense, I mean -- I'm not correct in the language -
8 - so that it makes it clear that it's only when it's an
9 unusual infusion of funds that -- rather than just
10 accumulating their grant funds. Certainly make that --

11 MS. GLASOW: We consider that way too broad,
12 vague a standard, and it's not in accord with your
13 discussion to be very exact on what you --

14 CHAIR BATTLE: I actually like the
15 extraordinary and compelling circumstances language,
16 because we don't expect that people are going to be
17 applying for this often at all. But I do think
18 specifying what we mean by that is the other part of
19 what makes sense.

20 So that instead of -- does this amend an
21 already-existing section?

22 MR. MCCALPIN: Yes. Linda's C? Is that what

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1 you're talking about?

2 CHAIR BATTLE: Mm-hmm, right.

3 MR. MCCALPIN: Yes, it amends 1638.3(C).

4 CHAIR BATTLE: Okay.

5 MS. PERLE: What I've done really in taking
6 out the previous C, it's just combining the previous B
7 and C, and then this is a new C.

8 MS. MERCADO: And for D, because the old C --
9 pardon me, and I'm not part of --

10 CHAIR BATTLE: That's okay. You can
11 participate though, we don't mind.

12 MS. MERCADO: The old C, when limited to the
13 criteria in 1628.4(D), which really limits you in what
14 those exigent circumstances might be.

15 MS. GLASOW: Those are made to refer to the
16 criteria for making a decision, so we have to make a
17 change in the criteria section as well as the change in
18 the policy section. So they have to be consistent.
19 And so I've done that in the draft I gave you.

20 CHAIR BATTLE: Okay.

21 MS. PERLE: And my draft does this too, it
22 just does it in a little different way.

1 CHAIR BATTLE: There is another difference,
2 and that is that the CLASP recommendation talks about
3 the granting of the waiver, whereas the management
4 recommendation talks about the recipients request for a
5 waiver. So --

6 MS. PERLE: Doesn't your sentence mean grant?

7 MS. MERCADO: No, it doesn't.

8 CHAIR BATTLE: It may be approved at the
9 discretion of the corporation. Okay.

10 MS. PERLE: You know, I think that the main
11 question is whether you're going to give examples, or
12 whether you're going to give only specific
13 circumstances.

14 CHAIR BATTLE: Let me just ask my committee
15 members, where are you on that? Because I think we
16 could probably take the management draft and work it
17 into what we need to do. Do we want to give examples,
18 or do we want to state the special, extraordinary
19 circumstances for purposes of this particular waiver?

20 MR. MCCALPIN: I'd rather the latter, but I
21 can move with the former.

22 MR. FORTUNO: Well also, if we -- there's one

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1 management proposal would then, an alternative, which
2 wasn't the proposal, but I think what we're talking
3 about is the alternative. But neither the alternative
4 that you received from management, which again, is not
5 the proposal, nor the one from CLASP, has a
6 consideration of what other funds the grantee has
7 available.

8 So if it's carrying over a very sizeable non-
9 LSC balance, that's not factored in. And we also don't
10 have a cap, so that what we're talking about is giving
11 the corporation discretion to allow a carryover in
12 excess of 25 percent, but we're not saying that's
13 limited to 30, or 40, or 50, or 60, or 70, or 80
14 percent. So --

15 CHAIR BATTLE: Because you really don't know,
16 when you're talking about insurance proceeds, how
17 that's going to relate to the actual grant. I mean, I
18 don't know --

19 MR. FORTUNO: But the more open-ended it is,
20 the more subject to criticism we may find ourselves.

21 CHAIR BATTLE: If we specify the reasons, real
22 estate, you know, a piece of real estate in New York is

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1 going to cost more than a piece of real estate in
2 Indiana. You know, if we specify the reasons for it,
3 then the amount is not what's at issue. It's the
4 compelling circumstances in the reason, it seems to me.

5 MR. ERLENBORN: You know, I still come back to
6 the idea that if what we're trying to do is to assure
7 the timely expenditure of grants, we really should say,
8 write a rule that says, "The money that you get this
9 year to be expended this year should be expended in a
10 timely fashion. If there are non-current grant
11 sources, such as sale of real estate, insurance --" but
12 don't have that same rationale that it has to be spent
13 this year.

14 MR. FORTUNO: But the rule defines LSC support
15 as, among other things, any LSC derivative income. So
16 that that would capture --

17 MR. ERLENBORN: That's what we have to get at
18 if we're drafting something that will differentiate
19 funding --

20 MR. MCCALPIN: I suggest to you --

21 MR. ERLENBORN: -- and extraordinary --
22 receipts of funds that are such as insurance or a sale.

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1 MR. MCCALPIN: I suggest to you that insurance
2 proceeds are not income. They're a replacement of
3 capital.

4 MR. ERLNBORN: That's true.

5 CHAIR BATTLE: Are they booked differently,
6 Ted? Insurance proceeds, do they go in the fund
7 balance?

8 MR. MCCALPIN: Derivative income, I view as
9 interest and dividends or rent --

10 MR. FORTUNO: Royalties, or --

11 MR. MCCALPIN: -- or royalties, or something
12 of that sort. But insurance proceeds are not income.
13 Neither are --

14 MR. FORTUNO: Sale proceeds.

15 MR. MCCALPIN: -- really, are proceeds from
16 the sale of real estate, income. They're return of
17 capital.

18 MS. MERCADO: But I think it's still in the
19 fund balance, it's still --

20 MS. GLASOW: But it is, in an accounting, it
21 would show up as -- end up in the fund balance. But I
22 think our rule already gives the corporation the

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1 authority to put limits on the time they can keep a
2 fund balance we allow them to keep. And so we've got a
3 lot of control on that.

4 And also, in the factors we look at to approve
5 it, we look at their record, their financial record.
6 So it's a whole lot of oversight and control of that.
7 So I think maybe your concerns are taken care of by the
8 rule, LaVeeda.

9 CHAIR BATTLE: Okay.

10 MS. GLASOW: I think if we can get the
11 standard that you want, then I can fix it through this
12 rule to be consistent in all the sections.

13 CHAIR BATTLE: The question is, I want to make
14 sure that all the committee members are happy with it.
15 Can we get that fix and get it back in time for us to
16 look at it and make sure we're happy with it before we
17 meet tomorrow?

18 MS. GLASOW: What is the standard that you
19 want?

20 CHAIR BATTLE: The standard I'm going to let
21 John articulate.

22 MR. ERLNBORN: Why me?

1 CHAIR BATTLE: Don't ever ask, "Why me?"

2 MR. ERLENBORN: I don't know if it can be
3 drafted. But what I have been articulating is let's
4 see that the current funding for delivery of services
5 is protected, and that the grantee is required to use
6 those in a timely fashion, but not apply that same rule
7 to these unusual influxes of capital.

8 And you might give examples, I don't know if
9 you want to limit it to those examples or not, but what
10 we've been talking about, insurance proceeds, the
11 proceeds of the sale of property --

12 MR. MCCALPIN: Or litigation recovery.

13 MR. ERLENBORN: -- litigation recovery, yes.

14 MS. GLASOW: So what you're trying --

15 MR. ERLENBORN: Because these are non-current
16 funds that we expect them to use for the delivery of
17 service.

18 MS. GLASOW: So what you're trying to say is
19 that type of money coming in will not be considered to
20 be part of a fund balance.

21 MS. PERLE: No, no, no, no.

22 MR. ERLENBORN: Well, let's not do that,

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1 because that's too wide open. Let's make it, unless
2 the corporation doesn't want to get involved in making
3 those decisions, we'll let the corporation give the
4 waiver.

5 CHAIR BATTLE: Let me give a stab at it.

6 MS. PERLE: You're saying 25 percent only of
7 -- I mean, that sort of goes back to what Mr. McCalpin
8 said. It's of the 25 percent -- above 25 percent
9 waivers, only in the situation where you're not talking
10 about accumulation of a current grant.

11 MR. ERLNBORN: Exactly.

12 MS. TARANTOWICZ: But I don't think that the
13 rule, as it's been over the years, just has dealt with
14 current funds. And I think that that suggestion
15 changes the whole tenor of the rule. And I think it
16 always dealt with derivative income, and it's really --

17 MS. PERLE: No, but it's only -- what Mr.
18 Erlenborn is saying is only for those decisions above
19 the 25 percent.

20 MS. TARANTOWICZ: Do you know what I'm saying?
21 I think what we're effectively doing is changing the
22 cap from 10 percent to a waiver of 25 -- to a cap of 25

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1 percent to a waiver of I don't know what, unless you
2 put specific examples in the rule, if you're going to
3 go above the 25 percent.

4 CHAIR BATTLE: We will put the specific
5 examples in. I mean, I think --

6 MS. TARANTOWICZ: But Mr. Erlenborn's
7 suggestion was to make a difference between current
8 funding and other types of funding, and I don't think
9 the rule, as it's been over the years, was intended to
10 do that, because it's always included derivative
11 income.

12 Now, these kinds of things may not be income,
13 which is a different concept that --

14 CHAIR BATTLE: Can I make a suggestion? "In
15 extraordinary and compelling circumstances, recipients
16 may request a waiver to retain a fund balance over 25
17 percent of their LSC support. If the recipient
18 receives a year-end proceed for insurance payments,
19 sale of real estate, or payment from settlement of a
20 lawsuit."

21 MS. PERLE: Can I just ask --

22 MR. FORTUNO: Which year end?

1 CHAIR BATTLE: Because that gets at --

2 MR. ERLNBORN: The year end --

3 MS. TARANTOWICZ: End of the year.

4 MS. PERLE: Well, could we say during the year
5 in question they received? I mean, again, I'm
6 concerned that --

7 CHAIR BATTLE: The only way you'll have that
8 fund balance is if you recieved those dollars during
9 that year, so --

10 MS. PERLE: During that --

11 CHAIR BATTLE: We can just take out the year
12 end, if the year end is an issue, and just say,
13 "Insurance proceeds, sale of real estate, payment from
14 settlement of a lawsuit." Those are the only reasons
15 for which you can even apply for a waiver.

16 "Such a request for a waiver may be approved
17 at the discretion of the corporation, pursuant to the
18 criteria set out in 1628.4(D).

19 MR. ERLNBORN: Would it be helpful if there
20 were also the weight of the administration to establish
21 a criteria for the expenditure of those funds? In
22 other words, not just say, "We're going to waive this."

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1 MR. FORTUNO: We have that.

2 MS. GLASOW: That's already in there.

3 MR. ERLENBORN: Oh, that's in there?

4 CHAIR BATTLE: Yes, and what you do is, you
5 establish those as part of the granting --

6 MR. ERLENBORN: Right.

7 CHAIR BATTLE: -- the bargain for exchange and
8 the grant of awards.

9 MR. ERLENBORN: Okay.

10 CHAIR BATTLE: Okay.

11 MS. GLASOW: And Jay Brown brought up an
12 important point that if we try to kind of find these in
13 a different category, then what do we do if they cease
14 being LSC recipient, then it's hard getting our fund
15 balance back, because it's not necessarily a fund
16 balance.

17 CHAIR BATTLE: See, I guess my view is I don't
18 want to change the nature of how we handle fund
19 balances for accounting purposes and all other
20 purposes. We just simply want to do a fix of some
21 specific instances in extraordinary circumstances, and
22 that's it. Let's see if that will work.

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1 MS. PERLE: Can I just -- what I want to know
2 is -- and I wasn't clear from what you just said, is
3 are you really limiting it to those specific
4 circumstances?

5 CHAIR BATTLE: Yes.

6 MR. FORTUNO: Yes.

7 MS. PERLE: Okay.

8 CHAIR BATTLE: I think that's -- I need to
9 hear from my committee. Where are we?

10 MR. ERLENBORN: If we have some others that
11 come up in the future, we can address them at the
12 amendment.

13 MS. PERLE: That'll never happen.

14 MS. WATLINGTON: You don't want it too open,
15 but you don't want to limit it to those things.

16 CHAIR BATTLE: These can all be explained.
17 Anybody looking at them --

18 MR. ERLENBORN: Yes.

19 CHAIR BATTLE: -- will be able to say, "This
20 is the circumstance." Bill, are you comfortable with
21 that? Maria?

22 MS. MERCADO: I don't like it narrow.

1 Inevitably, as soon as you look at it, there's always
2 some other exigent circumstances going to come up. I
3 mean, I would prefer that it's a "such as". It has the
4 extraordinary language in it, but it has them as
5 examples of extraordinary circumstances, whereas we're
6 limiting to --

7 MR. ERLNBORN: I think this is a good
8 compromise. It should help to avoid any criticism of
9 the granting of the waiver, because we're specifying
10 things that are clearly not current grant money for the
11 provision of services, and if that's what we're trying
12 to protect, we're still protecting that.

13 And so we're not -- the recipients, grantees,
14 may not be getting everything they'd like, which would
15 be kind of open-ended, which we could get criticized
16 for. But it's tough on the administration, trying to
17 decide which ones to grant and which not.

18 MS. PERLE: Are we using these three examples,
19 or -- I mean, these three items, or are we just using
20 the one, which is what --

21 CHAIR BATTLE: The three.

22 MR. MCCALPIN: Three.

1 CHAIR BATTLE: We've gone to three. Okay,
2 any --

3 MR. ERLENBORN: Call it a compromise.

4 CHAIR BATTLE: It is a compromise. It's
5 not -- everybody's not happy, so maybe we did good work
6 on this one.

7 MR. ERLENBORN: If everybody's happy, you've
8 made a mistake.

9 CHAIR BATTLE: Any other discussion on this
10 rule? This was the only issue, I think, in this rule
11 that we needed to discuss. Okay.

12 We now finally move to the last item on our
13 agenda, which is the issue of -- you move?

14 MR. MCCALPIN: You finished with this?

15 CHAIR BATTLE: You've got more?

16 MR. MCCALPIN: No, but are you going to have
17 some sort of a motion?

18 CHAIR BATTLE: A motion, yes. Let's do it.

19 MS. GLASOW: Actually, LaVeeda, we need to fix
20 the language on page 18.

21 CHAIR BATTLE: I'm sorry, okay.

22 MS. GLASOW: Because it's --

1 CHAIR BATTLE: Page 18?

2 MS. GLASOW: Paragraph G. On the second line
3 of G it says, "A need for any changes to the timing."
4 We need to change that to, "A need for any changes to
5 the conditions on timing or purposes," and cross out
6 "of".

7 MR. MCCALPIN: I'm sorry, I didn't hear what
8 you were talking about.

9 MS. GLASOW: Page 18.

10 MR. ERLNBORN: The bold paragraph.

11 MS. GLASOW: Second line.

12 MR. MCCALPIN: Yes?

13 MS. GLASOW: "When it determines a need for
14 any changes to the --"

15 MR. MCCALPIN: A special line in G?

16 MS. GLASOW: Yes.

17 MR. MCCALPIN: Oh, well I got a problem in the
18 second line on the page. But go ahead.

19 CHAIR BATTLE: Did you get this one, though,
20 Bill?

21 MR. MCCALPIN: Yes.

22 CHAIR BATTLE: All right.

1 MS. GLASOW: "When it determines a need for
2 any changes to the conditions on timing, or purposes."
3 Get rid of the word of, and put in, "set out in the
4 corporation's written approval." Otherwise, it sounds
5 like we're talking about changes to the approval
6 instead of the conditions in the approval.

7 CHAIR BATTLE: Okay.

8 MS. GLASOW: I think that's it.

9 CHAIR BATTLE: All right, line two for Bill.

10 MR. MCCALPIN: Do you need the word "for" in
11 that line? Go back -- "The need to retain a cash
12 reserve for private attorneys participating in the
13 recipient's PAI program." I guess maybe you do. "For
14 acquisition, for expenditures --"

15 CHAIR BATTLE: Right, you do.

16 MS. MERCADO: You do.

17 MR. MCCALPIN: Okay. In F, what is a "natural
18 line item"?

19 CHAIR BATTLE: We'll get Ted. He comes up to
20 explain natural item to us.

21 MS. GLASOW: We actually talked about that
22 last time we met.

1 CHAIR BATTLE: Yes, we did, we did.

2 MS. GLASOW: It is a term of art in
3 accounting. I do not remember what it means, but we
4 left it in there because we were satisfied that it was
5 an important term.

6 CHAIR BATTLE: Ted explained it last time,
7 didn't he? Jay? Jay, you can come and explain it for
8 us.

9 MR. BROWN: Madame Chairman, it just means
10 that you give -- a natural line item is to actually
11 delineate the specific expense category. For instance,
12 salaries, supplies. Take a look at an accounting
13 statement. It shows each item by line. So you say
14 natural line item being salaries for attorneys,
15 salaries for paralegals, salaries for secretaries.
16 Down the list you go down all the different cost
17 categories are natural line items.

18 CHAIR BATTLE: You got it, Bill?

19 MR. FORTUNO: I think it's a term of art in
20 the accounting industry.

21 MR. BROWN: It just states it by line, each
22 cost that's on the statement. Salaries is one,

1 supplies is one, litigation cost is another. All the
2 different categories of expense.

3 MR. MCCALPIN: Do you have any unnatural line
4 items?

5 (Laughter.)

6 MR. BROWN: You're right. That is --

7 CHAIR BATTLE: A full fund balance at the end
8 of the year is an unnatural line item. Okay, anything
9 else in 1628 by anybody else? Bill, you happy?

10 MR. FORTUNO: Ready for a motion?

11 MR. MCCALPIN: Yes.

12 CHAIR BATTLE: Okay. Now --

13 MR. FORTUNO: Has it been moved, or --

14 M O T I O N

15 MR. MCCALPIN: I move we recommend to the
16 board approval of 1628 as amended here today for a
17 publication as a final regulation of the corporation.

18 MS. WATLINGTON: I second.

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

21 (Chorus of ayes.)

22 CHAIR BATTLE: All opposed?

1 (No response.)

2 CHAIR BATTLE: The motion carries. Work well
3 done.

4 MR. FORTUNO: Effective date 30 days from date
5 of publication, or --

6 CHAIR BATTLE: That's right.

7 MR. MCCALPIN: Oh, that's --

8 CHAIR BATTLE: That's given.

9 MS. GLASOW: That's normal, yes.

10 MR. MCCALPIN: That's a given.

11 CHAIR BATTLE: That's a given. I think the
12 last item we have on our agenda is consider and act on
13 LSC's FOIA handbook. And then we have, of course,
14 public comments.

15 But we really have, as I understand it, the
16 amendment that we addressed in a regulation some months
17 back to the FOIA, had to do with electronically being
18 able to make documents available to the public. And we
19 handled that particular regulation some time ago.

20 And part of what the change in the
21 government's regulation pertaining to FOIA also
22 requires that there be a handbook that gives guidance

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1 to how the procedure works. And what you have in your
2 board book is an external FOIA handbook that kind of
3 gives guidance to people who are looking, or seeking to
4 access public information from the Legal Services
5 Corporation through the FOIA, and it gives some
6 guidance as to how to do it. Is that, in a nutshell --

7 MR. FORTUNO: It's the restatement policy is
8 already in effect, and the issuance of this handbook is
9 something that's required by the electronic FOIA
10 revisions.

11 I should also add that this document, as well
12 as the second one there, which is provided for your
13 information, the internal handbook, are pretty much
14 entirely the handiwork of Rachael Gould, who has been
15 here with us helping out today.

16 CHAIR BATTLE: Well done, Rachael.

17 MR. FORTUNO: She's a second year law student
18 at George Washington University.

19 CHAIR BATTLE: I liked your icons. The looked
20 -- all the way throughout, they're interesting and I'm
21 sure that looks real good on the Web, too, because you
22 like to see stuff like that, something to click on.

1 Any questions from the committee about this?
2 Bill?

3 MR. MCCALPIN: I would suggest that in the
4 first line of the second paragraph -- I guess that's of
5 the handbook -- it would more appropriately read, "LSC
6 is headed by an --"

7 CHAIR BATTLE: What page are you on, so we can
8 all follow you?

9 MR. MCCALPIN: Fifty-seven.

10 CHAIR BATTLE: Okay.

11 MR. MCCALPIN: "LSC is headed by an 11 member
12 board of directors appointed by the president with the
13 advice and consent of the Senate."

14 CHAIR BATTLE: Okay. Anything else?

15 MR. MCCALPIN: Yes, let me ask you, looking at
16 the next page, where do regs fit in? Are they -- if
17 they're published in the Federal Register yes, but how
18 does somebody go find them?

19 MS. GLASOW: Well actually, we have them up on
20 our website.

21 MR. MCCALPIN: So --

22 MS. GLASOW: We can have a lot more things in

1 our public reading room and our website that are
2 required by FOIA, this is just listing what's
3 absolutely required by FOIA.

4 MR. ERLBORN: Do you have a link from your
5 website to the --

6 MS. GLASOW: Yes, actually we're having a
7 whole new system put up very soon. Right now, I think
8 you go through public -- no, I think we have a link for
9 rules and regulations, and LSC act --

10 MR. FORTUNO: As opposed to a link to the code
11 of federal regulations at a different site, our regs,
12 which are part of the CFR, are actually included on our
13 site. So that we don't send you to another site with a
14 link, our regs appear on our site itself.

15 MR. MCCALPIN: So would the regs be in the
16 public reading room, too?

17 MR. FORTUNO: Yes.

18 MS. GLASOW: I'm not sure if that's where we
19 have them categorized right now, but I know they're up
20 on the Web.

21 CHAIR BATTLE: It says --

22 MR. MCCALPIN: Yes, but there are some of us

1 who don't know what a Web is.

2 (Laughter.)

3 MR. ERLNBORN: Spiders make them, you know.

4 CHAIR BATTLE: Bill, you see type one? Type
5 one is anything that's published in the Federal
6 Register, we have it on our Web. Type two is anything
7 we have in our public reading room, and it's listed,
8 and then type three is if you want to request a
9 specific document, then they have a form and there's a
10 process for it.

11 MR. MCCALPIN: Yes, I understand.

12 CHAIR BATTLE: Okay. Anything else? Any
13 other changes or observations about -- okay, Bill.

14 MR. MCCALPIN: Page 59.

15 CHAIR BATTLE: Okay.

16 MR. MCCALPIN: The last bullet under, "Any
17 member of the public may request." The first line
18 includes any request. It seems to me that there's
19 something missing there. "Includes any request for
20 waiver of reduction of FOIA fees as explained below
21 fees may be waived." That's a separate sentence at
22 least, isn't it?

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1 MS. GLASOW: Yes, we'll fix that.

2 CHAIR BATTLE: Okay.

3 MR. MCCALPIN: On the next page, second sub-
4 bullet, I suspected are the infra, rather than supra.

5 MS. GLASOW: We'll check that.

6 CHAIR BATTLE: Anything else?

7 MR. MCCALPIN: Page 61, the appeal process.
8 The first bullet, "What's the significance of the word
9 "accordingly" at the end of it? "By writing a letter
10 of the office of legal affairs accordingly."

11 MS. GLASOW: We'll check on that.

12 MR. FORTUNO: I think what --

13 MS. MERCADO: I think quarterly goes to the
14 bullets, it's just not put in correctly.

15 MR. FORTUNO: Well no, I think the initial
16 request may go to one of two places. It may be
17 responded to by the Office of Legal Affairs, or by the
18 Office of Inspector General, so that the appeal goes to
19 the office that acted on the initial request.

20 MR. MCCALPIN: As appropriate.

21 MS. GLASOW: As appropriate.

22 CHAIR BATTLE: As appropriate. Okay.

1 Anything else? Okay.

2 MR. MCCALPIN: What the hell are you going to
3 do at 5:00?

4 MS. GLASOW: Did you vote on this?

5 M O T I O N

6 CHAIR BATTLE: Let's now take a vote. I will
7 entertain a motion that we approve as presented to us,
8 the LSC's FOIA handbook, which is required by our law
9 to be on our website as amended by the changes made
10 today. Recommended to the board, approval.

11 MS. WATLINGTON: I so move.

12 MR. MCCALPIN: Was this just going out for
13 publication?

14 CHAIR BATTLE: No, this --

15 MS. GLASOW: No, the FOIA itself requires that
16 we put this on the Web by the end of this calendar
17 year, and it must be adopted by the head of the agency.
18 So we've asked you to consider it, and then recommend
19 to the board tomorrow to adopt it. Therefore, we have
20 fulfilled our FOIA requirements because you've adopted
21 it, and we will have it on the Web before the end of
22 the year.

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1 MS. MERCADO: In other words, we can't put it
2 off. We have to decide today.

3 MS. GLASOW: Yes.

4 MR. FORTUNO: And it doesn't embody any new
5 policies or procedures. It's simply a restatement in
6 lay-speak of policies and procedures already in effect,
7 on which this board has acted.

8 M O T I O N

9 CHAIR BATTLE: I'll entertain a motion that we
10 recommend approval by the board.

11 MS. WATLINGTON: I move.

12 MR. ERLNBORN: Second.

13 CHAIR BATTLE: Been moved and seconded. All
14 in favor?

15 (Chorus of ayes.)

16 CHAIR BATTLE: All opposed?

17 (No response.)

18 CHAIR BATTLE: Motion carries. I want to
19 thank all of you for hanging with us through this very
20 lengthy and detailed session of the ops and regs
21 committee. We are now adjourned.

22 (Whereupon, at 3:33 p.m., the meeting was

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1 adjourned.)

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