Thursday, January 22, 2015
5:20 p.m.

Westin Colonnade Hotel
180 Aragon Avenue
Coral Gables, Florida  33134

COMMITTEE MEMBERS PRESENT:
Charles N.W. Keckler, Chairperson
Robert J. Grey Jr.
Harry J.F. Korrell, III
Laurie I. Mikva
John G. Levi, ex officio

OTHER BOARD MEMBERS PRESENT:
Victor B. Maddox
Martha L. Minow
Father Pius Pietrzyk, O.P.
Julie A. Reiskin
Gloria Valencia-Weber
STAFF AND PUBLIC PRESENT:

James J. Sandman, President
Lynn Jennings, Vice President for Grants Management
Wendy Rhein, Chief Development Officer
Rebecca Fertig Cohen, Special Assistant to the President
Ronald S. Flagg, Vice President for Legal Affairs, General Counsel, and Corporate Secretary
Mark Freedman, Senior Assistant General Counsel, OLA (by telephone)
Stefanie Davis, Assistant General Counsel, OLA (by telephone)
David L. Richardson, Comptroller and Treasurer, Office of Financial and Administrative Services
Carol A. Bergman, Director, Office of Government Relations and Public Affairs
Carl Rauscher, Director of Media Relations, GRPA
Marcos Navarro, GRPA
Jeffrey E. Schanz, Inspector General
Laurie Tarantowicz, Assistant Inspector General and Legal Counsel, OIG
Daniel O'Rourke, Assistant Inspector General for Investigations, OIG
David Maddox, Assistant Inspector General for Management and Evaluation, OIG
Janet LaBella, Director, Office of Program Performance
Bristow Hardin, Program Analyst, Office of Program Performance
Lora M. Rath, Deputy Director, Office of Compliance and Enforcement
Herbert S. Garten, Non-Director Member, Institutional Advancement Committee
Allan J. Tanenbaum, Non-Director Member, Finance Committee
Nikole Nelson, Executive Director, Alaska Legal Services Corporation
Richard Austin, Executive Director, Legal Services of the Virgin Islands, Inc.

Don Saunders, National Legal Aid and Defenders Association (NLADA)
Robin C. Murphy, NLADA
Lisa Wood, American Bar Association SCLAID Chair
Richard K. Leefe, Leefe, Gibbs, Sullivan & Dupré, LLC
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CHAIRMAN KECKLER: Good afternoon. Because of our extensive agenda today and the proximity to dinner, I think we'll go ahead and get started. Noting the presence of a quorum, I call to order the noticed meeting of the Operations and Regulations Committee.

Our first item of business is an approval of the agenda today.

MOTION

MR. GREY: So moved.

MS. MIKVA: Second.

CHAIRMAN KECKLER: All in favor?

(A chorus of ayes.)

CHAIRMAN KECKLER: The agenda is approved.

Our next item of business is the minutes from our last quarterly meeting, found at page 163.

MOTION

MR. GREY: So moved.

MS. MIKVA: Second.

CHAIRMAN KECKLER: All in favor of approving these minutes?
(A chorus of ayes.)

CHAIRMAN KECKLER: The minutes are approved.

We now turn to our first item of substantive business, which is a discussion of the Committee's evaluations for 2014 and our goals for this year. And I want to thank everybody for filing them out and for your comments.

You can see in our book the summary that Carol Bergman has kindly prepared, beginning at page 169. In general, people are happy with the Committee, which is gratifying.

I think, if you look at -- the comments are actually on the next page, page 170 -- some useful thoughts came out of the evaluation process. And I'll just give my comments, and if people want to add in or elaborate on things that they might have said.

It seems a lot of us got confirmed by the Senate, and we've started in. And it feels somewhat like the middle of our service. But actually and realistically, we're at an important point at this meeting and over the next few meetings here because there's a time lag for anything that we do on this
Committee.

So to the extent that we want to leverage the experience that we've gained over the last few years with this organization and with the regulatory process into something big and something strategic that advances our strategic plan, we need to start thinking about it soon because if it's not started soon, then it's probably going to be difficult, given the things that we've already got in the queue, to get it done before the Board, or at least some of us, comes to an end.

Then the new Board will come and we'll have all these transition issues. And they'll have to get acquainted with it, and it won't be back to square one because we'll have a transition program. But it will be a couple steps back. So if you have some strategic ideas with regulatory changes, now or soon is the time to start thinking about them.

Another comment in there is elimination of unnecessary and not mandated restrictions on grantees. That's something that I agree with, but we need to think about what those are and how we can think of the
case to change them.

But this has to do with larger issues. If you want to revisit the 12-1/2 percent requirement, that's been there for a long time; it would be a big change.

If you want to look at ways for the grantees to start earning program income the way a lot of other nonprofits do nowadays, that would be another big change.

If you want to think about ways to increase the number of applicants for our grants and increase the competition on the ground, which has been a longstanding issue -- and a lot of these things extend out beyond the jurisdiction of this Committee, but they do have a regulatory aspect.

So we can't do all these things. That would be difficult, or a variety of other things. But if you want to do something of this nature, using those illustrations, we need to think about that and to put them on the regulatory agenda and get them evaluated and thought about and brought to the Committee and the Board.

So that's, I think, the essence of what I'm
hearing about how this Committee can think big. If it's going to think big, now is the time to think big because thinking big in 2017 won't do us -- we'll be thinking for somebody else.

So with that, I'll open it up for other comments about the evaluations. Yes. Robert?

MR. GREY: Well, this Committee has done a lot of work in the last couple of sessions -- actually, the last couple years. And I think, Charles, in large part you have been very meticulous about leading a very thoughtful approach to a lot of the issues that have come up, some of which have been ticklish, to say the least.

But I think one of the things that might be instructive, and it's mentioned in here and it's mentioned in the evaluation, is that it might be a good idea to go back and look at the strategic plan as a Committee and to understand what we've done, check that off the list to see what else is left to do, and collaborate with staff to see what we could do to facilitate a better operational organization in support of the grantees and the mission.
But I'm like you. I don't want to pick anything out of thin air because that doesn't serve us well, but to go back and do that the same way we started, which was, here are things that popped up as a result of the strategic plan we thought we needed to work on.

It may be a time to revisit that, check some off, and say, we didn't take these. I remember that we left a couple because we said, we can't do everything. So it might be time to do that and to do it in a comprehensive way so that we are following the path that we set for ourselves and how we thought the organization ought to evolve.

CHAIRMAN KECKLER: Yes. I think that's good advice, and in a moment, we'll get the strategic plan report, and in a sense, in our operational hat. But as we look about and think about what we as a Committee on the regulatory side can do for each of these areas that the Corporation is doing, and so look at it with both perspectives, I guess.

Are there other comments on the evaluations?

(No response.)
CHAIRMAN KECKLER: If not, I will turn it over to President Sandman to discuss the strategic plan and Management's report.

PRESIDENT SANDMAN: Thank you, Charles. Your Board book includes a comprehensive report that we prepared that lists all of the things that we have done over the course of the please few years, actually, to implement the goals and initiatives identified in the strategic plan.

The report focuses particularly on things that we did in 2014, but a number of things that we did in that year were follow-ons from matters that began in the prior years.

One thing that the Committee has asked me to consider in making this report is whether I continue to think that these are the right goals, whether we need any mid-course adjustments. I continue to think that these are the right goals. I certainly wouldn't subtract anything from them.

I think there may be some things that we could do to further refine them or additional initiatives that we might identify. But my bottom line is, this
was a good plan, and it was well thought through, and
we identified the right initiatives.

I'd want to be cautious about adding to the
list because we still have work to do to implement the
plan that we adopted and the initiatives we identified.

I'd be happy to answer questions. If the
Committee would like any additional information or has
any suggestions about the format or how I might do the
report next year, I would appreciate them.

CHAIRMAN KECKLER: Jim, where do you think
that we've made the most progress, and where are we
facing the most challenges on our initiatives?

PRESIDENT SANDMAN: It's easiest for me to
identify progress in concrete terms. And I think we've
made the most concrete progress in improving our fiscal
oversight.

I think there are a number of specific things
we can point to, new processes that we've implemented,
people that we've hired, the involvement of OCE very
actively in the grantmaking process, that are very
different from how we were doing things a few years ago
that is directly the result of the recommendations of
the Fiscal Oversight Task Force.

I think the results are borne out, as you'll see in the presentation that I make on Saturday, in the number of special grant conditions we impose for fiscal reasons. There are very specific things we're doing to follow up with grantees where we see yellow flags or red flags in a way that we weren't doing previously.

The area that I think is the hardest is strategic plan goal number 2, to become a leading voice advocating for civil legal aid in the United States. That's difficult to measure. We're hardly the only voice out there. We need to coordinate our work with Voices for Civil Justice, the new communications hub. And it's a huge task.

I continue to be struck, when I do have an opportunity to speak to non-lawyer audiences, at how many sophisticated, intelligent, generally well-informed people are unaware of the fact that you have no right to counsel in a civil case in the United States of America. That's the level of ignorance that we're dealing with and trying to remedy. And it's a big task to try to address that.
I'd put our progress on strategic plan goal number 1, maximizing the effectiveness, efficiency, and availability of resources for our grantees, in between those two.

CHAIRMAN KECKLER: Thanks. Are there questions from the Committee regarding the report?

(No response.)

CHAIRMAN KECKLER: I have a quick question about initiative 2, which is on the standards, the metrics. I guess everything is guided by their own experience, and so sometimes I still will look at a collection of something like 134 grantees in the way that I would look at a class of 134 students. Right?

I would say, at the end of this, some of these people are going to be As, and some are going to get Bs, and some are going to get Cs. And I hope nobody will get a D or an E, but if they do, I need to know that.

So when I think of the ultimate goal of having a performance standard, I'm thinking of evaluation. I'm thinking of better and worse -- maybe not globally, but saying, in this year, this organization is better
at pro bono. This other one is better at being very efficient. Another is better at innovation. Another is better at client satisfaction.

So there's not necessarily a global assessment. But there's still always better and worse. And I'm still struggling with this capacity to assign grades or grade groups to this set of organizations.

So my question now is, am I asking the wrong question? Is my desire wrong-headed?

DEAN MINOW: I don't think the desire is wrong-headed. I wonder, though, if grading is the right way to think about it instead of rating or something like that, especially as you've amplified now with the different dimensions, which I totally agree with.

There'll be some that will be very strong in one thing and not so strong in something else. So ratings might be a better way to put it.

PRESIDENT SANDMAN: I think it's a fair question, but I think it's a complicated question and has to be approached with great delicacy. There are a number of things we do to rate. We score applications
for grants.

We have metrics that we look at in terms of how any individual grantee compares to medians for all grantees in terms of number of cases closed total, number of cases closed with private attorney involvement. We have a scoring system for fiscal capacity.

The thing that I have become more and more aware of over time, though, is the great disparities that exist among the programs that LSC funds because we are a minority funder, on average. We don't own these programs. We don't control them. And for the majority of them, we're funding them at less than 50 percent.

I think the way we would approach the rating of a program where we're an 85 percent funder, I think, shouldn't necessarily be the same as the way we approach the rating of a program where we are a 15 percent funder. I think the way we approach a grantee that is a telephone hotline service statewide as opposed to a statewide full-service program in an area with large rural expanses, I think we need to recognize differences between those.
I think you will often find that the best performing programs that we have are the ones that have the most funding from other sources, and one of the reasons they're so good is because of the other funders that they have.

So all of those things need to be factored in. It's not a monolith that we're dealing with out there. These are not all students taking the same class who are similarly situated. You've got a lot more diversity among the group than that.

CHAIRMAN KECKLER: That's fair enough. But I'll just close with this. I can remember coming in and saying -- again, with that perspective which I understand is simplistic -- but saying, well, who are our best? Who are our best and who are our worst? And where's the list that says who's our best and who is our worst?

Of course, there's no list. And then I was told. I was said, well, we know. I said, well, I don't know. Right? And our other stakeholders don't have a sense. So anyway, my desire is still there, to know the answer to that question, who are the worst and
who are the best, given that there are different
dimensions to that and different explanations for it.

Are there other comments or questions? Harry?

MR. KORRELL: Yes. I'm interested in Jim's
comment that we're the minority funder or even a small
funder. I guess to me that doesn't change whether we
would want to do the rating because they're still
spending LSC money.

The other issue is that I'm not sure anybody
else is doing this kind of rating, or whatever the
right term is. I think we could provide a pretty
valuable service to the community, assuming we get some
buy-in on what we use, if we were providing that kind
of rating, grading, evaluation. I think it would be
helpful.

I think it would be helpful for the other
contributors to a recipient that they're only getting
15 percent of its funding from us to see the LSC
assessment of what this does. So the fact that we
might be only a portion doesn't make me think we want
to shy away from doing this if this is what we think we
want to do.
To respond to Charles's question, I don't think you're asking the wrong question. I think that's the question that we said we were going to ask when we drafted the strategic plan. So I think it's still a good question.

CHAIRMAN KECKLER: Thanks, Harry. I agree, though, with the comments that there's a complicated answer to that question. The question is there, but the answer's complicated. But that still doesn't mean we shouldn't try to provide that complicated answer.

Go ahead.

MS. REISKIN: Yes. I think it's hard when you talk about best and worst. So you could have an organization that does all the right things from a nonprofit management perspective but they have crappy lawyers. And we don't want that. On the other hand, you could have some excellent lawyers but horrible management, and that will lead to bad things, too.

So there's a bunch of gradations in there. But one thing I think we can do, and I think we've started to do a little but I think we can do more of, is do a better job coordinating with other funders
because there are certain best practices in the nonprofit world, and we don't serve our grantees well when we're asking the same question that they've had to answer for six other people.

I think we've started to do that better, but I think that's a lower-hanging fruit. But I think if we're looking at ranking or rating or whatever, first we have to ask, so what are we rating? And I think that we haven't answered.

I'd love to discuss it because I don't know. I could argue two sides of the same question. What is the best bang for our buck? I personally have concerns about going to less and less extended representation because I think that's a really important part of legal aid work. I'm not saying that that's the only thing. But I think when it's less and less available, that really is a disservice to poor people.

But that's not going to be the best bang for the buck. You're not going to have high numbers. So we haven't really decided, I think, what is good.

CHAIRMAN KECKLER: Yes. That's a good point.

Our statutory mandate is to provide economical and
effective legal service to the poor. And there are
different ways to do it. But the question of figuring
out what is the most effective and the most economical
way to do it presents the question of better and worse.

There are different dimensions to that but, as
you say, I want to know those different dimensions. I
don't want a global assessment. I want a more
sophisticated, complicated answer.

FATHER PIUS: Just a question for you, really.
To develop this idea of rating, I really like. But
who is the targeted audience for this? Is the idea of
doing this so that LSC Management can properly manage
the quality of the services being provided? Is it so
that the Board can properly supervise to make sure this
is happening? Or is this the ultimate goal of the
public, so the public can know that the recipients of
these funds -- because it makes a difference.

I have no idea what the internal use of this
information -- and I remember the comment early on in
the Board that, we know who the good ones are. And
that's helpful. But I don't think, if that exists,
that information is, I don't think, transmitted to the
Board.

That is, the Corporation is very good at providing financial information to the Board about audit reviews and that sort of things, and that's one of the things I want to talk about in the Delivery of Legal Services Committee, is that's one thing -- I'm hoping that that happens more with that, is that Management gives more reports to the Committee similar to the way audit reports are done -- not exactly, of course, but there is some communication between the Corporation and the Committee on behalf of the Board as to what the quality issues are.

Then as we get more of that information, we can target it more. Then we can narrow it more. Now, obviously, we have to be sensitive to confidentiality issues on those things a little bit more, the way we might not be just in strict financial.

But just a question for you is what audience were you targeting or thinking of when you're thinking of this rating system?

CHAIRMAN KECKLER: Well, if you ask me the question, the audience is anybody who's making
decisions and directing resources in order to encourage
the best, to make the interventions.

Julie made this very good example, in a sense, of organizations that are weak in some areas and strong in the others. Well, we know what kind of interventions. We know what kinds of learning. We know who to select and to emulate and in what way, the organization that's following best practices in management. We want to promote them and emulate them, and we want to intervene to improve their legal work and vice versa.

So the idea ultimately is that this information will allow us to, once you find better and worse, show others what's better and what's worse.

FATHER PIUS: And since we do have what's better and worse -- that is, we have this whole document called the performance criteria. Right? And these are meant to tell us that if you're doing these things, this is what we decide as good and bad.

But the question that I don't think we have as a Board is who is meeting these performance criteria well and in what sections and who isn't. And that's
one thing I'd like us to move a bit towards.

CHAIRMAN KECKLER: All right. Martha?

DEAN MINOW: Well, one thought to figure out:

Is there a name that we could give to an honor roll of those organizations that hit the excellent best practices in some X number of domains?

One reason I suggest that is we may want to be careful about labeling organizations as bad till we know that our rating system is good. And in addition, we will always be under-inclusive, and it's better to say, these are exemplary, rather than, we've covered the waterfront and we know everybody else has not.

So it's just as a way to test the waters because your point about who the audience is, I share that view. And we want organizations that are struggling, that have a new director, for example, it would be great to be able to say, here's a model program, and not just have it be the anecdotal, here's the model program.

CHAIRMAN KECKLER: Right. And I think that making the positive aspects of it, I think, is absolutely great, and the issue of best practices and
emulation. And to the extent that there's other ways
that we can do that kind of recognition, that's a key
way to begin.

I think we talked about that, I remember,
during the strategic plan, that that was where we were
moving towards. But we still -- anyway, that's an area
of opportunity.

FATHER PIUS: I do hope maybe we can discuss
this more in the Delivery of Legal Services Committee
because I think that's an aspect of something I want to
discuss more. And maybe it can form a part of our
discussions.

PRESIDENT SANDMAN: I do want to point out
that we post on our website the reports that are done
as a result by OPP and OCE. They're out there for
everybody to look at. And I have to pore through them,
and they're not ranked or listed in any kind of
numerical order.

I just want to underscore, I take Harry's
point. I agree with it, that our standards for a 15
percent funded program and an 85 percent funded program
shouldn't be any different. And I am acutely aware of
the fact that Congress expects no less of us simply
because we're a 15 percent funder rather than an 85
percent one.

But the thing that concerns me about any kind
of public rating system, even an honor roll, is the
assumption that will be drawn from that, that there is
a set of uniform fair standards that apply across the
board fairly to everybody.

I just look out there at an environment where
I see some programs that may be struggling and they'd
say, you know, we could do a lot better if we were in a
state where the legislature supported funding for legal
aid the way they do in that other state over there that
you've put on your honor roll.

I see it in the city where I live and work.
In the District of Columbia, there are 27 civil legal
services providers just in the city. Our grantee in
the District of Columbia is funded in the same way it
would be if it were the only one in the city.

Compare that to other parts of the country,
where the LSC-funded program may in effect be the only
game in the state. How do you equate those, if
somebody who doesn't make the honor roll is implicitly going to be viewed as second-rate?

I think the nuance here is a little too complicated to lend itself to these kind of public listings that I think cause potential to do harm.

FATHER PIUS: I understand that. And I understand, too, that the reports are issued individually. But I do think we need in some way to aggregate some of that data, to give us a broader picture of what's going on with the grantees rather than individual, one by one.

It's certainly something I think we should at least start thinking about approaching the way we do financial oversight.

CHAIRMAN KECKLER: All right. Thank you, Father.

Let's go ahead and move on to the rulemaking agenda and an update on that, as well as a couple of substantive rules on the rulemaking agenda. Mr. Flagg?

MR. FLAGG: Thank you. I'm hoping that Stefanie Davis is on the line as well?

MS. DAVIS: I am, and Mark Freedman is here
with me as well.

MR. FLAGG: Great. Let me put the update on rulemaking agenda into a bit of context in two ways.

First, I should advise the Board that within the last year, Legal Services Corporation has been asked to join or have a representative to the Administrative Conference of the United States.

That's a useful development for us because ACUS, the Administrative Conference of the United States, is the agency, a small agency in the federal government, which exists to promote improvements in efficiency, adequacy, and fairness of the procedures by which federal agencies, and here we are lumped with them, conduct rulemakings and regulatory programs and administering grants and benefits.

I mention that because I'm the person at LSC is our representative to ACUS, and I can tell you that in this rulemaking agenda process, that LSC is really at the front of the class, with some others.

But that is, ACUS recommends that organizations regularly look at their universe of regulations and identify in a systemic way regulations
that should be modified, regulations that should be
rescinded, areas that are not subject to rules where it
might be helpful to do it.

We and you are doing that. And I can tell
you, most organizations don't have the wherewithal to
do that on a regular basis, and we're trying to do that
annually. So I think that's a good thing.

The second point I want to make is that we
actually reported to -- and this Committee approved a
rulemaking agenda for 2015. And just as a reminder,
the active pieces of that rulemaking agenda include a
revision to 45 CFR Part 1640, which deals with the
definition of federal law relating to the proper use of
federal funds; we're going to have a report on that and
a proposal for you momentarily.

Then we have two other rulemakings we're
actively working on. One relates to subgrants and
subcontracts that relates to or deals with Parts 1610
and 1627 of our regulations. We're working on that
right now, and expect to have to you at the next Board
meeting in April a proposed rule.

Then lastly, probably the most ambitious of
our current rulemaking undertakings is reviewing Part 1630 and the property acquisition and management manual known as the PAMM. Sorry, Jim. And that is a very significant undertaking, and we expect and hope to have to you next January a proposed set of revisions to those rules.

What we wanted to do today is update you on two other rules because even though we set an agenda in advance, we react to things in realtime. So one of the things that Stefanie will report on is a proposed revision; Management proposes a new modification to Part 1628, which she'll get to in a moment.

Then also, in the course of setting our rulemaking agenda for this year, we talked about Part 1603 and the state advisory councils, and we wanted to update you on our research and our recommendations in those regards.

So with that introduction, Stefanie, do you want to talk about 1628 and Part 1603?

MS. DAVIS: Sure. I'd be happy to. Thank you, Ron.

As Ron mentioned, we set our agenda, and
shortly after we set the rulemaking agenda, we were
faced with a situation in which a grantee had received
a huge attorney's fee toward the end of the year.

They wanted to know whether they would be able
to keep that money, if they would be able to seek a
waiver to keep those funds because the result of
getting these funds led them to have a larger balance
of LSC funds in their account at the end of the year
than is permitted under our regulations.

So we looked at Part 1628, which governs
recipient fund balances, and we came to the conclusion
that, well, that scenario wasn't covered by the
regulation.

Part 1628 was amended in 2000 to give more
guidance to Management about when it could authorize
recipients to hold onto some of their LSC funds at the
end of the year. Normally, programs should spend all
of their funds because we give them what they can spend
and they should be able to spend that by the end of the
year. But in some instances, programs may have money
left over.

Part 1628 currently allows recipients to
withhold or hold back up to 10 percent of their LSC funds at the end of the fiscal year, at the end of the calendar year, without needing to ask LSC for permission.

If they want to keep between 10 and 25 percent of their LSC fund balance, they need to request permission from LSC. And if they want to retain more than 25 percent of their LSC fund balance, they need to ask LSC for a waiver.

As the rule is currently written, LSC can grant a waiver in extraordinary and compelling circumstances. But the circumstances in which LSC can grant a waiver of a fund balance in excess of 25 percent is limited to three circumstances.

Those are insurance reimbursements, proceedings from the sale of real property, and a payment from a lawsuit in which the recipient itself was a party. So that's not an attorney's fee award; that's an actual payment when the recipient itself was a party.

So we had this question come up from a grantee. And as explained in the memo, that was the
last in a series of situations we had seen in the past
couple of years in which recipients had very valid
reasons for wanting to retain more than 25 percent of
their LSC funds at the end of the calendar year but we
didn't have the ability to allow them to do that. And
so recipients had to make hard choices about spending
their money or using or losing a disaster grant
received from another funder.

So in response to those situations, Management
would like to undertake a rulemaking to amend Part 1628
to allow it to have more flexibility to grant waivers
in excess of 25 percent.

We're not proposing to relax the extraordinary
and compelling circumstances; we think that's the right
standard. But we think the way that the rule is
currently written is far too limiting in the
circumstances that are considered extraordinary and
compelling.

We understand that the reason that the rule
has these limitations in it was a concern on the part
of a prior Board about LSC Management having too much
discretion. I'm sorry? We're getting an echo here.
(Whereupon, at 6:00 p.m., the examination continued in evening session.)

EVENING SESSION

(6:00 p.m.)

CHAIRMAN KECKLER: Oh, I'm sorry, Stefanie. You're fine here on this end.

MS. DAVIS: We're echoing here, so I apologize for that.

We understand there was concern on the part of a previous Board that LSC Management have too much discretion in granting waivers in these circumstances, and so that was why the decision was made to limit these waivers of greater than 25 percent fund balances to these three discrete situations.

So in the interest of ensuring accountability and ensuring that the Board is certainly aware of these things, of these waivers when they're granted, we propose including notice to the Board before granting a waiver over 25 percent.

We also propose stating explicitly in the rule that recipients can request waivers before the end of the fiscal year. Currently, the rule only provides for
recipients to make requests and for LSC to act on requests within 30 days after a recipient has submitted its annual audited financial statement. But we think it might be useful for recipients who have advance notice that they may be in one of these situations to ask for the waiver.

Because this is an area where we've been getting a lot of questions and where we've been seeing more and more circumstances where grantees are running up against the 25 percent limit, we've created a fairly ambitious timeline to allow for maximum time to consider the rule prior to the end of the 2015 grant year.

So we propose to present an NPRM to the Committee in April along with a rulemaking options paper, and to have a Final Rule out in July of this year if there are no hugely substantive changes to the NPRM. So that's where we are on --

MR. FLAGG: I would just add that the presentation here is just to request permission to go forward to make a more detailed presentation. This is obviously a complicated issue, and the Committee would
have a full opportunity, and the Board, to look at the
details of what we propose.

There are certainly circumstances where I
think no reasonable person could say, gee, you
shouldn't have discretion. I mean, for example, if a
grantee was hit by an earthquake and couldn't spend
money for two months, would we really want them in the
last 30 days of a fiscal year to say, oh, my gosh,
we've got three months of cash left because we were hit
by an earthquake and we're going to lose it unless we
do something, so let's go buy some cars or something.

CHAIRMAN KECKLER: Yes. I think that's
reasonable. So do you think, Ron, just to posit, in
terms of protocol, are we thinking that amendments to
the rulemaking agenda should be a Committee vote?

MR. FLAGG: I'm trying to remember, Charles.

Did the Board actually --

CHAIRMAN KECKLER: I don't think the Board
did. The Committee voted to approve the rulemaking
agenda.

MR. FLAGG: Yes. I think it would be helpful
for the Committee to approve the addition of 1628 to
the agenda for 2015. And then, consistent with the
schedule set forth in this memo, we'd aim to, in April,
present you with a proposed rulemaking document both
for 1628 as well as for 1610 and 1627, which are
already on the agenda.

CHAIRMAN KECKLER: That seems agreeable. Are
there questions from the committee on this? Laurie?

MS. MIKVA: A quick question. If you know,
how much does LSC carry over as a percentage? Are we
within that 10 percent?

MR. FLAGG: I'll different to --

PRESIDENT SANDMAN: We're not currently.

We're above 25 percent currently. Well, actually, it's
a cumulative amount, but the amount that we carried
over from fiscal year '14 to '15 was more than 25
percent of our MGO appropriation for that year.

CHAIRMAN KECKLER: Julie?

MS. REISKIN: Martha was first.

DEAN MINOW: Well, Laurie's question actually
anticipates my concern. I guess I think this is
getting into the merits, and I certainly approve the
amendment of the agenda to consider this rule. But I
would worry about a rule that simply elaborates more circumstances under which exceptions can be created.

MR. FLAGG: No. Management's proposal, not to jump too far ahead or presuppose anything, would clearly list things as examples because as soon as we list six exclusive events, something else in the real world will intervene and we'd clap ourselves side of the head and say, gee, why didn't we think of that?

DEAN MINOW: I do understand where the rule came from. But I also think we're living in a different time, where there's a lot of unpredictable qualities of budgeting for nonprofit organizations right now.

I just think we need to be mindful of that and maybe make it more of a tracking device, and not have every one of these come to the Board but come up with some way to monitor. Because, running a nonprofit at the moment, let me just say every nonprofit I know is having these kinds of lumpiness in their budgeting process.

CHAIRMAN KECKLER: I think that the previous discussion about the diversity of funding sources for
our nonprofits is obviously relevant here. And I just note the irony, from a regulatory standpoint, that this is a regulation about extraordinary circumstances, and that it then attempts to list what's extraordinary.

Anyway, I'm sure that's not uncommon, but there's something odd about it. Okay. Go ahead, Julie.

MS. REISKIN: Well, I might be the only one who doesn't understand where this came from or why it is. Those of us who run nonprofits that don't get government money always laugh because it's like at the end of the state fiscal year and the end of the federal fiscal year, everyone's running to waste money because they have to spend it or lose it.

Why do we have any restrictions? I don't understand. If someone isn't doing their work, if someone is taking money and they're not hiring lawyers and they're not doing the legal work, that's a separate issue and we need to obviously take action.

But does the law say that we have to do -- I just don't get it. Part of good fiscal management is good fiscal management, and there are certain things
that you can do better if you -- are we going to lease copiers at outrageous amounts so that we're spending every month, or do we just buy one?

All kinds of stuff that, having sat on boards where there's government money, I just see that these things lead to what I think are bad financial decisions. And this might be for discussion the next time or now, but I don't know where it comes from.

CHAIRMAN KECKLER: Yes. I think we'll put that in the background, the purpose of the rule, just as a general matter, to get people to spend their grant. I won't add too much to that. I guess my own perspective is that I certainly hear you, and spending money when you don't need to spend money is always bad.

But a grant is in the nature of a contract in the sense that we're asking you, here's this money to do this. And if you didn't do it, there should be a reason.

Go ahead.

MS. MIKVA: I'm just wondering if, though, as part of when you give us the next report and a proposal, to at least address some of these issues and
whether a 10 percent and a 25 percent cutoff still make any sense.

CHAIRMAN KECKLER: Yes. I think it's worthwhile, if we're going to do this rule, to go ahead and at least say if you're comfortable with those as well so that we can be intentional about those cutoffs.

MR. FLAGG: I think that's helpful, and we'll address those. And if, in the course of addressing those issues, we think that, as often turns out to be the case, this is more complicated than we realized, we'll let you know that and suggest a different timeline.

CHAIRMAN KECKLER: So is there a motion to add this rule to the rulemaking agenda?

MOTION

MS. MIKVA: So moved.

CHAIRMAN KECKLER: Is there a second?

MR. KORRELL: Second.

CHAIRMAN KECKLER: All in favor?

(A chorus of ayes.)

CHAIRMAN KECKLER: Opposed?

(No response.)
CHAIRMAN KECKLER: So that is a Committee motion that carries, and that's added to our rulemaking agenda.

MR. FLAGG: Thank you. And now, really, a followup report to an item that has been at least on the potential agenda for a while, 1603. And again, I'll turn the microphone over to Stefanie.

MS. DAVIS: Sure. Thank you. The history of Part 1603, of course, originated out of a recommendation from the Inspector General in his July rulemaking agenda memo to the Board, recommending that because Part 1603, which regulates the state advisory councils, has been taking up real estate with no actual action for a while, it either truly be implemented or be rescinded.

In response to a request from the Committee in July for more information about particularly whether LSC had complied with its statutory mandate regarding the state advisory councils and the aftermath of the development, what the councils had done, where they went, we had one of our law fellows, Peter Karalis, do a lot of research into both of these things, and his
work is laid out in the memo that we provided to you.

What you can tell in this memo is that LSC did
in fact do what Congress wanted it to do. LSC complied
with the requirement to ask the governor of each state
to establish a state advisory council. That was
basically all that the statute directed us to do.

LSC was authorized to then step in and
establish state advisory councils in states where the
governor did not act. It does not appear that LSC
acted under that authority at any point.

The legislative history of this provision is
really interesting because it shows, in fact, that
there was this conflict where the House and the Senate
had differing provisions. The House wanted to require
LSC to appoint councils; the Senate merely authorized
it, and the House receded. So the Senate language
prevailed, and LSC was merely authorized to act if a
state governor did not.

So we satisfied our statutory mandate. We
received some questions after the regulation went into
effect about whether LSC had complied with its mandate
and whether the councils were effective, whether we
were receiving complaints for councils, whether we were receiving any input from councils at all. And as you can see, basically it appears that in at least 2002, there were no operational councils.

We did some fact-finding informally here at LSC with longtime staff who could not remember having heard anything about councils, any reports from councils, anything about the functioning of councils, since at least the mid-1980s.

So against that background, we have this rule that's on the books that we have been considering. What do we do with it? Do we allow it to stay on the books, or should we repeal it at this point since there are no operational councils? We've looked at it --

CHAIRMAN KECKLER: Let me pause you right there because I think that what you say is very important, that there's no operational councils and nobody's talked to us about it in ten years. But I think --

MS. DAVIS: It's like 30, Charles.

CHAIRMAN KECKLER: Well, somebody asked a question about it ten years ago.
MS. DAVIS: Right.

CHAIRMAN KECKLER: And there weren't any councils for 30 years, but somebody noticed that fact ten years ago. That's the last time somebody noticed.

MS. DAVIS: Right.

CHAIRMAN KECKLER: I guess the other question, which I think I know the answer to, is there any reason for such councils, which have been superseded by our other compliance and reporting mechanisms?

MS. DAVIS: I think that's an interesting question. I'm not sure that I'm the best person to answer it. I think that there are certainly oversight -- there are a lot of oversight mechanisms, as you point out.

We have our own Office of Compliance and Enforcement. We now an Office of the Inspector General, which we did not at the time the LSC Act was enacted. We have the internet, where anyone who wants to complain certainly can, and can do so rather easily.

So I would defer to others on this. But I'm not sure that there's a function that they would satisfy that is not already being met in other ways.
CHAIRMAN KECKLER: That's certainly the way the empirical situation seems to have been gone. So now we turn to the question, which you're about to turn to, of what to do about it.

MS. DAVIS: Right. So we had presented -- OLA, through Ron, has sent an email to the Board with this memo describing Management's position being, nothing has really happened. Nothing has happened. The boards are not functioning.

Our recommendation is not to -- or Management prefers not to act on 1603 at this time because it's lying dormant, and there are questions about what would happen if we moved to repeal? Would that raise new questions? If a council were to come up down the line, would it follow this rule? If we rescinded the rule, what guidance would we use?

So at this stage, and I can let Ron speak more to the Management recommendation, but I think at this point we are not inclined to recommend taking action on 1603.

MR. FLAGG: I would just elaborate briefly. Simply put, we live in a world of constrained time and
resources. I would suggest that the items that are on
the existing regulatory agenda for 2015, the item that
we just added, particularly the revision of 1630 and
the property acquisition and management manual, which
will be very labor-intensive, are all far more
important than whether or not 1603 remains on the books
or not.

So I think it should remain an item for
consideration on our regulatory agenda. But I don't
think it at this point should be given the priority
that these other things have. And if we were going to
address something else that is currently on our list
but on the back burner, I would be in favor of revising
our rulemaking protocol before we address 1603.

CHAIRMAN KECKLER: I appreciate that.
Obviously, it's true that it's not a matter of crisis.
People aren't calling in.

One thing I would add, though, and I asked to
add in Executive Order 13563, which is -- we're not
bound by that directly, but that's the guidance that's
given out on regulation. I might phrase, personally,
some of it differently. But it's got a lot of
interesting and good points in it.

One of the things it talks about that's relevant here is, in Section 6 -- this is page 192 of your Board book -- the retrospective analysis of existing rules, which is a new initiative the Administration has put forward as a best practice.

One of the things that it's asking people to do who are regulators, federal regulators, is look at these old rules. If they're outmoded, get rid of them. But from a priority standpoint, they're looking for the ones that are actually burdening commerce, and grantees look to those in particular.

So the question, since it's not providing a major burden, it's not a party. But at the same time, if it's outmoded, we should probably dispense with it. Father Pius, you brought this up at one time and pointed it out. What do you think?

FATHER PIUS: I tend to agree. I tend to think that if we're not using a statute, why clutter everything up? I'm not sure how much energy it's going to take to put out a notice and comment to say, we're thinking of replacing this entire rule with the
following statement: These councils are optional on
the part of the Corporation. They no longer exist.
There are no resources to support them. And therefore,
there are no more regulations, and leave that as the
sentence for this section of the regulation, and then
move on with life.

CHAIRMAN KECKLER: Or as just a preamble to
our rescission.

FATHER PIUS: Yes.

CHAIRMAN KECKLER: It's still on the agenda
but on the back burner, but I think that what we
might -- I don't think we necessarily need a motion for
this. But I think that to the extent that it remains
on the agenda, we know what we're going to do with it,
which is a rescission.

Harry?

MR. KORRELL: A question for Ron and for
Charles. How often in your career in government
service do you have the opportunity to simply repeal a
regulation and make it go away?

(Laughter.)

MR. KORRELL: We only have, what, a year and a
half, two years left. I really do think that it would be a high mark, in my short time in government service, if we could simply eliminate a regulation. And for that reason, I'm going to support that we do it.

CHAIRMAN KECKLER: Let's do it. I think that it's on the agenda. We know what to do with it when we can get to it, the next step is -- the memo and the materials here can be easily adapted into a justification.

So when you want to do it, get somebody back in the summer and present us with an NPRM for rescission. Yes?

DEAN MINOW: Far be it from me to rain on anyone's high point. But I would say three things. One, this looks very low priority.

Second, I actually do think there's a risk of simply repealing it without actually doing a thorough analysis of the other substituted forms of oversight and review. And I certainly wouldn't want a headline saying we've undone oversight and review, which would be a risk if it weren't done carefully.

Third, if anything, I would be interested in
proposing a rule that allows for a desuetude recognition; that is, when there is a rule that has not been used and no one has invoked it and no one has raised it in over ten years, it should go in an asterisked form and not be an operational rule, or something like that, so it's not specific to this one.

I don't know if we have others that are like this. But if there really are lots of rules cluttering up our rulemaking process and we never get to them, I'd rather deal with them as a group rather than spend a lot of time on this one.

CHAIRMAN KECKLER: I agree with you, Martha. I wouldn't want to spend a lot of time. Your idea is extremely interesting, but I'm not sure exactly how to do that. It should be in the next Executive Order that goes out government-wide. That should be the place for that.

So anyway, it's on the agenda. The Committee has spoken and have Board thoughts on it.

MR. FLAGG: Again, I think we're going to be providing you with a new rulemaking agenda for next year, and I think we've agreed to do that in July. So
you will see 1603 somewhere on that list.

CHAIRMAN KECKLER: Thank you, Ron.

MR. KORRELL: I do feel it's starting to rain a little bit, though.

(Laughter.)

MR. KORRELL: We will study the idea of repealing to death so that we don't repeal it. I recognize that's a risk.

CHAIRMAN KECKLER: No, Harry. We've set on the path. There's a path. And we don't know how long that slope is, but 1603 --

PROFESSOR VALENcia-WEBER: It's going into hospice.

FATHER PIUS: It's already in the morgue, so do bury it or not?

CHAIRMAN KECKLER: That's right. All right.

Do we have any more items on item 5?

MR. FLAGG: No. That completes our report.

CHAIRMAN KECKLER: Thank you. So let's move on to talk about 1640.

MR. FLAGG: I'll turn the microphone over again to Stefanie. And we're joined also by Laurie
Tarantowicz from IG's office, who helped initiate this rulemaking, and is helping us think about these issues.

MS. DAVIS: Great. Thank you, Ron. So today we actually have the substantive Notice of Proposed Rulemaking and rulemaking options paper for the proposed changes to Part 1640. This was one of the priorities for both Management and the IG on the rulemaking agenda for this year.

A brief history is that during the grant assurances process for fiscal year 2015 grants, LSC and IG discovered that the list of statutes covered in Part 1640 was not exclusive.

Part 1640 sets out the federal law relating to the proper use of federal funds by which all LSC recipients are bound. Congress created a provision in the 1996 appropriation stating that all LSC recipients had to agree to be bound by a contractual agreement, which is what we do through our grant assurances. The grant assurances are the contractual agreement.

But recipients would enter into this contract to agree that they would be bound by certain federal statutes governing the proper use of federal funds,
violation of which would result in summary termination of the grant. So the actual consequence is, violation of any of the laws on this list in this category may result in a recipient's grant being summarily terminated.

We agreed with the IG that Part 1640 should be updated to include appropriate statutes, and we in OLA involved our other graduate fellow, Sarah Anderson, in investigating what those statutes might be.

The legislative history of the provision in the 1996 Appropriations Act that made this requirement applicable to all grantees shows that Congress had a certain type of statutes in mind. Congress was really thinking about federal statutes prohibiting fraud, waste, and abuse in federal programs.

So that's the understanding that LSC carried into the original 1640 rulemaking and in the approach that we took to the rulemaking this time as well. So we identified three other statutes that were not on the list in existing 1640 that we believed were appropriate for inclusion on the list.

So as we were trying to decide what made the
most sense for amending this rule, we looked to the
IG's recommendation to remove the list from the
regulation and put it somewhere on our website.

We thought that idea made a lot of sense
because as Congress changes statutes, as laws change,
if they needed to be put onto the list or removed from
the list, if the list remained in the rule, we would
have to go through notice and comment rulemaking every
time a change needed to be made; whereas if we removed
it to the website, the laws are still applicable and
recipients would still have notice of them, but LSC
would have a lot more freedom and flexibility in making
changes to the list as statutes were added or removed
from it.

So we considered that proposal at the same
time we were considering whether the list should remain
exclusive, as it is in the current regulation, or
whether it should be more inclusive or illustrative.

So the problem with the existing rule was that it says
federal law relating to the proper use of federal fund
means this exhaustive list.

So that was a concern about whether that
language necessarily meant that the list would be
over- or under-exclusive, and we considered whether
making it more illustrative to say, federal laws
relating to the proper use of federal laws includes, or
includes but is not limited to, the list.

What we ultimately concluded was that the
exhaustive list is necessary to give recipients notice,
adequate notice, of the laws that they may lose their
grants summarily in response to a violation of those
particular statutes.

So that is the proposal that you see before
you today, is a rule proposing that we remove the list
of statutes from the rule and move it to our website,
but continue to have it be an exclusive list of
statutes.

We would change the grant assurances to
reflect the move of the list from the regulation to the
website so that it's still in the grant assurances
which laws apply, so it's still in the contractual
agreement.

In the interest of transparency, and again
having Board awareness of what's happening, Board
oversight of what's happening, the proposal is that the Board would have to approve any changes, either additions to or removal from the list before those took effect.

CHAIRMAN KECKLER: Stefanie, this reminds me a little bit of when we were doing our alien rule. We talked about the type of information.

MS. DAVIS: Yes. Yes.

CHAIRMAN KECKLER: The information and documents that were acceptable.

MS. DAVIS: Yes.

CHAIRMAN KECKLER: But we were phrasing it a little bit different because there, we did it as an appendix of acceptable documentation. Is there a reason we're not doing it that way here?

MS. DAVIS: Well, when we revised 1626 the last time, we pulled the list of acceptable documentation out of the appendix to 1626 and turned it into a program letter. And it was in part for this reason. The immigration documents are constantly changing, so we didn't want to have to update the reg every time a new status was added or something changed.
I'm not sure if that's what you were asking or if you were asking about the kind of --

CHAIRMAN KECKLER: Are we doing it pretty much the same way, or is that the general plan? Or is there any sort of nuance difference there?

MR. FLAGG: It's basically the same. It's basically the same approach.

MS. DAVIS: Yes.

MR. FLAGG: The idea is to give notice by having a definite list, give notice exactly where the information appears, and give people an opportunity to see it. So I think it's basically the same approach.

MS. DAVIS: I think that's right.

MR. FLAGG: So I think at this point we'd ask if there are any other questions about this.

CHAIRMAN KECKLER: All right. Does the IG have a comment?

MS. TARANTOWICZ: No. Just that we're generally supportive of Management's recommendation in this regard, and appreciate the cooperation that Management showed in involving our office in this undertaking.
CHAIRMAN KECKLER: Well, thank you for your help in this.

Father Pius?

FATHER PIUS: Just to clarify, you agree -- because there were four options provided under this, and IG and Management are in agreement which one that should be done at this stage?

MS. TARANTOWICZ: Yes. That's correct.

FATHER PIUS: The OIG and Management have -- okay. That's what I just wanted to see.

Thanks.

CHAIRMAN KECKLER: Harry?

MR. KORRELL: Ready for a motion?

CHAIRMAN KECKLER: I am ready for a motion if there's no further comments or questions. The motion would be to approve this NPRM for presentation to the Board.

MOTION

MR. KORRELL: You anticipated me. That was my motion.

CHAIRMAN KECKLER: Okay. All in favor?

(A chorus of ayes.)
CHAIRMAN KECKLER:  Opposed?

(No response.)

CHAIRMAN KECKLER:  Hearing no opposition, we will present this to the Board for their approval of publication and solicitation of comment on Management's proposed rule.

With that, we can now turn to our next item -- oh, before we do that, let's listen to any public comment on 1640 that we can carry there to our presentation of the Board.  Yes?  Please state your name.

MS. MURPHY:  Robin Murphy, representing NLADA as chief counsel.  I think I missed a couple public comments on the other regulations, but that's fine.  I'm going to be short and sweet because in this instance, NLADA, as a preliminary matter, given that these are proposals, really supports all three proposals from the Office of Legal Affairs for the most part.

The one exception would be there are some comments in terms of 1628, that there shouldn't necessarily even be limits on carryovers of LSC funds.
And so that would probably be the preferable position. But absent taking that position, we are fully supportive of the position presented to the Committee by the Office of Legal Affairs on that regulation.

1640 as well; we understand there will be a public notice and comment period. We will make comments. But we agree with the LSC staff that an illustrative list does not provide the notice that grantees need. The stakes in this area are very high for the most part, probably 100 percent with some exceptions.

The staff on these programs are committed providers of legal services to poor people. They are not intentionally violating federal laws. So it's very important that they have the appropriate notice.

I think the function of identifying what federal statutes apply in this situation is best given to the LSC staff and to the LSC Board and the OIG, and giving notice to the programs so they are aware of what they need to do, as opposed to having a list where they're just illustrations. So once again, we really support the comments of the Office of Legal Affairs
FATHER PIUS: And just speaking as a Board member on that, I'm especially interested in the field's view on which of those four options the Board should take on 1640. So the more you can encourage members in the field to express their opinion on that, that's something I would certainly like to hear from the field on.

MS. MURPHY: We will definitely be submitting written comments. And I know the field will be on line with the Office of Legal Affairs in terms of exhaustive versus illustrative list because the stakes are so high. It's really important that they have notice of what is happening there.

As to the other regulation, we take the position let sleeping dogs lie is the best thing there. That would be our advice on that. I know it would be fun the repeal, but given the current environment, it may be just better to let sleeping dogs lie.

I did want to -- and I hope the Committee will entertain some comments on -- the consideration of rating programs. That does raise concerns for me,
given the contact that I have with the field. One of
the things I would ask the Committee to consider is
what would be the purpose of the rating? How would
they be used? How would they add to the work of the
Committee? To the work of LSC? Would they really be
helpful?

I would also ask the Committee to consider the
ramifications of putting in a rating system. In
addition to the problems that President Sandman raised
and Dean Minow raised with even instituting a rating
system, given the current complexion of the legal
services programs around the country, really consider
the effect on morale.

There can be, even in a program that's
struggling or having difficult problems, very
effective, devoted attorneys. And having a rating, a
negative rating, would really have a very severe impact
on morale.

These are also attorneys that are working well
below market rate, often very long hours, to support
their clients. And so I ask you to consider that and
the morale impact this would have.
Also, what would be the impact on other funders? If they're going to look at a rating system, would this be used as a supportive means or would this be used as a way to basically end a program as opposed to do what OCE, OIG, OPP do now to some extent, other than questioned costs and some other sanctions, but really to support the program and shore up those things that are negative as opposed to just yanking the funds. And I'd be very concerned about those ramifications.

If you are going to consider the rating system, I think comments along Dean Minow's line would be the better way to go, illustrating best practices or model programs in a particular area because there's such a divergence, a lot due to budgetary reasons, a lot of unexpected things that happen in different states. It really raises a lot of problems.

So those are all my comments. I'm short and sweet. And thank you for your consideration.

CHAIRMAN KECKLER: Thank you very much, and we're sensitive to those issues.

Well, let's go ahead and turn to our last substantive item, the updating of population data on
migratory farmworkers. You will find a useful, brief reference here next to you. And what we'll do this evening is we'll work through it page by page.

(Laughter.)

CHAIRMAN KECKLER: No. Please. I'll turn it back over to Mr. Flagg as well as Bristow Hardin to summarize this matter.

FATHER PIUS: Before you get into this too far, if you could remind me just the statutes or the authoritative source for the separate migratory fund.

It's not statutory, I think, is it? Or is it?

MR. FLAGG: No.

FATHER PIUS: Just remind me of where that authority source comes from. I couldn't find it.

MR. FLAGG: Yes. Actually, it's covered in our memo.

FATHER PIUS: Which one?

MR. FLAGG: It's at page 217. It's dealt with both in a general way and in a specific way. The general way is, and Charles alluded to this earlier before, that the LSC Act requires us to structure grants for the most economic and effective delivery of
legal assistance.

The specific way in which this is addressed is, in an amendment to the LSC Act in 1977, Congress directed us to conduct a study of the special legal needs of various subpopulations, including migrant or seasonal farmworkers.

That study quite emphatically found that specialized legal expertise and knowledge were needed to address the distinctive, unmet, specialized legal problems that migrant and seasonal farmworkers because of the type and conditions of work in which they are engaged, and their cultural and ethnic background.

For a number of years, Congress actually did break out separate subpopulation line items for our budget. They have not done that in a number of years, but clearly are well aware of the fact that we have --

FATHER PIUS: Just to get to the heart of the matter, I just want to be clear: I'm not advocating this. But were LSC to simply fold the migrant grant back into the field grant, do you think we would be in violation of the statutory obligations?

MR. FLAGG: Yes. Because, based on the
evidence we have assembled here --

FATHER PIUS: You think it's still required under the '77 --

MR. FLAGG: Well, I think the evidence is -- there's a judgment here. We're not legally obligated to have a separate migrant grant. But we are legally obligated to provide service in the most efficient and effective way possible, and I think the record here and the record before the LSC in 1977 was that the most efficient and effective way to provide service to farmworkers, who are in many isolated geographically, culturally, and otherwise, is through these separate programs.

We looked at that issue in the course of this study, and maybe most tellingly, when we asked the question of the basic field programs -- not the migrant programs, who of course were in favor of and spoke about why this was the most efficient and effective way to serve this population -- but when we asked the same question of the basic field programs, they likewise said that the most efficient and effective way to serve this population is through these separate grants.
FATHER PIUS: It's not that I want to create more work. But the fact that this assessment was done nearly 40 years ago is something we should keep in mind.

MR. LEVI: What you've done is update the work now. Aren't we having a presentation here of that?

MR. FLAGG: Yes.

MR. LEVI: Of the new --

MR. FLAGG: Yes. So again, there have been specialized grants to serve migrant and agricultural workers going back to the '70s and maybe even before. The amount of the migrant grant in each geographic area, generally states, is based on the migrant population of that area, which is then deducted from the total poverty population for that area.

The basis on which LSC has allocated these migrant grants over the last 25 years currently raises two separate issues. One is the data on which that allocation are based are old. They're 25 years old. So we're handing out current dollars based on 25-year-old data.

Second, and Congress was aware of this at the
time, but the count that was done 25 years ago was of migrant workers. And the problem with that is that the people who have actually been served by the programs receiving these monies going back 40 years are not just migrant workers but other farmworkers eligible for LSC services who share the specialized legal needs of migrants.

So it doesn't make sense to allocate to programs based on a definition of the population that is not the population being served. So those were the two problems that we were addressing in this study.

So the study methodology was essentially twofold. First, LSC Management, and largely Bristow and others within LSC, analyzed the issue of what population -- if any, to your point -- of agricultural workers and their dependents face barriers to access to civil justice and share legal needs that could be most efficiently and effectively addressed by legal assistance and delivery approaches. And that is an issue that is discussed at length in the materials that we provided to you.

In answering that question, we identified a
specific set of agricultural and dependents who do
share legal needs and who do share barriers to access
and who, as a result, can be most effectively and
efficiently served by a specialized program.

Having defined that group, we then went to the
Department of Labor and said, we don't know how many
people there are in these groups. Please tell us. And
the Department of Labor performed an analysis to
estimate the populations that fell in those groups.

There's no U.S. census data that allows you to
push a button and get the number; it requires a study.
Now, there are government data that address those
populations, and the Department of Labor accessed those
data and really put together an expert panel that
provided the data, which we propose to use to allocate
these grants.

So Management's proposal to this Committee is
really threefold at this point. One is to approve a
request for public comments on what we've proposed
here.

Second is to feather in the changes that would
occur as a result of these new population estimates
over two years, just as we did with the census data, so that in 2016, 50 percent of the change would go into effect and in 2017, the full effect of the new population would go into effect.

Then the third aspect of Management's proposal is that these data regarding the agricultural population be updated every three years coincident with the updating of the general poverty population census.

CHAIRMAN KECKLER: Let me pause you right there, Ron. But today, for the Committee, the census -- since this isn't a regulation; it's going to be a Federal Register request for comments, and presumably you're also going to send it out to the grantees separately and notice them -- IGs my first question is, what about the report? Is the report going to be made public, or how is that going to be?

MR. FLAGG: The report is already public. The report is on our website in several different places.

CHAIRMAN KECKLER: All right. Very good.

MR. FLAGG: I think all stakeholders have already had access to the report. So in your materials at page 224 is the actual notice that would appear in
the Federal Register. And that notice includes links to the report and to the data.

CHAIRMAN KECKLER: Yes. But the request for the Committee today is that we would just act to vote to take this to approve it for comment, or to take it to recommend to the Board to approve for comment?

What's your --

MR. FLAGG: This would be akin to a rule, even though it's not a rule per se. But we would ask the Committee to recommend to the Board that this notice be approved for comment. Presumably, given the importance of the issue, we will get public comments.

We would expect at some future date, possibly as early as April, armed with those public comments we'll make a recommendation to the Committee as to how to proceed. And obviously at that point the Committee and the Board would determine how to proceed.

CHAIRMAN KECKLER: Laurie, then Father Pius.

MS. MIKVA: I have three questions. One is, why 100 percent of poverty as opposed to 125? My other question is, why are the numbers so different? And my third question is, do the grantees know how this is
going to affect their money? Isn't that something they
want to know, as opposed to what the raw numbers are?

MR. FLAGG: Well, let me answer those in
reverse order. They essentially know, as a result of
the numbers that are here, as much as they can possibly
know. We don't know what the dollars are until we know
what Congress appropriates to us for 2016.

But we can tell them today, your
percentage — I'm looking at a chart; Montana is at the
top of this page — Montana knows that, for migrant
purposes, its share of the total migrant grant
allocation is .48 percent, so less than 1 percent.

It knows that if the new population estimate
is adopted, it will go up to .89 percent. And so every
program knows exactly how their share increases or
decreases.

MR. HARDIN: And it will roughly correspond.

MR. FLAGG: Right. And lengthier be no
mistake: Some of the changes are very significant. A
number of large states with large migrant programs are,
under this estimate, having smaller shares, and a
number of states that, under the prior count, had very
small or even shares of zero, now have larger shares.

Your second question, I think, was, why was that? And the reason that is so is because the approach we're taking now is quite different from the approach that was taken in 1990, and you'll not be shocked to hear that I think the way we're doing it now is right and the way we've been doing it before is less than optimal, in two regards, at least.

One is one I've already mentioned, which is in 1990, we were just counting migrant workers. It makes no sense to just count migrant workers if the services being provided are being provided to a larger population. You ought to identify who it is you think you're serving and try to count those people. And that's what we're doing today. We didn't do that in 1990.

Second, we took into account eligibility, which was not done in 1990. So we have, really, two approaches that have differing effects directionally. We're counting a broader group of people so that should have, everything else being equal, increased the population.
But we're taking into account the percentage of that broader group who are, based on credible evidence, eligible for our services. And that was not done in 1990, and that obviously has an effect of decreasing the population.

So it's not surprising that we got quite a different answer. And of course, you have a 25-year passage of time, so even if you did things exactly the way they were done in 1990, I would have expected to get a different answer. So I think that's the answer to your second question.

The answer to your first question is, we used 100 percent because that is the percentage used with regard to the general census and poverty population allocation.

PRESIDENT SANDMAN: Sorry. If I could just follow up one point that Laurie raised.

I think we did learn, when we made the census adjustment, that it was important and useful to the grantees to express the changes in dollar amounts and to show them how the new percentages we propose to use would affect what their current grant was.
So we can take the 2015 grants and apply these numbers and say, all other things being equal, this is how these changes would affect the dollar amount of your migrant grant. And I think we should consider doing that.

MR. FLAGG: Sure.

FATHER PIUS: My point was simply to encourage you to do just that.

CHAIRMAN KECKLER: Martha?

DEAN MINOW: Laurie's first question -- isn't the general population 125 percent for eligibility?

MR. FLAGG: The census data that we use to allocate the grants across the states -- so we get $350 million, say, for field grants, and that's allocated on a per capita basis based on a population count. And the count is done at 100 percent of the federal poverty line.

DEAN MINOW: It's not about their individual eligibility; it's about the state allocation?

MR. FLAGG: Right. Correct.

DEAN MINOW: But their individual eligibility would still be 125 percent?
MR. FLAGG: Or -- yes. Correct.

DEAN MINOW: Or whatever. Right?

MR. FLAGG: Correct. Yes.

CHAIRMAN KECKLER: If there's nothing further, we're just hoping for comment from the field on this. Is there a motion to take this to the Board for approval for publication?

MOTION

MR. GREY: So moved.

MR. KORRELL: Second.

CHAIRMAN KECKLER: All in favor?

(A chorus of ayes.)

CHAIRMAN KECKLER: Opposed?

(No response.)

CHAIRMAN KECKLER: Without opposition, that recommendation will be presented to the Board at the next board meeting.

Is there any other public comment?

MR. SAUNDERS: Thank you, Mr. Chairman. Don Saunders with the National Legal Aid and Defender Association. It's not the first time I've stood between the Committee and dinner, so I will be very
brief.

(Laughter.)

MR. SAUNDERS: First of all, on behalf of NLADA and the field of your grantees, I want to congratulate you on your confirmations and your ability to move forward in the very positive manner that the Chairman and you have been taking this Corporation. So congratulations.

I just wanted to make one followup comment on this issue because it's a critically important issue to the field and has been for a number of years. This affects some of the most vulnerable clients in the United States and a cohort of some of the most dedicated advocates that you have funded over the years.

We have really appreciated the opportunity to work with Ron and Mark and certainly Bristow throughout this process. We commissioned a study to look at the overall national count of agricultural workers in the United States.

We also worked with our farmworker section to provide a white paper that brought -- this is not meant
to be a pun, but brought the position of the field to
the process. And we are delighted, frankly, with the
Management memo to you with respect to the updating of
how this program works, why it remains important, and
then why it should remain a priority to the Board.

I just want to make one comment. We very much
welcome the opportunity to engage in public comment.
We saw all of those documents last night, and had been
pretty involved with the discussion of the national
number. I have actually read them all, but I wouldn't
begin to tell you I understand everything.

But we do have some concerns about the issue
that Laurie raised about the fluctuations in the
state-by-state redistribution. We think the national
figure is a reasonable, reflective figure of the
reality of who is eligible for LSC services across the
country, and we've been aware of that methodology for
some time.

We only saw the methodology last night. No
problem from LSC; it's just the DOL data getting here.
And indeed, those fluctuations are significant. They
will have an impact on both your basic field programs
and your existing farmworker programs.

One of the things we were able to do when we looked at the national numbers is to suggest some of the realities in the field, such as issues like family violence is a real problem here. You have pockets of retired farmworkers across the country -- things that might escape the radar at DOL. Some were accepted; some were not. But I think the process was better for the conversation.

I just wanted to highlight at the beginning that we don't know enough yet to even comment on whether this redistribution is exactly right. We will be discussing this with people in the field, both basic field programs who this will affect directly as well as your farmworker programs. And hopefully we'll be able to provide some input during your 45-day period, both to LSC and hopefully, through you, to the Department of Labor.

But I just wanted to take the opportunity to stress how important it is. I think we were surprised, frankly. I don't think we were surprised; we were surprised at the degree of the change from states like
California, Texas, the state we're in here, where you think of the traditional crop pickers and the agricultural systems being very large parts of the economy.

So we're still trying to get our hands around these numbers. And we will be working very hard in the next month and a half to do that.

CHAIRMAN KECKLER: Thank you, Don. And our thanks to NLADA for their interest and information and studies of this subject. And we'll look forward to your comments.

MS. MIKVA: Could I ask one question?

CHAIRMAN KECKLER: Yes. Laurie?

MS. MIKVA: Mr. Saunders, do you think you would benefit from additional time, or you think the time frame we're talking about is reasonable?

MR. SAUNDERS: I think it's just right.

CHAIRMAN KECKLER: Gloria?

PROFESSOR VALENCIA-WEBER: Yes. I want to add two comments of appreciation, first to Bristow and Ron and the people at LSC to undertake what is a very hard area to study. I come to this not just from my own
academic experience, but I come from a family with two people who were farmworkers organizers, traveled with Cesar Chavez, and also established programs to try to track migrant children educationally as they go across the United States.

I hope that in the comment period we can get to the data that is not captured, that is, the people who reside in colonias and the border and other places that continually escape whatever documentation, whether it's census or state, municipal. Because there are these other kinds of elements involved in this kind of work.

So I thank you for your efforts.

CHAIRMAN KECKLER: Thank you. Thank you, Gloria.

Is there any other business to bring before the Committee?

(No response.)

CHAIRMAN KECKLER: If there is not, I will now entertain a motion for the adjournment of the meeting.

MOTION

MS. MIKVA: So moved.
MR. KORRELL: Second.

CHAIRMAN KECKLER: All in favor?

(A chorus of ayes.)

CHAIRMAN KECKLER: The Committee stands adjourned.

(Whereupon, at 7:02 p.m., the Committee was adjourned.)