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LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS

OPERATIONS & REGULATIONS COMMITTEE

Friday, April 28, 2006  
3:53 p.m.

The Chase Park Plaza Hotel  
212-232 N. Kingshighway Boulevard  
St. Louis, Missouri

COMMITTEE MEMBERS PRESENT:

- Thomas R. Meites, Chairman
- Lillian BeVier
- Michael D. McKay
- Thomas R. Meites
- Bernice Phillips
- Sarah M. Singleton
- Frank B. Strickland, ex officio Chairman of the Board

OTHER BOARD MEMBERS PRESENT:

- Herbert S. Garten
- David Hall
- Thomas A. Fuentes

STAFF AND MEMBERS OF THE PUBLIC:

- Helaine M. Barnett, President, LSC
- Victor Fortuno, V.P. Legal Affairs, Gen. Counsel, LSC
- Mattie C. Condray, Senior Assistant General Counsel

1 Patricia D. Batie, Manager of Board Operations  
2 Karen Dozier, Executive Assistant to the President  
3 Richard "Kirt" West, Inspector General  
4 David Maddox, Assistant Inspector General for Resource  
5 Management  
6 Joel Gallay, Special Assistant to the Inspector General  
7 Tom Polgar, Director, Office of Government Relations and  
8 Public Affairs  
9 Charles Jeffress, Chief Administrative Officer  
10 David Richardson, Comptroller and Treasurer  
11 Linda Perle, CLASP  
12 Don Saunders, NLADA  
13 Terry Brooks, ABA  
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## C O N T E N T S

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MOTIONS: Pages 3, 4, 18, 29, 42

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

2 (3:53 p.m.)

3 CHAIRMAN MEITES: This is the meeting of the  
4 Operations and Regulations Committee.5 The first item on our agenda is approval of  
6 the agenda.

7 Do I have a motion to that effect?

8 M O T I O N

9 MS. BeVIER: So moved.

10 CHAIRMAN MEITES: Second.

11 MR. HALL: Second.

12 CHAIRMAN MEITES: And it is passed.

13 The second is approval of the open session  
14 minutes of our committee's January 27, 2006, meeting, a  
15 motion to approve those minutes?

16 MR. HALL: So moved.

17 MS. BeVIER: Second.

18 CHAIRMAN MEITES: And they're approved. And  
19 the third housekeeping item is approval of the minutes  
20 of the closed session meeting of this committee on  
21 January 28, 2006. Motion to approve them?

22

1 M O T I O N

2 MS. BeVIER: So moved.

3 MR. HALL: Second.

4 CHAIRMAN MEITES: And they are approved.

5 Okay. The first item of substance on our  
6 agenda today is to consider and act on the draft notice  
7 of proposed rulemaking to revise 45 CFR, Part 1624,  
8 prohibition against discrimination on the basis of  
9 handicap. Mattie, are you prepared to give the staff  
10 report?

11 MS. CONDRAY: Yes, I am.

12 CHAIRMAN MEITES: Please do.

13 MS. CONDRAY: All right.

14 At the last meeting, management was directed  
15 to prepare a draft notice of proposed rulemaking, and  
16 that draft is being presented for your recommendation  
17 for approval for publication by the full board today,  
18 recommendation today is for approval tomorrow. The  
19 draft proposes only relatively minor changes to the  
20 existing regulation, and I am just going to hit the  
21 highlights of them. I will point out there's a staff  
22 report in the book that discusses in a slightly -- in a

1 little more detail than I am going to provide a summary  
2 of the draft notice of proposed rulemaking. The entire  
3 draft notice is also in the book, and the preamble  
4 provides a much more detailed explanation of what the  
5 proposal is, and finally, there is a redlined version  
6 of the regulatory text just demonstrating the proposed  
7 changes.

8           The first change that is being proposed  
9 throughout the regulation is simply a nomenclature  
10 change. Every place where the current regulation uses  
11 the phrase "handicapped person" or "handicapped  
12 persons," management is proposing that that be changed  
13 to "person or persons with disability or disabilities,"  
14 as grammatically appropriate.

15           There's no substantive change meant. It's  
16 merely updated nomenclature, preferably phraseology  
17 being currently used.

18           Second change that management is proposing is  
19 to add a reference to the Americans With Disabilities  
20 Act, and that's proposed to be in the "Purpose"  
21 section.

22           We're not proposing to impose any additional

1 obligations on our grantees or to make the corporation  
2 responsible for administering the Americans With  
3 Disabilities Act.

4           It's more just a recognition that there are  
5 those ADA requirements that apply to our grantees  
6 independently, and it was felt that the regulation  
7 should at least acknowledge the existence of this  
8 entire other statutory and regulatory responsibility  
9 and scheme.

10           One of the substantive changes is to add a  
11 definition and use of the term "auxiliary aids or other  
12 assistive devices."

13           Currently, there's not a formal definition of  
14 the use "auxiliary aids." In the provision of  
15 services, not the employment section, there is the use  
16 of the term "auxiliary aids," and there are a couple of  
17 examples.

18           In the employment section of the current  
19 regulation, it doesn't discuss the phrase "auxiliary  
20 aids" but talks about how our programs, as employers,  
21 need to make reasonable accommodations, and it seems to  
22 be getting at much the same concept. So, it was felt

1 that having -- use of a standardized term and that  
2 single term having a definition in the definitions  
3 section would make the overall regulation more usable  
4 and more consistent.

5 The particular definition that's proposed is  
6 not exactly taken from but it is inspired by the  
7 definition of assistive technologies in the Individuals  
8 With Disabilities Education Act, mainly because that  
9 was a good source for a good use of that term, and it  
10 acknowledges a broader range of systems and devices  
11 that are now available.

12 We've added a couple of examples to what we  
13 previously had, but at the same time, want to use the  
14 other assistive devices phrase to allow for whatever  
15 might come up in the future that none of us can  
16 anticipate yet.

17 Another change is to add explicitly into the  
18 regulation what is currently the LSC policy regarding  
19 investigation and enforcement of claims of violations  
20 of Part 1624.

21 The current regulation only references Part  
22 1618 of the corporation's regulations, which is the



1 general enforcement provision. It says that claims of  
2 violation of this part will be handled in accordance  
3 with part 1618.

4           The rub here for the corporation is,  
5 particularly now that there is the ADA, the  
6 corporation -- what the corporation can do is, you  
7 know, basically yank grantees' money, I mean strong-arm  
8 them, you know, live in their territory until they  
9 comply, but we can't -- the corporation can't do what  
10 the EEOC can do and can't do what local human rights  
11 commissions can do and order injunctive relief, which  
12 the people who are complaining, who are very few and  
13 far between, I hasten to say, but we can't get them the  
14 relief that they really want.

15           So, the corporation's policy over the years  
16 has been to encourage people who wish to file  
17 complaints with us -- tell them they're welcome to do  
18 so and we'll investigate them, but to encourage them to  
19 file complaints with other agencies of jurisdiction who  
20 may be better suited to not only getting them the  
21 relief that they seek but who also have the resources  
22 and expertise in investigating those claims.

1           Generally, the corporation's policy has been  
2           that, if there are other investigations going on by  
3           other agencies, the corporation tends to defer while  
4           that investigation is pending, and use the results of  
5           that investigation.

6           This process has turned out to be pretty  
7           efficient and effective for everybody involved. So, we  
8           thought that it would be helpful to clarify  
9           expectations for both grantees, corporation staff, and  
10          potential claimants to have this policy actually  
11          embodied in the regulation.

12          The way the specific language of the  
13          proposal -- and as discussed in the preamble, of  
14          course -- if the corporation, for whatever reason,  
15          feels that it wants to take primary, you know,  
16          responsibility for investigating a complaint, it  
17          obviously maintains the authority and reserves the  
18          jurisdiction to do so. I'm trying to go quickly, in  
19          the interest of time.

20          I think the final what I would call a  
21          substantive change being proposed is the elimination of  
22          the self-evaluation section. The original regulation

1 provided that -- I guess in like January of 1980, I  
2 believe -- grantees had to provide a self-evaluation  
3 report to the corporation.

4 Well, 26 years later, I think everybody who  
5 is going to report has reported. So, that section has  
6 just become obsolete, and so, the corporation is --  
7 management is recommending to propose to eliminate that  
8 section.

9 I will note that there are other aspects  
10 within the regulation where, you know, under section  
11 1624.5, grantees are required to certify facility  
12 acceptability prior to entering into leases or  
13 purchases of office space, or if the facility is not  
14 accessible, provide a detailed statement as to why, and  
15 this requirement is an ongoing requirement that  
16 management believes ensures that facilities are, to the  
17 maximum extent possible, accessible to persons with  
18 disabilities and that grantees are taking accessibility  
19 issues into consideration when providing services.

20 I will also say that, through the workshop,  
21 the rulemaking workshop that we had, some of the  
22 information that came out, which I believe we reported

1 on last time, was that we do get very few -- we hear  
2 very few of these complaints, so we believe that our  
3 grantees are, by and large, very compliant with both  
4 the acceptable services and employment provisions of  
5 the regulation, which is why the changes being proposed  
6 are relatively minor but ones which management believes  
7 will make the regulation stronger and better going into  
8 the next 25 years before we amend the regulation again.

9 Management is proposing in here a 45-day  
10 comment period. Our statute requires a minimum of a  
11 30-day comment period. A 45-day comment period, I will  
12 say, may allow sufficient time for comments from the  
13 disability community and organizations, as well as  
14 grantees.

15 So, if approved for publication with the  
16 45-day comment period, I am estimating that the comment  
17 period would end somewhere around the end of June,  
18 which would make it tight but possible for us to have a  
19 draft final rule for presentation for the committee at  
20 the July meeting, certainly for the next one, easily,  
21 but presuming if we didn't get a whole lot of comments  
22 raising a lot of issues that we hadn't seen before,

1 that would be -- that's about the time period, the time  
2 lag.

3 With that, I think I will take questions, if  
4 anybody has any.

5 CHAIRMAN MEITES: I have two.

6 MS. CONDRAY: Okay.

7 CHAIRMAN MEITES: Looking at the redlined  
8 version, which is page 41 in our book --

9 MS. CONDRAY: Yes.

10 CHAIRMAN MEITES: Despite your remarks, I do  
11 not see any reference to the ADA in the "Purpose"  
12 section. I've looked for it, but I don't see it.

13 MS. CONDRAY: Hang on a second. Oh, that's  
14 because it -- the proposed new language, which is in  
15 the "Purpose" section in the draft notice of proposed  
16 rulemaking, inadvertently did not make it into the  
17 draft redlined -- into the redlined version.

18 CHAIRMAN MEITES: Okay.

19 MS. CONDRAY: But if I draw your attention to  
20 page 35 of the book --

21 CHAIRMAN MEITES: Hang on. There it is.  
22 Okay.

1 MS. CONDRAY: -- the last sentence of the  
2 proposed new "Purpose" section --

3 CHAIRMAN MEITES: Okay. Item two, if you  
4 look at -- I'm going to use the redlined version again,  
5 at my risk -- page 46, proposed 1624.7(b) --

6 MS. CONDRAY: Yes.

7 CHAIRMAN MEITES: With me so far?

8 MS. CONDRAY: Page 46.

9 CHAIRMAN MEITES: Page 46.

10 MS. CONDRAY: Uh-huh.

11 CHAIRMAN MEITES: I would suggest that you  
12 consider, in the second line, making "agency" plural,  
13 "agencies." ". . . such complaint to the appropriate  
14 Federal, state, or local agencies," since there may  
15 be --

16 MS. CONDRAY: Oh, yes.

17 CHAIRMAN MEITES: And I, for one, commend  
18 this change, because a number of statutes involved have  
19 deadlines in which to file complaints, and it is, I  
20 think, in the claimant's interest to be referred  
21 promptly to the appropriate agency if they are going to  
22 pursue their claim. Otherwise, they may have

1 limitations problems.

2 Okay. With that, comments from members of  
3 the committee?

4 MR. HALL: Just a question. It's for  
5 information purposes.

6 On page 42, under section 1624.4, the  
7 discrimination that's prohibited, the last line of that  
8 says, ". . . or through any contractual or another  
9 arrangement."

10 I would assume, going back to our provisions  
11 discussion, that someone who the agency is working with  
12 through a Judicare program -- this would be applicable  
13 to them.

14 Do we know whether we have had problems  
15 with -- if my assumption is correct, do we know if we  
16 have had problems with attorneys that we have brought  
17 in to work with the organization through Judicare or  
18 some other program who may not be in compliance?

19 MS. CONDRAY: I believe your underlying  
20 assumption is correct.

21 MR. HALL: Okay.

22 MS. CONDRAY: I am not aware of any

1 particular problems.

2 The ". . . directly or through contractual or  
3 another arrangement" language dates back to the  
4 original regulation. That's not a change.

5 MR. HALL: Right.

6 MS. CONDRAY: And I believe is reflective of  
7 language from the Rehabilitation Act and the Federal  
8 implementing regulations for those agencies who are  
9 required to have them. I'm not entirely sure about  
10 that.

11 I'm not aware of any more widespread issues  
12 of complaints that we may have gotten about PAI  
13 attorneys or Judicare attorneys, any more so that our  
14 direct grantees.

15 MR. HALL: And I'm not raising it to say the  
16 language shouldn't be there.

17 I was just -- because I assume our mandate is  
18 to try to make sure our grantees comply and that they,  
19 you know, change their buildings or whatever, but I was  
20 just wondering whether, when we have talked about, you  
21 know, relationships with private attorneys, whether our  
22 grantees have begun to either work with their private



1 attorneys who they are referring cases to make sure  
2 that they are in compliance, or even making a decision  
3 not to go to one, because that's a problem, and so, I  
4 was just raising it more from an informational  
5 standpoint, if there was any insights we might have  
6 about how this is played out in regards to that little  
7 piece.

8 MS. CONDRAY: I am not aware of it being a  
9 problem, but I also don't -- I personally can't speak  
10 to what relationships our grantees have with their  
11 attorneys -- to what extent they talk about these  
12 issues, I don't know.

13 CHAIRMAN MEITES: Lillian?

14 MS. BeVIER: This is pure grammatical, and  
15 it's fussy.

16 MS. CONDRAY: Well, in honor of Mr. McCalpin,  
17 I invite this.

18 MS. BeVIER: Okay. Good.

19 1624 -- it's the same provision that David  
20 was talking about.

21 I don't -- in the very last line, it's  
22 through any contractual or another arrangement, and I

1 don't get why it's "another" instead of just --

2 MS. CONDRAY: Or "other"?

3 MS. BeVIER: Because if it were -- I mean if  
4 it were any, another --

5 MS. CONDRAY: Yes.

6 MS. BeVIER: -- it doesn't make sense.

7 So, can you just -- I mean I don't know why  
8 the "another" was put in there, but I suggest we take  
9 it out and --

10 MS. CONDRAY: I would tend to agree with you.

11 MS. BeVIER: Okay.

12 MS. CONDRAY: I don't know why that was in  
13 there either. And I will also say that, in rereading  
14 the draft NPRM, also in honor of Mr. McCalpin, I've  
15 noticed two other small typos, which I will fix, a  
16 missing "s" and a missing period.

17 CHAIRMAN MEITES: Anymore comments from the  
18 committee or the board as a whole?

19 (No response.)

20 CHAIRMAN MEITES: All right.

21 I will open the floor for public comment on  
22 this proposal.

1 (No response.)

2 CHAIRMAN MEITES: Hearing no movement at all,  
3 the staff has recommended that we, in turn, recommend  
4 to the board that the draft regulation be approved for  
5 publication, with a 45-day comment period. Is that the  
6 sense of our committee?

7 M O T I O N

8 MS. BeVIER: I recommend that we do that.

9 MR. McKAY: Second.

10 MS. BeVIER: I move that we do that.

11 CHAIRMAN MEITES: All right.

12 MR. McKAY: Second.

13 CHAIRMAN MEITES: All in favor?

14 (Chorus of ayes.)

15 CHAIRMAN MEITES: Opposed?

16 (No response.)

17 CHAIRMAN MEITES: That is what we will do.

18 Okay. Thank you, Mattie.

19 Let's move to the next substantive item,  
20 which is the staff report on 45 CFR, Part 1621, which  
21 is the client grievance procedure regulation.

22 MS. CONDRAY: Pursuant to direction from the

1 last committee meeting, a second rulemaking workshop  
2 was held in the LSC offices on March 23rd of this year.

3 The entire list of representatives is in the staff  
4 report.

5 We had a number of LSC programs who run  
6 hot-line programs and similar type programs, as well as  
7 having a number of additional client representatives.

8 After the last meeting, the general consensus  
9 was that we wanted more information and wanted more  
10 input from the client community, and we had several  
11 additional representatives.

12 Like at the first workshop, there was a  
13 lively discussion which raised a number of issues and  
14 themes. The staff report which you have been provided  
15 summarizes in greater detail, if that's not an  
16 oxymoron, the issues and themes.

17 I won't go into great detail on them, but I  
18 think I am going to try to highlight some of the themes  
19 that really kind of came out over and over again, and I  
20 think are reflected in different ways in the list  
21 that's in the staff report, one of which is that it's  
22 really, really important -- the client grievance

1 process is a really important place for clients and  
2 applicants to feel listened to, to feel like they have  
3 been treated with dignity, and that -- the theme of the  
4 importance of communication came up in a number of  
5 different ways, and that it's really important for  
6 grantees to provide notice to clients and their  
7 applicants about the client grievance process.

8           The other major theme that came up with that  
9 just as strongly is that the strength of the regulation  
10 as it currently stands is its flexibility, and that as  
11 important as notice and communication is, it's really  
12 just as important for the grantees to have the  
13 flexibility to implement that notice and those  
14 communication systems in ways that work for them,  
15 rather than a one-size-fits-all approach from the  
16 regulation, top down.

17           There was also, I think, another major theme  
18 that kind of came out and is reflected in here, is that  
19 the current operating environment -- although the  
20 regulation provides a lot of flexibility and works,  
21 generally, pretty well, the current operating  
22 environment does provide -- the regulation does provide

1 some challenges in the current operating environment,  
2 where you have more hot-line programs, where you have  
3 larger service areas and more dispersed populations,  
4 where in-person services are rarer and more difficult  
5 to -- both more difficult for the grantee but also more  
6 difficult for the clients.

7           So, reflecting on all of those things,  
8 management is proposing that it develop a draft notice  
9 of proposed rulemaking for the committee's review.  
10 Management anticipates, really, only minor changes to  
11 the regulation, because again, as we heard, the  
12 regulation is pretty flexible and works pretty well,  
13 but it is felt that there are changes designed to make  
14 the regulation a little more relevant for today's  
15 operating environment which would emphasize some of the  
16 themes of notice and communication, yet build upon the  
17 flexibility that's already in the regulation.

18           Some examples, without prejudging what would  
19 be in the NPRM, some clarification of what "initial  
20 visit" actually means in terms of when notice needs to  
21 be given, kind of specifically talking about the use of  
22 conference calls and other technologies for meetings

1 and hearings, so that there's not an assumption that  
2 they have to be in person if that doesn't work for  
3 everybody, again emphasizing the importance of notice  
4 and communications with clients and applicants.

5 Some other issues that came up that  
6 management would want to consider how to address them  
7 in the NPRM might be related to client confidentiality  
8 and distinctions between applicants and clients.

9 The current regulation makes such a  
10 distinction. Essentially, applicants don't quite get  
11 as much process as clients, because generally,  
12 applicants, what they're complaining about is the fact  
13 that they didn't receive service, as opposed to clients  
14 who may complain about the services they get. One of  
15 the things we heard is that those complaints are much  
16 fewer and farther between than the complaints of people  
17 who just didn't get service, and mostly when they --  
18 when the program -- and the programs generally sounded  
19 like they really take the time to talk to those people  
20 and talk it through -- once they feel like the clients,  
21 the applicants have been heard and they've been treated  
22 with dignity, they may not be happy that they're not

1 being served, but they walk away from the process much  
2 less aggrieved.

3           And then there is also the thought that  
4 the -- a lot of the discussion that came out is stuff  
5 that maybe shouldn't be in the regulation itself but is  
6 either some best practices or guidance or a bit of a  
7 fleshing out of what everybody thinks the regulation  
8 means, and so, it was thought a draft NPRM would  
9 provide the preamble, would provide a good place for a  
10 discussion of those issues that would then be  
11 memorialized in some way, beyond specific regulatory  
12 requirements.

13           So, that's the management recommendation.

14           If directed to proceed that way, we would  
15 anticipate presenting a draft NPRM to the committee at  
16 its next meeting.

17           CHAIRMAN MEITES: I have a couple of  
18 questions.

19           The first is I see that among the list of  
20 participants in your workshop were several persons  
21 whose title is "client representative." Is it common  
22 for our grantees to have a position of client



1 representative?

2 MS. CONDRAY: I believe 1607, the governing  
3 body regulation, requires our grantees' governing  
4 bodies to have client representatives on their board,  
5 and several of these people were client board members.

6 CHAIRMAN MEITES: Full disclosure. I was on  
7 the grievance committee of our local grantee, and I  
8 only sat on a couple -- only one grievance, but I felt  
9 that the grievant was inadequately represented at our  
10 hearing, because essentially they were pro se at the  
11 hearing. Is it the practice that the client  
12 representative usually sits in on those hearings, if  
13 there is one, and assists the client in making a  
14 presentation?

15 MS. CONDRAY: No.

16 To the extent that -- the grievance committee  
17 is required to reflect -- the composition of the  
18 grievance committee is required to generally reflect  
19 the composition of the board.

20 CHAIRMAN MEITES: Uh-huh.

21 MS. CONDRAY: There are generally usually  
22 client members on the grievance committee, but they

1 don't act as ombudsmen or representatives.

2 CHAIRMAN MEITES: Then let me recycle my  
3 question.

4 Do our grantees often have a client advocate,  
5 someone who does represent the client at a grievance  
6 proceeding?

7 MS. CONDRAY: I don't believe so, no.

8 CHAIRMAN MEITES: Okay. That was a question.

9 Second is, from what you've said, from your  
10 remarks, it looks to me as if the position is the  
11 regulation works pretty well, and you do not  
12 contemplate major changes. Is that right?

13 MS. CONDRAY: I believe that's correct, yes.

14 CHAIRMAN MEITES: Okay. That's all I have.

15 Lillian?

16 MS. BeVIER: Mattie, I just have a question  
17 about how you handle some of these sort of more subtle  
18 things that it seems to me are very difficult to put in  
19 a reg.

20 Two of them struck me as terribly important  
21 for grantees to keep in mind, and one is, the way you  
22 treat your people that you are denying is going to

1 determine, in a large number of cases, whether or not  
2 there's a grievance that comes to be.

3 That's also true with docs, by the way, and  
4 there's -- you know, you probably are aware of those  
5 findings that say, if the doctor apologizes for a  
6 mistake, there's not going to be a malpractice suit.

7 So, that's important, but I don't think --  
8 it's pretty hard to regulate, and I'm curious about how  
9 that gets handled.

10 The second thing has to do with the  
11 trickiness of putting the fact of a grievance procedure  
12 availability on the website or giving notice of it,  
13 because if you tell people in advance that it's  
14 available, it might make them think, uh-oh, I'm going  
15 to get hammered here, and so, I know that, of course,  
16 you want the people with grievances to be able to have  
17 notice and learn, but I don't see how those get put in  
18 a regulation.

19 So, you've mentioned something about best  
20 practices, but can the regulations enforce best -- or  
21 enforce the drafting of best practices in each -- by  
22 each grantee?

1 MS. CONDRAY: Well, no, no, it can't. The  
2 discussion that came out of both workshops was really  
3 interesting, because it was almost like there was a  
4 parallel discussion where people were acknowledging  
5 that it's really important for clients and applicants  
6 to have the information, to be empowered -- that it's  
7 very empowering to give them the information that, if  
8 they're unhappy, they don't just have to, you know,  
9 deal, and having that information up front, we heard,  
10 was very empowering, but we also heard that if it's not  
11 transmitted well, it can come across as very  
12 adversarial, and there's a fine -- there is, indeed, a  
13 fine balance, and I think there's a way, in the  
14 regulation, with the regulatory text, to emphasize that  
15 a notice -- that notice has to be provided, without  
16 having to say, you know, within the first 15 seconds of  
17 your telephone script, doing in-take, you have to  
18 provide information telling the person X, Y, Z. I  
19 mean, because we talked about that, and different  
20 programs do it different ways.

21 There are programs that, when you go through  
22 their automated -- you call in and you get put into an

1 automated system, and -- you know, if you have a  
2 housing problem, press one; if you need to talk to  
3 somebody in Spanish, press two, kind of thing -- and  
4 some of those programs have as part of that initial  
5 script, basically while you're on hold, your basic  
6 notice that you have rights.

7 Other programs don't do it in that way, and  
8 for the programs that do it, it obviously is working  
9 for them, and it's not creating an adversarial  
10 situation.

11 So, I think there's a way for the regulation  
12 to reflect the flexibility, but I think what you can  
13 use -- you can't mandate best practices. That's kind  
14 of an oxymoron.

15 MS. BeVIER: Right.

16 MS. CONDRAY: But you can use the pre-ambular  
17 discussion to talk about the tension -- just kind of  
18 this colloquy -- there's a way to include in the  
19 preamble, which discusses the tension between the two  
20 philosophical approaches and, you know, what programs  
21 are trying to balance and how different programs have  
22 chosen different ways to achieve that balance, and you

1 know, obviously, the preamble wouldn't be the only  
2 place to kind of promote best practices, I mean that  
3 the LRI and, you know, other -- program visits and  
4 other ways that the corporation disseminates  
5 information.

6 MS. BeVIER: Okay.

7 CHAIRMAN MEITES: Other comments or questions  
8 from the committee or the board?

9 (No response.)

10 CHAIRMAN MEITES: Are there public comments  
11 on this proposal?

12 (No response.)

13 CHAIRMAN MEITES: All right. Hearing none,  
14 if there's a -- I would entertain a motion that we  
15 recommend to the board that the staff be directed to  
16 draft a notice of proposed rulemaking.

17 M O T I O N

18 MR. McKAY: So moved.

19 CHAIRMAN MEITES: Is there a second?

20 MS. BeVIER: Second.

21 CHAIRMAN MEITES: Discussion?

22 (No response.)

1           CHAIRMAN MEITES: All in favor?

2           (Chorus of ayes.)

3           CHAIRMAN MEITES: Opposed?

4           (No response.)

5           CHAIRMAN MEITES: All right. That is what we  
6 will recommend to the board. You're still up?

7           MS. CONDRAY: No, I'm not.

8           CHAIRMAN MEITES: Okay. Who's next? The  
9 next item is consideration of other regulations to  
10 review.

11           We asked that this be put on the agenda  
12 because our committee is a beast that must be fed.

13           MR. FORTUNO: Good afternoon, everyone.

14           I think the next item on the agenda -- and  
15 first, I guess, for the record, I'm Victor Fortunato,  
16 general counsel.

17           The next item on the agenda is consideration  
18 of other regs to review. The LSC Strategic Directions  
19 for 2006-10 that were recently adopted by the board  
20 provides that the board will periodically review  
21 administrative requirements for grantees and examine  
22 where appropriate regs should be amended. The

1 objective is to minimize burdens where possible and  
2 make sure that regulations are current, and provides  
3 that, every year -- that is, the Strategic Directions  
4 provides that, every year, the board will review regs  
5 to see what's appropriate for the upcoming year.

6 The Strategic Directions also says that the  
7 recommendation for appropriate amendment for fiscal  
8 year 2006 has already been done, and that's what you're  
9 working on now, is 1621, 1624.

10 There was also some discussion about not just  
11 the prohibition against handicap on the basis --  
12 discrimination on the basis of handicap and client  
13 grievance procedures, but there was some discussion  
14 about PAI.

15 How all these come about is -- you may recall  
16 that, last summer, the committee directed staff to  
17 publish in the Federal Register and to post on our  
18 website a request for comments from interested parties.

19 The request didn't outline specific regs that  
20 would be taken up.

21 The request simply asked that, on the issue  
22 or the subject of a rulemaking agenda, whether the



1 public had any views.

2           We got fairly few comments -- seven, as I  
3 recall -- and the comments essentially said that the  
4 regs that are now in place have been in place for a  
5 while, that grantees have come to understand and  
6 develop their systems to be able to deal with these  
7 regs, and that we should be careful to not engage in  
8 rulemaking for the sake of engaging in rulemaking,  
9 that, in fact, that expensive and cumbersome process,  
10 time-consuming process, should be undertaken only when  
11 there are compelling reasons for doing so, and none of  
12 the commentators seem to see -- commenters -- seemed to  
13 see a strong reason for undertaking this kind of a  
14 review of specific regs -- that is, to engage in  
15 revisions of specific regs.

16           The ones that did come across as possibly  
17 warranting some review -- two of those have been  
18 discussed this afternoon -- client grievance and  
19 discrimination on the basis of handicap. There was  
20 also a little discussion about PAI, but the committee  
21 decided that it would be most appropriate, and  
22 management, in fact, had recommended that it would be

1 most appropriate to engage in a broad dialogue with all  
2 interested parties before undertaking that kind of  
3 review with an eye towards possible revision, and  
4 referred the matter to Provisions, and Provisions has  
5 been holding hearings and getting additional  
6 information.

7 1631, which was an obsolete regulation -- I  
8 think the committee decided it would be appropriate to  
9 rescind that, and that's been done.

10 So, I think that the 2006 agenda is well  
11 underway. I think that you have some rulemaking yet to  
12 undertake.

13 I don't think that you want to do anything  
14 more this time but will, in the next 6 to 12 months,  
15 want to sit down and take a look to see where you are,  
16 what's happened on the rules that are still open, and  
17 to determine whether there's anything more to be done  
18 on any other rules, but in terms of a rulemaking  
19 agenda, I don't think there's really any work to be  
20 done now. I don't know if Mattie has any thoughts on  
21 that.

22 MS. CONDRAV: No.

1           CHAIRMAN MEITES:  Given our strategic plan,  
2   when is the next time we should agenda this item?

3           MR. FORTUNO:  Since it says that it will be  
4   done yearly, and it also says that the review has  
5   occurred and decision has been made for '06, you, I  
6   would think, would want to, in late '06, start thinking  
7   about '07, because you'll need to decide what, if  
8   anything, you want to be doing in fiscal year '07,  
9   which starts October 1.

10           So, I think that in the fall is really the  
11   time to take this back up, and whether we do so by  
12   publishing another notice requesting comment or through  
13   some other means can be decided by the committee, and  
14   then the staff will carry out the instructions of the  
15   committee, but I think it's a little premature right  
16   now.

17           CHAIRMAN MEITES:  Understood.  We meet in  
18   September or October.  Is that right?

19           Vic, is that roughly the schedule you would  
20   recommend for us?  Does that make sense to everybody?

21           MR. MCKAY:  Yes.

22           CHAIRMAN MEITES:  Okay.  Well, why don't we

1 just leave that, and you'll remember to put it on our  
2 agenda for the October meeting.

3 Okay. Next is -- is there any public comment  
4 on that, since we have it on the agenda?

5 (No response.)

6 CHAIRMAN MEITES: Okay. Next is the staff  
7 report on dormant class action cases.

8 MR. FORTUNO: This falls under the category  
9 of things I was asked to remember and come back to you  
10 on.

11 CHAIRMAN MEITES: Right.

12 MR. FORTUNO: This is going to be a short  
13 report but I think requires a little bit of background,  
14 since it dates back to November of '04.

15 There was some discussion by the committee  
16 concerning 45 CFR, Part 1617.

17 CHAIRMAN MEITES: The discussion began in  
18 response to a citizen's complaint about certain wording  
19 in our regulations.

20 The complainant was good enough to come to  
21 our meeting and testify, and as a follow-up to his  
22 testimony, we asked you to look into this, and you've

1 made a series of reports since then.

2 MR. MCKAY: Well, since we're clarifying --  
3 sorry, Mr. Chairman, if I could -- I think it's  
4 important to make sure everyone understands, for the  
5 benefit of people in the audience, is that Congress has  
6 made it now illegal for grantees to participate in  
7 class action lawsuits.

8 This complaint gave rise -- the one that we  
9 heard in November of 2004 -- gave rise to that  
10 question, and we asked Counsel's office to do this, and  
11 this committee now has been monitoring that to make  
12 sure that we're faithfully executing that prohibition.

13 CHAIRMAN MEITES: Thank you. Victor?

14 MR. FORTUNO: In terms of any nuances that  
15 may exist here, it really stems from the definition --  
16 well, 1617 provides that grantees may not participate  
17 in -- initiate or participate in a class action.

18 It provides that non-adversarial  
19 monitoring -- post-judgement non-adversarial  
20 monitoring -- is not initiation or participation, and  
21 it's around that area that the discussion occurred,  
22 because it was felt that there were grantees out there

1 that were involved in this non-adversarial monitoring,  
2 which, at least on the face of the regulations, is  
3 permitted, but there was some uncertainty as to just  
4 what was meant by that, just what kind of activities,  
5 and I think the committee wanted to have an  
6 understanding as to what the proportions of this issue  
7 was, whether there were very many programs involved in  
8 this non-adversarial monitoring.

9           So, in November of '04, the committee asked  
10 that staff poll all LSC grantees to determine whether  
11 any remained involved in these dormant class actions.

12           The Office of Compliance and Enforcement did  
13 such a polling, and then, by memo dated January 19,  
14 '05, and a presentation made at the February 5th  
15 meeting, February 5, '05, meeting of the committee,  
16 that was reviewed, the results of the polling.

17           The committee suggested that, to the extent  
18 that it was consistent with their ethical obligations  
19 and court orders, that we might want to suggest to  
20 grantees that they should seek substitute counsel and  
21 try to withdraw from these cases.

22           Not so much to get into a debate about

1       whether the rule prohibits adversarial --  
2       non-adversarial monitoring -- clearly, it doesn't, but  
3       we also were not to get into a debate about whether the  
4       activities that were ongoing qualified under this  
5       definition. It was assumed that they did.

6                But we did carry out the wishes of the  
7       committee and communicate with the various grantees who  
8       were reported to have these dormant class actions, that  
9       they should consider -- very seriously consider seeking  
10      substitute counsel. Most agreed to.

11               There were two that felt that, since the reg  
12      permitted non-adversarial monitoring, and because they  
13      felt that it would be not fruitful for them to expend  
14      resources -- time, effort -- trying to locate  
15      substitute counsel, they declined to seek substitute  
16      counsel.

17               That was reported to the committee, and the  
18      committee, six months ago, said we'd appreciate your  
19      going back to those two programs and explaining to them  
20      that we feel strongly they should be making reasonable  
21      efforts to get out of these cases.

22               So, we did go back to the two remaining

1 programs. Of the two, one had eight such matters, and  
2 has now found substitute counsel in three of them.  
3 One, the order has expired, so that one's done, and  
4 we're talking about four remaining cases in that  
5 program, and they are actively seeking substitute  
6 counsel in those four cases.

7           So, they have taken the position -- while,  
8 originally, it was we don't think we're obligated to do  
9 so and we think that there is no real need for us to do  
10 so, so we respectfully decline, after we got back to  
11 them, they reconsidered and decided to go ahead and  
12 seek substitute counsel, and as I said, they've gone  
13 from eight to four, and hopefully, that four will be  
14 down to zero when they're done their efforts seeking  
15 substitute counsel.

16           The other program had one such dormant class  
17 action. That program has also reconsidered, and what  
18 they've done is they've started a process of actively  
19 seeking substitute counsel.

20           What they hope to do is have counsel lined  
21 up, so that if the case should ever turn adversarial,  
22 they've got a firm ready to step in and take it over.



1 The concern is that it will take whatever firm agrees  
2 to do this hundreds of hours to come up to speed on  
3 this and to be positioned so that, in the unlikely  
4 event it ever turns adversarial, they would step in,  
5 but they are making reasonable efforts to secure such  
6 substitute counsel to come up to speed and be ready and  
7 waiting in the wings to step in, should it ever become  
8 adversarial.

9 CHAIRMAN MEITES: Thank you. I am heartened  
10 by that report. Let me ask other members of the  
11 committee -- questions, comments?

12 MR. MCKAY: I'm just as heartened. I think  
13 it's great. Great progress.

14 MS. BEVIER: I do think we should keep the  
15 pressure on.

16 MR. FORTUNO: Okay.

17 CHAIRMAN MEITES: Why don't we put this on  
18 our October agenda again for another report?

19 MR. FORTUNO: Okay.

20 CHAIRMAN MEITES: Or if you have something to  
21 report sooner, you'll report to us.

22 MR. FORTUNO: Yes.

1           CHAIRMAN MEITES:   Okay.

2           MR. FORTUNO:   If there's anything sooner,  
3   I'll report.

4           Otherwise, I'll report in October whether  
5   there's been any change.

6           CHAIRMAN MEITES:   Very good.   Thank you.

7           MR. FUENTES:   Mr. Chairman?

8           CHAIRMAN MEITES:   Tom, go ahead.

9           MR. FUENTES:   I'm wondering if we're -- just  
10   as a courtesy -- keeping informed the gentleman from  
11   California who brought this to our attention.

12          CHAIRMAN MEITES:   I don't remember his name  
13   either.   I'm sure we can find it in the minutes.

14          MR. FORTUNO:   Dean Andell.

15          CHAIRMAN MEITES:   Victor, on our behalf, why  
16   don't you just bring him up to date?

17          MR. FORTUNO:   Will do.

18          CHAIRMAN MEITES:   Thank you.

19          MR. FUENTES:   Thank you.

20          CHAIRMAN MEITES:   Okay.   Back to the agenda,  
21   consider and act on other business.   Is there other  
22   business?

1 (No response.)

2 CHAIRMAN MEITES: Public comment on any  
3 matter before our committee?

4 (No response.)

5 M O T I O N

6 CHAIRMAN MEITES: If not, I will accept a  
7 motion to adjourn.

8 MS. BeVIER: You've got it. I move we  
9 adjourn.

10 CHAIRMAN MEITES: Is there a second?

11 MR. McKAY: Second.

12 CHAIRMAN MEITES: And we are in adjournment.  
13 Thank you very much, ladies and gentlemen.

14 (Whereupon, at 4:38 p.m., the meeting was  
15 adjourned.)

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