

LEGAL SERVICES CORPORATION

OPERATIONS AND REGULATIONS COMMITTEE MEETING

Friday, April 16, 1999

10:25 a.m.

Hilton Alexandria Mark Center  
Terrace Ballroom  
5000 Seminary Road  
Alexandria, Virginia 22311

COMMITTEE MEMBERS PRESENT:

LaVeeda M. Battle, Chair  
John N. Erlenborn  
F. William McCalpin  
Ernestine P. Watlington

BOARD MEMBERS PRESENT:

Maria Luisa Mercado

LSC STAFF AND PUBLIC PRESENT:

John McKay, President  
Victor Fortuno, General Counsel & Secretary  
Suzanne Glasow, Senior Assistant General Counsel  
Leonard Koczur, Assistant Inspector General for Audit  
Linda Perle, CLASP  
Edouard Quatrevaux, Inspector General  
Karen Sarjeant, Vice President for Programs  
Laurie Tarantowicz, Counsel to the Inspector General

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C O N T E N T S

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Approval of Agenda. 3

Approval of Minutes of the Committee's meeting of February 21, 1999. 4

Consider public comment and consider and act on final rule, 45 CFR Part 1641, Debarment, Suspension and Removal of Recipient Auditors. 8

Develop a recommendation to make to the Board regarding setting of the compensation level for the Corporation's Inspector General. 106

MOTIONS: 3, 7, 107, 131

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

1  
2 CHAIR BATTLE: Good morning. This is  
3 April 16, 1999. And this is a meeting of the  
4 Operations and Regulations Committee of the Legal  
5 Services Corporation. I am here joined by my  
6 distinguished other members of this committee, John  
7 Erlenborn, Bill McCalpin, and Ernestine Watlington.  
8 And we have with us as well Maria Mercado. Good  
9 morning to all of you.

10 We have before us, first off, the approval of  
11 the agenda. You should have all received a Board book,  
12 which contained the agenda and the items to be  
13 discussed today. I will entertain a motion to adopt  
14 the agenda.

## M O T I O N

15  
16 MR. ERLENBORN: So moved.

17 MR. MCCALPIN: Second.

18 CHAIR BATTLE: It has been appropriately moved  
19 and seconded that we adopt the agenda as printed in our  
20 Board book. All in favor?

21 (Chorus of ayes.)

22 CHAIR BATTLE: All opposed?

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1 (No response.)

2 CHAIR BATTLE: Motion carries. Okay. The  
3 next item on our agenda is approval of minutes of the  
4 Committee's meeting of February 21, 1999. The minutes  
5 are the very -- are contained on the very next -- as  
6 the very next document in the Board book. Are there  
7 any corrections, additions, or deletions to the  
8 minutes?

9 Bill?

10 MR. ERLNBORN: I have a question.

11 CHAIR BATTLE: Okay.

12 MR. ERLNBORN: You have a question? You go.

13 CHAIR BATTLE: Well, Bill first and then --

14 MR. McCALPIN: Well, I think we were delighted  
15 to have Nancy Rogers and Maria Luisa with us. I think  
16 it is inappropriate to describe them as committee  
17 members as the minutes do. Also -- well, that is  
18 right. It says committee members. Oh, it lists Edna  
19 as a committee member too. So I think that they are to  
20 be listed as also attended.

21 CHAIR BATTLE: That stands to be corrected.

22 John?

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1 MR. ERLENBORN: My question is one of  
2 procedure generally. In looking at the minutes for  
3 this committee and also for the Board, and I think that  
4 this is probably a time honored tradition, but it says  
5 such as this. Mr. Erlenborn -- no, "Mr. McCalpin moved  
6 the agenda be adopted as written. Motion passed by  
7 voice vote. Then Mr. Erlenborn moved to adopt the  
8 minutes as corrected."

9 CHAIR BATTLE: I saw that and I wondered about  
10 that.

11 MR. ERLENBORN: Well, and I am just seeing  
12 another problem as I read this.

13 CHAIR BATTLE: Yes.

14 MR. ERLENBORN: Apparently there was a motion  
15 to correct the minutes.

16 CHAIR BATTLE: Yes.

17 MR. ERLENBORN: Which was passed, which was  
18 does not reflect -- it is not reflected here. But in  
19 the other minutes of the Board, there are items such as  
20 this that say there was a motion to correct the minutes  
21 without saying in what way.

22 CHAIR BATTLE: Right.

1           MR. ERLLENBORN: I don't think the minutes are  
2 sufficiently descriptive of what the Board or the  
3 committee has done. And I would say that we should  
4 caution whoever prepares them in the future if there  
5 are amendments suggested to the agenda, for instance,  
6 that should be spelled out so we know what the  
7 amendment was.

8           Amendments to the minutes should be spelled  
9 out so that the minutes of the meeting, whether Board  
10 or committee, would truly reflect what occurred here  
11 and not just be a cursory, a motion was made and passed  
12 and seconded, and nobody knows what the motion was.

13          CHAIR BATTLE: Okay. I think that point is  
14 well taken. I read the minutes and as well wondered  
15 about us having adopted and then gone back and  
16 corrected. And whether that was accurate.

17          MR. ERLLENBORN: It doesn't even say here that  
18 a motion was made to correct.

19          CHAIR BATTLE: Yes.

20          MR. ERLLENBORN: It says that a motion was made  
21 to adopt the minutes as corrected and there is nothing  
22 above that indicated we corrected them.

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1 CHAIR BATTLE: Yes. And what the corrections  
2 were.

3 MR. ERLENBORN: Or what the correction would  
4 be.

5 CHAIR BATTLE: Right. Yes. Okay. I think we  
6 have someone that agrees with us out there. Are there  
7 any other corrections or suggestions?

8 M O T I O N

9 MR. McCALPIN: I think I am going to move that  
10 the minutes be returned to the scrivener for -- to be  
11 reviewed and modified in light of this conversation.

12 MR. ERLENBORN: And I would second that.

13 CHAIR BATTLE: Okay. All in favor?

14 (Chorus of ayes.)

15 CHAIR BATTLE: All opposed?

16 (No response.)

17 CHAIR BATTLE: The motion carries. Okay.

18 MR. McCALPIN: Now it is going to be  
19 interesting to see what that motion looks like in the  
20 next meeting.

21 CHAIR BATTLE: I think the way that it looks  
22 will illumine how well that these suggestions have been

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1 called and adopted.

2 The first action item that we have on the  
3 agenda today is to consider public comment and consider  
4 and act on final rule, 45 CFR Part 1641, Debarment,  
5 Suspension and Removal of Recipient Auditors. And we  
6 have at the table before us to present this members of  
7 the inspector -- Office of Inspector General. If you  
8 will identify your names for the record, please.

9 MS. TARANTOWICZ: I am Laurie Tarantowicz,  
10 counsel to the Office of Inspector General.

11 MR. KOCZUR: I am Len Koczur, the assistant  
12 inspector general for audit.

13 CHAIR BATTLE: Okay. Okay. You should have  
14 in your Board book the -- I am sorry, you should have  
15 received in the mail a copy of the -- it was not in the  
16 Board book, but we did have a three-hole punch for it,  
17 an April 8, 1999, memorandum to the Board from Laurie  
18 Tarantowicz setting out the proposed changes to be made  
19 to 45 CFR Part 1641 after review. As I understand it,  
20 there were no comments received; is that correct?

21 MS. TARANTOWICZ: That is correct. It was  
22 published for 60 days in the Federal Register and no

1 comments were received.

2 CHAIR BATTLE: Okay. Did you, in addition,  
3 send this out to IPAs so that they -- the IPAs that we  
4 are aware of that have been doing audits for our  
5 recipients so that they were individually as well  
6 aware?

7 MS. TARANTOWICZ: Yes, we did. We followed  
8 the prior practice and sent, by e-mail, a notice to  
9 IPAs of the proposed rule. We had it up on our web  
10 site. We tried, but we got no comments.

11 CHAIR BATTLE: Okay.

12 Bill.

13 MR. McCALPIN: Am I to understand that you  
14 sent them a notice that this was on a web site, but you  
15 did not actually send them copies, hard copies of the  
16 proposed regulation.

17 MS. TARANTOWICZ: That is correct. We sent  
18 them notice that it was on the web site and in the  
19 Federal Register.

20 MR. McCALPIN: How many IPAs look at the  
21 Federal Register?

22 MS. TARANTOWICZ: Well a lot look -- they do

1 look --

2 MR. McCALPIN: Do accountants normally look at  
3 a Federal Register?

4 MS. TARANTOWICZ: I don't think so, but we  
5 told them where it was and also IPAs, I believe,  
6 generally visit our web site because they have to in  
7 order to complete the audits they are conducting.

8 Is that not right?

9 MR. KOCZUR: Yes, that is correct. We have a  
10 number of informational documents on the web site for  
11 the IPAs and they -- virtually all of them visit the  
12 site. So they certainly would have known that it was  
13 there. And it was easy to find on the -- the  
14 regulation itself as published was easy to find on the  
15 web site.

16 MR. McCALPIN: If you have any IPAs as old as  
17 I am, that would not be much notice.

18 MR. QUATREVAUX: If I may, Madame Chair.

19 CHAIR BATTLE: Yes. Please just identify  
20 yourself for the record.

21 MR. QUATREVAUX: I am Ed Quatrevaux, inspector  
22 general of the Corporation. We have from the start,

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1 with the new system of compliance oversight through the  
2 annual audits, conditioned this group of the private  
3 sector to deal with us over the Internet and by  
4 electronic mail. They have to have that capacity  
5 simply to submit an audit report and they have to come  
6 in.

7 We provide other notices that way to them and  
8 we have had no indication of any problem. So it is --  
9 for this group of people, that type of notice was not  
10 at all unusual. Thank you.

11 CHAIR BATTLE: Are there any other questions?

12 (No response.)

13 CHAIR BATTLE: Okay. If you would present --  
14 we did receive the commentary as well as the rule and  
15 your explanation, but if you would give us an overview  
16 so that we could start our review, we would appreciate  
17 it.

18 MS. TARANTOWICZ: Okay. This rule is intended  
19 to implement the OIG statutory authority in starting  
20 with the 1996 appropriations act to remove, suspend, or  
21 bar independent public accountants, for good cause, for  
22 providing audit services to recipients after notice and

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1 an opportunity to be heard.

2 As I mentioned, the rule was published in the  
3 Federal Register as a proposed rule after the committee  
4 considered it at its September meeting. Basically, the  
5 rule is based on the government-wide system in the  
6 federal government for suspension, debarment, and  
7 removal of contractors dealing with the federal  
8 government.

9 CHAIR BATTLE: Just a moment.

10 John, are you not able to locate your copy of  
11 this?

12 MR. ERLENBORN: I am afraid I can't.

13 CHAIR BATTLE: Do you have an extra copy that  
14 we can provide to Mr. Erlenborn? Okay.

15 MR. ERLENBORN: The problem is that for 30 or  
16 40 years, I had a secretary and since I don't have one,  
17 things get lost all the time. Thank you.

18 CHAIR BATTLE: If it will give you comfort, I  
19 do have a secretary and things get lost.

20 MR. McCALPIN: Amen. And even occasionally  
21 she loses things.

22 CHAIR BATTLE: That is right. That is right.

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1 Okay. Do all of the other members of the committee and  
2 Board present have a copy? Okay. Good. We can  
3 continue. Thank you.

4 MS. TARANTOWICZ: Okay. The government-wide  
5 system was established pursuant to executive order and  
6 guidance provided by the Office of Management and  
7 Budget. Basically, all federal agencies have very  
8 similar debarment regs, and we have modeled this reg on  
9 those.

10 CHAIR BATTLE: Okay. All right. Why don't we  
11 do this, and I was going to mention this as we get  
12 started. We had I think at our last meeting asked that  
13 to make it easier for our review, that the commentary  
14 be placed as a footnote to the particular part of the  
15 rule that we are discussing and that way we don't have  
16 to spread out our papers and look at the commentary at  
17 the same time that we are looking at the rule and it is  
18 easier to follow.

19 So I know for purposes of our review today we  
20 have it in the format that generally we use to submit  
21 it to the Federal Register, and that is what we have  
22 used really in the past for a long time. But it does

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1 make the review a lot more simple for us -- simpler for  
2 us to do if we can use that other format. So I want to  
3 just mention that to you when we get it done the next  
4 time.

5 Let's move then to the actual language of the  
6 rule and as there are concerns about the commentary  
7 provisions that relate to the rule, you may raise those  
8 concerns at the time that we look at the rules. So  
9 that means everybody can spread their materials out.  
10 And let's do that unless there was a particular -- does  
11 anybody have a particular grave concern about the  
12 commentary before we begin our review of the rule?

13 MR. McCALPIN: Not an overall concern except  
14 that I will raise questions about the commentary as we  
15 get to specific provisions in the rule.

16 CHAIR BATTLE: Okay. Okay.

17 MS. TARANTOWICZ: Okay. Section 1 just sets  
18 out the general purpose of the rule and its  
19 application. It applies to all IPAs performing audit  
20 services for recipients, subrecipients, or other  
21 entities that receive LSC funds and are required to  
22 have an audit performed in accordance with guidance

1 promulgated by the OIG.

2 MR. McCALPIN: Madame Chair.

3 CHAIR BATTLE: Okay.

4 MR. McCALPIN: May I suggest that in the third  
5 line and again two lines later you consider  
6 substituting the word "or" for the word "and" because  
7 some of these are discreet actions, whereas when you  
8 join them with the "and," it sounds like they all have  
9 to be taken together. So that this sets out the  
10 authority of the OIG to debar, suspend, or remove. And  
11 the same thing two lines later. I just suggest that  
12 you think about whether that is a more appropriate  
13 statement.

14 MR. ERLNBORN: I would agree that it should  
15 be in the disjunctive rather than the conjunctive.

16 CHAIR BATTLE: Okay. Point well taken.  
17 Anything else about 1641.1, the purpose and  
18 applicability of the rule?

19 (No response.)

20 CHAIR BATTLE: Okay. 1641.2, the definitions.  
21 And there are several. So let's just go through them  
22 one by one on adequate evidence.

1           MR. McCALPIN: Well, I have a problem equating  
2 evidence with information. Now let me back up and say  
3 I appreciate that you are following along this  
4 document, which I haven't had a chance to read yet.  
5 But I assume that what you are doing is picking up what  
6 is government-wide, and so on, except that as a lawyer,  
7 I have trouble equating evidence and information.

8           And I appreciate the fact that you probably  
9 don't want strict rules of evidence. There are lesser  
10 rules in administrative proceedings, but the question  
11 is, did you take just -- do you take something out of a  
12 newspaper as information and consider that as adequate  
13 evidence? You could on the basis of this and I  
14 suggest, however, that that is inappropriate.

15           MS. TARANTOWICZ: I see what you are saying.  
16 I guess our intention was to follow the government-wide  
17 rule and on the belief that the definitions and the  
18 other provisions set out in the rule have been in place  
19 for quite a long time and have been applied and subject  
20 to judicial scrutiny. So we would follow the same  
21 standards in applying the rule. But I understand your  
22 concern.

1 CHAIR BATTLE: Is the term "information" at  
2 all defined in the context of that body of law  
3 developed where debarment proceedings take place in  
4 other designated federal entities?

5 MS. TARANTOWICZ: I don't know. I am sorry.

6 CHAIR BATTLE: Okay.

7 MR. ERLENBORN: I have a suggestion. And that  
8 is to modify "information" with the word "credible."  
9 And that would give the -- those who are following this  
10 some judgment if it is just an allegation story in the  
11 newspaper, whatever. If it is not credible  
12 information, it should not be followed.

13 MR. McCALPIN: Is what is in the newspaper  
14 credible?

15 MR. ERLENBORN: Not always. Not always.  
16 Sometimes yes.

17 MR. McCALPIN: Well, I think that would be  
18 helpful certainly.

19 CHAIR BATTLE: Yes.

20 MR. McCALPIN: And you have got the same  
21 problem in subparagraph (K), I think.

22 MS. MERCADO: Well, you have preponderance,

1 which is a different standard there.

2 CHAIR BATTLE: Yes, but the person --

3 MR. McCALPIN: Well, but you have got the same  
4 word "information."

5 MS. MERCADO: Bill, are you saying to modify  
6 that by adding "credible" as well.

7 MR. ERLENBORN: It is just a suggestion.

8 CHAIR BATTLE: In both places, yes.

9 MR. ERLENBORN: I thought I would send up that  
10 balloon and see if it floated.

11 CHAIR BATTLE: Okay.

12 Linda, would you come and identify yourself  
13 for the record.

14 MS. PERLE: I am Linda Perle from the Center  
15 for Law and Social Policy representing the National  
16 Legal Aid and Defender Association. First of all, I  
17 want to apologize for not filing a written comment.  
18 For a lot of reasons, I let the ball drop in this and I  
19 apologize to the Committee and I have already  
20 apologized to the IG's office.

21 MR. ERLENBORN: Why don't you sit down. You  
22 would be a lot more comfortable.

1 MS. PERLE: Okay.

2 CHAIR BATTLE: I was going to suggest that.

3 MS. PERLE: I was just going to suggest that  
4 really the -- what you are defining here is not so much  
5 the word "evidence," but you are defining "adequate"  
6 and "preponderance." And so I don't think it would be  
7 terrible if you used the word "evidence."

8 And it is really evidence deduced in the  
9 process at the hearing or, you know, during -- it is  
10 really -- they are hearings provided. They are written  
11 hearings, for the most part. But it is evidence that  
12 is presented at these hearings that has to be either  
13 adequate or -- what is the word?

14 MS. MERCADO: Preponderance.

15 MS. PERLE: Or a preponderance. So perhaps  
16 what you want to do is say it means evidence introduced  
17 at the hearing provided for in these procedures  
18 sufficient to support. And I think that might address  
19 your problem.

20 MR. McCALPIN: I am not at all sure that the  
21 debarring official is limited by this to what may be  
22 presented in writing to him.

1 MS. PERLE: Well, then you could probably say,  
2 "Other credible evidence" if you wanted to. But I  
3 think that you really -- what you want to do is put  
4 some -- my understanding of your comment really is that  
5 you want to put some boundaries on what kind of  
6 evidence you can use to consider making these  
7 decisions.

8 CHAIR BATTLE: Well, one of the things, one of  
9 the concerns that we had in going this particular rule  
10 is in many places, we use the term that we are  
11 attempting to define in the definition.

12 MS. PERLE: I understand that. But all I am  
13 saying is that for this, really what you are defining  
14 is "adequate" and "preponderance" rather than  
15 "evidence."

16 MR. McCALPIN: Yes.

17 CHAIR BATTLE: Yes. That is the purpose of  
18 this particular definition, but nowhere in here do we  
19 speak to what is to be considered, what is the  
20 evidentiary standards.

21 MS. PERLE: It is just a suggestion.

22 CHAIR BATTLE: Yes.

1           MR. ERLNBORN: I think we are defining the  
2 word "evidence" here by the use of the word  
3 "information."

4           CHAIR BATTLE: Yes.

5           MR. McCALPIN: That is right.

6           MR. ERLNBORN: So we are defining a phrase  
7 and the word both in this definition.

8           CHAIR BATTLE: Okay. Does credible  
9 information get at, for the other members of the  
10 committee and the Board, the issue?

11          MR. McCALPIN: It certainly helps.

12          CHAIR BATTLE: It does. Okay. You may want  
13 to give some thought. "Credible" really does help to  
14 put some parameters on this aspect of the definition.  
15 And you may want to give some thought to whether there  
16 are other ways to clarify by looking at that body of  
17 law that we are just getting a chance to really look at  
18 what the model is as to how they are able to get past  
19 this particular concern that we have.

20          MS. PERLE: Okay.

21          CHAIR BATTLE: About how it is defined. You  
22 can go on to the other definitions.

1           And let me just mention this, Linda. Even  
2 though you did not submit a commentary, I think that  
3 Laurie has already had an opportunity to do the  
4 overview. And if you are going to have comments from  
5 time to time, it is okay if you want to come to the  
6 table and participate. It is up to you.

7           MS. PERLE: That is up to you.

8           CHAIR BATTLE: Well, you are welcome to do it.

9           MS. PERLE: That is up to the IG's office. I  
10 am happy to do whatever.

11          MS. TARANTOWICZ: Sure. Please.

12          CHAIR BATTLE: Instead of going back and  
13 forth.

14          MS. PERLE: Okay.

15          CHAIR BATTLE: Just come have a seat and sit  
16 here with us. As we go through it, if you have some  
17 things that you would like to raise, you may.

18          MS. TARANTOWICZ: The next definition is of  
19 audit services, and it is defined to mean the annual  
20 financial statement audit of a recipient.

21          MR. ERLNBORN: I have a question, which shows  
22 my ignorance. And that is would this -- should this

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1 not include the performance audit, which is also a duty  
2 of the --

3 MR. McCALPIN: The compliance audit.

4 MR. ERLENBORN: Yes, the compliance audit.

5 MR. KOCZUR: Within the context of the annual  
6 financial audit, they do look -- the IPAs do an  
7 assessment of compliance with laws and regulations. So  
8 that is all -- it is considered one audit, its  
9 financial -- its internal controls and its laws and  
10 regulations.

11 MR. ERLENBORN: But this definition would not  
12 seem to include it.

13 MR. McCALPIN: That is right. The definition  
14 is limited to financial statement audit.

15 MR. KOCZUR: But the financial statement audit  
16 includes a review -- an audit, if you wish, of the  
17 compliance with laws and regulations as well as the  
18 internal management controls.

19 We get a series of reports as a result of the  
20 annual financial statement audits. The first report is  
21 an opinion on the financial statements. It says  
22 whether they are fairly presented or not. We also get

1 a report on internal controls. That is how well the  
2 organization controls its processes and so forth. And  
3 then we have a third report that deals with the  
4 compliance with laws and regulations, which gets to the  
5 performance aspect of this.

6 MR. ERLNBORN: See, the fact that you have  
7 these three discreet portions of the audit would seem  
8 to mean that when you say "financial statement" here  
9 that you would be talking only about the first of those  
10 three. Unless it is defined somewhere, which you have  
11 suggested that financial audit is defined somewhere to  
12 include the compliance.

13 MR. KOCZUR: Right. I think in our compliance  
14 supplement, it is clear that we are talking about all  
15 three types of reports. And so we could add to this,  
16 to the financial statement audit, the -- include the  
17 audits on internal controls and the audits on  
18 compliance with laws and regulations, which I think  
19 would get to the issue. And we get the package with  
20 all three types of reports in it. And the absence of  
21 any of those reports would mean that we wouldn't accept  
22 that package at all.

1           MR. ERLNBORN:   And I guess what I am worried  
2 about is you might have all three, but the auditor may  
3 have done a lousy job on the compliance audit.   And  
4 this would seem to say, "Well, that is not included  
5 here because it is only the financial statement."

6           MS. TARANTOWICZ:   We can add it.

7           MR. KOCZUR:   We can add the internal control,  
8 which will -- and the performance as it relates to  
9 compliance with laws and regulations.

10          MR. ERLNBORN:   Now, is that fair to require  
11 that of the audit team?

12          CHAIR BATTLE:   Maria?

13          MS. MERCADO:   I mean, you are just further  
14 defining financial statement basically because those  
15 are part of the financial statement.   I mean, in the  
16 industry of the IPAs, they understand that to mean  
17 that, that it includes all that.   But to just a regular  
18 layperson or a program or whatever, then you are just  
19 defining it further.

20          MR. ERLNBORN:   So it would do no harm.

21          MS. MERCADO:   It would do no harm.

22          MR. ERLNBORN:   All right.

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1 MS. MERCADO: Right.

2 MR. ERLBORN: Like a doctor, I want to do no  
3 harm.

4 CHAIR BATTLE: Okay.

5 MS. TARANTOWICZ: The next definition in  
6 subsection (C) is a contract defined to mean an  
7 agreement between a recipient and an IPA for an IPA to  
8 provide audit services to the recipient.

9 CHAIR BATTLE: Okay. Any question with regard  
10 to that?

11 (No response.)

12 CHAIR BATTLE: You can move on to the next.

13 MS. TARANTOWICZ: Conviction defined to mean a  
14 judgment or a conviction of a criminal offense by any  
15 court, whether entered upon a verdict or plea including  
16 pleas of nolo contendere.

17 MR. McCALPIN: There are several problems with  
18 this one.

19 MS. TARANTOWICZ: Uh-oh.

20 MR. McCALPIN: First of all, it doesn't  
21 require a final judgment. You may be convicted in a  
22 trial court, it goes on appeal, it may be affirmed or

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1 may be reversed. There is a conviction in the trial  
2 court, but it is not necessarily a final conviction.  
3 Secondly -- yes?

4 MS. TARANTOWICZ: If I might address that one.  
5 We intended it to be a conviction and not the final  
6 conviction. And in Section 1641.20, we have a  
7 provision for a reconsideration of the action based on  
8 a reversal.

9 MR. McCALPIN: That is ass-backwards. You  
10 can't debar them on the trial court conviction and then  
11 two years later when the appeal is decided, you  
12 un-debar them.

13 MS. TARANTOWICZ: We can't?

14 MR. ERLNBORN: Well, we could.

15 MR. McCALPIN: Well, you could, but I think it  
16 is inappropriate.

17 CHAIR BATTLE: Debarment for three years? Is  
18 there a maximum time frame on debarment?

19 MS. TARANTOWICZ: Yes, it is for three years.

20 CHAIR BATTLE: Right.

21 MS. TARANTOWICZ: Unless there is  
22 extraordinary circumstances.

1 CHAIR BATTLE: Yes. And so I guess that is  
2 the concern that Bill is raising. If you debar and  
3 then someone appeals, then they have already lost that  
4 opportunity to garner contracts on a conviction that  
5 has been fully overturned. You have got a suspension  
6 as an option, but this conviction piece has relevance,  
7 I think, more so in the debarment realm than it does in  
8 the suspension realm.

9 Go ahead, Ed.

10 MR. QUATREVAUX: If I may just point out that  
11 this is not just any old contractor, this is a  
12 professional service that is certifying for us on our  
13 behalf the circumstances out there. A conviction would  
14 certainly damage the credibility of that firm and their  
15 work. I would be very concerned about any audit firm  
16 where the principle was convicted of a criminal  
17 offense.

18 MS. MERCADO: Well, I want you to go ahead and  
19 finish that point because I have another point to bring  
20 up on that.

21 MR. ERLNBORN: So do I.

22 CHAIR BATTLE: Okay.

1 Bill.

2 MR. McCALPIN: Well, I think you have got due  
3 process problems.

4 MS. TARANTOWICZ: But there has already been a  
5 conviction. I don't think you have --

6 MR. McCALPIN: Yes, but the conviction is not  
7 final. Hell, it may even be set aside on a post  
8 judgment motion.

9 MS. TARANTOWICZ: Certainly. But, I mean, if  
10 that happened before the debarment went forward, then  
11 we would --

12 MR. McCALPIN: Yes, but you ought not have to  
13 reconsider it.

14 MS. TARANTOWICZ: I guess I am not  
15 understanding. I mean if you have a conviction and you  
16 have your conviction up on appeal, you can still be in  
17 jail.

18 MR. McCALPIN: I am sorry?

19 MS. TARANTOWICZ: Isn't it true that if you --  
20 once you are convicted, you can go to prison even if  
21 you have your conviction up on appeal?

22 MR. McCALPIN: It is possible, but unusual.

1 MS. MERCADO: Unless they post an appeal bond  
2 and they would be out.

3 MR. McCALPIN: It is unusual.

4 CHAIR BATTLE: I am sorry?

5 MR. QUATREVAUX: Just as a practical matter,  
6 and I don't know the law, but how does one know when a  
7 conviction is final? I mean, do you not act for some  
8 period?

9 CHAIR BATTLE: The appeal time has expired.

10 MR. McCALPIN: That is easy. If the appeal  
11 period has expired and there is no appeal, it is final.

12 CHAIR BATTLE: Let me just give you the  
13 language of a violation of that agreement that we used  
14 in 1640 that "A recipient has been convicted of or a  
15 judgment has been entered against the recipient for a  
16 violation of any of the laws that are listed in  
17 paragraph (A)(1) of this section for perspective LSC  
18 grant or contract by the court having jurisdiction of  
19 the matter and any appeals of the conviction or  
20 judgment have been exhausted or the time for appeal has  
21 expired."

22 I mean, so what we did in dealing with this

1 particular issue on the recipient side was to have the  
2 violation of agreement mean that this is the end. You  
3 have been convicted and there is no further appeal.  
4 And therefore, now it is time for us to take action on  
5 that conviction.

6 And I guess the concern that is being raised  
7 is when you are taking an action predicated upon the  
8 conviction, we aren't doing our own finding of fact at  
9 all in this circumstance, we are simply taking an  
10 action because there has been a conviction. Then the  
11 question becomes, the solidity of the action that we  
12 are taking and the validity of it, if the conviction  
13 itself gets fully overturned.

14 So it may be that we can give some  
15 consideration to how we have handled it in the  
16 recipient area and allow for those time frames for the  
17 appeal to have been exhausted before we do the  
18 debarment.

19 You have got suspension as an option. You  
20 could suspend someone and not allow them to solicit  
21 during the time that that conviction is -- the time  
22 frame for the appeal to take place. So it is not as if

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1 you don't have any remedial action that you can't  
2 undertake.

3 But this pertains to debarment, which is final  
4 termination for a time certain from being able to  
5 solicit or enter contracts. And I think that that is  
6 the concern that I am hearing from Board members being  
7 expressed.

8 Maria?

9 I am sorry, did you want to respond to that?

10 MS. TARANTOWICZ: Well, I understand we have  
11 suspension. A suspensicn was intended to be limited  
12 temporary waiting for the outcome of the actual  
13 criminal procedure in this case, proceeding in this  
14 case.

15 I think that the effect of changing it would  
16 be then to change suspension to be conviction before  
17 indictment or conviction before a conviction is final,  
18 and then a suspension wculd likely go on for a longer  
19 period of time in order to wait for the conviction on  
20 all the appeals. And the effect on the actual --  
21 effect on the IPA would be not much different because a  
22 suspension would be in place.

1 CHAIR BATTLE: Sure.

2 MS. PERLE: But I don't know that in terms of  
3 their reputation -- I mean, I am not an auditor. So I  
4 don't know how that would be handled, but I think in  
5 terms of the effect on reputation and things, a  
6 suspension is not as bad as a debarment, particularly  
7 if it never becomes a debarment.

8 CHAIR BATTLE: Yes.

9 MS. TARANTOWICZ: But if they are already  
10 convicted.

11 CHAIR BATTLE: Maria?

12 I would suggest, I would really urge you to  
13 give some thought to distinguishing -- I understand  
14 that a suspension is available during an indictment and  
15 under some circumstances, it may be appropriate to  
16 suspend right then in order to protect the assets of an  
17 LSC recipient.

18 And so I have no problem with that. But the  
19 question is debarment and taking that final kind of  
20 action before you even have a final conviction. So I  
21 would just call your attention to 1640.2(B)(1), which  
22 is the definition of a violation of the agreement and

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1 addresses the issue of the conviction.

2 Maria?

3 MS. MERCADO: Yes. My question deals with the  
4 language that the conviction is a conviction of a  
5 criminal offense by any court. And I am assuming you  
6 meant to -- you meant that to be all the way from  
7 Class A misdemeanors where somebody gives you a ticket  
8 for speeding and, you know, you pleaded that ticket.  
9 That is a conviction on that plea. It is a criminal  
10 offense even though it happens to be a traffic  
11 violation.

12 If you didn't have insurance in your car, it  
13 is a Class B misdemeanor. You plead to it, you pay the  
14 offense, that is a criminal offense. So we are going  
15 to be debarring people for these things. Or do you  
16 mean solely felonies? I mean, what kind of offenses do  
17 you mean?

18 MS. TARANTOWICZ: Where conviction is used --  
19 and this is just a definition of the term "conviction."  
20 Where conviction is used in the rule, it is limited to,  
21 in 1641.7, offenses indicating a breach of trust,  
22 dishonesty, lack of integrity, conspiracy to do the

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1 same. I don't think that would cover traffic tickets  
2 or the like.

3 MS. MERCADO: Well, wait a second. Where are  
4 you reading? 1641?

5 CHAIR BATTLE: 1641.7 sets out a list.

6 MS. TARANTOWICZ: .7(D). It is on page 23.

7 CHAIR BATTLE: 7 sets out the causes for  
8 debarment and specifically -- is it (D)?

9 MS. TARANTOWICZ: Yes.

10 MS. MERCADO: So you don't care if someone has  
11 been charged with a felony for motor or anything else,  
12 committing robbery or whatever as long as it deals with  
13 a breach of trust.

14 MR. McCALPIN: It may be lack of integrity if  
15 you murder somebody.

16 CHAIR BATTLE: I think so.

17 MS. MERCADO: There is a whole lot of group of  
18 offenses on here that wouldn't qualify under this  
19 category. So we are not necessarily saying conviction  
20 in this.

21 CHAIR BATTLE: We are not concerned about  
22 those. No.

1 MS. MERCADO: Okay.

2 CHAIR BATTLE: We are not concerned about  
3 those. The whole purpose of having conviction involved  
4 is if you have an IPA who has demonstrated a criminal  
5 lack of trust, dishonesty, or integrity, then we have a  
6 need to take action. Those are the specifics.

7 MS. MERCADO: So those are mainly fraud type  
8 cases.

9 CHAIR BATTLE: Right. You are tying it to the  
10 specific issue related to the work that they do for us.  
11 Okay. Are there any other questions about this?

12 MR. McCALPIN: Yes.

13 CHAIR BATTLE: Bill.

14 MR. McCALPIN: I never can remember the full  
15 Latin phrase, but it starts out "inclusio s" something.  
16 But when you say plea including pleas of nolo, you may  
17 limit it to a plea of nclo. I think that what you mean  
18 is including without limitation --

19 MS. TARANTOWICZ: That is correct.

20 MR. McCALPIN: -- pleas of nolo. Because  
21 there is an outward plea, for instance, which is well  
22 recognized, which may be excluded. You limit yourself

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1 when you put the reference to the nolo plea in there,  
2 including pleas of any kind or any -- a plea of guilty  
3 of any nature, or something of that sort. But the way  
4 you have got it here, you may limit it to a plea of  
5 nolo.

6 MS. TARANTOWICZ: We can say, "Including, but  
7 not limited to."

8 MR. McCALPIN: Yes, you can do that. That  
9 would help it.

10 CHAIR BATTLE: Okay. Let's move on to (E).

11 MS. TARANTOWICZ: Subsection (E) defines  
12 debarment to mean a decision by the debarring official  
13 to prohibit an IPA from soliciting or entering into new  
14 contracts, to perform audit services for recipients  
15 based upon a finding by a preponderance of the evidence  
16 that any of the causes for debarment exist.

17 CHAIR BATTLE: Okay. Are there any questions  
18 about (E)? Why don't I just ask if there are questions  
19 and if there are not, then we won't actually have to go  
20 through a reading of the specific rule and that will  
21 help to move us along. Any questions on (E)?

22 (No response.)

1 CHAIR BATTLE: If there are none, let's move  
2 on to (F). Are there any questions on (F)?

3 MR. McCALPIN: Yes. I don't understand the  
4 reference to a person performing the function of legal  
5 counsel. Does that mean anybody on the OIG's legal  
6 staff, which as far as I know is just you.

7 MS. TARANTOWICZ: Unfortunately, that is true.

8 MR. McCALPIN: Does it mean anybody -- if  
9 there is any other lawyer in the OIG it could be that  
10 person? I don't quite understand what this means.

11 MS. TARANTOWICZ: As I recall, we put that  
12 phrase in in a response to a management quite -- we are  
13 talking quite a while ago. But I think the concern was  
14 that somebody might not have the title of counsel. For  
15 instance, my predecessor in this position her last  
16 title was not counsel to the OIG. So it was just  
17 intended to cover that. We could probably delete that  
18 phrase and just explain it in the commentary if even  
19 that is necessary.

20 MR. McCALPIN: Is the intent that it be  
21 somebody in the OIG with a law degree?

22 MS. TARANTOWICZ: And performing the functions

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1 of counsel to the OIG. I mean, we might -- we do have  
2 enough --

3 CHAIR BATTLE: If you say, "Legal counsel to  
4 the OIG," does that get at it? I mean, does that get  
5 at it whether or not that person has that specific --  
6 you know, it could be someone who is legal counsel  
7 serving in that function however that is written.

8 MS. TARANTOWICZ: Right.

9 CHAIR BATTLE: Okay. If that satisfies it,  
10 then why don't we do that rather than performing the  
11 functions and all of that. Just say, "Legal counsel to  
12 the OIG."

13 I have another concern here. And that is --  
14 of course, in the absence of an OIG counsel, the  
15 debarring official shall be another designated person.  
16 And I think that that gets at -- I know in the  
17 commentary the issue that I raised earlier,  
18 particularly about what shows in 1641.7(A), as one of  
19 the reasons for an action or cause of debarment being  
20 one who has failed significantly to comply with other  
21 government auditing standards, generally accepted  
22 accounting standards or OIG audit guidance.

1 I have raised a concern of whether the person  
2 doing that kind of review needs to have an expertise in  
3 those areas and be able to do the kind of peer review  
4 and analysis of whether a person has substantially not  
5 followed the generally accepting accounting principles  
6 or government auditing standards. And that may or may  
7 not be legal counsel. If legal counsel is also a CPA,  
8 then I have a comfort level. If not, then you may need  
9 someone else.

10 And the commentary addresses the concern that  
11 this comment was well taken and there was some thought  
12 given to the next person in line in the OIG's office,  
13 but the problem being that that person probably will be  
14 the person presenting it to the OIG. So that person  
15 would not be appropriate.

16 Here we limit the debarring official to being  
17 an OIG staff person. And my question is whether it  
18 might also be appropriate to allow the person who is to  
19 hear this to be someone with that expertise that might  
20 not be an OIG staff person, but appointed by the OIG.

21 Linda.

22 MS. PERLE: Well, I have a similar concern,

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1 but for a slightly different reason. My concern is  
2 that the OIG staff is relatively small, that the legal  
3 counsel is often involved in deciding issues that come  
4 up in the context of audits, whether they be special  
5 audits or the annual financial audits, and I don't  
6 think there is sufficient independence.

7 This is not in any way to reflect on my views  
8 of Laurie or, you know, other people that served in her  
9 position. But I don't think that there is sufficient  
10 independence between her position and people in the  
11 audit division or the OIG who is the officer that  
12 ultimately will hear the appeal.

13 I mean, the two of them work very closely  
14 together. She takes her direction, in many instances,  
15 from Mr. Quatrevaux. And I just -- I think that there  
16 is insufficient independence in that office to be in  
17 this position. So I would probably urge that there be  
18 somebody outside of the office who takes that role.

19 CHAIR BATTLE: Well, what I am saying is I  
20 think that the OIG ought to have the discretion,  
21 depending on the issue. If the issue is just making  
22 sure there is a conviction, I think legal counsel can

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1 make sure that all the time frames have already passed  
2 and that there is a conviction. So therefore there  
3 needs to be a debarment proceeding.

4 I am not worried about that. But I am when  
5 the issue to be reviewed is a competency issue that  
6 pertains to following generally accepted accounting  
7 principles. And I think the OIG needs to have the  
8 discretion to be able to go outside of his office  
9 written into how we do the reg.

10 John.

11 MR. ERLNBORN: LaVeeda, let me disagree  
12 kindly. We have judges who sit in judgment of  
13 complicated issues all the time. They don't have to  
14 have a degree in the subject matter. They will hear  
15 the evidence, and evidence can be produced by both  
16 sides. And if you need expert witnesses to testify as  
17 to what the standards are, you know, that can be done.  
18 But I don't think you have to have an expert in the  
19 field sit in judgment.

20 CHAIR BATTLE: That may be true and I am  
21 involved in a real complicated case right now where it  
22 is really interesting. I went out and got an expert to

1 help my client. And the court took my expert as the  
2 court's expert so that the court would have someone  
3 available to review and make recommendations. So I may  
4 agree that the person sitting in judgment needs to at  
5 least have access to someone who has that expertise.

6 I have a concern because -- and I think that  
7 the Office of Inspector General has struggled with  
8 this. The point that Linda is making is well taken.  
9 You have got a small staff. Everyone on this staff has  
10 been involved in pulling together this debarment  
11 proceeding. Then you have got to have someone who sits  
12 to review, "Well is this," and the question becomes,  
13 under subsection 7, "substantial non-compliance with  
14 the auditing standards."

15 And in order to make that judgment, you got to  
16 have something on the other side as well and not just  
17 the people who put this together to look at. Now  
18 whether you do that by allowing for -- and I don't  
19 know, maybe the inspector general can address this  
20 other staff person. If, in fact, it couldn't be the  
21 number two person in line who does this presentation,  
22 who then could be the person to make this judgment.

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1           MR. ERLLENBORN: Let me suggest that that  
2 initial determination at the proceeding that would be  
3 started is tantamount to an indictment. You don't hear  
4 witnesses from both sides and bring in experts to make  
5 your judgment. That is limited to the trial. And I  
6 would think here in this procedure, the staff of the  
7 OIG is, in effect, deciding whether they are going to  
8 begin this process or it is an indictment, an initial  
9 finding that there may be a violation.

10           Then when you have the full-blown hearing, if  
11 experts are needed beyond the expertise of the OIG, the  
12 OIG can go outside the office to bring in experts. I  
13 would hope that there are sufficient experts on the  
14 quality and the requirements of audits within the OIG's  
15 office that they don't really have to go out. And the  
16 defendant, the IPA in this case, can bring in his or  
17 her own experts. So that is the trial phase.

18           MS. PERLE: But the debarring official is the  
19 person that is conducting the trial. And if they are  
20 not sufficient -- I am not so concerned about the  
21 expertise as much as the independence. And if they are  
22 not sufficiently independent, you are not getting

1 really a fair --

2 MR. ERLNBORN: Well, the judge conducts the  
3 trial in a court.

4 MS. PERLE: Right. But he is totally  
5 impartial and hasn't been involved and is not working  
6 for the Agency that is -- the office that is bringing  
7 the indictment. He is not working for the prosecutor.

8 MR. ERLNBORN: Then would it be your position  
9 that whenever there is a debarment proceeding, you will  
10 have to go outside of the Office of OIG and outside of  
11 the Corporation to find some independent judge?

12 MS. PERLE: No. I think that LaVeeda is  
13 correct with certain of these, which really are just  
14 sort of making a judgment about whether there has been  
15 a conviction or, you know, those sorts of things. I  
16 think that is a judgment that the legal counsel is  
17 perfectly capable of making. There is no independence  
18 involved and there is no -- you know, that is just sort  
19 of, as I said, checking off -- I think LaVeeda said  
20 checking off the boxes.

21 And there may be other situations where there  
22 really isn't an issue where the legal counsel hasn't

1       been involved at all, but I think that there may be  
2       other situations where everybody in the office really  
3       has been sort of intimately involved in what has  
4       happened.

5               Maybe you don't have to go outside of the  
6       Corporation. I think there are -- in other places in  
7       the Corporation, there are people who might have the  
8       independence who -- some of them may have the  
9       experience as auditors.

10              MR. ERLNBORN: I don't know if there is  
11       anyone here or readily available who can tell us what  
12       happens in other debarment proceedings, but they are  
13       common throughout the federal government in contracting  
14       cases, with the defense departments, civilian  
15       contracting and so forth.

16              MS. TARANTOWICZ: Yes.

17              MR. ERLNBORN: And I wonder if it is the  
18       practice in other debarment proceedings to go outside  
19       to find someone who is independent. That it is not my  
20       understanding. In the law firm I worked for, I didn't  
21       myself get into this area, but there were government  
22       contract specialists. And I never recall that they had

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1 outside persons brought in to sit in judgment on these  
2 debarment proceedings.

3 MS. TARANTOWICZ: That is correct. It is  
4 usually an employee of the Agency.

5 MR. ERLNBORN: Right.

6 MS. PERLE: But if you look, for example, on  
7 what this committee did with respect to the proceedings  
8 on termination of funding, there was a lot of  
9 discussion in there to ensure that the person who was  
10 the fact-finder was an -- maybe the word wasn't --  
11 impartial fact-finder. And I guess my concern is that  
12 there is no way to ensure that impartiality in many of  
13 the situations that are raised by this rule.

14 CHAIR BATTLE: Why don't we go back to this  
15 language. Actually, I want to respond, John, to your  
16 earlier point. And I really think -- you know, I have  
17 raised a point that only comes out of 1641.7(A). I  
18 think all the others, I don't have a problem with legal  
19 counsel. That is not at issue.

20 I don't think this is really an independence  
21 issue. Because either you are suspended or not by a  
22 federal agency. You have lost your license, or you

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1 have been convicted or you have got a civil judgment.  
2 I mean, all of those other reasons are things that  
3 clearly legal counsel can do, there is not an issue as  
4 it relates to debarment.

5 The only issue arises when you have got to  
6 make this judgment. And if we say, "The debarring  
7 official shall be an impartial OIG staff person  
8 designated by the inspector general," does that get  
9 it --

10 MS. TARANTOWICZ: Well, I think or somebody --

11 MS. PERLE: Or outside. I mean, I think you  
12 have to -- for example, also in 1606, I think, provided  
13 that in appropriate circumstances, that they could go  
14 outside of the Corporation in that situation.

15 CHAIR BATTLE: Why not just impartial person  
16 designated by the inspector general. Give him the  
17 option. I mean, the impartial person can either be on  
18 his staff or under some circumstances, if he feels it  
19 necessary, he can go outside.

20 MS. TARANTOWICZ: I am sorry, but I don't see  
21 the need for -- I mean, the system that we have set up  
22 is not -- as Mr. Erlenborn stated, is the system in

1 place throughout the federal government. The system  
2 that we have set up does not -- I don't think you need  
3 to -- certainly I agree that the inspector general, we  
4 should put in discretion to appoint somebody outside of  
5 the office, but I don't see that it should be a  
6 requirement.

7 CHAIR BATTLE: Okay. It is not going to be a  
8 requirement. I didn't suggest ever that it should be a  
9 requirement. The only thing I am saying is give him  
10 the discretion. A person inside, outside depending on  
11 the circumstances.

12 I am sorry, Suzanne, if you have got something  
13 you wanted to suggest, would you come to the mike and  
14 identify yourself.

15 MR. ERLENBORN: State your name, rank, serial  
16 number.

17 CHAIR BATTLE: Yes.

18 MS. GLASOW: Suzanne Glasow, senior assistant  
19 general counsel at Legal Services. Just since she  
20 mentioned 1606, I looked it up. And basically when we  
21 looked at due process requirements for termination and  
22 debarment proceedings under the Corporation's rule, one

1 of the requirements is that there is an impartial  
2 decision-maker.

3           However, that can be an employee of the  
4 Corporation agency. But we did define what an  
5 impartial decision-maker is, and they may want to look  
6 at that and see how that fits within the context of the  
7 IPA debarment.

8           CHAIR BATTLE: Okay. I think that point is  
9 well taken. Can we take a look at that. And all that  
10 does is simply to give the inspector general the  
11 discretion so that the ultimate decision has  
12 credibility all the way around because of the way that  
13 the regulations are drawn to give him the discretion to  
14 look at it. And he can make the decision that he wants  
15 to either appoint someone within his office or outside  
16 of his office. And the regs give him the authority to  
17 do that.

18           Okay. Moving on to (G). Any questions about  
19 (G)?

20           MR. McCALPIN: Yes.

21           CHAIR BATTLE: Okay.

22           MR. McCALPIN: We have defined indictment as

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1 an indictment.

2 MS. TARANTOWICZ: I know.

3 MR. McCALPIN: Let me suggest to you that  
4 indictments are frequently referred to as a presentment  
5 by a grand jury charging a criminal offense.

6 MR. ERLBORN: Or sometimes a charge.

7 MR. McCALPIN: Sometimes. So I think you can  
8 avoid using the word "indictment" to define indictment  
9 either way.

10 MS. MERCADO: Well, I mean the thing is that  
11 indictment generally refers to felonies rather than  
12 misdemeanors.

13 MR. McCALPIN: I can't hear you.

14 MS. MERCADO: Indictments generally refer to  
15 felonies rather than misdemeanors. Informations are  
16 misdemeanors.

17 MR. McCALPIN: Well, they say an information  
18 has the effect of an indictment. So I think they have  
19 covered that. But I have a problem with the -- on  
20 page 5, the gratuitous statement -- it is almost  
21 gratuitous or it gets back to where we were before --  
22 that an IPA may be suspended if indicted for any

1 offense indicting a breach of trust or so on.

2 And you then define suspension as leading to  
3 debarment. And if our objection is that you shouldn't  
4 debar them short of a final conviction, why should you  
5 debar them simply for an indictment which hasn't even  
6 resulted in a conviction?

7 MS. TARANTOWICZ: Well, we are not debarring  
8 them, we are suspending them.

9 MR. McCALPIN: But look at how you define  
10 suspension. You define suspension -- it means a  
11 decision by the debarring official in anticipation of a  
12 debarment.

13 MS. TARANTOWICZ: Right. That just mean --  
14 that means that it is -- you suspend and then you  
15 have -- you wouldn't suspend if you didn't intend to  
16 debar. Suspension is a --

17 MR. McCALPIN: So you intend to debar simply  
18 for an indictment?

19 MS. TARANTOWICZ: No. You have to debar based  
20 on the causes for debarment, which do not include  
21 indictment.

22 MR. McCALPIN: Well, as a matter of fact, if

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1 you look at 16.7, one of the causes is currently  
2 debarred or suspended. 16.7(B). So he can be debarred  
3 if he is suspended.

4 MS. TARANTOWICZ: I see what you are saying.

5 CHAIR BATTLE: That is a good point. I spoke  
6 with Laurie this morning about that.

7 MS. TARANTOWICZ: Right. I guess the problem  
8 is not with the definition of indictment, but with  
9 1641.7 and including suspension in the causes for  
10 debarment.

11 CHAIR BATTLE: It is. It is. The point I  
12 raised with you this morning was if a federal agency  
13 has already looked at the facts and decided to suspend  
14 not to debar, for us to start debarment proceedings on  
15 that goes beyond what the other federal agency has even  
16 found. It may be appropriate for us to suspend pending  
17 whatever the outcome is going to be.

18 MS. TARANTOWICZ: Right.

19 CHAIR BATTLE: I don't know if this design of  
20 the regulation regarding debarment and suspension in  
21 all other federal agencies is the same if you suspend  
22 with the intent to debar or not.

1 MS. TARANTOWICZ: Yes.

2 CHAIR BATTLE: But if it is, then it seems to  
3 me what is appropriate is a suspension in relationship  
4 to another federal agency's suspension.

5 MS. TARANTOWICZ: Right.

6 CHAIR BATTLE: Okay.

7 MR. McCALPIN: You know, let me suggest that  
8 maybe all we can do here today is to raise these issues  
9 for further consideration without attempting to redraft  
10 and resolve by language everything that we are raising.  
11 I doubt that we can really effectively do that today.

12 CHAIR BATTLE: I think you are right. And  
13 particularly with there being no commentary. I think  
14 what has happened is the Committee feels a real duty to  
15 go back through with careful scrutiny, as we do with  
16 all of the rules, to make sure that when we finalize  
17 this, that it goes out as a final rule, that we thought  
18 through all of the issues. I agree. I think we have  
19 got enough that we are going to have to get another  
20 redraft before we finalize it and present it to the  
21 Board.

22 MS. MERCADO: Just so that I have a

1 clarification. Bill, were you saying that the  
2 definition on suspension needs to be changed in order  
3 to comply with --

4 MR. McCALPIN: Well, I guess my basic problem  
5 is to take some definitive action simply based on an  
6 indictment.

7 MS. MERCADO: Well, right. I mean, that would  
8 be a problem in any circumstances.

9 MR. McCALPIN: That is my basic problem.

10 MS. MERCADO: Right. Because there has been  
11 no finding by anyone that there are actually --

12 MR. McCALPIN: Except the grand jury, which we  
13 know is not a very objective proceeding.

14 MS. MERCADO: One-sided, right. Okay.

15 CHAIR BATTLE: Okay. All right. The next is  
16 IPA. And we define IPA here by just telling you what  
17 IPA stands for, independent public accountant. One of  
18 the concerns that I raised and we talked about is  
19 particularly when we say debarment, and this may be  
20 addressed later on in the rule, I think it is important  
21 that we are very specific that IPA means the named  
22 independent public accountant.

1 I mean, I don't want us to get into a  
2 circumstance where there is any muddy water about who  
3 has been debarred because debarment may trigger -- and  
4 this is a question that I have. If I am a CPA and I  
5 have debarred by either a federal agency or entity, a  
6 grantee granting entity such as LSC, do I then have an  
7 obligation to give notice to my local licensing agency  
8 of my debarment.

9 And if you debar Price Waterhouse, because  
10 that is the firm that did the audit and you gave notice  
11 to Price Waterhouse that you have got a problem, does  
12 that then trigger some responsibility for every  
13 independent auditor who works for Price Waterhouse to  
14 give notice to someone that they have been debarred.

15 I just want to make sure that however we  
16 define independent public accountant, it is specific  
17 enough that the targeted independent accountant knows  
18 who he is and who has to respond to these proceedings.

19 MS. TARANTOWICZ: We tried to address that  
20 later in the reg, under scope of debarment, in  
21 requiring that the particular IPA would be a firm or an  
22 individual being debarred, suspended, removed be

1 specifically named.

2 CHAIR BATTLE: Yes. But I guess -- see, when  
3 you say firm again, Price Waterhouse is a firm. And if  
4 you debar Price Waterhouse, there are specific CPAs who  
5 work for Price Waterhouse.

6 MS. TARANTOWICZ: Right. And the reg  
7 addresses that and states that debarring, for instance,  
8 the firm Price Waterhouse, God forbid --

9 CHAIR BATTLE: I am just using that as an  
10 example. Please I don't want Price Waterhouse to  
11 feel -- and they are a new company now. They are  
12 Coopers, Price, or whatever.

13 MS. TARANTOWICZ: Right. That only debars the  
14 firm and individuals acting as agents for the firm. An  
15 IPA working for that firm could leave, go somewhere  
16 else, and is not under a debarment unless specifically  
17 named.

18 MS. MERCADO: Well, you have it in your scope  
19 that it is a division of the firm.

20 MS. TARANTOWICZ: Right.

21 MS. MERCADO: Specifically. So it wouldn't  
22 mean the whole firm Price Waterhouse, it would be

1 whatever division you were talking about.

2 MS. TARANTOWICZ: Exactly.

3 MS. PERLE: But you could provide that it only  
4 be a specific individual and not affect the rest of the  
5 firm.

6 MS. TARANTOWICZ: That is true.

7 MR. ERLBORN: I have a sense of déjà vu.  
8 Did we discuss this once before?

9 MS. MERCADO: Yes, we did. Yes, we did.  
10 Because I remember the Price Waterhouse analysis.

11 CHAIR BATTLE: Did I do that before?

12 MS. TARANTOWICZ: Maybe we should pick on  
13 someone else.

14 CHAIR BATTLE: Well, who else is out there?  
15 Now they are all consolidated. Okay.

16 MS. MERCADO: A monopoly here.

17 CHAIR BATTLE: Well, we will get to -- we may  
18 get to that point then as we go through. Any question  
19 about the next (I) or (J)?

20 (No response.)

21 CHAIR BATTLE: (K)? We have already dealt  
22 with (K) some. Are there any questions about (K) or

1 (L) or (M)?

2 MR. McCALPIN: Yes.

3 CHAIR BATTLE: Okay.

4 MR. McCALPIN: (M). A suspension is a  
5 decision in anticipation of debarment -- we have been  
6 down there -- to prohibit an IPA from soliciting or  
7 entering into new contracts to perform audit services.  
8 Then your next sentence says, "Suspension may cover an  
9 IPA's contracts with all recipients." But what you  
10 are -- you are suspending him from solicitation, not  
11 from contracts.

12 MS. TARANTOWICZ: Well, we are suspending them  
13 from soliciting or entering into contracts.

14 MR. McCALPIN: That is right. Well, but it  
15 may cover an IPA's contracts.

16 MS. TARANTOWICZ: It may cover an IPA's  
17 solicitation or entering into of contracts.

18 MR. McCALPIN: Yes. And it may -- you could  
19 read that as saying "existing contracts" rather than  
20 "prospective contracts."

21 CHAIR BATTLE: Okay. Could you just amend  
22 that to say, "Suspension may cover an IPA solicitation

1 or entering into new contracts with all recipients or  
2 with one or more specific recipients." Is that what  
3 you intend?

4 MR. McCALPIN: I think that would do it.

5 MS. TARANTOWICZ: Yes.

6 CHAIR BATTLE: Okay. That corrects that  
7 problem.

8 MS. TARANTOWICZ: That is fine.

9 CHAIR BATTLE: Okay. All right. Now 1641.3,  
10 Scope of Debarment, Suspension and Removal. Okay.

11 (A). Any questions about (A)?

12 (No response.)

13 CHAIR BATTLE: (B)(1). Under (B)(1), I have a  
14 suggestion in the highlighted portion that you have  
15 which reads, "Generally debarment, suspension or  
16 removal will affect only those divisions or  
17 organizational elements materially involved in the  
18 relevant engagement."

19 That we take out the term "generally" and say,  
20 "Debarment, suspension or removal will affect only  
21 those divisions or organizational elements that are  
22 materially involved in the relevant engagement and the

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1 cause for the debarment."

2           There are at least four causes for debarment  
3 that are specific to individuals. You have lost your  
4 license, you have been criminally convicted. And I can  
5 envision a chief principle losing his license and the  
6 poor person who was the second chair on that particular  
7 audit not being involved in losing the license, but  
8 materially having been involved in the relevant  
9 engagement, who would then be affected and then brought  
10 into this when there is no reason for that person to be  
11 brought in.

12           So I think cause is a critical piece to this.  
13 So it has to be material involvement and the cause  
14 because, as I said, four of the five causes are very  
15 personal to individuals.

16           MS. PERLE: Would it help if you -- I am not  
17 sure, but if you said, "Will affect only those  
18 individuals, divisions, or other organizational  
19 elements." Would that help?

20           MS. TARANTOWICZ: Well, this only -- this  
21 section only deals with --

22           MS. PERLE: Deals with the issue of firms. I

1 am sorry. Excuse me.

2 CHAIR BATTLE: Deals with the issue of firms?

3 MS. TARANTOWICZ: Yes.

4 CHAIR BATTLE: And the only time that firm  
5 comes up is in (A) or (B). But (C), (D), (E), and (F)  
6 are all personal. So there are only certain instances  
7 in which you really could have a firm's involvement in  
8 a debarment proceeding where, you know, you -- say, you  
9 just have done incompetent work under (A) or you have  
10 been suspended.

11 MS. PERLE: Is it possible that a firm can be  
12 indicted?

13 MS. TARANTOWICZ: Yes. You can indict a firm  
14 and certainly it can be subject to civil judgment.

15 MS. MERCADO: Criminal, yes. I mean, they  
16 won't go to jail, but they will be fined.

17 CHAIR BATTLE: Okay. All right.

18 MS. MERCADO: In fact, there was a big RICO  
19 case in some of that accounting.

20 CHAIR BATTLE: And it is the firm, it is not  
21 the individuals in the firm who have been indicted.

22 MS. TARANTOWICZ: Right.

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1 CHAIR BATTLE: Okay. All right. Well, then  
2 but that is the other reason why the cause has to be  
3 there as well.

4 MS. TARANTOWICZ: That is what we intended and  
5 I think that clarifies it.

6 CHAIR BATTLE: Okay. All right. Okay. Does  
7 that also -- I think that that cause language should be  
8 in (2) as well and materially involved in the relevant  
9 engagement and the cause for the debarment proceeding  
10 is relevant, I think, to both of those.

11 MS. MERCADO: Right.

12 CHAIR BATTLE: Okay. And any questions about  
13 (3)? And (3) really says, "Only if such individual is  
14 specifically named and given notice of the proposed  
15 action and an opportunity to respond."

16 I guess what ought to clarify, and I am now  
17 sitting as the CPA working in the firm as second or  
18 third chair on an audit. And there is a proceeding  
19 that comes down as a result of one of those reasons  
20 given under Section .7 If my name is not in it, do I  
21 need to be concerned about it --

22 MS. TARANTOWICZ: Personally? No.

1 CHAIR BATTLE: -- personally. No.

2 MS. TARANTOWICZ: No.

3 CHAIR BATTLE: I think the practice -- I can  
4 envision a situation where you could name a -- in one  
5 or two the principle partner and find out that the  
6 incompetence was not the principle person who signed  
7 off on it, but the number two person who actually did  
8 the work and the number one person signed off on it.

9 But we need to be certain that the person who  
10 is debarred is the one who has committed the offense.  
11 And if their name is not in it, then they are not --  
12 they don't need to respond and they don't have to worry  
13 about being subject to it.

14 MS. TARANTOWICZ: Correct.

15 CHAIR BATTLE: Okay. 1641.4, Duration of  
16 Debarment, Suspension and Removal. Any questions about  
17 (A) or (B), (B)(2).

18 Bill.

19 MR. McCALPIN: The last line on page 21 where  
20 it says, "May be extended for an additional six  
21 months," I suggest that what you are talking about for  
22 an additional period of up to six months? You don't

1 mean automatically six months.

2 MS. MERCADO: What line are you on, Bill?

3 CHAIR BATTLE: The very last line on 21.

4 MS. MERCADO: Ch, okay.

5 MS. TARANTOWICZ: Right.

6 MR. McCALPIN: Up to.

7 MS. TARANTOWICZ: Up to is the --

8 MR. McCALPIN: Yes. I would think that is  
9 what you were probably talking about.

10 CHAIR BATTLE: Okay.

11 MR. McCALPIN: Then on the next page,  
12 paragraph (3), "OIG shall notify the appropriate  
13 official," and so on, "of an impending termination of a  
14 suspension." I do not find in here any provision to  
15 notify him of the initiation of a suspension.

16 MS. TARANTOWICZ: Right. This was intended --  
17 and I understand the confusion because it is not clear.  
18 This was intended to cover -- if you look at  
19 paragraph (2), what we are trying to address is the  
20 situation where this -- we are going to notify people  
21 that are already involved somehow.

22 In other words, if we are suspending someone

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1 pending the outcome of a state licensing board's  
2 proceeding, we are going to suspend pending the outcome  
3 of that, then we are going to notify them when the  
4 suspension is up so they know that -- or it is going to  
5 be up so that they know that, "Look, your proceeding  
6 hasn't concluded yet. We are getting ready to end the  
7 suspension. Do you have any concerns about that?"

8 MR. McCALPIN: Yes, but you may suspend for a  
9 lot of other reasons.

10 MS. TARANTOWICZ: Right. But this was only  
11 intended to cover those situations. And I can see it  
12 is not clear and we can clarify that.

13 MR. McCALPIN: Yes, because basically I can  
14 see a state body getting this notice of the termination  
15 of a suspension and saying, "What is this all about?  
16 We never heard of a suspension."

17 MS. TARANTOWICZ: Right. I Understand.

18 CHAIR BATTLE: Okay. So we can -- you can fix  
19 that.

20 MS. TARANTOWICZ: Yes, I will. I will try.

21 CHAIR BATTLE: Okay. Anything else under (B)?

22 (No response.)

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1 CHAIR BATTLE: What about (C)?

2 (No response.)

3 CHAIR BATTLE: Then we can move onto subpart  
4 B, Debarment. 1641.5 on debarment. Subsection (A),  
5 any questions?

6 MR. McCALPIN: Yes. Hang on a minute.

7 CHAIR BATTLE: Okay.

8 MR. McCALPIN: I guess my problem is really  
9 with (B), if we can get there. And at the bottom of  
10 the 22 it says, "Debarred IPAs are also prohibited from  
11 providing audit services to the affected recipient as  
12 agents or representatives of other IPAs and are  
13 required to provide prior written notice to the  
14 debarring official before providing such services to  
15 other recipients. Debarred IPAs must also provide  
16 prior written notice of the debarment to any recipient  
17 for which the IPA provides audit services."

18 So if I understand this, if an IPA has  
19 contracts to provide audits to, let's say, two  
20 recipients and it is debarred from providing services  
21 to recipient one for reasons, suppose it has a two or  
22 three-year contract with recipient number two that is

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1 in the first year. Does that mean that he cannot  
2 complete the contract for years two and three simply  
3 because he has been debarred as recipient one?

4 MS. TARANTOWICZ: No. Debarment doesn't  
5 affect existing contracts. Removal does.

6 MR. McCALPIN: Well, except that it says -- if  
7 you will look at page 9, "In addition, the debarred IPA  
8 is required to provide written notice of a debarment to  
9 any recipient seeking its services."

10 Oh, wait a minute. Above that. "Although  
11 IPAs are debarred from providing audit services to  
12 selected recipients or make contract with others, the  
13 IPA must give prior written notice to the debarring  
14 official before providing such services to other  
15 recipients." So that you can't go ahead and complete  
16 your contract.

17 MS. TARANTOWICZ: That is not what was  
18 intended. This is the preamble explanation?

19 CHAIR BATTLE: Yes. Can we make the preamble  
20 consistent with the rule?

21 MS. TARANTOWICZ: Well, that would be good. I  
22 will try to do that.

1 CHAIR BATTLE: Okay. And if that happens,  
2 will that clear your concern, Bill?

3 MR. McCALPIN: Yes.

4 CHAIR BATTLE: Okay.

5 MR. McCALPIN: And I am not sure what the  
6 words "such services" in the bottom line on page 22 --  
7 are they services as agents or representatives or are  
8 they -- does "such services" refer to any audit  
9 services?

10 MS. TARANTOWICZ: I don't know anymore.

11 MS. PERLE: Can I make a suggestion?

12 MS. TARANTOWICZ: Please.

13 MS. PERLE: The suggestion is that you should  
14 go and every place in this rule where you use the word  
15 "such," that you should, you know, go find it. Because  
16 there are other places that I pointed out to Laurie  
17 earlier where they use like "such offenses," and where  
18 it doesn't make sense in terms of the syntax of the  
19 sentence or it is not clear.

20 So I think that is something that you just  
21 have to go through the rule and sort of say is this  
22 clear in this particular instance. And I think that is

1 an editing --

2 MS. TARANTOWICZ: Good idea. Yes. I think  
3 the use of "such" was -- and the rule is very long and  
4 we were trying to make it as short as possible, but I  
5 guess sometimes it doesn't work. So I will check all  
6 of those.

7 CHAIR BATTLE: Okay. All right. Anything  
8 else in .5? If not, we can move on to 1641.6,  
9 Procedures for Debarment. Any questions about (A) or  
10 (B)?

11 (No response.)

12 CHAIR BATTLE: 1641.7, Causes for Debarment.  
13 We have already spent sometime discussing this, but  
14 let's go through 1641.7, the causes for debarment. Any  
15 questions about Section (A)?

16 MR. ERLNBORN: This is, I guess I should say,  
17 not necessarily a serious observation, but I would  
18 wonder if this would be cause for debarment if the IPA  
19 prematurely released information about an audit that  
20 was in process.

21 I am thinking of the flak on the Hill when we  
22 appeared before the appropriations subcommittee where

1 one of the members chided the IG for failure to notify  
2 Congress of preliminary findings of an audit situation  
3 when the comptroller general's standards for an audit  
4 would have been violated if he had done that.

5 CHAIR BATTLE: Sure. Sure.

6 MR. ERLNBORN: Just a chance for me to make a  
7 statement.

8 CHAIR BATTLE: Certainly. Well, but that  
9 actually raises, in my view, a question about the  
10 "failed significantly." There are a lot of standards  
11 contained in the standards for government audits  
12 established by the comptroller general.

13 And the question is, when do you fail  
14 significantly on that list of standards and is that an  
15 industry statement? I mean in other words, for  
16 example, do CPAs get their licenses pulled when they  
17 fail substantially to follow the government standards  
18 or is that a language usage that is a term of art or  
19 did we -- where do we get that from?

20 MR. KOCZUR: The firm that didn't follow the  
21 audit standards, whether it is government standards or  
22 the AICPA standards, could lose its license.

1 MS. MERCADO: So that the question is, is  
2 "failed significantly" a term of art that needs to be  
3 put in a definition or not?

4 MS. TARANTOWICZ: I don't think it -- correct  
5 me if I am wrong. I don't think it is. We were trying  
6 to -- I think we may have had this discussion with the  
7 committee sometime ago, but we were trying to make  
8 clear that we are not going to debar for a minor  
9 failure to comply, but we -- you know, we take  
10 debarment seriously.

11 We take it adherence to standards seriously,  
12 but understand that there might be some minor failing  
13 that really doesn't impact anything. And we are  
14 certainly not going to debar somebody for that. But, I  
15 mean, we need to be able to exercise judgment. And  
16 when we feel something is significant, we need to be  
17 able to take action.

18 MR. KOCZUR: I don't think we can define  
19 "significantly" so that it would cover all the type of  
20 circumstances we would be dealing with. Each audit  
21 would be -- each case is different.

22 And we would look at the failure, what

1 standards were not followed, and how that affected the  
2 overall report, the overall audit, whether the audit  
3 could be relied on even though the standards were  
4 violated or if -- again, if it was a significant  
5 violation, that it couldn't be relied on, that we  
6 couldn't rely on that report to tell us that our  
7 grantee had spent the money properly, for example.  
8 That would clearly be a cause for debarment.

9 CHAIR BATTLE: It might be helpful in the  
10 commentary, though, to walk through what the elements  
11 of "failed significantly" might be in line with what  
12 you just said, whether or not the ultimate audit is  
13 reliable, is something that someone could competently  
14 rely upon for determining the financial position of the  
15 recipient is the bottom line issue.

16 And if the failings are such that it becomes  
17 unreliable, then that at least gives some notice. You  
18 know, if you forget to dot an I or cross a T or follow  
19 a new standard that everybody is just learning, then --  
20 but the overall audit itself is still ultimately  
21 reliable, then you are in good shape. But if your  
22 failings are such that we can't tell whether you have

1 money or not, then we have got to move to protect that  
2 recipient against that kind of an assessment of the  
3 financial statement.

4 MS. TARANTOWICZ: And we can add some examples  
5 in the commentary.

6 CHAIR BATTLE: I think that would be helpful.  
7 And I think that there probably is a body of some law  
8 out there where licensing agencies make determinations  
9 that, you know, they have got to take a CPA's license  
10 because they just don't get it. Don't know how to do  
11 it, don't know what the standards are. And  
12 particularly, those critical standards that relate to  
13 the reliability issue, I think, are key.

14 MS. TARANTOWICZ: Right.

15 CHAIR BATTLE: Linda.

16 MS. PERLE: Yes. I have some concerns about  
17 this section. I certainly don't have any problem with  
18 the government auditing standards and, you know, the  
19 standards of the profession. And I don't really have  
20 any problem with the notion that programs need to  
21 follow the OIG audit guide, which has been -- gone  
22 through a lot of process and has been published.

1           But the rule itself just says, "And/or OIG  
2           audit guidance." And it doesn't even say "written  
3           guidance." And I do have some problem. I have some  
4           sense that this law gives much too much discretion the  
5           way it is written, maybe not intended, within the OIG's  
6           office to sort of --

7           CHAIR BATTLE: Is there a specific audit  
8           guide?

9           MS. TARANTOWICZ: Yes. We have an audit  
10          guide. We can certainly put it -- we intended "written  
11          guidance." Obviously, we are not going to -- any  
12          guidance that we expect IPAs to follow, we have in  
13          written form. We have an audit guide. We also issue  
14          audit bulletins when it is not necessary to reissue the  
15          entire guide. So as it is stated in the commentary, we  
16          intended OIG audit guidance to cover those two.

17          MS. PERLE: I mean, I am not really familiar  
18          with the audit bulletins and I don't know whether there  
19          is any process -- well, I mean, I just think that you  
20          have to be much more specific if you are talking about  
21          things that are issued by the OIG in terms of what --  
22          since this is a pretty serious process.

1 I think that you need to be very specific  
2 about what are those -- what are the standards issued  
3 by the OIG that have to be followed in order to avoid  
4 being, you know, sanctioned by the Agency. So I think  
5 that you need to say the audit guide and if it is audit  
6 bulletins, fine.

7 MS. TARANTOWICZ: We can put that in the reg.

8 MS. PERLE: Okay.

9 MS. MERCADO: Especially since you already  
10 have the document anyway.

11 MS. TARANTOWICZ: Yes.

12 MR. McCALPIN: Where are we? No, I mean where  
13 are we in the --

14 CHAIR BATTLE: On .7, page 23.

15 MR. McCALPIN: (B)?

16 CHAIR BATTLE: We are now on -- we are still  
17 handling (A). I don't know if there any other  
18 questions on (A) before we go onto (B).

19 MR. McCALPIN: Oh, I am sorry. That is what I  
20 was confused about.

21 CHAIR BATTLE: Okay. Any other questions  
22 about (A)? Anything?

1 (No response.)

2 CHAIR BATTLE: We can move on to (B). Now we  
3 are on (B).

4 MS. TARANTOWICZ: (B) I believe we discussed  
5 previously when we were discussing the definition of  
6 "indictment." And so we will take out "suspended" and  
7 move suspended over to "causes for suspension."

8 MR. McCALPIN: I would like to suggest that we  
9 all go back to the grade school grammar books and think  
10 about the phrase that says, "Including where." Where  
11 is a place, it seems to me. I suggest that that could  
12 be more aptly phrased.

13 MR. ERLNBORN: When might be better.

14 MR. McCALPIN: Yes.

15 MS. TARANTOWICZ: I will.

16 CHAIR BATTLE: Okay. Anything else in (B)?

17 (No response.)

18 CHAIR BATTLE: (C)?

19 MS. MERCADO: I am never going to write Bill a  
20 letter.

21 CHAIR BATTLE: Okay. If there is nothing on  
22 (C) than (D).

1 MR. McCALPIN: Well, here we have the final  
2 conviction. The issue that we talked about earlier.

3 MS. TARANTOWICZ: Right.

4 MS. PERLE: Also, this is the same where --  
5 this is the same kind of comment that was raised  
6 before. And it says, "Conspiracy to do the same" and  
7 it is not clear what you meant, though I thought it  
8 should be, "Conspiracy to commit such an offense," or  
9 something like that.

10 MS. MERCADO: And then we get to "such."

11 MS. PERLE: Well, but otherwise, you would  
12 have to say, "Conspiracy to commit an offense involving  
13 breach of trust." I think that in this situation  
14 "such" is clear enough.

15 MR. ERLBORN: I would assume that if we  
16 change the definition of conviction, you don't need to  
17 do it again in (D). You would be referring back to  
18 that definition.

19 MR. McCALPIN: Right.

20 CHAIR BATTLE: Okay. Now so where are we  
21 going to do the fix? Are we going to do it in (D) or  
22 in the definition?

1 MR. McCALPIN: I will leave it up to the  
2 drafters to decide that.

3 CHAIR BATTLE: Okay. All right.

4 MR. McCALPIN: But the same applies, John, to  
5 (E), the civil judgment. There has got to be a final  
6 civil judgment.

7 MS. MERCADO: So that whole issue of dealing  
8 with appeals and everything and time has been  
9 exhausted.

10 CHAIR BATTLE: Let me tell you why final is  
11 good. I could see the potential for corporate  
12 liability. If someone has an initial conviction that  
13 is fully overturned and we debar them, which starts to  
14 signal some other things for their license because  
15 there might be, with licensing agencies, they are  
16 requirements to give notice if they are debarred. And  
17 so that they can begin proceedings.

18 And if we have done that and the conviction is  
19 overturned and we are the only ones who have done that  
20 and other agencies are waiting for the final  
21 conviction --

22 MS. TARANTOWICZ: They are not.

1 CHAIR BATTLE: -- then I just don't want to  
2 see us in an a situation where someone comes back and  
3 says, "You caused me this harm and I have lost my  
4 business," and we are open to that. If what you are  
5 saying is that prior to the inability of a conviction  
6 there are debarment proceedings taking place in the  
7 other parts of the federal government, then I would be  
8 glad to look at that.

9 MS. TARANTOWICZ: Yes, that is what takes  
10 place.

11 CHAIR BATTLE: Okay. But --

12 MS. TARANTOWICZ: I can give you information  
13 on that.

14 CHAIR BATTLE: Okay. That would be helpful to  
15 us. But from our standpoint with what we are doing,  
16 that is the sense that I have got some concern about  
17 that and the reason for the concern. Okay. Let's move  
18 on. We have gone through (E) to 1641.8.

19 MR. McCALPIN: 1641 point --

20 CHAIR BATTLE: 8. Tongue-tied. 8(A). Notice  
21 of Proposed Debarment. (A)?

22 MR. ERLENBORN: Question.

1 MS. PERLE: I just have a question. I mean,  
2 the IG indicated recently, and, you know, that they  
3 have gone to the use of electronic mail for lots of  
4 information. And I think that is appropriate, I don't  
5 have a problem with this. But I think we just want to  
6 make it clear that -- and I think that you meant  
7 this -- that written notice does not include e-mail  
8 notice in this because, you know, there could be  
9 consequences if somebody doesn't open their e-mail.

10 CHAIR BATTLE: My computer has been down. Or  
11 my AOL connection might not work.

12 MS. TARANTOWICZ: We would certainly not send  
13 it exclusively by e-mail.

14 MS. PERLE: I think that you should say -- you  
15 should talk about that in the preamble just so that it  
16 is quite clear. I mean, because there are ways to get  
17 evidence of receipt by e-mail. I mean, you just have  
18 to check the box that shows that it has been received.  
19 So I think you just need to make it clear that this has  
20 to be hard copy in addition to anything else. You can  
21 certainly do it by e-mail in addition.

22 MR. ERLNBORN: And we do have the

1 long-standing rule about mailing. If something is  
2 mailed, there is the presumption that it has been  
3 received and it is noticed.

4 MS. PERLE: Well, but they may have added  
5 something that says, you know, evidence of its receipt.

6 MS. TARANTOWICZ: Well, we send it certified.

7 MS. PERLE: Yes.

8 MS. TARANTOWICZ: Or return receipt.

9 MR. ERLENBORN: I have a question about -- in  
10 (A). The use of the word "it" could be an individual,  
11 an IPA, and I think it might be better if you just  
12 reiterated IPA would take care of the --

13 CHAIR BATTLE: Sent the IPA.

14 MR. ERLENBORN: A partnership, a corporation,  
15 or an individual.

16 CHAIR BATTLE: Yes. Send the IPA written  
17 notice?

18 MR. ERLENBORN: Yes.

19 CHAIR BATTLE: Okay. That takes care of --  
20 okay. Anything else in (A)?

21 (No response.)

22 CHAIR BATTLE: (B)?

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1 (No response.)

2 CHAIR BATTLE: 1641.9, Response to Notice of  
3 Proposed Debarment. (A)?

4 (No response.)

5 CHAIR BATTLE: (B)?

6 Okay, Bill.

7 MR. McCALPIN: Going to your comment on  
8 page 11, I would suggest that you move the phrase "if  
9 requested" to follow the word "meeting" earlier in the  
10 sentence because where it is it leaves an openness to  
11 what is requested.

12 I assume what you mean is, "Although the  
13 meeting, if requested, shall take such form as a  
14 debarring official deems appropriate, the meeting shall  
15 be," and then the person be. Otherwise, it is a  
16 question of what is being requested, the meeting or the  
17 in person or the place or what.

18 MS. TARANTOWICZ: It is the in person,  
19 actually.

20 MR. McCALPIN: Oh. "The meeting shall, if  
21 requested, be in person."

22 MS. TARANTOWICZ: Right.

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1 MR. McCALPIN: Oh. Then I was mistaken.

2 MS. PERLE: I still think you should move it  
3 to a different place.

4 MR. McCALPIN: Yes.

5 CHAIR BATTLE: Okay. Yes. And that is a  
6 movement on the bottom of page 11 in that final  
7 paragraph, the third -- or second or third -- third  
8 sentence.

9 MS. TARANTOWICZ: Right.

10 CHAIR BATTLE: Okay. Okay. Anything else,  
11 1641.9, Response to Notice of Proposed Debarment (C),  
12 subsection (C)?

13 (No response.)

14 CHAIR BATTLE: (D)?

15 (No response.)

16 CHAIR BATTLE: 1641.10, Additional Proceedings  
17 as to Disputed Facts. (A)?

18 Bill.

19 MR. McCALPIN: Yes. Well, keep going. When  
20 you get to --

21 CHAIR BATTLE: (B)?

22 MR. McCALPIN: -- (D) I will have a question.

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1 CHAIR BATTLE: Okay. (C) or (D).

2 MR. McCALPIN: (D). The rule says, "May refer  
3 disputed facts to a fact-finder." Then on page 12 in  
4 your commentary, you say -- you, in effect, limit the  
5 fact-finder to an analysis and recommendation.  
6 Ordinarily a fact finder is empowered to produce,  
7 discover, read, you know, look for additional facts.  
8 Now it seems to me that your comment limits the fact --  
9 he is not really a fact-finder, he is a fact analyst  
10 and recommender.

11 MS. TARANTOWICZ: For fact-finding analysis  
12 and recommendation.

13 MR. McCALPIN: For fact finding, comma --

14 MS. TARANTOWICZ: Right.

15 MR. McCALPIN: -- analysis and recommendation.

16 MS. PERLE: You need to make that in the rule  
17 too.

18 MS. TARANTOWICZ: Right. It needs to be in  
19 the rule too.

20 MR. McCALPIN: Yes.

21 MS. TARANTOWICZ: I can do that.

22 CHAIR BATTLE: For fact-finding, analysis and

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1 recommendations.

2 MR. McCALPIN: Yes.

3 CHAIR BATTLE: Okay. All right. Anything  
4 else in (D)?

5 (No response.)

6 CHAIR BATTLE: Subsection C, Suspension.  
7 1641.11, Suspension.

8 MR. McCALPIN: Yes. Laurie, I think that you  
9 cannot simply incorporate 41.5 by reference. I  
10 appreciate the desire to compress the length, but you  
11 say -- you substitute "suspension" for "debarment."  
12 But 1641.5 -- wait until I get to it -- says, "IPAs are  
13 debarred from providing audit services for the period  
14 of debarment."

15 What you are really doing is suspending them  
16 from soliciting, not from providing services. And I  
17 don't think you can accomplish the incorporation by  
18 reference simply by changing one word.

19 CHAIR BATTLE: You speak of a duration of a  
20 period of debarment, which is also a three-year time  
21 frame, whereas the period for suspension is --

22 MR. McCALPIN: Eighteen months.

1 CHAIR BATTLE: -- eighteen months.

2 MS. TARANTOWICZ: Right. A suspension would  
3 be substituted for debarment.

4 CHAIR BATTLE: Okay. Okay.

5 MR. McCALPIN: You know, I understand and  
6 applaud the desire to shorten it up, but I don't really  
7 think this is a case where you can do that.

8 CHAIR BATTLE: It requires just putting this  
9 paragraph in, would it? Okay. All right.

10 MS. TARANTOWICZ: Okay.

11 CHAIR BATTLE: Procedures for Suspension,  
12 1641.12. Any questions about that?

13 (No response.)

14 CHAIR BATTLE: 1641.13, Causes for Suspension.

15 MS. TARANTOWICZ: This I will have to modify  
16 consistent with our prior discussion on .7.

17 MR. McCALPIN: Right.

18 CHAIR BATTLE: Okay. 1641.14, Notice of  
19 Proposed Suspension.

20 MR. McCALPIN: Again, you have a problem in  
21 the incorporation by reference because if you  
22 incorporate by reference here, you may suspend for

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1 three years, although 1641.4(B)(2) says, "In no event  
2 shall it exceed eighteen months."

3 MS. TARANTOWICZ: You are right.

4 CHAIR BATTLE: Okay. So we will just add that  
5 paragraph here.

6 MS. TARANTOWICZ: Right.

7 CHAIR BATTLE: We have got computers which  
8 makes that real easy now. Okay. Anything else under  
9 (A) under 1641.14?

10 (No response.)

11 CHAIR BATTLE: (B)?

12 (No response.)

13 CHAIR BATTLE: 1641.15.

14 MS. PERLE: Can I just make one comment about  
15 that preamble to 14?

16 CHAIR BATTLE: Sure.

17 MS. PERLE: I think when you really think  
18 about suspension, because it doesn't take affect until  
19 the next -- until they have completed their current  
20 contracts, that it may not be used as frequently as it  
21 might appear because of the kind of peculiar way that  
22 they are allowing them to finish their current

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1 contract. So in the preamble, you might just want to  
2 kind of talk about those situations where you would use  
3 suspension, which might be relatively limited. That is  
4 just a suggestion.

5 CHAIR BATTLE: Well, the solicitation part of  
6 suspension is immediately effective; is that right?

7 MS. TARANTOWICZ: Yes.

8 CHAIR BATTLE: You know, in other words, even  
9 though your suspension could affect your ability to  
10 recontract on the existing contracts, but you have got  
11 to complete the audit that you are doing now, it  
12 affects your ability to go out and get other contracts  
13 with other recipients.

14 MS. PERLE: No, I understand. I understand  
15 that. Really what I am just suggesting is that there  
16 be a little discussion about this in the preamble.  
17 This does not affect the rule.

18 CHAIR BATTLE: Okay. Okay. Any other  
19 questions about 1641.14? Hearing none, we can --

20 MR. McCALPIN: Well, we have done (A).

21 CHAIR BATTLE: Yes. Well, Linda came back and  
22 raised a question about the preamble so I wanted to

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1 give people a chance if they had any other questions  
2 about it to raise them.

3 MR. McCALPIN: Oh, okay.

4 CHAIR BATTLE: 1641.15(A), (B), (C)?

5 MR. McCALPIN: (C).

6 CHAIR BATTLE: Okay.

7 MR. McCALPIN: You know, I am concerned about  
8 basing a suspension on the contemplated legal  
9 proceeding. This is something that is floating around  
10 in somebody's mind about a possible proceeding and so  
11 you suspend based on that. I am troubled by the  
12 imprecision of that.

13 MS. MERCADO: Because that is even worse than  
14 an indictment.

15 MS. TARANTOWICZ: Yes, I think we were trying  
16 to get at where there is an investigation. But that  
17 can also -- that is also pending. So I think we can  
18 delete "contemplated."

19 CHAIR BATTLE: So that if it is a legal  
20 proceeding, then that is one thing, but not a  
21 contemplated legal proceeding.

22 MS. TARANTOWICZ: Right.

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1 CHAIR BATTLE: Okay. All right. Anything  
2 else?

3 MR. ERLENBORN: Just a question of that event.  
4 Do you need the word "pending" a legal proceeding?

5 MS. TARANTOWICZ: Well --

6 MR. McCALPIN: Well, "pending" is there.

7 CHAIR BATTLE: Well, "pending" or  
8 "contemplated" was there because you either had a legal  
9 proceeding going on or you were thinking about starting  
10 one. Now we are saying legal proceeding, which --

11 MR. ERLENBORN: Would assume that it is  
12 started.

13 MS. TARANTOWICZ: Well, but we might --

14 MR. ERLENBORN: Just a question for you to  
15 consider. I don't think that we have to decide it  
16 here.

17 MS. TARANTOWICZ: Okay.

18 MS. MERCADO: You might have to put pending.  
19 Did you mean it to mean that it is active as opposed to  
20 legal proceedings that have already occurred?

21 MS. TARANTOWICZ: Right.

22 CHAIR BATTLE: Okay. Did we decide on what we

1 are going to do on (C) (2)?

2 MS. TARANTOWICZ: Yes.

3 CHAIR BATTLE: Okay. All right. (D). No  
4 questions? We have moved on at a very rapid clip to  
5 subpart D, Removal. 1641.16, Removal. Are there any  
6 questions about that section? We don't have any  
7 subsections for that one.

8 MS. PERLE: I have a question.

9 CHAIR BATTLE: Okay. Linda.

10 MS. PERLE: I am not sure why we shouldn't  
11 just incorporate the removal provisions into the  
12 debarment provisions since they are essentially the  
13 same.

14 MS. TARANTOWICZ: I tried that in one of my  
15 many drafts of this rule and they are not the same to  
16 the extent that -- I mean, the same preponderance of  
17 the evidence, standard applied. The effect is not the  
18 same, current contracts versus --

19 MS. PERLE: Well, I know, but you could  
20 distinguish that in the same section.

21 MS. TARANTOWICZ: I know. I agree, but I  
22 think the feeling was -- and I don't feel strongly

1 about it. I can try to do it back that way again, but  
2 because the removal, suspension, debarment, they are  
3 very similar and different and different in sort of  
4 ways that you have to read it, that we thought it best  
5 to keep them separate.

6 MS. PERLE: I don't have strong feelings about  
7 that. I was just trying to think of ways to economize  
8 because I think my overall feeling is that this is --  
9 this whole rule is way too long and way too  
10 complicated.

11 CHAIR BATTLE: I think we tried economy.

12 MS. TARANTOWICZ: Yes, we have.

13 CHAIR BATTLE: And we have gone back to the  
14 giant size. Okay. Let's take a look at 1641.17,  
15 Notice of Proposed Removal, Responses to Notice and  
16 Additional Procedures, (A) and (B). Are there any  
17 questions? No questions.

18 What I am going to suggest now is we are right  
19 at about 12:00 o'clock before we go into the decisions  
20 part of this and our -- we do have some time after  
21 lunch that we can meet.

22 MR. McCALPIN: If it will help any, as the

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1 chief obstructionist, I can tell you that I don't have  
2 anymore comments from here to the end of the reg.

3 CHAIR BATTLE: Oh. We will finish this.

4 Okay. Well, with that in mind, let's just keep going.

5 I didn't know whether or not we were going to be here  
6 another hour on this. And so that is very helpful.

7 Let's then move on to subpart E, Decision. 1641.18,

8 Decisions of Debarring Officials. Are there any

9 questions about the standard of proof first? About the

10 subsection (B), which deals with what the record

11 includes?

12 (No response.)

13 CHAIR BATTLE: Subsection (C). I had a

14 question, and Laurie we did talk about this. I

15 understand that there is a federal administrative rule

16 generally that says if you have deadlines in your reg,

17 they do apply, for example here, to the IPAs with

18 regard to how much time they have to get information in

19 and all of that.

20 But this rule that basically says, "But we

21 don't have to meet any of our deadlines," subsection

22 (C) kind of struck me when I read it. And I understand

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1 that that is the general rule. And I didn't know how  
2 we had handled that or treated that in all other  
3 instances.

4 MS. TARANTOWICZ: I believe a similar --  
5 Suzanne, you can correct me, but I believe a similar  
6 provision is in 1606.

7 MS. PERLE: In 1606, it says, "Failure by the  
8 Corporation to meet a time requirement of this part  
9 does not preclude the Corporation from terminating a  
10 recipient grant or contract for the Corporation." So I  
11 guess it is the same.

12 CHAIR BATTLE: Okay. So we do have that same.

13 MS. TARANTOWICZ: And I really think that  
14 this -- I may have to look at the rule more closely,  
15 but I really think this applies to when decisions have  
16 to be issued at certain time periods. So it is not  
17 really, I don't think, that critical.

18 MS. PERLE: Laurie, is there a provision in  
19 here that says that there can be an extension of time  
20 before the IPA --

21 CHAIR BATTLE: That was what my next question  
22 was going to be whether there was any provision in here

1 for extensions. You have got death or you have got  
2 something that comes up. You have sent out a notice,  
3 you have got a 30-day time frame, that person is in a  
4 coma for 30 days, you know. Do we have any provision  
5 in here for -- or discretion for the -- an extension to  
6 be granted if requested?

7 MS. TARANTOWICZ: You know, I don't think we  
8 do.

9 CHAIR BATTLE: Okay.

10 MS. TARANTOWICZ: I wouldn't have a problem  
11 adding that.

12 CHAIR BATTLE: Yes.

13 MS. PERLE: And I am wondering whether you  
14 might want to clarify that (C) applies really only to  
15 this -- it says, "Requirement of this part." And it is  
16 really of this section. Is that correct? Is that what  
17 you just said before?

18 MS. TARANTOWICZ: I said I think. I said I  
19 would have to check. I don't think there are time  
20 requirements elsewhere on the --

21 MS. MERCADO: Yes, but the (C) is already  
22 applying to the decision part of it, not necessarily to

1 the process that you got you to the decision.

2 MS. PERLE: Right. That is my point. So why  
3 don't we just say instead of, "Requirement of this  
4 part" say, "Requirement of this section or subpart."

5 MS. TARANTOWICZ: Well, I am not sure it makes  
6 a difference. I really would like to check that.

7 MS. PERLE: Check it. Okay.

8 MS. MERCADO: Well, and I would assume, and I  
9 don't mean to put words in your mouth, LaVeeda, but the  
10 issue of extension of time as to IPAs really would deal  
11 with the process of responding to any kind of  
12 suspension, debarment or removal.

13 CHAIR BATTLE: That is right. That is right.

14 MS. MERCADO: Before you get to the decision  
15 part. So really that concept or that issue of  
16 extension would have to be incorporated in other  
17 provisions and statutes.

18 MS. PERLE: Right. What I was going to  
19 suggest was that we just put in some provision that  
20 says, you know, "Under appropriate circumstances, the  
21 IG can extend the time."

22 CHAIR BATTLE: Right. It just gives the

1 discretion.

2 MR. ERLNBORN: Right. I was thinking of the  
3 phrase, "Upon good cause shown."

4 CHAIR BATTLE: Yes.

5 MR. ERLNBORN: A time --

6 MS. PERLE: I was thinking that that suggests  
7 a sort of a long process where you might want to just  
8 say -- you know, they call up and say, "We just can't  
9 do it in this period of time."

10 MS. TARANTOWICZ: Yes. We can give examples  
11 in the commentary of when an extension would be  
12 granted.

13 MR. ERLNBORN: We can assume you wouldn't  
14 give it unless it was good cause.

15 MS. TARANTOWICZ: That is correct.

16 MS. PERLE: Let me just give you an example  
17 that is sort of from a slightly different context. The  
18 OIG's office is doing a series of audit service  
19 reviews. And a lot of them were proposed to be done  
20 this month. And a lot of the IPAs said, you know, "It  
21 is tax season for me. And this is a really bad time."

22 And so the OIG's office, as I understand, has

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1       been very, you know, has been, you know, very  
2       accommodating to make them a little bit later. So, you  
3       know, or somebody could say, "I am right in the middle  
4       of an audit of my biggest client. Can I have a few  
5       more days." And that usually is handled over the  
6       telephone, right?

7                   MR. KOCZUR: Yes.

8                   MS. PERLE: So I think that under appropriate  
9       circumstances, it might be --

10                  CHAIR BATTLE: Thirty day is a short time  
11       frame and this person's license is really on the line  
12       when they are subject to debarment. So we do want to  
13       at least give them the option and OIG the discretion to  
14       grant it and set the circumstances because of the  
15       expeditious way that it has to be done to be open.  
16       Okay. Anything in (D)?

17                   (No response.)

18                  CHAIR BATTLE: Okay. We are now down to  
19       1641.19, Exceptions to Debarment, Suspension and  
20       Removal. Any questions about that?

21                   (No response.)

22                  CHAIR BATTLE: 1641.20, Appeal and

1 Reconsideration of Debarment Official Decisions.

2 MS. PERLE: Excuse me. Could I go back to 19  
3 for a second?

4 CHAIR BATTLE: Sure.

5 MS. PERLE: I think this is something they  
6 ought to add it again in the preamble, and I know it is  
7 clear in the definitions, but I think that we want to  
8 make everybody aware that these debarments and  
9 suspensions and removals aren't only for audit  
10 services, that you could hire somebody to do -- help  
11 you set up your accounting system or to do your tax  
12 return or something. I just think in the preamble we  
13 want to kind of reemphasize that.

14 MS. TARANTOWICZ: That is fine.

15 CHAIR BATTLE: Okay. And this exceptions  
16 provision is kind of like what we are talking about in  
17 terms of exceptions to the 30 days, just giving you the  
18 room to breathe, the reality of how things fall out is  
19 good.

20 1641.20, Appeal and Reconsideration of  
21 Debarring Official Decisions. And we have got 60 days  
22 for notice of decisions and reconsideration. Any

1 questions about (A), (B), (C)? And (C) actually covers  
2 the remaining portion of this rule.

3           One comment that I thought about in  
4 relationship to this, because this is basically an  
5 administrative proceeding, is by an extraordinary writ,  
6 one might be able to go into federal court if they are  
7 not satisfied and say, "This agency did not follow any  
8 of its regs with regard to how it did whatever it did."

9           And I wanted to make sure that our standards  
10 for review, so that if someone takes the record and  
11 takes it into court and says on an extraordinary writ  
12 of mandamus, "Review this, Court, they are not doing  
13 what they are supposed to do," that we have the  
14 appropriate standards in place for how that review has  
15 to be done.

16           Generally, that kind of review is just any  
17 evidence of record. But I guess this gets back at the  
18 point that Bill raised initially about what evidence  
19 is. And I am hoping that we give the proper treatment  
20 to that so that we will have the kind of record that if  
21 i it is ever subject to any kind of external scrutiny,  
22 that we have gone through and made sure that everything

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1 is in place and can be reviewed and can withstand that  
2 kind of scrutiny.

3 Okay. Maria.

4 MS. MERCADO: Yes. And one of the easiest  
5 ways to do those kinds of record in administrative  
6 trial proceedings is just to automatically in every  
7 proceeding that goes before you, there is a recording  
8 of it. I mean, and agencies do this all the time. Not  
9 necessarily a stenographer or court reporter that does  
10 the record, but at least that there is a tape of it so  
11 that if it needs to be reviewed later for any  
12 particular decisions appeal, federal case, whatever, it  
13 is there.

14 CHAIR BATTLE: Most of this is by paper, isn't  
15 it?

16 MS. TARANTOWICZ: Yes.

17 CHAIR BATTLE: I mean, most of these appeals.  
18 But there is the opportunity to appear in person.

19 MS. TARANTOWICZ: Yes.

20 CHAIR BATTLE: And if there is evidence taken  
21 during that personal appearance, we don't have a  
22 provision in here that says it should be recorded, but

1 I think it is important. I think that point is well  
2 taken. If it is reviewed at any point, and that is  
3 evidentiary, then we can make sure that it is recorded.  
4 Okay.

5 And with that, in only just nine minutes flat,  
6 we have made it through an entire subpart of this rule.  
7 And we are to be commended, I think, as a committee for  
8 doing that. I think it is appropriate now -- we have  
9 some time this afternoon, we do have some other things  
10 on our agenda -- to take a recess of this committee for  
11 lunch. Is lunch ready? Is that --

12 MR. McCALPIN: I think on the schedule it is  
13 1:00 o'clock.

14 MS. MERCADO: No, lunch is at 1:00 o'clock.

15 CHAIR BATTLE: Oh, is it 1:00 o'clock? I am  
16 sorry. Okay. Let's take a break.

17 (A brief recess was taken.)

18 CHAIR BATTLE: We can start to gather back  
19 around. I am prepared to call the meeting back to  
20 order. I think we are prepared to move on to the next  
21 item on our agenda. I would like to note that we have  
22 listed, as the next item on our agenda, to consider

1 public comment and consider and act on 45 CFR  
2 Part 1628, Recipient Fund Balances.

3 And we discovered this morning that there were  
4 other committee members who did not receive the most  
5 recent copy of this particular -- of what we are to  
6 discuss today. There is no time frame on how we set  
7 this fund balance.

8 Is that correct, Suzanne? Can you come and  
9 address that?

10 MS. GLASOW: Yes. That is correct. We can  
11 put it off until the next meeting. There is no problem  
12 with that.

13 CHAIR BATTLE: Okay. So what we will do is  
14 you do -- I do want to make sure that everybody does  
15 have the most recent copy.

16 MR. McCALPIN: No. I gave yours back to you.

17 CHAIR BATTLE: Okay. Here you go.

18 MS. GLASOW: Yes. We will provide you with a  
19 fresher copy for the next meeting. It will be in the  
20 Board book.

21 MR. McCALPIN: John, do you have a copy?

22 MR. ERLBORN: I got one today.

1 CHAIR BATTLE: Everybody else have a copy?

2 Okay. All right.

3 And, Suzanne, you will provide us with a  
4 fresher copy so that everybody will have, prior to our  
5 next meeting, the recipient fund balance rule in  
6 sufficient time to review it so that we will be  
7 prepared to receive final review at our next meeting.

8 MS. GLASOW: That is correct.

9 CHAIR BATTLE: Okay.

10 MR. McCALPIN: Madame Chair.

11 CHAIR BATTLE: Yes.

12 MR. McCALPIN: I was probably inattentive, but  
13 how did we resolve or sign off with respect to the  
14 prior regulation?

15 CHAIR BATTLE: We decided that we were not  
16 going to present it tomorrow, there was no vote taken  
17 on it for that reason, that the revisions, which will  
18 result from our discussion today, will be made and it  
19 will be presented at our next meeting.

20 MR. McCALPIN: Fine. I wasn't fully sure.

21 CHAIR BATTLE: Okay. I think I said that real  
22 early on in our discussion and not at the end. But I

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1 think Laurie understands that that is what the  
2 committee is expecting.

3           The next item, which we have on the agenda, is  
4 to develop a recommendation to make to the Board  
5 regarding setting of the compensation level for the  
6 Corporation's inspector general. And you should have  
7 in your Board book a draft memorandum to our committee  
8 from our chair in this regard, regarding the inspector  
9 general's level of compensation. I am hoping that all  
10 the members of the committee have had opportunity to  
11 review that draft and all the attachments thereto. And  
12 I think that this is open for our review of this issue.

13           In addition to Doug's letter, I think we have  
14 been given a copy of a letter that the inspector  
15 general sent to the Committee on Governmental Affairs,  
16 the ranking member and the chair, which speaks to some  
17 issues that might be relevant to this. So we have that  
18 document before us as well.

19           And I know, John, you are our liaison to the  
20 inspector general. And I would be interested in  
21 knowing what your view might be with regard to what we  
22 might consider.

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## M O T I O N

1  
2 MR. ERLNBORN: Well, Madame Chair, in my role  
3 as liaison, I have discussed this with a number of  
4 people. The inspector general himself, as well as some  
5 members of the committee. And there is, I think, a  
6 general agreement among those -- not everyone on the  
7 committee that I have discussed this with, but some of  
8 those that I have discussed with the -- this with the  
9 committee and the inspector.

10 And I didn't have a chance to discuss this  
11 with our chairman because Doug hasn't been here this  
12 morning. But I believe that the resolution of this  
13 could be incorporated into a recommendation to the  
14 Board that would be as follows. And I am reading from  
15 my handwritten record, which is not legible to anyone  
16 but myself. And I don't do shorthand. This is the  
17 resolution that I would offer.

18 "The compensation of the inspector general  
19 shall be set by the Board to equal the compensation of  
20 the highest compensated officer of the Corporation,  
21 other than the president." Now that is the basic  
22 formula.

1           And the concept is that if the Board were to  
2 set a figure, a dollar and cents figure, that that  
3 would be a judgment that would be made from time to  
4 time and it could be construed by the inspector general  
5 or other people outside the Corporation as the exercise  
6 of some sort of control by the Board over the inspector  
7 general by the setting of his compensation. And that  
8 is why a formula is being suggested here.

9           The formula would say that the inspector  
10 general, rather than being -- having his compensation  
11 set as a percentage of the compensation of the  
12 president, which was discussed at one time, or the  
13 highest level available for the president to be  
14 compensated rather than just his own personal  
15 compensation, to tie this instead to the highest  
16 compensation actually being received by any officer  
17 other than the president. And that would be a vice  
18 president, I think, for all intents and purposes.

19           This would be a formula then where the Board  
20 would set the salary, but it would be done in  
21 accordance with this agreed formula, rather than being  
22 the exercise of some sort of judgment from time to time

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1 and thereby taking away any chance that we could be  
2 accused of interfering with the independence of the  
3 inspector general.

4 Now in discussing this, I discovered, and I  
5 think that others knew. But the fact is that in the  
6 bylaws of the Corporation, it is provided that the  
7 president may set the compensation of all other  
8 officers of the Corporation. Of course, the Board sets  
9 the president's compensation.

10 But the president's authority to set  
11 compensation for other officers has a proviso, and that  
12 is that the president must confer with or consult with  
13 the Board before setting those salaries of other  
14 officers. And we thought that it would be well to  
15 refer to that in this resolution with the following  
16 wording.

17 "The compensation of all officers of the  
18 Corporation, other than the president, shall be set by  
19 the president after consultation with the Board as  
20 provided by the bylaws."

21 So here, in short, is the sequence. The  
22 president would determine that he would like to set

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1 compensation of a vice president or the vice  
2 presidents, which would include the highest compensated  
3 officer. The president would then confer with the  
4 Board. And after consultation with the Board, those  
5 salaries would be set.

6 And if there was an increase in the vice  
7 president's or any officer's compensation above that  
8 which is currently being paid to the inspector general,  
9 the Board would then, in accordance with this  
10 resolution, increase the inspector general's  
11 compensation to that figure. I may have repeated these  
12 things a couple of times, but I hope that was  
13 understandable.

14 CHAIR BATTLE: Okay.

15 MR. ERLENBORN: And I believe that it is  
16 agreeable. As I say, I haven't had a chance to talk to  
17 Doug, but I think it would -- and we have to find out  
18 whether it is legal. Okay. This is just an agreement  
19 that I was unaware of. No question of legality.

20 And the note tells me that there was  
21 discussion and agreement between the inspector general  
22 and our chairman that the setting of this compensation

1 for the inspector general would be retroactive to  
2 October 1, 1998. So that would be in addition to the  
3 procedure that I have outlined. That is the  
4 recommendation that I offer.

5 CHAIR BATTLE: Okay. Are there any  
6 discussions?

7 MR. McCALPIN: Well, I will second the  
8 recommendation.

9 CHAIR BATTLE: Okay. All right.

10 MR. McCALPIN: But let me ask. Is there a  
11 difference in the highest level of compensation  
12 presently as compared with last October the 1st because  
13 if we set it as at the highest level at October 1,  
14 there may be a higher level in effect now. So it seems  
15 to me it is a question of whether the --

16 CHAIR BATTLE: Well, what we can do is make  
17 this particular formula retroactive. And if, in fact,  
18 there was a higher compensation then, what we are  
19 talking about is that differential and back pay from  
20 whatever that was bringing him up to the present level.

21 MR. ERLNBORN: I think we may have someone  
22 who can aid us in answering the question about what the

1 compensation --

2 CHAIR BATTLE: I calculate back pay all the  
3 time in my practice. But go ahead. We will hear from  
4 our president. Good morning, Mr. McKay. How are you?

5 MR. MCKAY: Good morning. Thank you. I am  
6 fine. I would be glad to comment on it. As I  
7 understand the question, it is -- has the --  
8 effectively has the compensation for the vice  
9 presidents increased since October. And the answer to  
10 that is yes it has increased. Both vice presidents are  
11 currently paid at a level of 108,200, the vice  
12 president for administration and for programs.

13 Most of that was a function of the normal  
14 merit increases with the ceiling being that of the  
15 president, which is set by statute and by the Board.  
16 And so also there was a change -- to be technical,  
17 there was a change in that of the vice president for  
18 programs because she was recently appointed by the  
19 Board to that position.

20 CHAIR BATTLE: Okay.

21 MR. McCALPIN: Well, basically what we are  
22 saying is that the formula is retroactive to

1 October 1st, but the amount is not.

2 CHAIR BATTLE: That is right.

3 MR. ERLENBORN: I think that is agreeable.

4 CHAIR BATTLE: So the differential will track  
5 whatever those salaries were, the highest paid person,  
6 and that is the way we will determine whatever back pay  
7 should be computed.

8 MR. MCKAY: I am told the date is January 1,  
9 and we understand the distinction that is just  
10 announced by you. And I think I can -- I certainly am  
11 speaking for management and I think that that is an  
12 agreeable situation as far as the Office of Inspector  
13 General is concerned. And I commend and thank the  
14 Board for that.

15 MR. ERLENBORN: I have reason to believe the  
16 inspector general would agree as well.

17 MR. MCKAY: I think I am indicating that. I  
18 am.

19 CHAIR BATTLE: Is he in the room?

20 MR. QUATFEVAUX: He is and he is nodding  
21 vigorously, I think, and that is authority enough for  
22 me to say I think he does agree.

1 MR. ERLNBORN: I might say that he probably  
2 is relieved, as we all should be, that we finally have  
3 found a solution to this issue.

4 CHAIR BATTLE: Maria?

5 MS. MERCADO: Yes. A couple of points on your  
6 proposed resolution, John. When we discussed this  
7 issue back in December of '94 and when we have  
8 discussed this since then, it has always been with the  
9 understanding that whatever level of compensation we  
10 were going to look to for the inspector general, that  
11 it had to be an independent level of compensation that  
12 did not deal with any question of merit or, you know,  
13 if the Board is pleased or not pleased at some of the  
14 investigations or some of the audit work that the  
15 inspector general does, that the salary would not be  
16 commensurate with his performance level.

17 In order to continue that curtain, that  
18 division of responsibilities by the inspector general  
19 and the independence of the inspector general and  
20 consequently the reason and the basis for doing a  
21 percentage level, which regardless of what the  
22 inspector general's office does or doesn't do, that is

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1 the percentage of whatever the president's level is.

2 Because the problem that you have with setting  
3 it to the vice president level, or whoever the higher  
4 officer is, as John just stated a minute ago, is that a  
5 lot of their salaries, due to the president's  
6 evaluations of performance and merit, are based on  
7 merit.

8 And so consequently indirectly you are saying  
9 that you are, because the vice president of programs or  
10 the vice president of administration is doing an  
11 excellent job, they come out with this creative work,  
12 their salary which would normally be at this level,  
13 based on their performance evaluations by the  
14 president, now reaches a higher level. It is not based  
15 on an objective criteria, it is based on the fact that  
16 they have performed well.

17 And the whole concept of setting the inspector  
18 general's salary, was to set it at an independent level  
19 that was not tied to the Board or the president  
20 reviewing their performance, but to keep the  
21 independent body. And I think that indirectly you are,  
22 through the work of the other vice presidents, that the

1 president may increase their salary in their  
2 evaluations, you are indirectly avoiding merit.

3           And so it is now -- I don't see it as being an  
4 independent gauge of the salary range, you know, like  
5 you said by the congressional record if it is a level  
6 one or level two, five, or whatever the category may be  
7 so that we go back to looking at the percentages.

8           And I am sure all of you got this memo from  
9 Victor that gives us the percentage levels of inspector  
10 generals in other federal agencies. And they go as low  
11 to 50.8 percent of the salary of whoever the top  
12 director --

13           MR. ERLENBORN: Are you aware that those  
14 figures are seven years old?

15           MS. MERCADO: Oh, I understand that. But I  
16 mean I think that a lot of them are still commensurate  
17 with the percentage level. I mean, even though the  
18 actual numbers may not be. I mean, for example, back  
19 in '92, LSC paid 78 percent of the level of the  
20 president at the time. We are currently paying 90  
21 percent of the president's level.

22           I mean, but you have a broad range from 50 to

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1 100 percent level. And I think that one of the reasons  
2 that this was brought to the Board was because there  
3 was a misconception, or at least we were led to believe  
4 that the compensation level for our inspector general  
5 was woefully below what other inspector generals in the  
6 industry or I should say in the federal government  
7 were.

8 And even if this is a few years old, it is  
9 obvious that the range is very broad as far as the  
10 compensation level, 50 percent to 100 percent. And I  
11 guess my bottom line comment would be that I would  
12 still prefer percentage levels because that is the most  
13 independent --

14 MR. ERLENBORN: It is a percentage level. It  
15 happens to be 100 percent.

16 MS. MERCADO: Right.

17 MR. ERLENBORN: And to further answer your  
18 comments. Yes there is an element in the formula that  
19 uses the compensation of the highest compensated  
20 officer and that compensation may have been awarded on  
21 merit, but not on the merit of the inspector general,  
22 on the merit of that officer.

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1           And so I don't think in any way you could say  
2 that we are making a judgment of the merit of the  
3 inspector general by tying his salary to the highest  
4 level of somebody else whose compensation on their  
5 merit has been set. So it is not a judgment of the  
6 inspector general's merit, it cannot be construed to be  
7 in any way an interference with the independence of the  
8 inspector general.

9           Now one of the other formulations could refer  
10 to the compensation for the president. And as I recall  
11 from the discussions we have had, one of the proposals  
12 was to set it at 98 percent of the maximum allowable  
13 compensation of the president. Well that may put us in  
14 the position sometime where the president is making  
15 less than the inspector general because we don't have  
16 to set the compensation of the president at the highest  
17 level and I don't think we would want that to happen.

18           I think this is a good formula, it takes out  
19 judgment of the inspector general, as you suggested we  
20 were trying to do. There are other ways, the proper  
21 ways to make those judgments and the proper things to  
22 do. But cutting the salary or keeping the salary low

1 as a judgment of the inspector general is not going to  
2 be involved in this process.

3 No judgment of his need -- I mean, his right  
4 or his -- what we should be giving him as an increase  
5 would only be determined by saying whoever the highest  
6 official is, highest compensated, 100 percent will be  
7 the percentage that the inspector general gets of that  
8 official.

9 CHAIR BATTLE: Okay. John and then I want to  
10 respond because you are really -- this is something  
11 that I requested and I want to just give my thoughts  
12 about how you look at compensation and what kinds of  
13 things you consider. Go ahead, John.

14 MR. MCKAY: Madame Chair, I misspoke a moment  
15 ago. The change in salaries for the current vice  
16 presidents was made January 1999, not '98, as I said a  
17 moment ago.

18 CHAIR BATTLE: Oh, okay. All right.

19 MR. MCKAY: And I wanted to make that  
20 clarification. Also, I want to make clear that we at  
21 the staff level and I in particular, will work very  
22 carefully with the Board as and when it becomes

1 appropriate in my judgment to recommend salary  
2 increases to the officers.

3 That would be the two vice presidents, a  
4 controller -- I am sorry, it would be the secretary and  
5 the treasurer of the organization. So that the actual  
6 setting of those salaries is done by the Board, which I  
7 think is another indication of the independence of the  
8 setting of the compensation not related to the  
9 activities of the inspector general, but rather to peg  
10 it at a place that makes sense within the Corporation's  
11 structure.

12 And of course that is your decision. I think  
13 your questions are correct questions, but I wanted to  
14 indicate that we will be coming to the Board to have  
15 those officers' salaries set.

16 CHAIR BATTLE: Okay.

17 MR. ERLENBORN: Madame Chair.

18 CHAIR BATTLE: Yes.

19 MR. ERLENBORN: Just one other proviso.

20 CHAIR BATTLE: Sure.

21 MR. ERLENBORN: And it is not included in  
22 this, probably doesn't need to be, but it should be an

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1 understanding. That this is a formula that would be  
2 utilized for the current inspector general. If we  
3 should have a new inspector general come, I don't think  
4 that it should be that we are tied to this. The Board  
5 could exercise judgment. If you have a new person  
6 coming into the office, you may want to start them at a  
7 compensation somewhat lower. But that is a judgment to  
8 be made at the time.

9 CHAIR BATTLE: Sure. That particular point is  
10 well taken. One of the things that I requested in  
11 reviewing and preparing for this discussion today was  
12 to try to make our decision regarding setting  
13 compensation in the realm that you would if you were  
14 setting anyone's compensation. That is, to look at  
15 comparables and make a determination that is objective.  
16 Of course, we aren't going to consider merit, but  
17 objective given what the duties and responsibilities of  
18 the person to be compensated are.

19 And for that reason in looking at the  
20 attachments to -- I reviewed the memo that we did  
21 receive from our chair and I, as well as the point that  
22 you made earlier, John, have some real concern about

1 his recommendation of 98 percent for the very reason  
2 that you pointed out.

3           If you make a recommendation of 98 percent and  
4 you decide to bring in a new president, your new  
5 president is someone where compensation is not the  
6 issue or another example would be if we changed the  
7 schedule, for some reason we got the law change and the  
8 schedule was different, then you may be compensating  
9 your president completely differently given that you  
10 are not in the compressed circumstance where we are  
11 gracious enough to have a wonderful president who can't  
12 be paid all the money we want to be able to pay him.

13           MR. ERLNBORN: We have that situation now,  
14 don't we?

15           CHAIR BATTLE: We do. That is the situation  
16 that we are in now. We have a president we can't pay  
17 him the kind of money we would love to be able to pay  
18 him because we are very strained where we are at to pay  
19 him on a particular schedule. So I did have some  
20 concern about going from 90 to 98 percent.

21           I also wanted to look at the whole methodology  
22 of setting a salary. I do agree that a formula is much

1 better than an actual amount because if you get into  
2 setting an amount, you have got to have some  
3 considerations as a basis for that amount, whatever it  
4 is.

5 And I wanted to be able to look at what is  
6 being done. We are not doing this in a vacuum in the  
7 general community. And the memo that was referred to  
8 is a memo based on 1992 figures, but it at least gives  
9 you an idea that inspector generals' salaries are set  
10 all over the map.

11 We did have some background information that  
12 also told us what the appropriations were for some of  
13 these agencies, what the staff level was for some of  
14 these agencies. And I think that that is credible,  
15 reliable, statistical information that you can use to  
16 start to do your comparison.

17 And generally, when you start to look at that,  
18 those percentages have meaning. The problem we have is  
19 the compression in our agency where the president's  
20 salary is so compressed that you cannot compensate your  
21 top person the way you want to so it becomes difficult  
22 to compensate your others.

1           But I want to make it clear I think there is  
2 some mention in here that the inspector general should  
3 be compensated equally with the president. As we look  
4 at this percentage and analysis that only happens twice  
5 in agencies and nowhere else, and I don't think it is  
6 appropriate in our agency at all. And I think that any  
7 resolution that we reach should make it clear that it  
8 is not our view that the inspector general should  
9 receive the same pay as does our president.

10           We are now just receiving -- is this recent  
11 information? Give me just a moment because this is in  
12 the middle of my discussion that I am getting this.  
13 What is this?

14           Okay. Well, what I would have loved to have  
15 had, but I am not certain that we do have, is current  
16 information that gives us that same statistical  
17 analysis so that we have the wisdom of what is going on  
18 at all the other designated federal entities who have  
19 this same task of setting salary. And I don't know  
20 that we have that current information. But a formula,  
21 it seems to me, has a lot -- makes a lot more sense  
22 than does a specific amount.

1           MR. ERLNBORN:  Madame Chair, having just  
2 received this, as all of the members of the committee  
3 have, I just took a quick look at what the compensation  
4 was for other inspector generals and I would say that  
5 the amount that would result from this formula would be  
6 comparable in most cases, maybe lower, than what is  
7 being paid.  Some cases higher, but on average --

8           MR. McCALPIN:  Most cases higher.

9           MR. ERLNBORN:  Well, it would be --

10          MR. McCALPIN:  There are only three that would  
11 be --

12          CHAIR BATTLE:  We have ranges on here for  
13 three.

14          MR. ERLNBORN:  Yes.  Except for those three,  
15 it would be fairly comparable or less than the  
16 compensation.

17          CHAIR BATTLE:  108.  Well, let's see.  One,  
18 two, three, four, five, six.

19          MR. ERLNBORN:  So I think this would show  
20 that it is not out of line.

21          MR. McCALPIN:  No.

22          CHAIR BATTLE:  Seven.  It would be more than

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1 seven out of the list.

2 MR. ERLENBORN: But within a couple thousand  
3 dollars of several.

4 CHAIR BATTLE: Are there any other concerns  
5 about this?

6 MR. ERLENBORN: I move the adoption --

7 CHAIR BATTLE: Okay. We have already a motion  
8 and it has already been set --

9 MS. WATLINGTON: We didn't follow it through,  
10 though.

11 CHAIR BATTLE: There was a movement -- I mean,  
12 a motion and there was a second and now we have  
13 discussion.

14 MS. WATLINGTON: Right. That is what I meant.

15 CHAIR BATTLE: And that is why I asked if  
16 there were any other questions. And I think we have  
17 other Board members or you have just walked in the  
18 middle of this. So I am not sure if you have  
19 completely heard all of the discussion, but I would  
20 like if there are any other discussion from any other  
21 Board members about this that we have it.

22 I think, John, let me just say this. Your

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1 point about this not being forever is a key point  
2 because if we do have a change in the schedule for the  
3 president, then we may want to redesign whatever we  
4 use. I think it needs to be clear that we are looking  
5 at a formula. We used one formula. We may at some  
6 point decide to go back to another formula that is more  
7 appropriate. We don't have much that we can do in  
8 terms of percentages.

9 I would not like to get into -- if you look at  
10 what the existing vice presidents are paid, what  
11 percentage of the president's salary is that? It is  
12 probably close to 98 percent. But if the president's  
13 salary is increased, then we wouldn't want to have that  
14 98 percent relationship arbitrarily continued simply  
15 because there is a new schedule that comes into play  
16 for the president.

17 MS. MERCADO: Yes, but the way his resolution  
18 read, though, it didn't read as the percentage, it only  
19 read as a direct correlation to next rank and all.

20 CHAIR BATTLE: Right. Which gives us an  
21 opportunity separately, it seems to me, to look at it  
22 to see whether or not it is appropriate to do any kind

1 of moving under the circumstances.

2 MR. MCKAY: And then this will be -- my  
3 understanding is this will be set by the Board along  
4 with the other officers.

5 CHAIR BATTLE: Right.

6 MR. MCKAY: And I will, as the senior  
7 management person, make certain that it come to you in  
8 that way so that you will have the opportunity on each  
9 occasion to set the compensation of the inspector  
10 general.

11 My understanding is, and we will work this  
12 from an accounting standpoint, that you will get a  
13 recommendation from staff to set the officers' salaries  
14 and the Board will then, by its own resolution, follow  
15 along to the highest management position for the  
16 inspector general.

17 And I think that is -- from our standpoint,  
18 that is a healthy structure for us in terms of  
19 compensation internally. And we have discussed that  
20 internally and we think given the responsibilities of  
21 the inspector general's office and the responsibilities  
22 of the senior executives, that that does make some

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1 sense. Only advisory, of course, to the Board. It is  
2 up to the Board to set the compensation. But this will  
3 work for us. And we will make certain that it flows  
4 smoothly to the Board.

5 CHAIR BATTLE: Okay. All right. Is there any  
6 other discussion?

7 I just want to make one other point. I don't  
8 know whether we have responded. It may be a Board  
9 responsibility to respond to this or make sure that the  
10 members of this committee know of our view regarding  
11 this compensation issue. We are now at 97.74 percent  
12 of the president's salary.

13 So, you know, now we have got the actual  
14 figure on the record. That is where we are right now.  
15 And it is really the compression that causes, I think,  
16 that difficult problem.

17 MR. MCKAY: Yes.

18 CHAIR BATTLE: What we do know in having this  
19 information is that what we are proposing is generous  
20 for the inspector general as compared to the 10 IG  
21 salaries that are now in place for agencies, some of  
22 which have much larger appropriations and much larger

1       staffs. Because it comes in at among, I guess, higher  
2       than seven of these salaries. And that is something we  
3       need to be aware of.

4               MR. MCKAY: If I may just comment. I think it  
5       is very appropriate for the Board to look carefully at  
6       the question of compensation and relate it externally  
7       and then relate it internally. And I have heard that.

8               And I think the most important thing that you  
9       are doing is to acknowledge the independence of the  
10      inspector general, and you are doing that in the way  
11      that you are proposing to move forward on compensation.  
12      That is the most important thing that you are doing.  
13      And we appreciate that because I think that strengthens  
14      the institution.

15              CHAIR BATTLE: Okay. Hearing no further  
16      comments or questions about this, are you ready for a  
17      vote. All in favor?

18              (Chorus of ayes.)

19              CHAIR BATTLE: All opposed?

20              (No response.)

21              CHAIR BATTLE: Motion carries. Okay. I think  
22      that is the last item that we have on our agenda. So

1 it is indeed time for lunch and we have finished, as  
2 usual, pretty close to the dime on this.

3 MR. McCALPIN: Do you want a motion to  
4 adjourn?

5 MS. MERCADO: No, we didn't have it.

6 CHAIR BATTLE: Oh, I am sorry. Motion to  
7 adjourn?

8 M O T I O N

9 MS. WATLINGTON: So moved.

10 MR. McCALPIN: Second.

11 CHAIR BATTLE: Ernestine moved, Bill seconded.  
12 Approved. I am sorry.

13 (Whereupon, at 1:05 p.m., the meeting was  
14 adjourned.)

15 \* \* \* \* \*