

LEGAL SERVICES CORPORATION\*\*  
BOARD OF DIRECTORS

MEETING OF THE  
OPERATIONS AND REGULATIONS COMMITTEE  
OPEN SESSION

Sunday, October 20, 2013

1:30 p.m.

Renaissance Pittsburgh Hotel  
107 Sixth Street  
Pittsburgh, Pennsylvania 15222

COMMITTEE MEMBERS PRESENT:

Charles N.W. Keckler, Chairman  
Harry J.F. Korrell, III  
Laurie I. Mikva  
Robert J. Grey, Jr. (by telephone)  
John G. Levi, ex officio

OTHER BOARD MEMBERS PRESENT:

Sharon L. Browne  
Victor B. Maddox  
Julie A. Reiskin  
Father Pius Pietrzyk, O.P.  
Gloria Valencia-Weber  
Martha L. Minow, Dean, Vice Chair

ALSO PRESENT:

James J. Sandman, President

## STAFF AND PUBLIC PRESENT:

James J. Sandman, President

Lynn Jennings, Vice President for Grants Management

Wendy Rhein, Chief Development Officer

Richard L. Sloane, Chief of Staff & Special Assistant  
to the President

Rebecca Fertig, Special Assistant to the President

Janet LaBella, Director, Office of Program  
Performance

Carol A. Bergman, Director, Office of Government  
Relations and Public Affairs

Carl Rauscher, Director of Media Relations, Office of  
Government Relations and Public Affairs

David L. Richardson, Comptroller and Treasurer,  
Office of Financial and Administrative Services

Ronald S. Flagg, Vice President for Legal Affairs,  
General Counsel, and Corporate Secretary

Stefanie Davis, Assistant General Counsel

Jeffrey E. Schanz, Inspector General

Thomas Coogan, Assistant Inspector General for  
Investigations, Office of the Inspector General

Lora M. Rath, Deputy Director, Office of Compliance  
and Enforcement

Bernie Brady, LSC Travel Coordinator

Allan J. Tanenbaum, Non-Director Member, Finance  
Committee (General Counsel, Equicorp Partners)

Terry Brooks, ABA

Chuck Greenfield, National Legal Aid and Defender  
Association (NLADA)

Don Saunders, National Legal Aid and Defenders  
Association (NLADA)

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

2 (1:30 p.m.)

3 CHAIRMAN KECKLER: Good afternoon, everyone.  
4 Welcome to LSC's quarterly meeting here. Beautiful day  
5 here in Pittsburgh.

6 Noting the presence of a quorum, I will now  
7 call to order the duly-noticed meeting of the  
8 Operations and Regulations Committee.

## 9 M O T I O N

10 CHAIRMAN KECKLER: As our first item of  
11 business, I would seek a motion for the approval of the  
12 agenda.

13 MS. MIKVA: So moved.

14 MR. KORRELL: Second.

15 CHAIRMAN KECKLER: All in favor?

16 (Chorus of ayes.)

17 CHAIRMAN KECKLER: The agenda is approved.

## 18 M O T I O N

19 CHAIRMAN KECKLER: I would also seek a motion  
20 to approve the minutes of our meeting on July 22nd,  
21 which are found in your Board book, page 8.

22 MS. MIKVA: So moved.

1 MR. KORRELL: Second.

2 CHAIRMAN KECKLER: All in favor?

3 (Chorus of ayes.)

4 CHAIRMAN KECKLER: The minutes, having been  
5 approved, we can now move to the substantive items of  
6 the Committee's business.

7 Before doing so, I would like to introduce to  
8 the Committee and the Board Stefanie Davis, who is a  
9 new Assistant General Counsel in the Office of Legal  
10 Counsel, and will be primarily, among other things,  
11 staffing this Committee and helping us with our  
12 regulatory matters. I have known Stefanie for some  
13 time, and have had the pleasure of working with her at  
14 the Department of Health and Human Services, and can  
15 certainly recommend her as a fine attorney.

16 So, with that, I will turn the meeting over to  
17 Stefanie to give us an update on some of our prior  
18 business, which is -- and current business, in the case  
19 of the private attorney involvement rule, and recent  
20 business, which are our recently-approved rule on  
21 restrictions on legal assistance to aliens.

22 Stefanie?

1           MS. DAVIS: Thank you, Charles, for those kind  
2 words. I am thrilled to be here today, and I have  
3 really enjoyed the two months that I have been here at  
4 the Legal Services Corporation. I have been thrown  
5 into rulemaking work immediately, so I have a couple of  
6 updates for you.

7           The first one is on the Part 1626 Notice of  
8 Proposed Rulemaking. This is the rulemaking on  
9 restrictions on legal assistance to aliens. This  
10 comment period closes tomorrow. We have only received  
11 two comments on the rule, to date. Neither of them is  
12 particularly substantive. So we expect that a final  
13 rule would be able to be drafted and be forthcoming for  
14 the January meeting, barring any unexpected comments  
15 that we receive in the next day or so.

16           The next update is on the private attorney  
17 involvement rulemaking, Part 1614. As you know, there  
18 were two workshops held in July and September of this  
19 year, as well as a request for information that had a  
20 comment period that closed on Friday.

21           So, the two workshops were very successful.  
22 We received an additional 10 comments on the PAI

1 rulemaking. So we have started collecting all of those  
2 comments, and will review and take a look at them.

3 As you know, the issues that have been placed  
4 forth for consideration by our panelists were very  
5 thoughtful and very important, need a lot of attention.

6 So we expect that a proposal on this proposed  
7 rulemaking will be forthcoming in April to give us  
8 adequate time to deal with the 1626 rule, and also to  
9 review the comments and come up with a rule that seems  
10 to address all the comments that were received.

11 CHAIRMAN KECKLER: Stefanie, could you just  
12 give us an update in January on how the private  
13 attorney involvement rule is coming along, as you do  
14 that?

15 MS. DAVIS: Certainly.

16 CHAIRMAN KECKLER: Thank you. Yes, I wanted  
17 to, here at the meeting, thank the Board members, as  
18 well as the staff, who participated in the rulemaking  
19 workshop, which I agree was very successful and got  
20 lots of substantive comments. And it was -- I think it  
21 is very useful, and I think that we will look forward  
22 to a strong reforming rule for 1614 to put out to

1 comment as we move along.

2 Are there any questions for Stefanie on these  
3 rulemakings?

4 Yes.

5 MS. MIKVA: Thank you. Stefanie, so then in  
6 April you come back to us and we maybe, at best, we  
7 okay something -- I am wanting long-term. When can we  
8 maybe hope, if everything goes well, to have a new PAI  
9 rule, assuming we determine we want one?

10 MS. DAVIS: I think that is a really excellent  
11 question, Laurie. If we provide you with a rulemaking  
12 options paper in -- I suppose a lot depends on what the  
13 rulemaking options paper looks like, and whether we  
14 have a draft rule for you in April.

15 Assuming that we do, and it is approved for  
16 publication, given the interest in this rule and the  
17 complexity of this rule, it is one that probably  
18 deserves a 60-day comment period, which would take us  
19 into June before comments are received. And a lot will  
20 depend on whether the field is thrilled with the rule  
21 that we have put forth, and whether we need to make any  
22 substantive changes, having received comments or not.



1           If we don't, and we have got a rule that  
2 everyone is happy with, then I think we could have a  
3 rule as early as August. That, I think, is probably a  
4 best case scenario. And I would certainly defer to Ron  
5 and other people who have more experience with our  
6 rulemaking processes than I do. But it does not seem  
7 unreasonable to me to say that we would have one next  
8 year.

9           MR. FLAGG: Yes, I think that is right, with  
10 the caveat that, of the three rulemakings that are  
11 currently pending -- the 1626 rulemaking that Stefanie  
12 just reported on, the 1613 rulemaking that she is going  
13 to talk about in a moment -- this PAI rulemaking is, I  
14 think, quite a bit more challenging and complicated.  
15 But with that caveat, I think we ought to try to get a  
16 rule noticed, commented on, and finalized next year.

17           And the fastest we could do it, I think, on  
18 the schedule that Stefanie just outlined would be to  
19 have a final rule for you in July. But that assumes,  
20 as Stefanie said, that any comments on a proposed rule  
21 coming out in spring we can deal with in a relatively  
22 short amount of time.

1                   CHAIRMAN KECKLER: Julie?

2                   MS. REISKIN: Quite a while ago we got a  
3 notice that said that there is several different ways  
4 to do the rulemaking, and there was -- a workshop was  
5 an option. Or you could do the notice and comment, or  
6 you could do both. And I think there was one other  
7 thing. And I was wondering if you have decided that  
8 doing it this way is the right way, or have you not  
9 gotten there yet?

10                   Because it just seems, with the complexity  
11 and -- it seemed like what you already did might have  
12 been a workshop. I don't know if that was --

13                   CHAIRMAN KECKLER: Well, what we did was -- we  
14 don't have a rule written yet. I mean we are sort of  
15 laying the groundwork for a rule by having some  
16 rulemaking workshops -- that is the idea behind  
17 it -- before we develop the rule, in part because the  
18 question was what is the scope of the rule going to be;  
19 what topics are we going to address; what things are we  
20 going to try to take on right now, in terms of  
21 following up on the pro bono task force.

22                   And so, that was something that I think the

1 rulemaking workshops were helpful about, about defining  
2 the scope of our activities and what we are going to  
3 take on.

4           So then, we -- the answer is it hasn't really  
5 been decided. We are going to have to decide that in  
6 January or April, in terms of the rulemaking options  
7 paper, in terms of our procedure. And the standard way  
8 to do it would be, at this point, to proceed in notice  
9 and comment. There are some other options which we can  
10 discuss at that time if it looks like it makes sense.

11           But notice and comment would follow the  
12 schedule that Stefanie talked about in terms of putting  
13 it out when we get the rule, putting it out at 60 days  
14 and then revising in light of the comments.

15           So, we can kind of -- if it does take that  
16 route, we have a plan, we have a schedule that we can  
17 foresee.

18           MS. DAVIS: No, I think that is right. The  
19 other option that I think you were referring to was a  
20 negotiated rulemaking, where we actually sit down at  
21 the table with our partners and with the interested  
22 community, with the interested stakeholders, and try to

1 come up with a rule. Those can be somewhat expensive  
2 and time-consuming, so I don't know if that is  
3 something that we will want to explore, but that is  
4 certainly one of the things that we will consider as we  
5 are coming up with the rulemaking options paper.

6 CHAIRMAN KECKLER: Any other questions on  
7 these rulemakings?

8 Yes, John?

9 MR. LEVI: Well, again, on the PAI, of course  
10 we had the workshops. But we had the whole pro bono  
11 task force. And so there has been tremendous community  
12 interest. And that precedes even all of that. And  
13 that was a year-long, with a committee looking at it,  
14 too.

15 So, this has not been a quiet topic, let's put  
16 it that way.

17 CHAIRMAN KECKLER: Okay. Well, in that case,  
18 let's go on to the topic number four, which is, as  
19 mentioned, our revisions to Part 1613. And I wanted to  
20 mention again my thanks to -- and put on the  
21 record -- my thanks to all the commenters, as well as  
22 to those people that appeared live before us in Denver.

1     That was a particularly, I think, substantive and  
2 helpful thing. Thanks again to Professor Gloria  
3 Valencia-Weber, who -- to help arrange that and  
4 moderate that.

5             But with that, and with the knowledge that we  
6 have gained from that session and from the subsequent  
7 comments, we are now at a new place where we  
8 can -- where we do have a rulemaking options paper and  
9 we do have a draft rule to consider today. And I will  
10 then turn it back over to Stefanie to discuss that.

11             MS. DAVIS: Great, thank you.

12             MS. DAVIS: So, I won't spend a lot of time on  
13 the background of this rule. This is the Part 1613  
14 rule, as Charles said, regarding restrictions on legal  
15 assistance with regard to criminal proceedings. And  
16 specifically with regard to representation or  
17 assistance to individuals in criminal proceedings in  
18 front of tribal courts.

19             So, the rule has been drafted in response to  
20 two particular amendments to the relevant law. One was  
21 from the Tribal Law and Order Act of 2010, which  
22 expanded the ability of tribal courts to sentence

1 individuals charged with crimes from a maximum of one  
2 year to up to nine years for multiple crimes. As part  
3 of that expanded sentencing authority, though, tribal  
4 courts are now required under statute to provide  
5 effective assistance of counsel, specifically attorneys  
6 as legal counsel, to defendants who are charged with  
7 crimes that carry a sentence of more than one year.

8           In 2013 earlier this year, the new Violence  
9 Against Women Act amendments passed. And the VAWA  
10 amendments gave tribes now special jurisdiction over  
11 domestic violence cases that occur in Indian Country.  
12 VAWA now requires that if defendants are charged with  
13 crimes under this special domestic violence  
14 jurisdiction, they are entitled to counsel, regardless  
15 of whether they are Indian or non-Indian. If the  
16 defendant is non-Indian, they have to have a certain  
17 relationship to the Indian victim before they can be  
18 given -- or before it is required that the tribe  
19 provides with defense counsel in a domestic violence  
20 case.

21           So, in response to these two statutory changes  
22 in January of this year, the Board authorized a

1 rulemaking to bring Part 1613 into line with the Tribal  
2 Law and Order Act. There was a Request for Information  
3 published on May 10th of this year. We received  
4 comments in August. Our comment period closed on  
5 August 23rd. And the aforementioned panel was held at  
6 the July Board of Directors meeting in Denver.

7           From the comments we received in response to  
8 the Request for Information, we received comments from  
9 four tribes, and we received comments from the Native  
10 American Indian Legal Services umbrella organization.  
11 We also had received comments at the panel from a  
12 number of experts in tribal law.

13           And the comments kind of came down on two  
14 sides: recipients and providers wanted to have the  
15 flexibility to undertake criminal representation if it  
16 was necessary under the Tribal Law and Order Act  
17 authority, but they expressed a great deal of concern  
18 that if courts were now going to use this ability that  
19 they have to spend LSC funds to provide representation  
20 in criminal courts, the tribes would simply appoint  
21 them as the defense counsel. And they were concerned  
22 that they would have to start taking on cases that they

1 didn't have the expertise or the resources to handle.

2           They were also very concerned about the fact  
3 that they often represent victims in domestic violence  
4 cases, and they were concerned that if courts were  
5 appointing them to represent defendants in domestic  
6 violence cases, they would be conflicted out of  
7 representing victims in those cases.

8           There was another concern that was raised that  
9 they would be in a position where they would have to  
10 use their Native American funding to represent  
11 non-Indian defendants, and they were concerned about  
12 the consequences of having to represent non-Indian  
13 defendants in tribal courts when they would then have  
14 to make sure that they are representing Indian  
15 defendants. They did not want an appearance that they  
16 were preferring one over the other, or having to  
17 represent one over the other.

18           The tribes who responded indicated that  
19 resources were a huge problem for them, and that they  
20 very much welcomed the Tribal Law and Order Act's  
21 authority to -- expansion of authority to use LSC funds  
22 to represent defendants in any criminal proceeding.



1 So, I think, from those comments, it seems that the  
2 tribes are very interested in having grantees, as much  
3 as possible, serve in this defense counsel role.

4 So, against those comments, and the backdrop  
5 of a program letter that was issued earlier this year  
6 in which the corporation indicated that amendments to  
7 Part 1613 were forthcoming, and in the interim  
8 recipients could undertake representation under the  
9 Tribal Law and Order Act authority, we drafted the  
10 rulemaking options paper and the draft rule that you  
11 have before you in your packet. The options, the there  
12 options that we came up with were -- they spanned quite  
13 a range.

14 The first option that you see is to retain the  
15 status quo, so not to make any changes to the rule,  
16 which, of course, is very easy to do. It would retain  
17 the prohibition that currently exists on representation  
18 on criminal proceedings that are greater than  
19 misdemeanors in tribal courts. The current rule only  
20 accepts, from the definition of criminal proceeding,  
21 misdemeanors or lesser crimes in front of tribal  
22 courts. So that is what we would have continued to

1 have, if the rule doesn't change.

2 Yes?

3 MS. REISKIN: The letter that was sent out,  
4 that allowed them to do greater crimes, right? So we  
5 would be undoing that if we did A, if we did the first  
6 option?

7 MS. DAVIS: Yes.

8 MS. REISKIN: Okay.

9 MS. DAVIS: If we did the first option, the  
10 recommendation would be to issue a program letter that  
11 would essentially rescind that letter.

12 MS. REISKIN: Okay.

13 MS. DAVIS: And say, "We are leaving the  
14 current prohibition in place. We are leaving the rule  
15 in place. You can only do representation up to  
16 misdemeanors."

17 We have --

18 MS. REISKIN: But wouldn't that be  
19 inconsistent with the new law?

20 MS. DAVIS: It would be. It would be  
21 inconsistent with the new law, but we believe it is  
22 within the authority of the Corporation to decide that

1 it does not want to extend that jurisdiction to  
2 its -- to the grantees.

3 MR. FLAGG: The law is permissive. It is  
4 not -- the law doesn't say the Corporation must grant  
5 this authority to recipients. It says, "You may."

6 MS. DAVIS: Sure, thank you. So it, as you  
7 point out, would have this visible kind of disjoin  
8 between the rule and the law. And it did not really  
9 respond to the comments that grantees made supporting  
10 flexibility. They were saying, "Don't make us do this,  
11 but we would like to have the flexibility to do it if  
12 there are grantees in communities that feel like they  
13 need it."

14 So, the second option that we put forth was to  
15 revise the definition of criminal proceeding, and to  
16 amend the definition, or to amend the prohibition that  
17 currently exists in the law, because the current  
18 prohibition says grantees cannot represent individuals  
19 with respect to criminal proceedings.

20 So, we believe that that change would be the  
21 minimum that was necessary to reflect the statutory  
22 change. But again, this one didn't fully seem to

1 address the concerns that commenters had put forth. It  
2 made clear that the expanded criminal representation  
3 was a criminal proceeding within the meaning of the  
4 rule. But it didn't amend Part 1613 in a way that  
5 would allow grantees to look at the appointment  
6 authorities that allow them to accept representation  
7 only if it is consistent with their primary  
8 responsibility to provide civil legal services.

9           So, that brings us to the option that we put  
10 forth, and that we recommended and having drafted the  
11 NPRM for. This option, we felt, captured the statutory  
12 change and reasonably addressed the concerns that  
13 commenters had put forth. It also gave us the ability  
14 to tighten up some aspects of the rule in ways that we  
15 thought would be beneficial to recipients.

16           So, as a substantive matter, this draft rule  
17 removes the exception for tribal misdemeanors from the  
18 definition of "criminal proceeding". So criminal  
19 proceeding now covers any kind of criminal proceeding.

20           It also introduced the new Section 1613.5,  
21 which captures all of the tribal provisions in one  
22 place. It is just a thought for ease of reference, it

1 would be good for recipients who are working in tribal  
2 courts to have their specific provisions in one place.

3           The little bit of clean-up that we did was  
4 first in 1613.1. We expanded the language to say that  
5 previous or existing 1613.1 says that Corporation funds  
6 will not be used to provide legal assistance, unless it  
7 is required by duties of professional responsibility.

8           So, we expanded that to say, "Unless  
9 authorized by this part," so that if there is  
10 something -- because there are these new statutory  
11 abilities that recipients have to use our funds to  
12 represent defendants in criminal proceedings. So we  
13 thought that, by expanding it to this part, it would be  
14 a little bit clearer that professional responsibility  
15 or statutory changes or regulatory changes would be  
16 captured.

17           We also -- we revised the definition. We also  
18 revised the prohibition in a couple of ways. The  
19 prohibition has been revised to allow representation  
20 where it is authorized by statute or regulation. And  
21 this is a little bit different from what it currently  
22 states. The current regulation states that it is where

1 representation is authorized by this part, recipients  
2 may use our funds to provide the representation. By  
3 revising it to -- this section to allow representation  
4 where authorized by statute or regulation, it means  
5 that we don't have to go back and revise the regulation  
6 every time the statute changes. The statute would  
7 capture or the regulation would capture statutory  
8 changes.

9           The next bit of housekeeping we did was in  
10 Sections 1613.4, and the new 1613.5. We revised the  
11 standard for accepting appointments from that the  
12 appointment would be consistent with the primary  
13 responsibility to provide civil legal services to that  
14 providing the representation will not impair the  
15 primary responsibility to provide civil legal services.

16       And the reason we thought that that was an important  
17 change to make is that "will not impair" seems to allow  
18 a recipient to consider more fully its resources, to  
19 consider more fully its ability to provide competently  
20 all of the representation that it has set its  
21 priorities to provide.

22           So, we thought that that would be a way that

1 they could consider financial resources, as well as  
2 their priorities and their capacity in deciding whether  
3 or not to accept criminal representation.

4 So, those are the major changes that we have  
5 proposed to the rule.

6 Moving forward, if you approve the NPRM as  
7 written, or with some changes to it, the next step  
8 would be publication. We have recommended, in the  
9 rulemaking options paper, a 30-day comment period,  
10 because it is not a particularly extensive revision,  
11 and I don't think that there is anything in the rule  
12 that is particularly contentious. Given that November  
13 would be the likely point at which we would get this in  
14 the Federal Register, we might want to recommend a  
15 45-day comment period, given the holidays and people's  
16 availability to comment on the rule.

17 So, are there any questions?

18 CHAIRMAN KECKLER: Julie?

19 MS. REISKIN: This may be a stupid question  
20 that everyone else knows, but when we say that  
21 it -- the appointment will not impair the primary  
22 responsibility, I have two questions around that. One

1 is, is that a global thing, where they decide we are  
2 going to do criminal or not, or is it a case-by-case?  
3 And in either case, then, do we have in our rule  
4 something that says they, the grantee, has final  
5 authority?

6           Because what I am worried about is appeals,  
7 and we don't want to set them up where a defendant, a  
8 criminal, someone who doesn't get representation loads  
9 them down with appeals, saying, "You didn't prove that  
10 this would impair." So that is one.

11           And then the other thing is I don't know if  
12 this would be legal, but could we put something in that  
13 says if there is a conflict between, like, a battered  
14 wife and a batterer or a battered person and a  
15 batterer, that we -- the victim gets priority? Or is  
16 that illegal? I see people shaking their heads no.

17           MR. FLAGG: I think we have typically left to  
18 the grantees the prioritization. And, obviously, there  
19 is -- the Committee would have and the Board would have  
20 authority to set priorities at the LSC level. But, by  
21 and large, I think we have not done that.

22           The other -- I think, overall, the regs make



1 clear that before our grantees can take an appointment,  
2 they have to make a determination in each case that the  
3 representation currently stated is consistent with  
4 their mission to represent eligible clients in civil  
5 cases. We thought that language was a little odd,  
6 because, by definition, if you are taking on a criminal  
7 case, it is not consistent. So that is, along with the  
8 reasons that Stefanie mentioned, that is why we are  
9 recommending a change to "would not impair" that  
10 mission.

11           And again, I think it is clear, and we will  
12 review it to make it clear that it is the call of the  
13 grantee, as to whether or not there is an impairment of  
14 their mission. And there are cases, federal cases,  
15 which have held that the federal law under which this  
16 obligation or this -- under the LSC Act and the  
17 regulations that create the ability for the grantee to  
18 make a choice in a particular case takes precedence  
19 under the supremacy clause over a state law obligation  
20 to represent a criminal or to turn down a criminal  
21 appointment.

22           CHAIRMAN KECKLER: July, I am very sympathetic

1 to that, about the issue of domestic violence. And it  
2 was raised at the last minute and it has been in there.

3           And I think the question, which you can  
4 comment on the other -- well, on the Committee and the  
5 Board -- is it is in there in the sense that -- in the  
6 issue of impairment, if that language in general can be  
7 interpreted that if the grantee has as its priority,  
8 for instance, the representation of all or most of  
9 eligible domestic violence victims, then there could  
10 be -- they could reasonably conclude that there would  
11 be an impairment perhaps, in that circumstance, if that  
12 is part of their priority to do that, they have chosen  
13 to do that.

14           And at least that is the way I interpret it.  
15 And so if there is some tweaking that needs to be there  
16 so that that doesn't provide them that authority, then  
17 I think we can do that.

18           Okay. Laurie?

19           MS. MIKVA: Thank you. The wording in .4(a)  
20 and .5(b) is slightly different. And I guess I am  
21 wondering. Is there a difference between -- I mean one  
22 applies just to the Indian. But in terms of when it

1 can be appointed, is there a difference between the  
2 two?

3 CHAIRMAN KECKLER: There is "will not" and  
4 "would not". That is one thing. What other in the  
5 impairment clause -- we should probably reconcile that.

6 MS. MIKVA: Well, they are just slightly  
7 different.

8 CHAIRMAN KECKLER: Right.

9 MS. MIKVA: And I guess if they are the very  
10 same thing, then maybe they should be worded the same.

11 MS. DAVIS: Okay. We can take a look at that.  
12 It may be an artifact of drafting. But I completely  
13 agree that they should be consistent. Thank you.

14 CHAIRMAN KECKLER: Yes, Sharon?

15 MS. BROWNE: I just have a request for  
16 clarification. On your summary of comments from the  
17 grantees, you mentioned their concerns about resources  
18 that would have to be used. And in your memo on page  
19 two, under "Background," it says that under Public Law  
20 111-211, that the tribal governments would be  
21 reimbursing the criminal defendant.

22 But yet on your proposed rule text, you

1 mentioned that the grantee can use Corporation funds to  
2 represent the criminal defendant in tribal court. So  
3 do the tribal courts reimburse the grantee for  
4 representation or not? And, if not, why not?

5 MS. DAVIS: I see Professor Valencia-Weber  
6 shaking her head. So if you would like to respond to  
7 that, please go ahead.

8 MS. VALENCIA-WEBER: It is not implied or  
9 explicit that the tribe is going to compensate LSC.  
10 That is not the way that amendment to our LSC statute  
11 was written. It doesn't explicitly or "impliantly"  
12 (sic) say that. And that is one of those questions up  
13 in the air when we were not probably going to see any  
14 attempt either a grantee possibly, if they have  
15 accepted representation, to request it after the  
16 completion of the action, or a tribe offer it willingly  
17 or upon request. I think it is just simply not  
18 answered.

19 CHAIRMAN KECKLER: Yes. I mean that is a good  
20 point. And I think that, in terms of -- one issue that  
21 I wanted to raise with regard to that, it occurs to me  
22 it doesn't necessarily need to be in the preamble here,

1 and I don't know that it needs to be in regulatory  
2 language, but it has to be the issue of impairment.

3 I mean one aspect of impairment has to do with  
4 the resources that are being used there. Now, it could  
5 be that if the tribe cannot or is not going to  
6 compensate LSC, well, they can handle a certain level  
7 of criminal representation. On the other hand, it  
8 would obviously be less impairing if they did receive  
9 some compensation. And I think that it might be worth,  
10 at some point, putting that in a preamble, that when  
11 they are thinking about impairment, it is not  
12 conclusive, it is not decisive, but it is a  
13 relevant -- it is an acceptable consideration for the  
14 grantees to note whether or not they are going to  
15 receive compensation from this from the tribal system.

16 Sharon?

17 MS. BROWNE: Well then, I suggest that the  
18 language be clarified. Because on page two of the  
19 memo, it does say that the tribes exercise in the  
20 expanded sentencing authority to, at the expense of the  
21 tribal government.

22 So, that language seems to indicate to me that

1 it is not discretionary on the part of the tribes to  
2 reimburse the grantee, but that the tribes must  
3 reimburse the grantee if they are going to be  
4 representing a criminal defendant in tribal court. It  
5 is just maybe a language -- maybe there was a phrase or  
6 something that was left out of the quote to clarify it.

7 But I would suggest that something be done to  
8 make it clearer, that it might not be -- might not  
9 happen.

10 MS. DAVIS: Okay, I think that is a fair  
11 point, and I take your point that it -- the language,  
12 as it pertains to tribes providing defense counsel, it  
13 seems like it is not discretionary for them to decide  
14 whether to reimburse.

15 But in drafting the rule we had done some  
16 research into reimbursement rates for both federal and  
17 state appointments for public defenders. And the  
18 reimbursement rates are not great, they are not -- it  
19 is unclear whether the amount that a grantee might be  
20 reimbursed for providing this type of criminal defense  
21 would be enough to offset the expenditures that they  
22 are making, in terms of spending their own time, their

1 own resources, to become familiar with the criminal  
2 cases if they haven't been doing them before.

3           And so, it is -- part of the reason that the  
4 language was drafted the way it was was to say it is  
5 really up to the grantees to decide whether, if it is  
6 not being reimbursed, if it is being reimbursed, in  
7 either of those instances, whether they feel like the  
8 representation would impair them.

9           I do take your point, and I think it is worth  
10 saying that recipients can consider whether they are  
11 being reimbursed, as to how much the representation may  
12 impair their ability to provide civil legal services.

13           MS. VALENCIA-WEBER: I would agree that we are  
14 bound by statutory language that does not define what  
15 we and our grantees are concerned about. And so, we  
16 should -- that is a legitimate concern about resources.

17           I was also wondering in the proposed draft,  
18 where you are giving the background, both at the big,  
19 federal Indian law meeting that took place just before  
20 our July meeting, and some Indian law forums and  
21 meetings that I have been at, where some of our  
22 grantees have been, there is concern that resources, as

1 explained in the proposed Federal Register draft, is  
2 there in terms of insufficient already for civil  
3 representation. But several of them mention, moreover,  
4 they do not have the resources for adequate criminal  
5 representation if we get into serious felonies.

6 Remember that the statutory language says "all  
7 offenses." And they are concerned, as good  
8 professionals. And they are concerned, as good  
9 professionals: How can you do an adequate criminal  
10 defense if you are not going to have access to  
11 investigators -- in some instances, expert  
12 witnesses -- if you are not going to do this charade of  
13 a criminal defense, where an attorney is assigned, and  
14 15 minutes before your trial the attorney meets the  
15 defendant for the first time?

16 And so, the potential for asking for resources  
17 from the grantee that they do not already have is a big  
18 concern. And I don't know if we want to put that in  
19 the narrative for the Federal Register, but that has  
20 been expressly articulated by our LSC attorneys who  
21 want to provide highest-quality service, and see that  
22 this is pushing them to service in an area they neither



1 have experience nor expertise nor the resources for  
2 proper constitutional defenses.

3 MR. KORRELL: Mr. Chairman? A question.

4 CHAIRMAN KECKLER: Yes, Harry.

5 MR. KORRELL: And this may be for Gloria more  
6 than anybody, but -- and I am familiar with the  
7 materials we have been looking at, but not with much of  
8 the background -- is there is a risk that, by adopting  
9 the new regulations -- and this is for Ron and  
10 Stefanie, too -- is there a risk in adopting the  
11 regulations that our grantees are going to feel  
12 compelled to pick up the slack, by virtue of the  
13 changes in the regulation? Or is there  
14 sufficient -- are you comfortable there is sufficient  
15 flexibility in here, given the caveats we have been  
16 talking about, that if they want, they can just say,  
17 "We are not going to be your public defender, you need  
18 to provide your own"?

19 MS. DAVIS: I would really like Professor  
20 Valencia-Weber's thoughts on this, as well. But as we  
21 were drafting this rule, we looked back at the  
22 commentary that had been provided at the July panel,

1 and the comments that NAILS provided in response to the  
2 Request for Information. And we specifically tried to  
3 draft the rule in a way that made it very clear  
4 that -- these factors that grantees can consider in  
5 deciding whether or not to accept appointments applied  
6 in these tribal criminal proceedings, specifically to  
7 make it clear that, yes, you do have the ability to  
8 decide whether or not criminal representation is going  
9 to be within your priorities up front, when you are  
10 setting your own priorities.

11 But also, if a tribe comes to you and wants to  
12 appoint you as a defender, that you can say, "This will  
13 impair our ability to provide the civil legal services  
14 that we have decided on. It is explicit in the  
15 regulation that we can consider these factors. The  
16 courts have upheld our ability to consider these  
17 factors."

18 And we think that it does enough to protect  
19 them, but again, I would really like to hear what  
20 Professor Valencia-Weber has to say.

21 MS. VALENCIA-WEBER: I think part of this is  
22 the reality of where we are. While we did get comments

1 from tribes that said, "We would like to get that kind  
2 of assistance for defense of our criminal defendants,"  
3 the reality about the number of tribes that are poised  
4 to take advantage of the opt-in that both TLOA and VAWA  
5 have, that is not mandatory to them and the changes to  
6 our statute is permissive. So, nobody is being told in  
7 any mandate.

8           So, at best, we need to focus on a reg that  
9 keeps the authority and the autonomy to our grantees.  
10 And we are not going to know for a while how many  
11 tribes actually are fully poised and equipped to meet  
12 the requirements of the TLOA and VAWA for a while. But  
13 we will be getting, in the coming year, indications  
14 that will guide us and maybe help us guide our grantees  
15 about where the request might arise.

16           There is at least three things that will  
17 provide information for us. One is that the Indian Law  
18 and Order Act, of which we had two members in our July  
19 program, is completing its congressional report, and I  
20 think it is due -- I think it may have just been handed  
21 to Congress in this coming week. And I talked to the  
22 editors of that. They could not give me an overview,

1 but said this would indicate a great deal about the  
2 tribes. And they did extensive field hearings and  
3 visits and other things.

4           So, we should look for that report, just to  
5 give us an idea which tribes out there are likely to  
6 attempt to opt in and obtain the criminal jurisdiction  
7 the two statutes promised.

8           And then, there is a second report coming from  
9 the Department of Justice, the tribal justice division,  
10 that -- we had the director, Tracy Toulou, speak in the  
11 July meeting, and they also had put out a Federal  
12 Register Request for Information to try to find out  
13 which tribes are interested in immediate opt-in for the  
14 VAWA criminal jurisdiction. They have a two-year  
15 project of trial and efforts that tribes can opt into.

16          Otherwise, all tribes cannot opt in to the  
17 jurisdiction until two years from the passage of the  
18 Violence Against Women Act. So they will be having  
19 information shortly. And I haven't talked to Tracy in  
20 about six weeks, but we will get what they have.

21           And then, thirdly, Department of Justice has  
22 given a two-year contract to the American Indian Law

1 Institute, which is located in Albuquerque, and which  
2 was the organization that put to every tribe in the  
3 United States that they had any contacts in Justice for  
4 our original Federal Register notice, and who will  
5 likely be willing to help us put out -- and we do have  
6 a draft -- the notice of proposed rulemaking, to  
7 further distribute that. And they are  
8 undergoing -- under a new two-year contract, they are  
9 reviewing tribes, specific tribes. They are going to  
10 do it geographically through the United States. And  
11 out of their review we will also be able to get data of  
12 which tribes are in a readiness position or have  
13 already moved to obtain the criminal jurisdiction.

14           So, out of that we would have some idea of  
15 what tribes are out there, where in the country, so  
16 that we can alert our grantees and share information  
17 with them. But there is no way anybody really knows  
18 how many tribes -- where those requests might come  
19 from.

20           MR. FLAGG: Let me make one other suggestion,  
21 which is in the rulemaking options paper at page seven,  
22 there is a discussion of the case law which recognized

1 the right of our grantees to turn down appointments in  
2 the past under the existing language. And what we can  
3 do is, in the draft preamble, we can put some of that  
4 discussion into the preamble to make clear that what  
5 had previously been discretion within our grantees to  
6 decide whether or not to take criminal appointees, that  
7 it is the intention in promulgating these changes to  
8 maintain that discretion.

9 CHAIRMAN KECKLER: Okay. Martha?

10 MS. MINOW: I am flashing back to the panel,  
11 which ended up being so instructive as a background for  
12 this.

13 It does strike me this is not about the rule,  
14 but about how the -- this organization will support, in  
15 this transition period. This is clearly going to be a  
16 time for transition.

17 And so, two thoughts. One, should this  
18 Committee put on its agenda -- not for next year, but  
19 two years from now, or when should it be, 18 months  
20 from now -- a check-in to see how things are working.  
21 And, two, is it for LSC or some other entity to provide  
22 a kind of clearinghouse as the different tribes deal

1 with this? The reason it would be for us is that the  
2 impairment of the civil duty task is our preoccupation  
3 and it may not be anybody else's. But a reason for  
4 someone else to do it is that we don't do the criminal  
5 stuff, and there has got to be a lot of coordination  
6 and sharing of information about that.

7           So I don't want LSC central headquarters to  
8 take on responsibility that we are not equipped to and  
9 shouldn't be doing. On the other hand, there is a  
10 piece of this that is uniquely ours. So I wonder if  
11 thoughts have been given to that.

12           MS. VALENCIA-WEBER: I think we should be  
13 watching and be planning to do a revisit to this, maybe  
14 18 months.

15           I should also say that Department of Justice  
16 is holding hearings around the country specifically on  
17 VAWA and some TLOA aspects. And because of the  
18 government shut-down they have had to cancel a couple  
19 of those regional hearings, and they are going to  
20 reschedule them. And they are also very much gathering  
21 information. And those hearings might provide  
22 something for us, too.

1           CHAIRMAN KECKLER: I think we will continue to  
2 be -- to remain apprised of it. And I think, as things  
3 change, we will get, presumably, some feedback into the  
4 Corporation from the tribes. And so we will keep a  
5 handle on this.

6           Partly as -- in conjunction with that, I  
7 wanted to highlight a point here and get other people's  
8 thoughts on this. One of the changes that Stefanie  
9 mentioned was the issue of automatically updating this  
10 rule. And that is in 1613.3.

11           I guess, thinking about it, I have a couple  
12 of -- I mean it would be nice to have that. It would  
13 be very sort of dynamic and modern to do it, and we  
14 kind of did it with the -- we did something like that  
15 with the restrictions on aliens. But I guess my  
16 concern is -- concerns are two.

17           First, this sort of whole process that we have  
18 gone through with this rule with getting lots of  
19 experts -- and it is a delicate balancing act between  
20 providing support for the tribes and for tribal  
21 sovereignty and for giving our recipients some capacity  
22 to continue their primary responsibility. This kind of



1 delicate balancing seems to have been useful in this  
2 case, and sort of a thoughtful process.

3           So I am a little reluctant to automatically  
4 have it change, and thereby have a little bit of -- and  
5 not necessarily confusion, per se, but there might be a  
6 statute that somebody thinks might be applicable, or a  
7 regulation somewhere that somebody thinks might be  
8 applicable, and then either the recipient uses that and  
9 says, "Oh, well, it is not in anything LSC has said,  
10 but it is here, and that gives us authority to do it,"  
11 and I don't -- or a tribe might say, "Well, forget what  
12 LSC said. We have got this, and we have our  
13 interpretation of this." So I don't want that kind  
14 of -- I am concerned about that kind of confusion kind  
15 of sort of working its way, filtering its way out.

16           And the other thing I sort of noted is that  
17 this provision doesn't actually even apply, per se, to  
18 things in tribal courts. It is criminal proceedings.  
19 So, if Congress were to pass, or some other agency were  
20 to pass a regulation that just says, "LSC handle  
21 immigration defenses," or something like that, whoa.  
22 That would be -- I mean that is sort of a low-risk,

1 perhaps, event.

2 But I -- anyway, that is sort of my  
3 hesitations about turning this over to automatic  
4 updating. And I just wanted to get other people's  
5 thoughts on that.

6 Yes?

7 FATHER PIUS: I have wrestled with the same  
8 issue as you did. I thought at least with that  
9 prohibition where it says, "unless authorized," it  
10 should say something like, "specifically authorized,"  
11 or something to get over the -- because you can't try  
12 to avoid the ambiguity point.

13 But I am reading that. I had sort of the same  
14 view as you, is the balance is -- having this go into  
15 effect automatically without us having to think about  
16 it or pass a rule that could help provide, as we do  
17 here, some coverage for -- yes, it is one of the things  
18 I highlighted, going through this, that I thought was  
19 something that struck me that we should think about a  
20 little more.

21 MS. BROWNE: I agree with you entirely,  
22 Charles. I think this is very open-ended and subject

1 to many interpretations, depending upon how somebody  
2 wants to read a statute. So I think it needs to be  
3 tightened up. And I would not like to see this left to  
4 a grantee or a tribal court to interpret. I think it  
5 has to come from LSC. And so I would certainly suggest  
6 that this language be amended so that LSC has its say  
7 on how to interpret the statute, and whether or not it  
8 is applicable, and how it is going to be applied.

9           CHAIRMAN KECKLER: I mean a statute -- if  
10 Congress passes a statute, we will be in the same  
11 situation as we were with the TLOA. It trumps us. If  
12 Congress wants to pass a statute that specifically  
13 says, "X, Y, and Z," well, then that is going to trump  
14 our regulation, and that is there.

15           On the other hand -- and then we are going to  
16 have to do the same thing, issue a guidance and say  
17 -- about this regulation there is a statute that  
18 supersedes it.

19           But yes. I mean I think that going back to  
20 this part might be simpler. But go ahead, Gloria.

21           MS. VALENCIA-WEBER: I share the concern about  
22 this open-endedness. And while you threw out

1 immigration as a long shot, I earlier sent an alert to  
2 Jim, and I think to Ron, that in the proposed Senate  
3 bill on immigration, there is this whole section about  
4 having immigration proceedings of a certain serious  
5 nature, where the immigrant could be deported and other  
6 things, anyway, that there shall be provision for a  
7 lawyer representation of "vulnerable immigrants," and  
8 there are certain categories.

9           And that has not been there before ever in  
10 immigration law. And there are projects like one that  
11 Ron's staff helped me with, a request from the New York  
12 City Bar, which has a very aggressive project with some  
13 law schools that, as a constitutional standard,  
14 immigrants facing deportation and certain other serious  
15 proceedings are entitled to have an attorney, and  
16 especially if they are indigent.

17           So, there is a push there. I don't know what  
18 will happen in immigration, but I mean you see the  
19 little openings. And when I saw that section in the  
20 proposed bill from the Senate -- doesn't say who is  
21 vulnerable, other than certain obvious class of people  
22 with disabilities, but there is much mischief possible.

1 MR. FLAGG: Mr. Chairman?

2 CHAIRMAN KECKLER: Yes?

3 MR. FLAGG: If the Committee -- if the  
4 consensus of the Committee is to address the concerns  
5 that have just been expressed, I think my suggestion  
6 would be to just go back to this part. I mean it would  
7 require us, any time there was a new statute, to issue  
8 a program letter. But it sounds like that is a risk  
9 that the Committee would prefer than the possibility of  
10 somebody making a judgement on their own that some  
11 statute or new regulation required or permitted them to  
12 take on criminal representation.

13 CHAIRMAN KECKLER: I think that is fine. I  
14 think that -- to go back -- because I think the  
15 process, I mean, although it is slower, obviously, than  
16 we want it to be -- we like to always respond -- it  
17 actually worked fairly well. I mean when we got notice  
18 of the statutory change, we promptly issued a program  
19 letter that I think people thought was a good letter  
20 and good guidance. And then we have proceeded with  
21 reasonable -- in the context of  
22 rulemaking -- reasonable speed to -- and thoughtfulness

1 to address this.

2 So, I think that would be fine. That would be  
3 certainly fine with me.

4 So, are there further comments on the draft?

5 (No response.)

6 CHAIRMAN KECKLER: If there are not, then with  
7 the -- as amended by the commentary of the Committee,  
8 do I have a motion to approve or -- this -- are we  
9 going to recommend this to the Board or are we going to  
10 approve it for publication, approve the NPRM? Is that  
11 what was expected here?

12 MS. DAVIS: I am probably the last person that  
13 should be answering this question. I think that if it  
14 can be -- I have seen this done before, that if you are  
15 fine with the changes going forward that we have  
16 discussed amending the preamble in response to Sharon's  
17 question, and making the change back to this part in  
18 the text of the final rule, making changes consistent  
19 with the comments, then I think our recommendation  
20 would be to approve this for publication.

21 CHAIRMAN KECKLER: Okay. In that case, is  
22 there a motion to approve, as amended by the discussion

1 of the Committee, the NPRM for notice and comment?

2 MR. KORRELL: Yes, Charles, I don't object to  
3 doing it that way.

4 CHAIRMAN KECKLER: Yes?

5 MR. KORRELL: I just wasn't sure if -- are  
6 we -- and this is maybe your original question -- do we  
7 approve it, or do we recommend it to the Board to  
8 approve it?

9 CHAIRMAN KECKLER: Yes, that was my question.

10 And let me contextualize this by saying that in the  
11 past we have generally recommended this to the Board  
12 for approval. And that is fine with me, and we can  
13 just continue to do that.

14 If you actually read the rulemaking protocol  
15 carefully, then we don't need to do that. But the  
16 practice has been to recommend it to the Board.  
17 But -- and I am just -- that is why I was just passing  
18 it off to legal counsel.

19 My preference is to just go ahead and  
20 recommend it to the board. But if there was some other  
21 expectation on the part of LOA --

22 MR. FLAGG: I think you have stated the state

1 of play exactly.

2 CHAIRMAN KECKLER: Okay.

3 MR. FLAGG: And if the preference of the  
4 Committee, given the fact that we are all going to be  
5 here for a couple of days, it is not going to have any  
6 effect on the timing, and probably, in terms of giving  
7 everybody on the Board a chance to be heard, your  
8 preference makes more sense in this context.

9 CHAIRMAN KECKLER: Okay, that is fine. Okay.  
10 So with that -- yes?

11 MS. MINOW: I think that is a good plan,  
12 especially in a case like this, where there are some  
13 amendments on spec, as it were. And it would be  
14 wonderful if, between now and the time when the full  
15 Board meets, if at least the Chair has a chance to look  
16 at some language.

17 CHAIRMAN KECKLER: That would be helpful. But  
18 I would add to that that it is go ahead and just have a  
19 copy machine make 11 copies of the changes that we are  
20 going to do. You don't have to rewrite the whole memo,  
21 but just say we are going to put in one, two, three,  
22 four, just like on one sheet, what the changes are



1 going to be.

2 M O T I O N

3 CHAIRMAN KECKLER: So, with that, going  
4 forward -- and the amendments -- is there a motion to  
5 recommend to the Board the approval of the draft NPRM  
6 for publication?

7 MR. KORRELL: So moved.

8 MS. MIKVA: Second.

9 CHAIRMAN KECKLER: All in favor?

10 (Chorus of ayes.)

11 CHAIRMAN KECKLER: The recommendation is  
12 approved, and we will present that to the Board with  
13 the changes, a change sheet.

14 Very good. Okay. The next item of business  
15 here is a briefing from our general counsel on our  
16 grants. You have a memo in there regarding migratory  
17 and agricultural workers, and the grants to assist  
18 them. I will go ahead and turn it over to you, Ron.

19 MR. FLAGG: Thank you, Charles.

20 MR. FLAGG: I believe Bristow Hardin, who is  
21 an OPP and has worked on these issues for many years,  
22 is with us by phone. Bristow, are you there?

1           MR. HARDIN:  Yes, I am.

2           MR. FLAGG:  Thank you.  Just to tell you where  
3 we are in this process, this is a -- meant to be a  
4 background briefing on what is obviously a set of  
5 fairly complicated issues.  We contemplate coming back  
6 to you either in January or in April with a set of  
7 proposals to address the issues that are noted in the  
8 briefing paper.

9           The issues, really, are twofold, at least.  
10 First, the data which we currently use to estimate the  
11 migrant population of each geographic area are outdated  
12 and, from best we can tell from current data, are no  
13 longer accurate.

14           Second, there is a mismatch between the  
15 populations served by what we call migrant grants, but  
16 which, from their inception, have been legal assistance  
17 for migratory and other farm workers, there is a  
18 mismatch between the people being served and the  
19 population used to calculate the size of the migrant  
20 grants and, on a state-by-state basis, how they should  
21 be allocated.

22           Neither of those things are desirable,

1 obviously. And management's proposals either in  
2 January or April will be to identify data which could  
3 be used to remedy those issues.

4 I was prepared to summarize orally the  
5 relatively long, written memo that you have. But,  
6 given the time, I am thinking it might be better to  
7 just open the floor to questions. Basically, I will  
8 just say a couple of things.

9 The legal authority for the migrant grants is  
10 set forth in the memo, and I think it is quite  
11 important that the LSC Act makes it quite clear that  
12 the Corporation may "make such other grants and  
13 contracts as are necessary to carry out the purposes  
14 and provisions of the LSC Act." And, consistent with  
15 this authority, there has been the special-purpose  
16 grants for migratory and other farm workers since the  
17 inception of the Corporation.

18 And Congress instructed the Corporation back  
19 in 1979 to study the need for grants to serve special  
20 populations, not just migratory and farm workers, but  
21 other special needs populations, as well. And there  
22 was a study, quite an exhaustive study in several

1 volumes which I would be happy to share with you, if  
2 you want to see it, back in 1979. And LSC again issued  
3 substantial guidance on this issue in 2000. And again,  
4 that history is laid out in detail in the memo.

5           And the issue we have for you today, and  
6 looking forward, is these issues involving the data on  
7 which the grants are currently based.

8           CHAIRMAN KECKLER: Let me ask you a quick  
9 question on this, which is does this imply -- the  
10 history in there -- that we have pretty much  
11 substantial discretion on the size and distribution of  
12 these grants?

13           MR. FLAGG: Well, we -- yes. I mean we have  
14 discretion -- the reason I hesitate is the field  
15 grants, there is a per-capita based on poverty  
16 population distribution requirement. And that is  
17 something we don't have discretion over. But how these  
18 special needs populations are served, and the basis on  
19 which the grants are created, we do have discretion.

20           CHAIRMAN KECKLER: Thank you. Other  
21 questions? Gloria?

22           MS. VALENCIA-WEBER: I don't know if it is

1 just the McKay letter that you have, or other kind of  
2 authority. Does LSC have the authority to define the  
3 nature of the work that we mean? I mean you have on  
4 page 40 of the book what is called Farm  
5 Work/Agricultural Work/Seasonal Work. But some  
6 categories of work have been left out.

7 I don't know, for instance, if the ranch hands  
8 in the cattle ranches in New Mexico consider themselves  
9 seasonal workers, agricultural workers.

10 MR. FLAGG: Well, again -- and, Bristow, if  
11 you want to chime in, please do -- but certainly the  
12 Corporation has the discretion to define the scope of  
13 the special needs population to be served by the  
14 grants.

15 I think the theory that has -- or the factors  
16 that have caused the Corporation in the past to go  
17 beyond migratory workers is that the other agricultural  
18 workers who are found in the same places as migratory  
19 workers generally face the same special needs and also  
20 face the same issues in getting legal services, in  
21 terms of language, in terms of physical location being  
22 far away from where our basic field grantees are.

1           So, historically, they have been included in  
2 the service provided by the grantees that have these  
3 migratory grants. Who precisely gets served is  
4 something that certainly is something that we have  
5 discretion to address.

6           And I don't know, off the top of my head, the  
7 answer to your question about the groups you mentioned  
8 in New Mexico.

9           CHAIRMAN KECKLER: Anything else? Others?

10           (No response.)

11           CHAIRMAN KECKLER: Thank you. I think that is  
12 something that we will have to think about, in terms  
13 of -- oh, and one question. And this may be either for  
14 you or for Mr. Hardin.

15           What is the just -- I am sure I could look it  
16 up, but what is the total size of these special purpose  
17 grants?

18           MR. FLAGG: Yes, it is on page -- let me give  
19 you a couple different benchmarks.

20           The current migrant population for LSC funding  
21 purposes is 1,619,982. That is the population. That  
22 is 3.39 percent of the total poverty population served

1 by LSC.

2           The grants -- and I don't have at my  
3 fingertips what the total migrant grants in Fiscal Year  
4 2013 was, but we sent that information out after the  
5 last meeting. The grants range from 25,000 in  
6 Louisiana to 2.4 million in California. And the  
7 total -- again, I apologize, I don't have at my  
8 fingertips -- but that information was sent, and you  
9 should have gotten in late July or early August. And  
10 we can send it out again.

11           CHAIRMAN KECKLER: Yes, I am sure it was in  
12 that letter, but I just didn't have that letter on me,  
13 so --

14           MR. FLAGG: Yes, it is roughly, again, 3.39  
15 percent of our --

16           CHAIRMAN KECKLER: Okay.

17           MR. FLAGG: -- total field grants. So, 3.39  
18 percent times 300 --

19           CHAIRMAN KECKLER: Ten million, something like  
20 that. Okay. So there is a substantial amount there we  
21 have to think about.

22           Okay. Well, since we are going to hear more

1 about that in the future, I will pause and I will go  
2 ahead and turn to the final substantive item of  
3 business, which is discussion of plans for the  
4 Committee's annual review of LSC's implementation of  
5 the strategic plan.

6 CHAIRMAN KECKLER: As you know, the Committee  
7 charter of the Operations and Regulations Committee  
8 does put us in a position to discuss the performance of  
9 the Strategic Plan and a variety of -- the measures  
10 that relate to it. And management has kindly proposed  
11 to give us an update and a schedule for assisting us  
12 and fulfilling that responsibility.

13 MR. FLAGG: Charles, can I just --

14 CHAIRMAN KECKLER: Oh, I am sorry. Yes, Ron?

15 MR. FLAGG: Our colleague, David Richardson,  
16 had the information at his fingertips. I did, too, but  
17 I didn't realize it. The migrant grants for 2013  
18 totaled \$10,435,301.

19 CHAIRMAN KECKLER: All right. Thank you very  
20 much.

21 And so, I was about to turn it over to  
22 President Sandman for a discussion of that.



1           MR. SANDMAN: Thank you, Charles. There are  
2 two relevant provisions. The first is the charter of  
3 the Ops and Regs Committee, which says the Committee  
4 shall annually review and consider the Corporation's  
5 performance in achieving the goals established in the  
6 Strategic Plan of the Corporation, including  
7 consideration of the measures used to evaluate such  
8 performance.

9           The second is in the Strategic Plan itself,  
10 which -- the plan says that the Board will  
11 periodically, but at least annually, review the three  
12 main strategic goals listed. To assist in this review,  
13 LSC management will perform a formal annual review of  
14 the performance of LSC, according to the Strategic  
15 Plan.

16           This review should include the concrete steps  
17 that have been taken to achieve each initiative  
18 proposed for the various goals; additional action that  
19 is required; and metrics, designated metrics, for  
20 determining the degree to which the initiatives taken  
21 support each goal.

22           What I would propose is that management do

1 that analysis and present our report at the January  
2 meeting of the Committee. The Committee can then  
3 either act to do its own review of the Corporation's  
4 performance under the Strategic Plan, or ask for  
5 additional information.

6 I would propose, in connection with a  
7 management review, that we poll the chairs of each of  
8 the Board committees to get their input into what their  
9 perceptions are of our activities in furtherance of the  
10 Strategic Plan over the course of the past year, since  
11 the Strategic Plan was adopted. But management will be  
12 prepared to issue the report that I think will form the  
13 framework for the Committee's review and the Board's  
14 review in January.

15 CHAIRMAN KECKLER: Thank you. Jim? And this  
16 is certainly open to discussion, but I guess the  
17 question -- and my question, then, is -- this is a  
18 management question, but also a question to other  
19 members of the Committee and the Board.

20 Since this is new to us to some extent, what  
21 are we expecting to do? We are receiving the report,  
22 we are going to talk about it and discuss it. But you

1 just sort of suggested that we act in approval of it,  
2 or -- what sort of action item should the Committee  
3 take in January as we receive the report?

4 MR. LEVI: I am not sure it is required that  
5 you have an action. But I think the report envisioned  
6 at least a check-in. So there might be an action, but  
7 there might not be. It is not a mandate that there  
8 be --

9 CHAIRMAN KECKLER: Right.

10 MR. LEVI: Yes.

11 CHAIRMAN KECKLER: So the question is we would  
12 receive the report, but we would have -- just as a  
13 purely technical matter to have -- discuss an act --

14 MR. LEVI: Well, it seems like you are a  
15 little behind on this one, and you are making a tweak  
16 to this one, and -- but that is the -- otherwise, where  
17 does that report get -- where does that report go?

18 And so, I think the thought of the plan was  
19 that this was the Committee that was best to do that.

20 CHAIRMAN KECKLER: Yes.

21 MR. LEVI: There might be an action item. It  
22 is not to say there isn't.

1           CHAIRMAN KECKLER: Yes. And so I think we  
2 will structure it as an agenda item that allows us to  
3 act by offering a recommendation if need be, but not  
4 requiring us to.

5           MR. SANDMAN: I think there are two kinds of  
6 potential actions the Committee and the Board could  
7 take, then. The first would be to direct management to  
8 do specific things to follow up on implementation of  
9 the plan.

10           But, second, I read the requirement that the  
11 Board review the goals periodically to encompass a  
12 notion that we might -- that the Board might revisit  
13 some of the goals or some of the steps that were  
14 identified for achieving those goals. There is an  
15 ongoing tweaking process during the life of the plan,  
16 at least potentially.

17           CHAIRMAN KECKLER: Right. And as -- and I  
18 think that, given the non-executive nature of the  
19 Committees, those would be recommendations. Those  
20 would be actions, they would be recommendations of the  
21 Board with regard to that, that we would start the  
22 discussion in the Committee.

1           MR. LEVI: Well, for example, suppose,  
2 as -- we don't have much time, but suppose we were  
3 fortunate enough to be in a position to restart a  
4 fellowship program. So that report might come -- would  
5 come to this Committee, I guess, with an idea of how  
6 that might be accomplished. And that is a fulfillment  
7 of a goal, but then there may be action items related  
8 to that, that this Committee would be recommending to  
9 the Board, then.

10           CHAIRMAN KECKLER: Good. Are there other  
11 questions and thoughts on this process, which we will  
12 see in January?

13           MR. KORRELL: Charles, I think it is just  
14 similar to what the Audit Committee does when we get  
15 reports from management on various issues of risk  
16 mitigation or what have you. We just take the reports  
17 and hopefully we see nothing that causes any concern,  
18 and we recommend a -- state a course.

19           CHAIRMAN KECKLER: Okay. Well, with that I  
20 will open it up to -- since we have time, I will open  
21 it up to public comment on either the -- on any item  
22 here, including our rulemaking or other topics.

1 (No response.)

2 CHAIRMAN KECKLER: Seeing no public comment, I  
3 will now move to consider and act on any other business  
4 for the Committee.

5 (No response.)

6 M O T I O N

7 CHAIRMAN KECKLER: Seeing none, I will now  
8 consider a motion to adjourn the business of the  
9 Committee for today.

10 MR. LEVI: So moved.

11 MS. MIKVA: Second.

12 CHAIRMAN KECKLER: All in favor?

13 (Chorus of ayes.)

14 CHAIRMAN KECKLER: The Committee is adjourned.

15 Thank you.

16 (Whereupon, at 2:45 p.m., the Operations and  
17 Regulations Committee was adjourned.)

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