

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

JOINT MEETING

OPERATIONS AND REGULATIONS COMMITTEE
and the
PROVISIONS FOR THE DELIVERY OF
LEGAL SERVICES COMMITTEE

OPEN SESSION

Sunday, September 29, 1996

10:12 a.m.

The Legal Services Corporation
750 First Street, N.E., 11th Floor
Washington, D.C. 20002

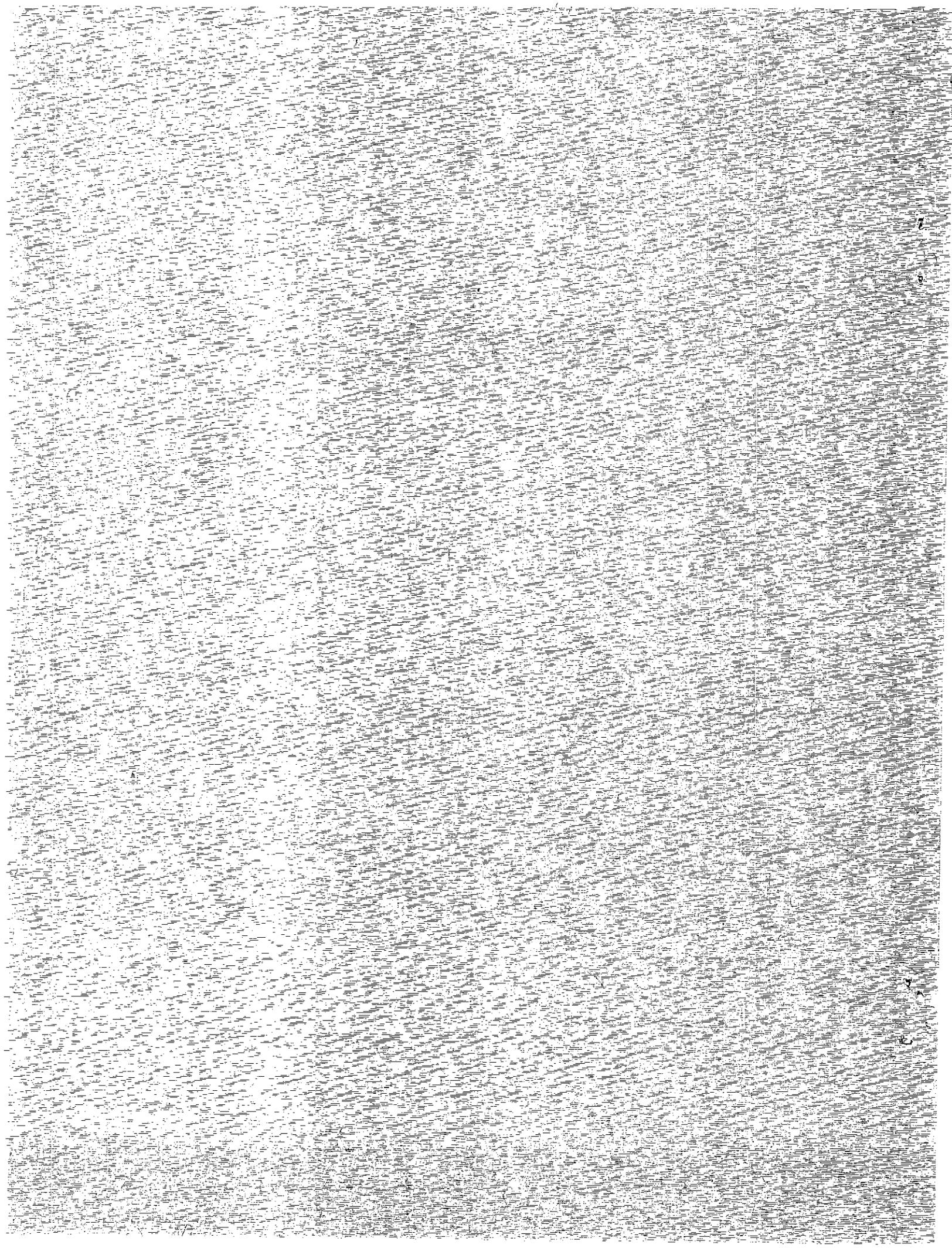
BOARD MEMBERS PRESENT:

LaVeeda M. Battle, Chair
Ernestine P. Watlington
Edna Fairbanks-Williams
John N. Erlenborn
Hulett H. (Bucky) Askew
Nancy H. Rogers
F. William (Bill) McCalpin
Maria Luisa Mercado
John T. Broderick

STAFF PRESENT:

Alexander D. Forger, President
Joan Kennedy
Thomas Kiefer
Trassie Muldrow

Diversified Reporting Services, Inc.
1025 VERMONT AVENUE, N.W. SUITE 1250
WASHINGTON, D.C. 20005
(202) 296-2929



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Renee L. Szybala, Counsel, Office of Inspector General
Edouard R. Quatrevaux, Inspector General
Suzanne B. Glasgow
Harrison D. McIver, III
David Richardson, Treasurer and Comptroller
Victor Fortuno, General Counsel
Linda Perle, Senior Staff Attorney, CLASP
John Tull
Merceria Ludgood

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P R O C E E D I N G S

(10:12 a.m.)

1
2
3 MS. BATTLE: I would like to go ahead and call our
4 meeting to order this morning and welcome everyone here on
5 this Sunday morning, September 29th, for a meeting -- a joint
6 meeting, actually -- of the Operations and Regulations
7 Committee and the Provisions Committee of the Board.

8 First, I would like to welcome our new board member
9 who is with us. John Erlenborn has joined us and joins this
10 committee, and this joint committee, this morning. We are
11 really glad to have you with us this morning.

12 MR. ERLENBORN: Thank you.

13 MS. BATTLE: Glad to see you here.

14 MR. ERLENBORN: Good to be aboard.

15 MS. BATTLE: Absolutely.

16 I also would like to just make mention of the fact
17 that this probably -- this series of meetings will be our
18 last meeting in this room. As I understand it, preparation
19 has been made for a move and it was only because the
20 construction project fell behind schedule that we were graced
21 with the opportunity to use this room once again. So it is
22 kind of an historic ending to our having had this facility

1 for the last five years, to be able to meet here.

2 We have before us a copy of the agenda and I will
3 entertain a motion to approve the agenda, unless there are
4 some changes to it as it is written.

5 M O T I O N

6 MR. ASKEW: So moved.

7 MS. BATTLE: Okay.

8 UNIDENTIFIED VOICE: Second.

9 MS. BATTLE: Since properly moved and seconded that
10 we approve the agenda as read -- and you should have a copy
11 of that agenda in your board book that was either made
12 -available right outside of the room, or sent to the board
13 members prior to this meeting.

14 It's been moved and properly seconded that we
15 approved the agenda as written. All in favor.

16 (A chorus of ayes.)

17 MS. BATTLE: All opposed.

18 (No response.)

19 MS. BATTLE: Motion carries.

20 We have in this book a copy of our minutes from our
21 July 8th through 10th meeting, and as well the 19th. Are
22 there any changes to either of those minutes, for the

1 Operations and Regulations Committee?

2 (No response.)

3 MS. BATTLE: Hearing none, I will entertain a
4 motion to adopt those -- and approve those minutes.

5 M O T I O N

6 MS. WATLINGTON: So moved.

7 MS. BATTLE: So moved by Ernestine on that
8 committee.

9 UNIDENTIFIED VOICE: Seconded.

10 MS. BATTLE: And seconded by the other member of
11 that committee.

12 All in favor.

13 (A chorus of ayes.)

14 MS. BATTLE: Opposed.

15 (No response.)

16 MS. BATTLE: Motion carries.

17 The next item on our agenda is consider and act on
18 the report of the staff and OPM on Phase II of
19 recommendations relating to the internal personnel policies
20 of the corporation.

21 We should have Joan Kennedy from our staff and also
22 the OPM consultants who have worked along with her, come to

1 the table, and make a presentation.

2 The board members should have received, prior to
3 this meeting, a copy of the draft manual, revised effective
4 September 30th. And I don't know if all of the board members
5 had an opportunity to read through that, but what we hope to
6 do is to take -- today to go through and to comment to the
7 staff on our observations with regard to this manual.

8 If there are just a few comments and we are
9 satisfied, we may be able to present it to the board. If
10 there are some additional things that we think need to be
11 done, we, I think, can send it back to the staff.

12 MR. MCCALPIN: Madam Chair, I got this on
13 Wednesday, about the same time I got the public comments to
14 the Board of Regulations. I came here on Thursday to attend
15 other meetings on Friday and Saturday. I've gotten through
16 five chapters of this, but not the rest.

17 I have a number of comments with respect to those
18 five chapters and I would be adverse to our adopting this
19 manual at this time.

20 MS. BATTLE: Okay. Why don't we do this. I have
21 had a chance to read through it completely and I talked with
22 Joan a little bit about some of my comments yesterday. Why

1 don't we go through today, since we have our consultants with
2 us, and raise those concerns that we do have about the
3 manual, and we can report tomorrow to the board the status of
4 our review, and hopefully finalize this at our December
5 meeting. I think that is a fair way to approach it. Okay?

6 Why don't we just hear a brief report then, Joan.
7 Just tell us how we got from the last time you talked to us
8 about this to today, and then we'll take questions from the
9 board members about the manual.

10 PRESENTATION OF JOAN KENNEDY

11 MS. KENNEDY: Good morning, Ms. Battle, committee
12 members, other members of the board, colleagues.

13 This morning we come before you to present the
14 corporations' revised personnel manual, a product of
15 approximately six months of staff working in consultation
16 with the U.S. Office of Personnel Management.

17 Joining at me at the table are Drs. Thomas Kiefer
18 and Trassie Muldrow from OPM, who have guided us throughout
19 this process. We plan to provide a brief overview of the
20 manual and, unless you prefer otherwise, to move directly
21 into the discussion phase, and we are prepared to respond to
22 any questions that you may have.

1 So with that I will turn it over to Dr. Kiefer.

2 DR. KIEFER: Thank you, very much. It is good to
3 be here this morning -- to be here to respond to any
4 questions you may have about the manual.

5 The revised manual, we believe, meets the goals
6 which were set forth in the Phase I report from May 1996,
7 that is to look at the existing manual, towards the overall
8 goal of developing one which would contain provisions which
9 could be applicable to all employees within the corporation,
10 to provide a degree of uniformity, to address existing
11 shortcomings in the manual, by making it a more succinct,
12 more readable document, which would be useful both for the
13 administration, human resources staff, as well as line
14 managers, in fulfilling their personnel management
15 responsibilities.

16 We looked specifically at polices in three areas:
17 classification and compensation, performance management, and
18 accrued leave, and the manual accordingly contains provisions
19 reflecting the policy goals which we had set forth in that
20 area. That is to adopt a uniform classification and
21 compensation system, to move toward a revised performance
22 management system, with annual performance evaluation, and

1 to, in essence, restore the accrued leave policy, which had
2 formerly existed.

3 And in addition to that, we looked at other areas
4 where improvements might be made to provide a more worker
5 friendly personnel climate that would serve the interests of
6 the employees of the corporation, with the provision of a
7 flexi-place program being an example that's -- at the same
8 time, we recognize the desire to continue the tradition of
9 at-will employment, and so the manual continues to vest
10 authority to depart from the manual as is in the interest of
11 the corporation, either in the present or in the Inspector
12 General, as is the case that is provided by law.

13 We would be happy to proceed now as would fit the
14 committee's own interests and desires, in terms of responding
15 to questions or providing further explanation to any
16 provision that you might have questions about.

17 MS. BATTLE: Okay. I would suggest that we simply
18 go section by section and take comments and questions from
19 board members about sections of the manual, so that we can
20 have some discussion about those sections.

21 Starting with Section 1, which addresses the legal
22 services -- certain purposes and principles -- preliminary

1 principles -- which, as I understand it, it's the staff's
2 view that the board would actually adopt, at some point, the
3 principles that are set out in Section 1. Is that correct?

4 Okay. So why don't we just talk about Section 1
5 first.

6 Section 1, the purpose -- my suggestion is, when we
7 talk about, in that first sentence -- we speak about the fact
8 that the Legal Services Corporation is a corporation
9 established in the District of Columbia, that we add a not-
10 for-profit corporation, just as an editing proposal there.

11 Anything else on Section 1.0, and the purpose?
12 You've got 1.1, the personnel principles.

13 I discussed a concern that I had about the second
14 principle, "fair and equitable treatment of employees in all
15 human resources matters, as provided by law, with due regard
16 for individual privacy and constitutional rights."

17 I would suggest that we say "individual privacy and
18 constitutional rights applicable to employees of a not-for-
19 profit corporation." I think there is a distinction made in
20 the law between the kinds of rights which a government
21 employee has, by virtue of being a government employee, as it
22 relates to constitutional rights, and the rights which an

1 employee who is at will, in a not-for-profit corporation
2 might have. And to the extent that we make an express
3 statement about these rights, we probably need to clarify
4 what we are talking about in that regard.

5 MR. ASKEW: Sounds fine to me.

6 MS. BATTLE: Okay. Was there anything else? Any
7 other concerns about the principles that are set forth?
8 You've got recruitment based on merit, fair and equitable
9 treatment, provision of pay equity with incentives and
10 rewards, maintenance of high standards of integrity, and
11 reflected in a concern for clients and the public interest,
12 efficient and effective management of employee's retention,
13 subject to financial resources, are all the other principles
14 set forth.

15 That Section 1.2, the section -- in the section
16 dealing with at will -- the at-will policy. Were there any
17 questions about that? Bill?

18 MR. MCCALPIN: Madam Chair, let me say, by way of
19 background, that as a young lawyer, I began a practice which
20 was heavily in the labor law context, representing
21 management, so that I had a strong background favoring the
22 employment at-will doctrine.

1 Nevertheless, it seems to me that, as baldly stated
2 as it is here, without anything that I have been able to
3 discover -- I may if I read the whole thing -- without
4 anything which appears to give any sort of due process to an
5 employee who may be terminated, I'm afraid that we have
6 carried the at-will doctrine to its furthest extreme, without
7 any immunity or any effect, which is bound to have some
8 effect on the moral of the employees who -- who may feel that
9 they have no protection at all against arbitrary action on
10 the part of the corporation.

11 Now, as I say, it may be somewhere along the line,
12 in the chapters I haven't yet had a chance to read, that
13 there is some element of due process. But everything that I
14 have seen so far gives me a concern that this appears to
15 carry our -- our possible practice to the extreme of
16 arbitrariness, without any leveling of that concern.

17 MS. BATTLE: Sure. Do you have a response to that
18 concern?

19 DR. KIEFER: I think that this is a legitimate
20 concern. I would say that this was a concern which was
21 expressed by employees during some of our earlier
22 discussions, although I would not say that this was an issue

1 about which there are terribly intense feelings. Certainly
2 the feeling is there.

3 Our hope is that, of course, the EEO provisions are
4 there and that would govern certain classes of arbitrary
5 treatment. And that, along with the statement of principles,
6 reflected in Section 1, the fact that the board is committing
7 the corporation to what is, in essence, a fair treatment,
8 would at least provide a basis for the development of due
9 process guarantees or provisions.

10 However, there are no specific said provisions in
11 the manual. Our understanding was that the manual itself was
12 in the form of guidance, rather than contract. And that,
13 therefore, we wanted to make it clear that that was the case.

14 MR. MCCALPIN: Let me ask you. I have -- I think
15 that back in here somewhere there is a provision about
16 grievances. And I don't know -- I haven't read it. I don't
17 know it. I don't know whether a discharge gives rise to a
18 grievance provision or not.

19 DR. KIEFER: The way it is written, termination is
20 not, in and of itself, a grievable issue.

21 MS. BATTLE: Tell me just so I'll know from a
22 practical stand -- point of view, if there was a termination

1 for misconduct at present, or a termination for some reason
2 -- I won't use the term "misconduct" in the context of an
3 at-will state -- you don't have to have a reason -- but if
4 the corporation decides to terminate an employee, what
5 happens now?

6 MS. KENNEDY: In the current manual, it is a
7 grievable (inaudible) in the current manual. That is not
8 imposed or included in this particular manual because our
9 research and the opinion rendered by the Office of
10 Independent Counsel indicated that a grievance provision was
11 inconsistent with the concept of at-will. And, therefore
12 (inaudible) from this manual. Suzanne may be able to speak
13 on that -- speak to that.

14 MS. GLASGOW: We looked at D.C. law --

15 DR. KIEFER: Suzanne, I can't hear you.

16 MS. GLASGOW: We looked at D.C. law and more and
17 more of one of the things that the law would look at -- the
18 courts would look at to determine whether we were, indeed, an
19 at-will employer, would be personnel manuals.

20 And so we looked to guidances that were available
21 from other organizations and some of the law, and tried to
22 strike that balance of making sure that we maintained our at-

1 will employment status without too much due process, with the
2 balance of these principles.

3 A decision whether we are at-will or not will be
4 based on certain factors. It is not whether we call
5 ourselves at-will; it is whether we act as if we are an at-
6 will employer. And having a personnel manual with a lot of
7 due process provisions, and grievance procedures, is one of
8 the things the court would look at to determine that, yes --
9 whether we are or are not an at-will employer.

10 I mean, we understand the concern, but --

11 MS. BATTLE: Well, it seems to be a conflict
12 between the point that Bill has raised and the point that I
13 raised.

14 On the one hand, if you say one of your guiding
15 principles is to assure and to give due regard to
16 constitutional rights for an employee, one of your
17 constitutional rights is due process. Okay?

18 MR. ERLÉNORN: Not in this -- not in this sort of
19 context, I wouldn't think.

20 MS. BATTLE: Well, it just depends on whether you
21 see yourself as an employee with a property interest because
22 you see some government interest.

1 And my point is -- that was my reason for saying
2 you have to limit what you are talking about in terms of
3 constitutional rights, so that you don't get into that due
4 process issue.

5 But I think that the point that Bill is raising is
6 well taken. I have seen, and I know that I'm not familiar
7 with D.C. law -- I am familiar with another at-will state
8 where for quasi-public -- when you have public funds that
9 fund an entity, you have both due process, from the
10 standpoint of notice and an opportunity to be heard prior to
11 your termination, but you don't have a right not to be
12 terminated. I mean, based on whatever the misconduct or
13 whatever the reasons are.

14 So that -- and that's where the at-will issue kicks
15 in. So that you do have some due process. You have a right
16 prior to your termination to at least notice and an
17 opportunity to be heard. But that because you are in at-will
18 state, you don't have to subscribe to a certain level of
19 whatever that misconduct is. However it is determined by the
20 employer is appropriate, from the employer's standpoint of
21 view. John?

22 MR. ERLNBORN: Let me first excuse myself and

1 apologize for interrupting you. I will try not to do that
2 again.

3 I just question whether there are constitutional
4 rights applicable to the procedures for discharge or other
5 actions between an employer and employee. I think the
6 constitutional rights are more applicable to government
7 action.

8 But apart from that, it seems to me that the at-
9 will doctrine and discharge for cause are diametrically
10 opposed and you can't have both of them existing in the same
11 document or in the procedures of the corporation at the same
12 time. I just don't -- I don't think you can say you are an
13 at-will employer and that that is the relationship of an
14 employer and employee, but the employee is entitled to due
15 process and discharge for cause only, which is -- that is
16 just the opposite of at-will employment.

17 MR. MCCALPIN: I'm not sure that you have to say
18 discharge for cause only. I think you can stop short of
19 that. I guess -- I am reminded that in the early days of
20 this board, we affected a number of at-will discharges and
21 generated a political storm. And I -- I just wonder if we
22 can't, somehow or other, build in some sort of a protection

1 against that kind of adverse reaction.

2 MS. BATTLE: Alex?

3 MR. FORGER: I think there are so many obstacles
4 against effective management in this corporation, to add
5 still another one, Bill, I think makes it even more
6 difficult. Before we've been able to hire Joan, we had to
7 wait through Congress, and go through all of that process.
8 If you seek to layoff somebody on a RIF, you go through all
9 of that process.

10 I would rather see the board put all its effort in
11 attracting management in which they have confidence that
12 management will function in a way that will not create
13 problems for the corporation, but yet inconsistent with these
14 principles, and to cause us to have still more process and
15 procedure, and we are awash in it every day. We spend most
16 of our time being diverted by that. It would simply add just
17 another, I think, level of obstacle to any effort of
18 effective management.

19 MS. BATTLE: What I think I have heard, really, are
20 two things.

21 One, that because D.C. law states as an at-will --
22 if you are an at-will employer, that we are going to look to

1 see how you treat your employees to determine whether that's
2 true or not. And if the way you treat your employees is
3 different from at-will, then we may decide to bind you to
4 whatever procedures you have put in place, and to evaluate
5 whether or not you have done that appropriately in a
6 particular case, which attaches certain responsibilities and
7 legal liability to having procedures. That's the concern I
8 think I'm hearing from Suzanne. Is that correct?

9 MS. GLASGOW: (Nods head affirmatively.)

10 MS. BATTLE: And so the whole prospect of taking on
11 procedures at this point carries with it a certain amount of
12 notice that I think the board would have to have and the
13 staff would have to have as to what the repercussions might
14 be if we do so.

15 The other thing I have also heard from Dr. Kiefer
16 is that when you discussed this with members of the staff,
17 there wasn't really a strong opinion one way or the other.
18 This is not an issue that comes up on a regular basis, at
19 least with the -- with our staff.

20 And I'm inclined, at this point, given that -- I've
21 told you what my experience is in another jurisdiction. And
22 I have to really rely on our general counsel's opinion with

1 regard to how at-will operates in the District of Columbia
2 because I think we have to make sure that whatever it is that
3 we implement, we implement in a way that is -- facilitates
4 assuring that what we are intending will happen, will happen,
5 if we get into a question being raised about the legality of
6 it, that we are probably okay without having a particular
7 stated procedure on this issue.

8 DR. KIEFER: May I respond just very briefly?

9 MS. BATTLE: Okay.

10 DR. KIEFER: And this is just to make a small
11 distinction and largely to agree with what you said. Yes,
12 employees were not overly concerned with the at-will concept.
13 It was simply -- their concern is a more direct, more casual
14 sense for fair treatment.

15 MS. BATTLE: Yes.

16 DR. KIEFER: Whether it is called at-will, or not
17 at-will, or whether you have this policy, what it really
18 comes down to is how individual managers and supervisors deal
19 with their employees, and that if they do so in a way that is
20 perceived as fair, that's fine, regardless of what you call
21 the policy.

22 MS. BATTLE: Which was the point I was about to

1 make. I think if we have as our guiding principle fair
2 treatment, and we treat our employees fairly, that that, in
3 an at-will context, possibly preempts the need to have a
4 formalized procedure.

5 MR. ERLENBORN: Madame Chair.

6 MS. BATTLE: Yes.

7 MR. ERLENBORN: Might I just ask -- add one other
8 comment. I think if you don't follow the at-will concept and
9 you put in procedures, you're just asking for litigation,
10 which I think this corporation has had sufficient already.

11 MS. BATTLE: Okay. A point well taken.

12 Now, point one -- I'm sorry. Nancy?

13 MS. ROGERS: I have a related -- a different matter
14 on Section 2. Is that in order?

15 MS. BATTLE: Okay. If it's related.

16 MS. ROGERS: It's not related. It's just another
17 Section 2 questions.

18 MS. BATTLE: Okay. 1.2 or --

19 MS. ROGERS: 1.3. I'm sorry. Okay. I'm jumping
20 way ahead.

21 MS. BATTLE: Okay. We'll just try to follow along.
22 We'll probably get to that, Nancy, but let's just try to

1 follow the order that the sections are in the manual.

2 The next -- if there are no other questions about
3 1.2, let's take a look at 1.3, which addresses departure from
4 and suspension waiver and amendment of the manual provisions.

5 This section, as I understand it, gives the
6 president, or the inspector general, the opportunity to
7 depart from provisions in this manual. And there is a
8 distinction made -- the authority to suspend, amend, waive,
9 or depart from the manual, basically rests with the president
10 or a designee of the president, or the inspector general.
11 And it says "consistent with Section 1.4," which we will
12 address later.

13 And then it goes on to say that "major policy
14 changes and individual waivers to insure -- that might inure
15 to the benefit of the president or the inspector general must
16 be approved by the board of directors."

17 In reading this section, I had a couple of
18 concerns. One is that though I think the section
19 appropriately sets out a procedure for assuring that there is
20 documentation of any departure from the manual, I was
21 concerned about the checks and balance on that.

22 I mean, if you take to its logical conclusion what

1 could happen if you got a provision which allows either the
2 president or the inspector general to, at any point, waive,
3 suspend, or depart from the manual, then the day after we
4 approve this, either the president or the inspector general
5 could say, okay, now we are going to depart from now on. And
6 begin a process of departing on individual decisions that are
7 made, and that would not be subject to any review by the
8 board.

9 Well, if the board has gone through this very
10 diligent process of having the staff to look at this manual
11 and develop it so that we will have some guiding principles,
12 then I think we do need to have some check and balance on any
13 departures there from.

14 And I'm concerned that the way at least the first
15 section is set out, unless something is viewed as a major
16 policy change, one could depart for any reason from this
17 manual. And though we trust our inspector general and our
18 president, and know that these departures probably, in
19 practice, would be only for justifiable documented reasons,
20 it does give me some concern the way that it is written.

21 And I would propose that what we do is to amend
22 this section to say that if you go to paragraph two, the

1 second sentence, "The Office of Administration and Human
2 Resources will retain all records which are the documentation
3 of any departures, which shall be subject to periodic review
4 by the board, chair, or some designee of the chair," so that
5 any departures that are undertaken are subject to review by
6 the board.

7 MR. MCCALPIN: I would suggest that it ought to be
8 by ops and regs.

9 MS. BATTLE: Ops and regs.

10 MR. MCCALPIN: My understanding is that this
11 general subject area is within the jurisdiction of ops and
12 regs.

13 MS. BATTLE: I suggest to the board, chair, or a
14 designee because my view is it is a right that is within our
15 ambit, but some future board may do it differently. And if
16 it is designated to be our area, as it is at present, then
17 that's fine. We could actually say ops and regs because that
18 is exactly the committee with the responsibility for
19 oversight of personnel policies at present.

20 MR. FORGER: When you say "subject to review," does
21 that mean in advance of the action being taken?

22 MS. BATTLE: Subject to review subsequent to the

1 action being taken.

2 MR. FORGER: Okay. So you are informed after the
3 action.

4 MS. BATTLE: Right.

5 MR. MCCALPIN: Is that the only change to that
6 paragraph that you are proposing?

7 MS. BATTLE: To that paragraph. I had a change to
8 the next paragraph as well.

9 MR. MCCALPIN: Let me make two comments with
10 respect to that paragraph and the wording.

11 In the second line it says, "depart from,
12 suspended, or waive, whether for one employee or all," and I
13 suggest there may be an in-between position between one and
14 everybody. It could be a group, a portion of the force.

15 MS. BATTLE: One employee or more?

16 MR. MCCALPIN: Well, one employee or -- I haven't
17 attempted to redraft, but I thought we'd pass comments on, if
18 they are acceptable.

19 MS. BATTLE: Okay.

20 MR. MCCALPIN: The other is, down at the bottom of
21 that paragraph it says "notify the employees of modification
22 and departure, and will prepare and issue replacement pages

1 for insertion as soon as possible after revised policies are
2 approved." And I have two comments with respect to that.

3 First of all, every modification or departure may
4 not require an amendment of policy.

5 And secondly, the question is who is going to
6 approve the revised policy.

7 MS. BATTLE: I guess that's a good point. I think
8 the first part of that sentence indicates only that the
9 insertion of new pages will come when such actions affect all
10 employees.

11 So it is envisioned, I guess, that the only time
12 that you would actually amend the policy manual is when the
13 president or the inspector general undertakes some sort of
14 policy that would affect all employees. And --

15 MR. FORGER: If it's a major change, it would be
16 ops and regs.

17 MS. BATTLE: If it is a major change, it has to be
18 approved by the board in advance. Is that right?

19 MR. FORGER: The ops and regs.

20 MS. BATTLE: By ops and regs?

21 MR. FORGER: I think that's -- or the board.

22 MS. BATTLE: It says "board."

1 MR. FORGER: Yes.

2 MS. BATTLE: So, Bill, are you suggesting different
3 language for the second part of that paragraph?

4 MR. MCCALPIN: Well, all I was doing was raising
5 the question of whether -- well, let's take the situation
6 that we had where there was a pay freeze, which presumably
7 affected everybody.

8 Now, does that require a modification of policy in
9 the manual, which requires prior board approval?

10 MR. FORGER: I guess that's -- well, that's a
11 system for pay increases, but not effectuating the pay
12 increase.

13 MS. KENNEDY: This language was intended to apply
14 to permanent kinds of changes, rather than one-time changes.

15 MR. MCCALPIN: Well, it doesn't really say that.

16 MS. KENNEDY: So we do need to clarify that.

17 MS. BATTLE: Yes. Okay. Are there other
18 substantive -- I think we are going to have to redraw the
19 provisions in this section to really be consistent with the
20 concerns that have been raised by board members at this
21 meeting.

22 I would like to kind of get on the table if there

1 are other concerns as well about the underlying policy in 1.3
2 of departure from the provisions of the manual. Are there
3 any other concerns about that?

4 MR. BRODERICK: Shouldn't there be some statement
5 in here, because if you read the first paragraph under 1.3 it
6 sounds as if this personnel manual is illusory. We can
7 change it whenever we want, but shouldn't there be some
8 modicum of good faith in all of that?

9 I mean, it seems to me the best interests of the
10 corporation is a fine standard, but the best interest of the
11 corporation ought to be exercised with some modicum of good
12 faith, otherwise there is no standard here. It seems to me
13 you can change it for any reason, any time, if it's in our
14 best interests. It makes me a little uncomfortable.

15 MR. MCCALPIN: Well, I think maybe, John, instead
16 of "good faith," I would phrase it in terms of the
17 requirements or best interests of the corporation. If you're
18 going to make a change, it really ought to be because the
19 best interests of the corporation require it.

20 Now maybe that's another way of saying "good
21 faith," but it's a little more precise.

22 MR. BRODERICK: It seems to me, if we are having

1 at-will status and we can change the rules whenever we want,
2 I mean, after awhile, it reduces itself to smoke, it seems to
3 me. And it ought to have a little more substance, I think,
4 for the people who are employed by this corporation, so there
5 is some -- there is some standard below which people should
6 have some assurance that we won't go.

7 MS. BATTLE: So you are suggesting that we add some
8 language which sets a standard such as good faith --

9 MR. BRODERICK: Something.

10 MS. BATTLE: -- in with best interests of the
11 corporation, as well?

12 MR. BRODERICK: I just think there ought to be
13 something in here that provides an at-will employee with some
14 level of assurance that if changes are made --

15 MS. BATTLE: Are in good faith.

16 MR. BRODERICK: You know, that they will be more
17 broadly interpreted than merely the narrow best interests of
18 the corporation.

19 The best interests of the corporation might well be
20 served by doing something that perhaps some of us might not
21 feel was done in good faith. I mean, it's a very narrow
22 test. Self-interest is not a standard that makes me real

1 happy. Anyway, I throw that out.

2 MS. BATTLE: Suzanne?

3 MS. GLASGOW: Could it be said in the best interest
4 of the corporation, consistent with the principles set out in
5 that prior section?

6 MS. KENNEDY: Our intent was for the principles, as
7 set out in Section 1.1, to be a blanket statement of fair and
8 equitable treatment in the administration of all policies
9 that follow in this manual. But certainly, if we cross
10 reference, do you think that would address the concern that
11 you have?

12 MR. BRODERICK: Well, it may well, and I don't mean
13 to jump in on the -- I'm not even on this committee, so --

14 MS. BATTLE: That's okay. You can state your
15 opinion, though.

16 MR. BRODERICK: I probably shouldn't even be
17 speaking. And I haven't, frankly, had the time to give this
18 a great deal of thought, but maybe that does address the
19 issue I'm grappling with.

20 MS. BATTLE: That's a good way to do it, because it
21 actually broadens it, John. It takes into account all those
22 variable factors which you have got in 1.1. So as you

1 measure your changes against all of those factors, if somehow
2 there is a conflict, then there is a question that one can
3 raise about whether it is in the best interests of the
4 corporation.

5 MR. MULDROW: Madam Chair, it may be helpful for
6 the entire manual if you make a decision that they are going
7 to adopt the principles because they are overriding
8 everything else -- if you are going to do that, you're doing
9 to find they are going to take care of you throughout, but
10 you will have to make the decision are these the principles
11 by which this committee, you know, can live in its best
12 interests or --

13 MS. BATTLE: Right. That's one of the reasons why
14 we are taking the careful time to go through Section 1,
15 because these principles that are set out in 1.1 and the
16 other sections, particularly in Section 1, are the most
17 critical to the board because we will have to adopt them.
18 And the rest of it really implements what we set out in
19 Section 1, it seems to me.

20 MR. ERLNBORN: Madam Chair, as -- I think possibly
21 the question is do we need to refer to 1.1 in various places
22 throughout the document, so that it would be applicable. Or

1 would we agree that 1.1 is applicable to the entire document
2 and, therefore, you wouldn't have to make constant reference
3 back to it.

4 And I would suggest that the latter should be the
5 position that we take. 1.1 is applicable throughout the
6 document and we don't have to restate that fact in other
7 sections.

8 I would also say, as to the issue here, we are
9 talking about possibly actions involving only one employee
10 because of some certain circumstances, or maybe a small group
11 of employees, or all. But it is action taken by the
12 president or, in some limited cases, by the inspector
13 general. And both of them are responsible to the board in
14 differing ways, an inspector general and the president, but
15 if the president is approving a waiver, or a deviation from
16 the principles of this, he does stand responsible to the
17 board. And I think it's -- we have to maybe view what he
18 does under this particular authority as part of the
19 prerogatives of the management of the corporation, the
20 president.

21 MS. BATTLE: Sure. I think what we are attempting
22 to do here is to set out, though, a road map for review, if

1 necessary. There may never be a need for review. But just
2 in -- in my experience, when you kind of put together a
3 manual such as this, it makes more sense to have that road
4 map available if you ever need it, than to not have it
5 available, so that you have to create it when the issue
6 arises.

7 But I think your points are very well taken with
8 regard to the fact that we are really discussing something
9 that if you really vest, as we do, in our president the trust
10 that he acts in good faith, then you really don't have a
11 concern about the departure from the provisions of the manual
12 in his discharge of his responsibilities.

13 Okay. Are there any other specific concerns about
14 anything in 1.3 that we need to address?

15 (No response.)

16 MS. BATTLE: Okay. 1.4. 1.4 deals with the
17 applicability to the Office of the Inspector General. And it
18 basically sets out that the present circumstances are that
19 the Office of Inspector General and the LSC are operating
20 under a delegation whereby the inspector general has
21 delegated to the director of the administration and human
22 resources director personnel authority for implementation of

1 a personnel system within the inspector general's office.
2 And it goes on to set out what that relationship is based on
3 that delegation, as I understand it.

4 As I read this, it -- I have some concern, given
5 the fact that we are -- we are in a mold now where his
6 delegation has occurred, so as long as that delegation is in
7 effect, then the operation of the manual through the
8 implementation for the director stands consistent with the
9 way that it is being operated for the corporation. Is that
10 correct?

11 MS. KENNEDY: Yes.

12 MS. BATTLE: That's the way it was? Bill?

13 MR. MCCALPIN: Madam Chair, the cover letter that I
14 got with this said that management did not recommend adoption
15 of 1.4.

16 MS. BATTLE: Right.

17 MR. MCCALPIN: So the question is, what does
18 management propose with respect to the subject matter of 1.4?

19 MR. FORGER: Well, if this management may respond,
20 I think the board has the decision to make and options to
21 consider.

22 On the one hand, I understand that if this is

1 adopted as a regulation, the inspector general would be bound
2 by its provisions, unless and except if there is something in
3 the Inspector General Act which would be in conflict with
4 that, and then it could otherwise be resolved.

5 The second option is what is in here, in which the
6 inspector general is not bound by this at all, nor his
7 employees. It is by sufferance, but it can be changed at any
8 time.

9 I think one of the reasons why the management feels
10 that's not the best option is that we still try to run this
11 organization as one corporation, even though there are
12 segments that have a different agenda, and a different
13 responsibility.

14 But people are in the halls. They are next to each
15 other. They are part of the organization, and I think that,
16 to the extent not inconsistent with the inspector general's
17 sense of independence and accountability elsewhere, we should
18 try to keep this as one corporation, with the employees
19 feeling that they all are treated in pretty much the same
20 way.

21 The third option, it seemed to me, was that the
22 inspector general commit himself or herself to the policies

1 and principles in this manual, with the opportunity of
2 departing there from, on notice to the board, and in advance
3 of departure. And at that point, the board could then decide
4 whether it wants to implement some or all of this by a
5 regulation and thereby bind the inspector general, which it
6 could do, or take whatever other action at the time seemed
7 appropriate.

8 So I think management's -- the one view that
9 management reached is that the provision, as now written,
10 seems like a least desirable one.

11 MR. MCCALPIN: The --

12 MR. FORGER: The least desirable. And certainly to
13 put it all in a regulation seems to me to be quite
14 cumbersome. And therefore, the only other one that we
15 thought of was if the inspector general would abide by this,
16 except on notice to the board, where that office thought it
17 should have a different rule applying to it.

18 There may be other options as well, but those were
19 the three that we had considered.

20 MS. BATTLE: I've got a concern at this juncture
21 that I would like to express, and it really goes back to the
22 fundamental way that we began this whole review of our

1 personnel policies. Because I think it was our view, from
2 the onset, when we undertook this task, that we would have
3 the inspector general work along with our own staff to
4 develop the personnel policies because, ultimately, it would
5 be the board's responsibility to adopt some sort of policy
6 that would be applicable to both the staff, as well as the
7 inspector general.

8 And I do know that the inspector general in June
9 gave us notice that he -- his office would not participate as
10 a joint member of the team reviewing this. And I know that
11 we have gotten comments and we have had an opportunity to
12 review those comments. And I think that that's in part where
13 1.4 comes from.

14 But I think ultimately this work that we have done,
15 and it is a tremendous amount of work, and it is well taken,
16 that we will soon bring to a close, is something that it is
17 our hope, from the board's standpoint of view, will have
18 application to all the people that are employed by the
19 corporation.

20 And in order to do that, I think we need to take
21 account of -- and I would like someone from the inspector
22 general's office to come to the table to be able to speak to

1 this. I think that we do need to take account of assuring
2 that as we go through this process, we do it in a way that it
3 has the appropriate application to all employees who are
4 employed with the corporation.

5 Now my view, based on what you said about the
6 various options that are available to us, is that we can look
7 to developing this manual, and adopting policies, and
8 attempt, as well, to meet the applicable sections of the
9 Inspector General Act which says, of course, that the
10 inspector general has to be bound to the applicable laws and
11 regulations that govern these appointments by this designated
12 federal entity, which is us.

13 So, you know, whether we do it in a regulation, or
14 whether we do it by a resolution, or whatever it is that we
15 deem to be our law, my view is that we have undergone this
16 process for the purpose of it having application to all of
17 the employees.

18 And so we need to give some thought now to
19 constructing a methodology of assuring that what we have done
20 does have application to all the employees of the
21 corporation.

22 MR. MCCALPIN: Let me make a comment before you

1 call on them because I have a notion that you'll want to
2 respond to what I have to say.

3 I have two comments following Alex's remark.

4 First of all, I have a good deal of doubt in my own
5 mind about the statement in the first paragraph of 1.4 that
6 the inspector general is not bound by personnel policies and
7 procedures, such as those set out in the personnel manual.

8 The applicable provision of the Inspector General
9 Act is 8.G(g) (2). "In addition to the other authorities
10 specified in this act, an inspector general is authorized to
11 select, appoint, and employ such officers and employees as
12 may be necessary for carrying out the functions, powers, and
13 duties of the Office of Inspector General."

14 The only possible word that would imply the
15 inspector general's freedom from the policies and procedures
16 is the word "employ" in that statute. But I'm not sure that
17 "employ" is broad enough to say that in addition to having
18 the right to select and employ his personnel, he also has
19 full freedom to take whatever personnel actions he wants with
20 respect to those employees.

21 So my --

22 MS. BATTLE: I'd like to finish that --

1 MR. MCCALPIN: But I have not researched the --

2 MS. BATTLE: Well, but --

3 MR. MCCALPIN: -- law on this, but I do have some
4 doubt.

5 Let me just make the second comment and then I --
6 Alex, with respect to your third suggestion, it seems to me
7 to say that if the inspector general is going to provide a
8 waiver or a departure, he has to bring it to the board, puts
9 him on a different basis than it does you, because if the
10 inspector general has to bring a waiver or a departure to the
11 board, why shouldn't the president.

12 MR. FORGER: Because you're splitting the
13 corporation.

14 MR. MCCALPIN: It seems to me that they are
15 relatively equal in terms of the oversight by this board.
16 And awhile ago we had a provision about waivers, and
17 modifications, and that sort of thing, and I thought that
18 they were equal.

19 MS. BATTLE: Well, let me just -- if I can, and
20 then, Alex, I'll allow you to answer the second part of what
21 Bill said.

22 There is a second part to the section that you

1 quoted from Section 8.E(g) (2), which says that, of course,
2 the inspector general is authorized to select and appoint and
3 employ these employees, but they are subject to the
4 applicable laws and regulations that govern such selections,
5 appointments, and employment, and obtaining such services
6 within the designated federal entity.

7 So it is our, it seems to me, responsibility to
8 develop the applicable laws and regulations that govern the
9 selections. Just as Alex, it seems to me, has the
10 responsibility for employing officers and employees of the
11 corporation, the inspector general has the responsibility of
12 employing officers and employees of the Inspector General's
13 Office. But both of them do so subject to the governing laws
14 of those selections and appointments. So I think we do have
15 the obligation to develop what that is.

16 Now, how that is done is what I think the issue is
17 before us, how we do that.

18 MR. MCCALPIN: I would suggest to you that the
19 language you have just read if it is -- may be read with
20 respect only to obtaining temporary or intermittent services
21 of experts or consultants, or an organization thereof, and
22 may or may not modify the first part of that paragraph.

1 MS. BATTLE: And I guess my view is that it
2 modifies it all. I mean, that's -- my reading is that --
3 that it's not in the complete absence of a system that you
4 make these appointments. The appointments are made in
5 conformity with some system that is in place.

6 And it is my view -- maybe we could get some help
7 from the Office of Personnel Management, because there are
8 inspector generals throughout the federal government, as to
9 how it is done, and whether those selections that are made,
10 pursuant to this act, by inspector generals and other federal
11 entities, is done pursuant to what those particular federal
12 entities have as their governing laws regarding those
13 selections.

14 If I could first hear from Mr. Kiefer -- I mean,
15 Dr. Kiefer.

16 DR. KIEFER: I'm not aware of any significant
17 problems that exist within Title V organizations -- non-Title
18 V, and this is a question I -- I have not really researched
19 that and I wouldn't want to venture a judgment on that at
20 this point, only to say that we are not aware of --

21 MS. BATTLE: But their selections are done in
22 accordance with what federal guidelines are for those

1 selections is probably your understanding.

2 I mean, in other words --

3 MR. QUATREVAUX: Well -- excuse me, Madam Chair.
4 If you would like information on how the Executive Branch
5 Inspector General implement the personnel policies within
6 Title V and within the cabinet departments where they work,
7 I'll be glad to provide you this, and it is a very deep
8 history --

9 MS. BATTLE: I'm sure there is.

10 MR. QUATREVAUX: -- from the passage -- original
11 passage of the IG Act in 1978. These issues have been worked
12 through quite extensively. But I assure you, the IG's retain
13 all classification and position authorities, all individual
14 pay decision authorities. So they -- everyone follows Title
15 V, but the IG's control the personnel matters, and I'll be
16 glad to provide the information.

17 MS. SZYBALA: Even though they are not covered by
18 Title V, I'd suggest that recently (inaudible) survey them.
19 But the feeling in the IG community, and I provided a legal
20 memo from the agencies (inaudible) long time ago, is that the
21 IG's personnel authority is coterminous with the heads. The
22 IG has --

1 MS. BATTLE: Excuse me. Let me just see -- when
2 you make the statement "coterminous with the heads," are you
3 saying then that the IG's authority is coterminous with the
4 heads, so if we establish personnel policies that govern how
5 the head makes his selections, then likewise those policies
6 govern how --

7 MR. MCCALPIN: We're the head. We're the head.

8 MS. BATTLE: Are you saying we're the head?

9 MS. SZYBALA: (Inaudible) but this 1.4, by the way,
10 is not the only -- the only participation the OIG did in this
11 manual. I mean, 1.3 came from us. Lots of other things in
12 here, too. I mean, it's not as if we were dropped out and
13 non-existent.

14 MS. BATTLE: I understand that. My concern was
15 that I think that we -- we asked for joint participation.
16 And I understand that at some point there was not joint
17 participation. There was a comment on what was developed by
18 the staff, as opposed to a development which included both
19 the inspector general, as well as the staff.

20 MS. SZYBALA: It's a side issue (inaudible) but to
21 some extent the working group on this issue operated as an
22 arm of management in making personnel decisions for

1 management, where the OIG was faced with sitting in a room,
2 asked for its opinion on certain personnel decisions
3 affecting management employees. We thought our position
4 there was no longer appropriate. We asked to be invited to
5 meetings and to comment on things provided to us appropriate
6 for OIG participation, and that's what the memo said, and
7 that's what we explained.

8 In any case, that's history, because we commented
9 timely and our comments were considered and hopefully
10 discussed, and I don't think there was any absence of OIG
11 participation.

12 What's forgotten here is another section of Section
13 8 of the IG Act, which is Section 8.D, which says that the
14 board has general supervision, and cannot delegate
15 supervision of OIG -- any OIG issues to any other employee of
16 the agency. You cannot -- whether you do it in the Federal
17 Register or you do it just by a personnel manual that is not
18 published in the Federal Register as a regulation or not, you
19 cannot make a rule that personnel decisions are governed by
20 the president and that applies to the OIG as well.

21 MS. BATTLE: Okay. Now, I don't think that that's
22 what I am intending to do, so I -- I want to make sure that

1 you're clear, and that the Office of Inspector General is
2 clear.

3 My suggestion with regard to how we approach this
4 issue is simply to have a system, which is stated in a
5 manual, that will be implemented as it relates to the
6 Inspector General's Office, in conformity with either this
7 delegation that has occurred, or if the delegation is
8 rescinded by the inspector general. But it has to be under a
9 framework of policies that have been adopted by the board.

10 MS. SZYBALA: But it is.

11 MS. BATTLE: And so that is the concern that I
12 have.

13 Now what I want to hear and understand is -- from
14 the inspector general -- is once this manual is adopted --
15 one concern that I had about the way that 1.4 is set out, is
16 that we now are in a phase where there has been this
17 delegation of the personnel responsibilities to the director
18 of administration and human resources. Now that can be
19 revoked.

20 MS. SZYBALA: But that has been in effect since
21 1993. It has been (inaudible) followed by the OIG.

22 MS. BATTLE: I understand.

1 MS. SZYBALA: And, you know, the odds of it being
2 revoked are -- there is very little alternative (inaudible).
3 On the other hand, our position on this is stated on paper in
4 March of 1996, and subsequent to that many times, and we kind
5 of begged for a dialog and disagreement and have gotten
6 nothing from the board, or from management. So this issue is
7 being raised basically by Mr. Forger. That's almost the
8 first time we have heard it, except that I had a conversation
9 with him at my request, because we wondered what their
10 position was.

11 I'm still not sure what the options look like and
12 they haven't been discussed, which -- you know, I think it is
13 unfortunate. I really do.

14 MS. BATTLE: Okay. Why don't I make some
15 suggestions with 1.4 as written, because I'm still -- you
16 know, each time that we get into this, there is some clarity
17 that we gain and I think I have gained some additional
18 clarity based on your statement that Section 8.A does set out
19 that the board has general supervision over the inspector
20 general. So, therefore, with that general supervision, we
21 can implement a personnel system, and the question is how we
22 implement that system, so that the inspector general, of

1 course, maintains his direct line of supervision through the
2 board and not through the president. That part of it I do
3 understand.

4 I would suggest in 1.4, at the end of the sentence
5 which now reads "currently, however, the OIG and LSC are
6 operating under a delegation whereby the inspector general
7 has authorized the director of administration and human
8 resources to exercise the personnel authority provided to the
9 IG by the IG Act," that we add a sentence that says "this
10 delegation may be revoked by the inspector general at any
11 time, to be effective 90 days after notice to the board." So
12 that, at any point in time, if this relationship changes, the
13 board has an opportunity to be able to address how to
14 reconfigure its relationship with the inspector general.

15 I would also suggest, at the end of the sentence in
16 the second paragraph, which is actually the second paragraph,
17 which reads "in particular, personnel matters for the OIG are
18 managed by the corporation's Office of Administration and
19 Human Resources, in compliance with personnel policies,
20 directives, and procedures of the corporation, except where
21 such policies create a conflict with the intent of the IG
22 Act, or contravene the independence of the OIG, in which case

1 the IG shall notify the board." That way, if there is a
2 question of conflict which comes up, it is incumbent upon the
3 IG to notify the board, so that we are aware of it and we can
4 address it in our supervisory capacity. Those two changes.

5 MS. SZYBALA: I'd have to talk to them about it.

6 MS. BATTLE: Bill.

7 MR. MCCALPIN: I would direct your attention to the
8 next paragraph of 1.4.

9 MS. BATTLE: Okay.

10 MR. MCCALPIN: I think it is not stated as clearly
11 as it might, because I think what the "except" means is that
12 except in the case of OIG personnel, whenever an LSC
13 official, other than the board, is designated as the final
14 authority for a personnel matter.

15 And my second comment is that in so much of the
16 policy manual as I have read, sometimes it is stated that the
17 president has authority, and sometimes it says that the
18 president has final authority. And I don't know whether that
19 is deliberate and intentional, and that the OIG has -- the IG
20 has authority only where we use the word "final," or whether
21 the IG has authority in all those instances where we give
22 authority to the president, without stating that its final.

1 MS. BATTLE: Is there -- Joan, do you want to
2 respond to that?

3 MS. KENNEDY: That was our intent. In fact, we had
4 attempted to scrupulously go through the manual and cross
5 reference any statement to the president's authority to
6 Section 1.4. And there may be some instances where we missed
7 that, but that was our intent.

8 MR. MCCALPIN: I think there are.

9 MS. BATTLE: Okay. Now if, in fact, the manual, in
10 all other instances, states the final authority for a
11 personnel matters, in the alternative being the inspector
12 general as it relates to the inspector general employees, and
13 the president as it relates to the president's -- the
14 corporation employees, other than inspector general
15 employees, then what need do we have for this provision.

16 It seems to me that this can be resolved if you
17 make those changes throughout. There is no need to talk
18 about this issue here, is there, Renee?

19 MS. SZYBALA: I think that was Joan's, if I recall
20 correctly, desire was to see it in one place, rather than to
21 insert it throughout. Insert the OIG (inaudible) just
22 thought it was cleaner. Is that the question, or am I

1 misunderstanding?

2 MS. BATTLE: Yeah. Because I think what Bill is
3 saying is it does appear in some places, so -- in other parts
4 of the manual.

5 MR. MCCALPIN: Oh, yes.

6 MS. BATTLE: So --

7 MS. SZYBALA: It probably can come out then. It
8 probably could come out in some of the places where it
9 appears if -- as opposed to making sure that it appears
10 everywhere. I mean, this covers every instance where it says
11 the president, the way I read it.

12 MR. MCCALPIN: Well, I refer you back to the
13 paragraph at the bottom of the page two, under 1.3, which
14 refers over to 1.4, with respect to the authority to suspend,
15 amend, waive, or depart from the manual, rests with the
16 designee -- I'm not sure we ought to have parentheses -- or
17 the inspector general, consistent with 1.4. And I think that
18 probably we only need to say it one time.

19 Whenever authority to suspend, amend, waive, or
20 depart from the manual is given -- is given, it rests either
21 with the president, with respect to management employees, or
22 the IG, with respect to IG employees. I think we only need

1 to say it one time, wherever we say it.

2 MS. BATTLE: Okay. Ernestine?

3 MS. WATLINGTON: I just -- you know, I'm not as
4 technical as you are with the codes or what, but just giving
5 you a practical incident that happened. If they are not in
6 conform -- you are in the same building, there was a time
7 when the OIG was able to give raises to his staff, but the
8 corporation couldn't, so I hope you do a personnel manual or
9 thing that would be in conform, that people working in the
10 same building, under the same organization would be, so that
11 it would make a more congenial type of working -- more of a
12 fair type of a working thing. It makes it very difficult
13 when one management can do one thing and another one can't.
14 I mean, this is just a practical way of looking at it.

15 MS. SZYBALA: That particular incident is what
16 started all of this.

17 MS. WATLINGTON: That's what I'm trying to say.

18 MS. SZYBALA: It happened for a few reasons: one
19 because there was no formal pay (inaudible) in effect, two
20 because the OIG had some (inaudible), three because the OIG
21 was not offered Phase I because it was different monetary
22 conditions. The whole rest of the corporation, except the

1 OIG, got the option of taking the Phase I buy-out.

2 MS. BATTLE: Okay. Now that addresses why it
3 happened, and I think your question goes to in the future how
4 would that occur.

5 MS. WATLINGTON: Yes. Process something that's
6 going to be conformed, so that this will not happen.

7 MS. SZYBALA: Okay. What I'm saying is, you can't
8 just say -- it will have to be across the board, no matter
9 what the --

10 MS. BATTLE: Renee, let me just say this. Can we
11 handle this by you responding when I recognize you, because
12 we otherwise, on the record, are going to have real
13 difficulty in being able to discern everything.

14 Now, in response to your question, Ernestine, I
15 think prospectively Section 1.3 -- if you are going to
16 implement a freeze, then that's a major activity. And a
17 major policy change that occurs has to be approved by the
18 board.

19 So if there were an instance in the future where
20 either the inspector general or the president intended to
21 implement some policy that was going to affect everybody,
22 either would have to get board approval for it. And that

1 way, the board would be aware of what was being done by one
2 side, as well as the other, and could make a consistent
3 decision about how it ought to be implemented by either.

4 Okay. I think that's your concern, and I think
5 that's part of why we wanted to address this issue in the way
6 that we have here.

7 MS. WATLINGTON: In a way that we won't be still
8 going through this. Once we make the rule, then everybody
9 has some idea of guidelines, what to go by.

10 MS. BATTLE: Yes. That I think is our intent with
11 this.

12 Okay. Now, Renee, did you have something else?

13 MS. SZYBALA: It's also in 1.4 at the bottom that
14 to be applicable to the whole corporation, both OIG and
15 management employees, the IG and the president have to agree.
16 This will avoid the kinds of surprises we have had in the
17 past. And if they don't agree, it will go to the board.

18 MR. FORGER: One being the pay phrase?

19 MS. SZYBALA: That's (inaudible).

20 MR. FORGER: Where we were under physical
21 constraints and the prospect of very little funding, so I
22 think that was a decision made by management that seemed to

1 me to be the sort that management should be able to do.

2 MS. BATTLE: Yeah. What we may need, and I think,
3 Ernestine, your point is extremely well taken, and -- it may
4 be that in order to address this issue on a prospective
5 basis, we would need to have some provision that would allow
6 for discussion and ultimate decision making.

7 Now, whether what we've got in Section 1 addresses
8 that or not, at this point I'm not clear.

9 MS. WATLINGTON: Neither am I.

10 MS. BATTLE: And I really think we may need to
11 revisit this issue because, in a practical sense, as
12 Ernestine has pointed out, these are the kinds of issues that
13 may come up. And I think we do need to make sure that they
14 are appropriately addressed.

15 Dr. Kiefer.

16 DR. KIEFER: Thank you. Just one comment to
17 clarify that particular issue.

18 The way the provisions for pay increases or merit
19 increases are written in the new manual, you can almost say
20 that you have a de facto pay increase as a matter of policy,
21 to the extent that any pay increases across the board, or any
22 merit increases, are subject to a positive decision by the

1 president. That is, there must be the determination that
2 there is money available for these things, and then the
3 determination then follows of how much money is available.
4 So that if there is no action then, by default, the pay stays
5 the same.

6 MR. MCCALPIN: But the OIG has its own budget.

7 DR. KIEFER: So that would be an instance, if
8 policies are adopted, in which the IG then would exercise
9 that same decision making and decide if money is available
10 and, if so, how it would be allocated.

11 MR. MCCALPIN: That gives the opportunity for what
12 we had before.

13 MS. BATTLE: Right. And we are trying --

14 MR. MCCALPIN: A freeze on one side and increases
15 on the other.

16 MS. BATTLE: And all I'm saying is because there
17 needs to be some consistency in thought and in implementation
18 where there are broad policies being undertaken, be it a
19 freeze, or be it an increase, by the staff, given the budget
20 cycle that we're in, and the fact that we are reliant on
21 appropriations from Congress.

22 It seems to me we do need to have a provision in

1 Section 1 that addresses, in a way that is clear, how those
2 broad decisions are made, subject to the approval of the
3 board.

4 MR. ERLENBORN: Madam Chair, I think I'm a little
5 slow in understanding what this means. I would like to go
6 back to the first sentence in 1.4.

7 MS. BATTLE: Okay.

8 MR. ERLENBORN: The end of that sentence says -- it
9 says that the inspector general is bound by laws and
10 regulations which apply to personnel matters within LSC, but
11 it is not bound by personnel policies and procedures, such as
12 those set out in this personnel manual. It goes on to say
13 that there has been a delegation.

14 But it would appear to me that if that statement is
15 correct, at any time the inspector general disagreed with a
16 pay freeze, or whatever, he could just revoke that delegation
17 of authority.

18 If that statement is true, that the IG is not bound
19 by personnel policies and procedures, such as those set forth
20 in this personnel manual, it seems to me whatever we do may
21 be just useless. And I'd like to have that question answered
22 definitively. Maybe there is agreement that the IG is not

1 bound.

2 MS. BATTLE: No, there isn't.

3 MR. MCCALPIN: There is not.

4 MS. BATTLE: No.

5 MR. ERLBORN: If he is bound, we can do things.

6 If he's not bound, there is nothing we can do, and I think
7 that really is the key question.

8 MS. BATTLE: Ann, you know what I would like, just
9 to follow up on the point that you've made, is clarification
10 as to the perception, because the perception becomes reality,
11 of what laws and regulations apply to personnel matters
12 within the LSC, what that is. Renee, can you tell me what
13 that is?

14 MS. SZYBALA: What laws and regulations apply? We
15 don't really have any regulations that -- personnel
16 regulations in the (inaudible). We have laws, such as the
17 Fair Labor Standards Act and EEOC type stuff.

18 But, I don't know. I haven't done any kind of
19 study on that. That language comes out of an OGC memo that
20 predates this whole discussion.

21 MS. BATTLE: It also comes out of your act which
22 says applicable laws and regulations that govern --

1 MS. SZYBALA: No. I'm talking about they are not
2 bound by the personnel policies and procedures.

3 Bound by laws and regulations, I mean, there is
4 legislative history on this OIG Act. This was purposeful
5 language. When the first IG Act was passed, the only
6 (inaudible) Title V. IGs are bound by Title V. Otherwise,
7 they are in charge of their own personnel.

8 So that, even within the federal government, where
9 everybody is bound by Title V, these IGs have their own
10 personnel offices. I mean, they handle personnel differently
11 in the Department of Labor OIG, than they do in the
12 Department of Labor management.

13 This had to change with the amended act because the
14 amended act, most of the agencies involved were not subject
15 to Title V, and that was recognized in -- by the Congress.
16 And so they just said, whatever the laws and regulations are
17 since there isn't Title V, those apply to the IG equally,
18 otherwise the IG has independent authority.

19 MS. BATTLE: But if you are subject to the general
20 supervision of the board, and the board adopts a policy in
21 its role as your general supervisor, why then are you not
22 bound by that?

1 MS. SZYBALA: This is the way this IG has decided
2 to behave in personnel matters since the get-go. If you want
3 to try researching that issue, legally you're going to find
4 that the IG community has very strong feelings that there --
5 I said it before -- the IG's personnel authority is as strong
6 as the board's and it comes -- it is separately funded and as
7 strong as the head. No different.

8 That part is not subject definitively to oversight,
9 in terms of operational oversight. General supervision
10 doesn't mean operational oversight over audits, or
11 inspections, or personnel authority, any of the independent
12 authority given by the act to the IG.

13 But this IG has said he will follow all policies
14 and procedures adopted by the board.

15 MR. FORGER: Renee, a point of information. I know
16 that the IG has said to management in the past it's important
17 to have all personnel policies set forth in a manual, so the
18 employees will know what to expect.

19 If there were a separate personnel manual for the
20 Office of Inspector General, I assume that would cover things
21 like hours of employment, and snow days, and salary, and
22 leave of absence, and vacation. Wouldn't that be appropriate

1 for the employees of the Office of Inspector General to know
2 what the personnel policies are of the Inspector General.

3 MS. SZYBALA: They do.

4 MR. FORGER: I think it is not enough to say, well,
5 read the LSC personnel manual and they may or may not be
6 applicable to you, even major policies, because we can depart
7 from that without anybody's approval.

8 What do people do, the IG personnel, in other
9 agencies or departments? They must know what the rules are.
10 And maybe you ought to just have your own personnel manual
11 and then try to make it somewhat complimentary to what goes
12 on with the LSC people.

13 MS. SZYBALA: We didn't think that was necessary,
14 but I mean, if that is the suggestion -- I'm really not
15 understanding you.

16 This says that the procedures set out in this
17 manual are applicable. Our employees know that they will be
18 -- they will be evaluated once a year, on our anniversary
19 date, under the current manual, and that has always been
20 true. We have never deviated from it.

21 MR. FORGER: But it isn't under this. I can't
22 change the salary structure, or the job descriptions, or

1 things like that. Those are major policy issues, and I need
2 to go to the board with respect to any change there.

3 MS. SZYBALA: So does the IG.

4 MR. FORGER: Well, is he then bound by all of
5 these? I don't think he is. That's what I've been hearing
6 you say for the last 30 minutes.

7 MS. BATTLE: It is confusing to me as well. On the
8 one hand we're saying we're bound, but we are bound because
9 we choose to, but by law we're not. That's what I'm hearing.

10 MS. SZYBALA: Right. It's the law and we --

11 MS. BATTLE: And I think that the board doesn't
12 quite have a comfort level with that, given that we are in
13 the midst of trying to restructure our entire personnel
14 system, so that we have a consistent system in place that we
15 know will apply to all people that are employed by the
16 corporation.

17 And I think what I would suggest is that we go back
18 and look at this. I don't think that we are at a point that
19 we should make a final decision about it. I think we have
20 heard very clearly from the Inspector General's Office and
21 also from management on these issues.

22 And I think we need to send this issue back with --

1 my view is this, and I'd like to hear from other committee
2 members about this. My goal in all of this is to have a
3 personnel system that gives notice to all the people that are
4 employed by the corporation of how things are going to be
5 done. And that everybody has the understanding that for
6 those employees that work in the Inspector General's Office,
7 the final decision making regarding appointments, employment,
8 classification, pay raises, performance appraisals, will be
9 made by the Inspector General.

10 For all management employees, the final decision
11 with regard to all of those issues will be made by the
12 president. If there are any major departures from anything
13 in this manual, those major departures must have approval by
14 the board.

15 However that needs to be constructed so that
16 everybody understands it, that's what I would like to see.
17 Whatever language we need in 1.4 that meets that, that's
18 really what I would like to see. And I just think we need to
19 send that back and come back with something that allows us to
20 do that in that way.

21 (End side 1, tape 1.)

22 MS. BATTLE: Now -- and I ask the question, Renee,

1 really to try to get an understanding of what laws and
2 regulations which apply to personnel matters means because if
3 we need to consider having a regulation that says, "This is
4 what this board will do with regard to its personnel
5 management," then, you know, we may have to visit that.

6 But I don't want us to go through this process and
7 end up with something that's subject to not being in place
8 the way it needs to.

9 Suzanne?

10 MS. GLASGOW: I think part of the issue in
11 determining what would be comparable for a designated
12 -(inaudible) in particular LSC to the Title V kind of things
13 which the IGs follow --

14 MS. BATTLE: Yeah.

15 MS. GLASGOW: -- in the bigger agencies. And I
16 would like to see some of the information on how the other --

17 MS. SZYBALA: I don't have it. I invited LSC to
18 look into this a long time ago.

19 MS. GLASGOW: And I think if we look at that real
20 carefully and work very closely, I think we can work
21 something out with some language that might be --

22 MS. BATTLE: Okay.

1 MS. GLASGOW: -- favorable --

2 MS. BATTLE: I think that would be helpful to us.

3 MS. KENNEDY: Madam Chair, are you asking the
4 Personnel Issues Work Group (inaudible) administration, and
5 the IG to bring something back to you?

6 MS. BATTLE: Yes. I want this to be a joint
7 project because it is critical.

8 What we are saying here is that as the supervisor
9 of both the corporation and the Inspector General's Office,
10 we've got to put something in place that we know is going to
11 work. And on this particular issue, I think I'd like to see
12 a joint product come out of it, the two of you working
13 together to come up with a way for that to happen.

14 MS. SZYBALA: Okay.

15 MR. FORGER: Could I ask, Renee, is there -- what,
16 if anything, in your opinion, can the board do to cause
17 personnel policies to be applicable to the Office of
18 Inspector General?

19 MS. SZYBALA: Any personnel policies that are
20 subject to change, the way personnel policies have been
21 subject to change here, through deviation, and through
22 abandonment, even without notice, cannot be made applicable

1 to the OIG. I'm not sure --

2 MR. FORGER: But otherwise it could be, if I don't
3 deviate and abandon, and do those terrible things?

4 MS. SZYBALA: I'm sure there's ways it can be
5 worked out, but not with the present EEO (inaudible). No --

6 MS. BATTLE: Well, we're not even talking about
7 that. Now you're talking about having a system in place that
8 applies to everybody, with any major departures coming to the
9 board. Major departures that affect all the employees.

10 MR. FORGER: Even if it is the OIG who has that
11 ultimate decision, but comes to the board for major
12 departures or deviations, or abandonments.

13 MS. SZYBALA: I really didn't think that's what
14 this said.

15 MS. BATTLE: I'm not sure that it does. That's why
16 I'm sending it back. John?

17 MR. ERLNBORN: I'd like to know if the language in
18 1.4 doesn't address the issue that you've raised.

19 It says, in the third paragraph, in fact, that this
20 means that whenever the LSC president or LSC office director
21 is given final authority, the inspector general retains that
22 authority for OIG personnel.

1 So doesn't that address the issue that you have
2 raised about changes being made with -- by the president?

3 MS. SZYBALA: Right. It does.

4 MR. FORGER: They don't affect the OIG.

5 MR. ERLENBORN: Wouldn't that affect the OIG?

6 MS. SZYBALA: But it's being found insufficient for
7 some reason. I'm not exactly sure I understand, but 1.4 is
8 fine. It addresses it. It addresses several issues.

9 MR. ERLENBORN: But you still would believe that we
10 should have the phrase that the inspector general is not
11 bound by personnel policies and procedures, such as those set
12 forth --

13 MS. SZYBALA: That's the law. That's the law. I
14 don't think this needs to say that he is.

15 MR. ERLENBORN: I thought you just said, in
16 response to Mr. Forger's question, that we could adopt things
17 that would be applicable in personnel policies. Now you're
18 saying we cannot?

19 MS. SZYBALA: I'm saying that Mr. Quatrevaux made a
20 compromise and gave up some independent personnel authority
21 when he did that delegation a long time ago, and made himself
22 subject to decisions by the board. And the delegation said

1 wherever the decision maker is not the board, it will be the
2 IG. That's what the delegation said. The rest of the IG
3 community would disagree strenuously.

4 MR. ERLENBORN: That's what this -- that's what
5 this says. The board would be making the decision by
6 adopting these regulations, and the inspector general would
7 be the final authority in waiving or changing the provisions.

8 MS. SZYBALA: Okay.

9 MR. ERLENBORN: It seems to me this conforms with
10 what you say would be required.

11 MS. SZYBALA: And what -- I'm not sure what the
12 problem is.

13 MR. ERLENBORN: The problem is that the statement
14 says that this -- if we adopt this, these regulations --
15 personnel regulations -- are not applicable to the inspector
16 general.

17 MS. SZYBALA: According to the Inspector General
18 Act, personnel policies and procedures, such as this, do not
19 bind the IG.

20 MR. ERLENBORN: Even if the board adopts them?

21 MS. SZYBALA: Yes. Only the IG Act. Yes. This IG
22 has said he will be bound. That's the policy.

1 MR. ERLENBORN: Then I don't understand your
2 response to Mr. Forger, where you say the board could adopt
3 procedures --

4 MS. SZYBALA: I thought we were talking about a
5 regulation.

6 MR. ERLENBORN: Well, I see. You --

7 MS. SZYBALA: That's what Ms. Battle said.

8 MR. ERLENBORN: If we would put this in the form of
9 a regulation, then you believe it would be applicable.

10 MS. SZYBALA: Well, then it would have to be looked
11 at another way. I can't say right now that this passed
12 muster as a regulation that could bind.

13 MR. FORGER: But absent this, Renee, what is the
14 Office of Personnel -- Office of Inspector General bound by,
15 so that employees could look at it and say, oh, well this
16 applies to me and I have the assurance that these are the
17 personnel policies?

18 MS. SZYBALA: They are bound by this. Why is it
19 any different from corporate employees? I'm really losing
20 you.

21 MS. BATTLE: As I understand the difference, the
22 corporate employees are indeed bound by this manual, once the

1 board adopts it and it becomes implemented.

2 And the board has a level of discomfort with having
3 a provision in its manual that basically says that a group of
4 employees are not bound by it.

5 And the question that I asked earlier -- I think
6 I've gotten a response to it. You're saying that suppose the
7 language in the act says applicable laws and regulations,
8 that the only way that the board could somehow have and
9 utilize, and implement its supervisory authority is to do so
10 in a regulation, and I don't know that I agree with that, but
11 that's -- that's what I understand you to say.

12 MS. SZYBALA: That's right. I think it's
13 irresponsible for the IG to give back what Congress said, to
14 give back any measure of independence, formally, that
15 Congress gave them in the Act.

16 MR. ERLNBORN: Might I suggest then, as a
17 compromise, that we adopt a simple regulation that says that
18 the manual for employees will be applicable to the Office of
19 Inspector General. It could be a one sentence regulation.

20 MS. BATTLE: I suggested that to Suzanne to look at
21 that.

22 MR. ERLNBORN: And then that would seem to

1 surmount the problem of the inspector general being bound
2 only by regulations.

3 MS. BATTLE: Yes.

4 MR. MCCALPIN: One of the problems with that, John,
5 is that every time you want to have an amendment, you have to
6 go through the amendment of regulation process.

7 MS. BATTLE: Well, not if the regulation just says
8 this is a regulation which establishes that the board,
9 corporation employees, and inspector general, shall be bound
10 by the personnel manual adopted and approved by the board.

11 Suzanne?

12 MS. GLASGOW: I see a difference between an entity
13 establishing their personnel policies and procedures and
14 then, under that, who gets to apply that to their particular
15 employees, who has the authority.

16 The IG would have the authority to apply it to his
17 employees; the president to the entity's employees. And
18 that's why I feel like this statement is -- too broadly
19 states the law.

20 And because the IG Act talks about they are subject
21 to, for the big agencies, Title V provisions, so even IG's
22 employees, as he applies that to his employees, it seems to

1 me, would be subject to the regulations in Title V for his
2 employees, in classification, pay schedules, et cetera.

3 MS. BATTLE: Right.

4 MS. GLASGOW: That's what we are trying to
5 establish in this manual, and that's why I think we need to
6 talk about this a little more specifically with the IG and
7 see if we can work out some language that perhaps more
8 correctly states the law so that we are all happy, but
9 understand that the IG really does have substantive authority
10 in this area because of his need for independence.

11 MS. BATTLE: Okay. I'm just going to ask a
12 question and I don't mean to put you on the spot, Dr. Kiefer.

13 (Laughter.)

14 MS. BATTLE: But I guess my question is, I'm trying
15 to understand how the Office of Personnel Management actually
16 works. You have regulations which guide your classification,
17 pay -- I mean, there are actually regulations that are
18 promulgated in the Code of Federal Regulation on a lot of
19 that -- those things.

20 Then each of the federal agencies, internally,
21 promulgate directives, and in certain things that implement
22 how those standards that are set out in the regulations will

1 apply, for example, to the Department of the Army, and the
2 various other entities.

3 Is that -- tell me exactly how that works.

4 DR. KIEFER: Yes. We, to a lesser degree than in
5 the past -- that's the whole thrust of much of what's going
6 on -- is these set forth personnel authority. OPM was
7 responsible for setting basic regulations. Agencies,
8 however, are fully empowered to provide interpretative and
9 implementing regulations.

10 MS. BATTLE: Now are those interpreting and
11 implementing regulations contained in CFR, or are they
12 contained in directives and interpretive manuals that each of
13 the federal government entities have?

14 DR. KIEFER: Well, of course, we no longer have a
15 federal personnel manual.

16 MS. BATTLE: Okay.

17 DR. KIEFER: So that ceases to exist. In that
18 sense, Title V is probably the most commonly used. The
19 agencies -- my own understanding of practices of agencies
20 themselves, they then promulgate internal regulations which
21 set forth the rules and procedures for implementation.

22 MS. BATTLE: And my question is, those -- the

1 promulgating of internal regulations takes place internally
2 and is not published in CFR, is it?

3 DR. KIEFER: Not to my knowledge.

4 MS. BATTLE: Okay. So those internal regulations
5 are what govern for federal agencies their personnel
6 policies; is that correct?

7 DR. KIEFER: For the individual agencies --

8 MS. BATTLE: For the individual agencies.

9 DR. KIEFER: -- subject to Title V, U.S. Code,
10 whatever.

11 MS. BATTLE: Yeah. So if we were to mirror that,
12 then technically LSC could promulgate internal regulations
13 that do not go into the Code of Federal Regulations. We
14 could simply set up a procedure by which we devised our own
15 personnel system for ourselves.

16 UNIDENTIFIED VOICE: (Inaudible.)

17 MS. BATTLE: I know that. I know that.

18 MR. MCCALPIN: I think you need to ask one more
19 question, and that is whether those internal agency
20 regulations apply to those agencies' IGs.

21 DR. KIEFER: Well, again, subject to the IG Act and
22 Title V, quite correctly, as we said, agencies are bound by

1 Title V, if they are Title V agencies. But it is also true
2 that the inspector general within an agency has this
3 authority and have chosen to exercise it in different ways.

4 MS. BATTLE: Well, I'd like for someone just to
5 look at that because if there are internal regulations that
6 guide personnel policies in federal agencies that don't have
7 to be published in CFR, that gives us at least some guidance
8 as to how to address this issue about laws and regulations as
9 it relates to personnel for us.

10 And as you go back and look at this issue, it
11 certainly would be helpful to us, I think, if we look at how
12 those internal regulations might have applicability to
13 inspectors general.

14 Given the fact that you don't necessarily have the
15 Title V overriding reg that guides how the structure works,
16 but that if there is guidance, that internal regs have
17 applicability, then I think that helps us to grapple with how
18 we might want to address this issue for ourselves.

19 Okay. Are there any other questions on this issue?

20 (No response.)

21 MS. BATTLE: This might be a good time to take a
22 break before we go on to the next issue.

1 Let's take a break and we'll come back in five
2 minutes.

3 (A brief recess was taken.)

4 MS. BATTLE: Do I have all of my committee members?
5 We do not have a Provisions quorum at present, do we? Yeah,
6 we do. I was just hoping that I had all of my committee
7 members here so we could go back on the record.

8 MR. MCCALPIN: You do.

9 MS. BATTLE: Okay. We need Joan. Can we get Joan?

10 Now that we've got our major discussors back, and
11 most of our board members back, let's resume our session and
12 continue our discussion of the Legal Services Corporation
13 personnel manual.

14 Let's move on to Section 2. For the remaining
15 sections, what I would like to do is to just find out if the
16 board members have any concerns in any of the sections that
17 we have.

18 We recognize that -- I think Bill mentioned that he
19 had only had a chance to read through Section 5. I don't
20 know at what level of review our other board members have
21 been able to give to the other provisions in this manual.
22 But given the fact that we are closing a fiscal year, and we

1 are about to start a new one, the other provisions, and
2 possibly the policies -- the general policies they're under
3 -- in some sections may need to be implemented.

4 So we are going to look for guidance from the staff
5 on that. We -- it doesn't seem to me that we are going to be
6 able to complete our review today. But if there are
7 particular sections that we need to pay attention to because
8 you've got to begin some implementation, please let us know
9 as we go through this, so we can give special attention to
10 them and maybe give some guidance to the staff as to how it
11 might be implemented until we complete our review.

12 Okay. Bill.

13 MR. MCCALPIN: With respect to 1.5, I expect that
14 October 1 would not be the effective date.

15 MS. BATTLE: Yeah. The effective date will come
16 after we have approved it as a board. Yes. Okay.

17 Let's move on to Section 2, which addresses
18 employment. Are there any concerns that board members have
19 about Section 2?

20 MR. MCCALPIN: The first sentence is one of those
21 things that give me some concern. It gives the appearance of
22 being arbitrary.

1 MS. BATTLE: The employment --

2 MR. MCCALPIN: I don't have to -- let's not go into
3 that again.

4 MS. BATTLE: All right. Are there any other
5 concerns in Section 2? Nancy?

6 MS. ROGERS: On page 11, the implementation page, I
7 wondered why in drafting this there wasn't the requirement of
8 a request to the president -- in the case of the OIG, to the
9 OIG -- that set forth why the employee who is going to accept
10 other compensated employment can do so and still comply with
11 responsibilities here, and why that outside employment
12 doesn't conflict.

13 The reason that I mention that is that every
14 organization I have been employed with required that and it
15 provides a way for management to get something in advance.
16 It's just much easier to supervise if you know where your
17 employees are working for compensation outside of the office.
18 And if they have put themselves on record as to how that
19 outside compensated activity does not interfere, either with
20 the purposes or the carrying out of their employment.

21 MS. KENNEDY: I'm not sure if I understand your
22 question fully, but there is a section in the manual later on

1 that addresses dual compensation. It should be -- and I
2 think it goes to at least part of the concerns that you have.
3 It is on page 31.

4 MS. BATTLE: Well, but that deals with dual
5 compensation from the corporation. I think her concern is
6 since we have a non-LSC activities policy, if a person is
7 being compensated -- let's say -- let's just use Avon for
8 example. You're selling Avon, and you are also employed by
9 the corporation. And during your lunch hour, you get a few
10 people together to sell Avon, and you also bring those
11 products in and have them in your office, or you are involved
12 in some other things.

13 Is there a requirement that you give notice to
14 management that you're engaged in this other employment, so
15 that management is aware of it at some level, rather than
16 just a policy that says it is okay to do it, and you do it on
17 your own, and you don't have to tell anybody?

18 MS. KENNEDY: In the current language, that is not
19 a requirement, but we could very easily add that kind of
20 language.

21 MS. BATTLE: Right. Okay. I think that -- does
22 that get at your concern, Nancy?

1 MS. ROGERS: Yes, it does.

2 MS. BATTLE: All right.

3 MR. FORGER: And that would be whether or not
4 compensated, I assume, the rationale is the same.

5 MS. BATTLE: Right.

6 MS. ROGERS: I think it might be difficult to
7 define a non-compensated, so you might, just for that reason,
8 limit it to compensated because non-compensated might be PTA
9 or something else.

10 MS. BATTLE: Yeah.

11 MR. FORGER: If you become president of the PTA --

12 MS. BATTLE: And you have to make meetings for the
13 PTA.

14 MR. FORGER: During the course of the day. Right.
15 I would just think any activity that takes you out, except to
16 see the doctor, the dentist, or whatever, if you decide
17 you're going to be a cub scout leader from three to five
18 every day, then that's -- maybe not, but --

19 MS. ROGERS: I think the policy does apply to that,
20 but I don't know that you need the reporting requirement. I
21 guess my own sense would be that the greatest temptation to
22 cut short your work might be from other compensated

1 employment. I guess the reporting requirement might be
2 limited to the compensated.

3 MS. KENNEDY: If I understand your concern, rather
4 than -- your concern is with respect to secondary employment.
5 Is that right?

6 MS. ROGERS: Yes.

7 MR. MCCALPIN: Moonlighting.

8 MS. ROGERS: Moonlighting during the day.

9 MR. ERLENBORN: Would this, might I ask, involve
10 sort of a precertification, that the terms and conditions of
11 that outside employment would be revealed, and then a
12 judgment would be made that there is no conflict? Or that
13 there is, either one way or the other?

14 MS. ROGERS: Yeah. I'm not -- I'm not a personnel
15 expert, but I would expect something like that. Some
16 statement as to why it wouldn't interfere, so that whoever is
17 managing has a sense of when they intend to work, and can --
18 can make a judgment as to whether they are in compliance with
19 what they, themselves, said that was thought to be non-
20 interference.

21 MS. BATTLE: Maria?

22 MS. MERCADO: Don't we have some employees that

1 actually might work like part time for us, and part time for
2 somebody else?

3 MS. BATTLE: Do we have any part-time employees,
4 Joan?

5 MS. KENNEDY: We don't have any part-time
6 employees.

7 MS. MERCADO: At this time.

8 MS. KENNEDY: We used to have some, but I
9 understand they (inaudible).

10 MS. MERCADO: I was thinking then, you know, I
11 don't know at what point you would have a conflict
12 (inaudible) that you wanted to hire part time, if there other
13 part time --

14 MR. FORGER: We have Mr. Eckles (sp. ph.) is part
15 time.

16 MS. KENNEDY: I'm sorry. Let me correct myself.
17 We do have one part-time employee.

18 MS. BATTLE: Okay. Are there any other concerns
19 about Section 2, or any of the appendices or the appendix to
20 Section 2?

21 MR. FORGER: Going back to Mr. Erlenborn. We want
22 consent required or notice. I thought you were saying some

1 element of consent, and Nancy was giving notice.

2 MS. ROGERS: I'm not sure.

3 MR. ERLBORN: Probably, to be fair to the
4 employees, it might be that they would allowed to engage in
5 that activity unless notified that a conflict --

6 MS. BATTLE: Right. I think notice probably
7 confers it, and then after the notice is given, if a conflict
8 arises, then the supervisor at least is on notice and can
9 address it.

10 MR. ERLBORN: Or if the notice reveals a
11 conflict, the employee could be advised that this would not
12 be acceptable.

13 MS. BATTLE: Right.

14 MS. ROGERS: That makes sense to me.

15 MS. BATTLE: Yeah. So we would include a notice
16 requirement.

17 MS. KENNEDY: Yes.

18 MS. BATTLE: Anything else in Section 2? Bill?

19 MR. MCCALPIN: You're talking about -- yes, I do.
20 Let me just say that the effect of 2.7 and Appendix C,
21 paragraph C, on 11, I was a little surprised that there is no
22 reference to telephone, and the use of the telephone by

1 employees for a private personal -- I don't know precisely
2 what the policy there ought to be, except that it seems to be
3 completely open.

4 MS. KENNEDY: Certainly 2.7 was intended to include
5 telephones. We did not list it as an example in (inaudible)
6 in 2.7, but we could particularly add that.

7 MS. BATTLE: Okay.

8 MR. MCCALPIN: I didn't know whether it was left
9 out deliberately.

10 MS. KENNEDY: No. It was just not included as an
11 example. We listed fax machines, mail, data processing,
12 computers --

13 MR. MCCALPIN: I assume personnel policies which
14 relate to use of the company telephone --

15 MS. BATTLE: Yes. And it really relates more to
16 abuse, rather than just use. If somebody calls you from home
17 to say the kids are home and they are okay, that may not be
18 related to your official duties, but that's not an abuse of
19 that telephone. A one hour conversation about it might be.
20 Okay.

21 Anything else in Section 2, from any other board
22 members?

1 (No response.)

2 MS. BATTLE: Any other comments about any of the
3 appendix sections? Appendix A through, I believe it is, E.

4 (No response.)

5 MS. BATTLE: Okay. Section 3 deals with staffing
6 procedures. Any questions about Section 3?

7 MR. MCCALPIN: Yes, I do. Section 3.3, I have a
8 number of questions.

9 MS. BATTLE: Okay.

10 MR. MCCALPIN: First of all, in paragraph B, I'm
11 not sure what external eligibility means. "In the case of
12 external eligibility," that's a phrase that I don't know. It
13 means, I guess, if you're going to look outside, but I'm not
14 sure the phrase is apt.

15 DR. KIEFER: It may be a technical term, but it
16 refers to those who are not employees of the corporation.
17 One of the things that you do when you decide to recruit for
18 a position, you decide what we call the area of
19 consideration. Is this position for internal corporate
20 employees, or internal plus former corporation employees, or
21 will it be open to everybody. Some sort of --

22 MR. MCCALPIN: I understood what -- I thought I

1 understood what you were trying to do, but it didn't seem to
2 me that that phrase really did it.

3 DR. KIEFER: If it confuses, then we can change the
4 wording.

5 MR. MCCALPIN: Under C, you have at the end of the
6 phrase, "the selecting official," and I don't think there is
7 any description of who is the selecting official.

8 And in D, is one of those instances where it says
9 at the end "except as approved in advance by the president,"
10 and it doesn't refer to that final authority phrase that we
11 saw earlier in 1.4. So it was a question of its
12 applicability to the IG.

13 Then in E, I wonder why, after the selection is
14 made, you would then go to an authorization for release of
15 information, background, or security check, and documentation
16 of qualifications. I would think you would do that before
17 you make a selection, rather than after. You're apt to be
18 embarrassed. You make a selection and then you look for this
19 documentation and you find out you don't want to adhere to
20 the selection. I would think you would do it first.

21 MS. KENNEDY: I believe that this particular step
22 was instituted because of the savings in administrative time

1 and thereby reducing the number of folks that you would do
2 the background checks on. That's the way it has happened in
3 the past.

4 MS. BATTLE: Can we turn your mike on? I'm hearing
5 that maybe we can't hear you. Make sure it is on, so that
6 you can project.

7 MR. MCCALPIN: Ed wants to be heard.

8 MS. BATTLE: Okay. Mr. Quatrevaux. If you will
9 come to the table.

10 MR. QUATREVAUX: I just happened to -- I think I
11 can help here. The background checks that are being referred
12 to are not the standard employer review of credentials, but a
13 more thorough process that in the past had been run by an
14 element of OPM, which subsequently became a private
15 corporation. You may have read about it.

16 But background checks are conducted on many, many
17 types and grades of government employees, and I'm talking
18 about people actually going out into neighborhoods and
19 knocking on doors, and that sort of thing. So I think that's
20 what is being referred to here.

21 MS. FAIRBANKS-WILLIAMS: You mean similar to an FBI
22 check?

1 MS. BATTLE: Are we doing that for employees?

2 MR. ERLBORN: Madam Chair?

3 MS. BATTLE: Yes.

4 MR. ERLBORN: It would seem to me that the use of
5 the word "final selection" may be the problem here. This
6 should be possibly "conditional selection." In other words,
7 this is the candidate that we believe we are going to hire,
8 subject to the final --

9 MS. BATTLE: Right. That's a good way to do it.

10 MR. ERLBORN: -- look at the qualifications.

11 MS. BATTLE: That's a good suggestion, I think, and
12 that covers the concern that was raised, I think, by Bill.

13 MR. MCCALPIN: I have one last question, and that
14 is, is this procedure applicable to temporary employees? It
15 doesn't specifically say.

16 MS. BATTLE: Joan?

17 MS. KENNEDY: No. We did not (inaudible) this
18 procedure for temporary employees. We have temporary
19 employees that we hire from -- we have temporary employees
20 who we hire from agencies for short duration assignments, and
21 we do not do background checks for those employees.

22 MR. MCCALPIN: Well, it may be -- it ought to be

1 made clear that this is not applicable in the case of
2 temporary employees.

3 MS. BATTLE: Okay. Is there anything else in 3.3,
4 by anyone?

5 MR. MCCALPIN: Let me go to 3.4. Why do we hire
6 temporary employees under contract? I thought if we went to
7 Manpower or somebody like that because we needed extra
8 secretarial help, we would bring them on, but we wouldn't
9 necessarily enter into a contract with those people.

10 MS. KENNEDY: This particular category of temporary
11 employee is referring to consultants, rather than the
12 Manpower kind of --

13 MR. MCCALPIN: It doesn't say that. "To fill
14 regular classified positions on an acting basis, or as an
15 additional staff for particular assignments."

16 When I look at temporary employees, I think about
17 going to Manpower and I wouldn't think that you would want to
18 get into a contract with the employees who come from
19 Manpower.

20 MS. KENNEDY: And we do not.

21 MR. MCCALPIN: But that's what you say. Temporary
22 employees --

1 MS. FAIRBANKS-WILLIAMS: So you should put contract
2 employees in there?

3 MS. KENNEDY: I'm sorry. I missed that question.

4 MS. FAIRBANKS-WILLIAMS: I said, so you should put
5 temporary contract employees in there?

6 MS. KENNEDY: Well, let me give you an example of
7 an instance where this has been applicable.

8 When we hired our press secretary, for instance,
9 she was hired initially under contract for a short period of
10 time, prior to having become permanent. And those are the
11 kinds of employees that this particular section is --

12 MR. MCCALPIN: Except it's not limited to that.

13 MS. KENNEDY: We need to reword it and look at the
14 language --

15 MS. BATTLE: Yes. You can have it apply to both
16 temporary employees and to contract employees, and temporary
17 will communicate, it seems to me, the point that Bill is
18 making, and contract employees would cover the situation that
19 we talked -- that you talked about involving the press
20 secretary.

21 MS. KENNEDY: We'll change the language to
22 (inaudible) between the two.

1 MR. MCCALPIN: I would point out also, in the same
2 paragraph, we have that at the discretion of the president
3 without any clear indication of whether it also applies to
4 the IG, because it's not, you know, consistent with that
5 language early on about final authority is given.

6 So throughout this there is the question of the
7 status of the president and the IG. In fact, I've
8 underlined, as I've gone through, every time we use the word
9 "president" and raised for myself the question that does that
10 also apply to the IG.

11 MS. BATTLE: We may be able to come up with some
12 language that we can word search and correct all of these
13 with, it seems to me.

14 MS. KENNEDY: The other option I thought I heard
15 the board consider earlier -- the committee consider earlier
16 -- was including that reference in the -- in Section 1.1 and
17 having it have a blanket statement that makes applicability
18 throughout the manual.

19 MR. MCCALPIN: That would make sense.

20 MS. KENNEDY: But use a term that makes sense
21 throughout the manual.

22 MS. BATTLE: Okay. I'd like to go back to A(1).

1 There is a term used that I'm not familiar with. "Part-time
2 regular employees who meet the minimum number of hours
3 required by specific plan documents." What does that mean?
4 "Are eligible to receive corporation benefits."

5 MS. KENNEDY: Well, we have several different kinds
6 of plans. One, for instance, is our 403-B pension plan. We
7 have our health plans. We have our disability plans. So
8 that's what those are referring to when you talk about plan
9 documents.

10 MS. BATTLE: Okay.

11 MR. ERLNBORN: It might help if you would say
12 employee benefit plan documents.

13 MS. BATTLE: Yes. That sure would.

14 Okay. Anything else in A? Anything else in three?

15 (No response.)

16 MS. BATTLE: I did have a concern in B(2) that I
17 expressed, I think to you, Joan, yesterday, when we talk
18 about non-exempt employees are not incumbents in the
19 application of the Fair Labor Standards Act, and how you do
20 your overtime.

21 I wasn't sure as to whether the new act was enacted
22 which would provide for employees who are not exempt being

1 able to take compensatory time in lieu of overtime pay. And
2 I just wanted us to look at that and if it -- and make a
3 determination if it's not effective yet, then we don't need
4 to put it in. If it is effective, we might want to add it.

5 MS. KENNEDY: We will look at that.

6 MS. BATTLE: Okay. Anything else in three?

7 (No response.)

8 MS. BATTLE: Hearing nothing else in three, let's
9 move on to Section 4, which addresses classification.

10 On the occupational profiles in 4.1, I raise the
11 issue as to whether we needed to also include physical
12 requirements when we talk about what our occupational
13 profiles will include. There are some jobs that do have
14 physical requirements that may be something that you would
15 want to give general notice to the public when people get
16 ready to apply for a position, so that they could determine
17 whether or not they meet those physical requirements.

18 DR. KIEFER: Yes. The term "competency" in 4.1
19 includes physical requirements.

20 MS. BATTLE: Okay.

21 DR. KIEFER: And also on 4.2, it talks about
22 evaluation criteria under paragraph E(7). Physical demands

1 and work environment are mentioned as an evaluative criteria
2 for --

3 MS. BATTLE: Okay.

4 DR. KIEFER: -- the job. We could certainly --
5 certainly add that to 4.1 and make sure that it includes
6 physical demands.

7 MS. BATTLE: Okay.

8 DR. KIEFER: Yeah. So long as they are job
9 related.

10 MS. BATTLE: Exactly. Well, that's exactly right.
11 We're talking about physical requirements that are job-
12 related requirements.

13 DR. KIEFER: Exactly.

14 MS. BATTLE: Yes. Okay.

15 Is there anything else in four? This is just an
16 editing change to 4.4(A). "The employee has been performing
17 the new duties," because you are talking about reclassifying
18 new duties and redesigning a position to incorporate new
19 duties that have been performed for a period of time.

20 DR. KIEFER: Right.

21 MS. BATTLE: I think the time frame suggested there
22 is over a period of two or three months at least.

1 DR. KIEFER: Right.

2 MS. BATTLE: Okay. Bill?

3 MR. MCCALPIN: On page 21, D is another one of
4 those instances about -- well there it says final authority
5 with the president, so I would assume that to the extent a
6 reclassification would affect something within the IG area,
7 the IG would be substantive. But then that's one case where
8 it does say final authority.

9 Let me raise also the -- 4.5(A). As I understand
10 that -- let me see -- "a detail is an assignment to another
11 position to perform specific works for a period of time. The
12 employee retains his or her assigned position and salary and
13 returns to that position upon expiration of the detail."

14 I have thought that ordinarily if you temporarily
15 assign a person to a job that pays more, that the employee
16 gets the higher rate of pay while he is performing within the
17 higher rated job. This would seem the negative of that, and
18 he would stay at the same salary level, even though
19 performing the responsibility of a job that carries a higher
20 pay rate. I think that's contrary to what I have been
21 accustomed to seeing.

22 MS. BATTLE: Okay. Can you address that?

1 DR. KIEFER: Yes. Those would be -- even under
2 Title V this is not required, and it is fairly common to say
3 for someone to act as a supervisor for a period of two or
4 three months and not to receive the higher pay.

5 So what you are describing would probably be called
6 a temporary promotion, and so if the decision were made that
7 it is appropriate to pay the person more, there would be that
8 kind of an action.

9 Customarily a detail does not carry any pay
10 implications. But certainly the action is permitted if you
11 describe it under the regulation here.

12 MR. ERLBORN: Is there a provision then here for
13 a temporary promotion?

14 DR. KIEFER: I think --

15 MR. MCCALPIN: He talks about promotion, but it
16 doesn't say anything about temporary, does it?

17 MS. BATTLE: No. I don't remember seeing that in
18 here.

19 MR. FORGER: A new position or a higher
20 classification it says, is all.

21 MR. ERLBORN: If a temporary promotion is to be
22 distinguished from a detail, then I think there should be

1 something in here defining and setting out --

2 MS. BATTLE: Yes. I think that could happen. I
3 think --

4 MR. ERLBORN: -- the temporary promotion.

5 MS. BATTLE: Can we do that?

6 DR. KIEFER: So, we could mention that
7 specifically. Right.

8 MS. BATTLE: All right. That's a good point.

9 I raised a question under Section F on
10 terminations. We do recognize that we are in an at-will
11 state and so, therefore, you don't have to necessarily have a
12 reason for terminations. But -- and I do also recognize that
13 under federal government law, that an employee, even if
14 terminated for misconduct, has an entitlement to their earned
15 vacation pay.

16 However, in a not-for-profit environment, an
17 employee, potentially terminated for misconduct, if your
18 manual sets out that that person does not have a right to
19 their vacation pay, would not have that right to vacation
20 pay.

21 And I think that's an option that we may want to
22 consider, given -- you know, when you get into situations

1 It would seem to me that this should be tied in
2 with those plans, if we have those, so that if someone is
3 being denied post-employment benefits, that ought to include
4 also not getting the unused vacation time.

5 MS. BATTLE: Yes. The reason I raised that, I know
6 that, at least in our state, as it relates to, for example,
7 unemployment compensation, if a person is terminated for
8 cause, they may not be entitled to their unemployment
9 compensation. It almost adds insult to injury. If you have
10 someone who steals from the corporation, you give them their
11 vacation pay, and then you pay them their -- because that's
12 your provision. They also get their unemployment
13 compensation. Renee?

14 MS. SZYBALA: There are --

15 MS. BATTLE: I'm sorry.

16 MS. SZYBALA: There are legal implications that I
17 think you would have to look into because you're talking
18 about an environment in which there are no due process rights
19 at all, and something that has monetary value that the person
20 owned yesterday, and today you're saying, with no right for
21 the person to explain, or have due process, you don't own it
22 anymore. And there you might find that you have -- the law

1 limits you to some extent.

2 The plan documents limit you as well, as to what
3 you can say they can't be. These are contractual documents
4 between the corporation and the insurance policy companies,
5 and the employees, that I don't think you can terminate,
6 especially without due process rights.

7 And there is also probably a policy issue you
8 should think about. I mean, you are creating an environment
9 in which to protect yourself -- where they can find that they
10 are terminating you for cause, without a hearing, and without
11 documentation -- they are going to say it's for cause. They
12 can deprive you of these rights and, therefore, you have to
13 keep your balance down as low as possible to protect
14 yourself. You have to take all your time. Everybody is
15 going to use all their vacation, even in times, maybe, when
16 it is not to the best interest of the corporation to have
17 them out on vacation, because they need to protect
18 themselves. So there are some issues, I think.

19 MS. BATTLE: I'm sorry. Maria.

20 MS. MERCADO: I think one of the examples that were
21 given, as far as misconduct or cause, assumes that it is a
22 criminal action. However, lots of employers terminate for

1 cause that has nothing to do with criminal allegations and
2 merely that they didn't follow a personnel policy that they
3 should have done, or they were instructed to do X, and they
4 didn't do X, they did Y.

5 MS. BATTLE: Yes.

6 MS. MERCADO: And that is called misconduct. In
7 those situations, are we saying that then someone is not
8 entitled to their retirement, or their vacation leave,
9 because of that particular type of activity, versus a
10 criminal activity?

11 I think there is a great difference, you know, for
12 really -- I mean, you are penalizing people for whatever
13 reason. Maybe not following some policy that may not be that
14 egregious, I think, to the corporation. And I don't see that
15 as being necessarily fundamentally fair, as opposed to
16 someone who actually did criminal activities. It would be in
17 a different category.

18 MR. ERLBORN: That's why I used the phrase "gross
19 misconduct." I don't think "cause" should be the --

20 MS. BATTLE: Sure.

21 MR. ERLBORN: -- operative word, but gross
22 misconduct or something like that should be.

1 MS. BATTLE: Maybe what we can do is simply look to
2 the unemployment compensation law, which is part of why I
3 raised that issue in the first place, to determine what it's
4 requirements are. And I think that that's one of those
5 subsidiary issues as to how it might apply, that might drive
6 how we address this particular issue. Because if a person,
7 because of the way that we handle our dismissals, is still
8 going to be entitled to that, as well as other things, then
9 that places us in a different situation maybe down the line,
10 involving other litigation, as well.

11 Maria.

12 MS. MERCADO: If you look at the unemployment law
13 -- I mean, just to give you an example in Texas -- where
14 someone gets terminated for cause, meaning perhaps they
15 weren't there at eight o'clock; they were getting there at
16 8:15 for continuous times; they would not be entitled to
17 unemployment benefits because they were terminated for cause.

18 Again, in that situation, are we saying someone is
19 not going to be entitled to vacation pay, et cetera? I mean,
20 I think that is something that really needs to be looked at
21 very carefully as to what level of misconduct or cause it is
22 that we are going to do this. Because if you go by

1 unemployment law, in some states, like in my state, that
2 would not be an appropriate decision, I think, to take away
3 people's benefits.

4 MS. BATTLE: Tell me practically, Joan, now how
5 does it work. It may be that we have such great employees
6 that this has never been an issue, so we are just kind of
7 discussing something for the intellectual love of it.

8 Have we had an instance that at least you are aware
9 of, where we have had to terminate somebody for any kind of
10 cause?

11 MS. KENNEDY: Well, understand I only have a year's
12 history.

13 MS. BATTLE: Yes.

14 MS. KENNEDY: So since I have been here, I am not
15 aware of that kind of situation and I don't know if anyone
16 else, who has more history than me, can speak to that. Dave?

17 MR. RICHARDSON: We have had a number of cases
18 where people --

19 MS. BATTLE: Could you come up to the mike for us,
20 Dave? This is Dave Richardson.

21 MR. RICHARDSON: For the record, my name is Dave
22 Richardson.

1 We have had a number of people who have been
2 dismissed for cause.

3 MS. BATTLE: Okay.

4 MR. FORGER: Wasn't the president -- a president --
5 dismissed at one time?

6 MR. RICHARDSON: That's correct.

7 MS. BATTLE: Was it for cause?

8 MR. RICHARDSON: Shoplifting.

9 MS. BATTLE: Oh, okay. He did resign. Okay.

10 Well, that's just one area you may want to look at.
11 And I think we need to come down consistent, of course, with
12 our at-will status, but just giving -- giving some
13 consideration to gross misconduct.

14 MR. ERLENBORN: Let me reiterate. If we do have --
15 do we have a pension plan?

16 MS. BATTLE: Yes.

17 MR. FORGER: A 403.

18 MS. BATTLE: A 403. 403-B pension plan.

19 MR. ERLENBORN: 403-B. Of course, that's a defined
20 contribution type plan.

21 MS. BATTLE: Yes.

22 MR. ERLENBORN: And probably the rules there might

1 be a little different.

2 But if there is any provision in any post-
3 retirement plans, the gross misconduct, as defined therein,
4 would subject the plan employee to the loss of those
5 benefits, that should be coordinated with the loss of
6 vacation time. That's my only point.

7 MS. BATTLE: Yes. And I guess to address the
8 concern that Maria raised, I agree with you. If somebody is
9 just, you know, been sick a lot and been absent, and not been
10 able to do their job, I'm not sure that that's really what we
11 are trying to get at here, as much as a situation where, you
12 know, it adds insult to injury for us to pay out enormous
13 sums to someone who has taken money from us, or done some
14 things that we think are egregious -- severely egregious.

15 All right. Anything else in Section 4?

16 MR. MCCALPIN: Yeah.

17 MS. BATTLE: Okay. Bill.

18 MR. MCCALPIN: Section 4.6, page 23, the second
19 paragraph, in determining whether functions are going to be
20 reduced or eliminated, refer only to meeting the
21 corporation's responsibilities and obligations under the LSC
22 Act. And we have just had an example of where it is

1 different legislation, to wit the Appropriations Act, which
2 has caused us to do a lot of things. So that I think we
3 ought to refer "and to other applicable laws."

4 MS. BATTLE: Okay. Did the staff get that?

5 Do you have anything else? Anything else by any of
6 the other board members in Section 4?

7 MR. ERLENBORN: Let me just ask Bill. Is there an
8 LSC Act --

9 MR. MCCALPIN: Oh, sure.

10 MR. ERLENBORN: -- currently?

11 MR. MCCALPIN: Oh, yes.

12 MR. ERLENBORN: I thought we needed to be re-
13 authorized.

14 MR. MCCALPIN: Well, we do need to be re-
15 authorized, but I think we have always taken the position
16 that we are still bound to the provisions of the LSC Act.

17 MR. ERLENBORN: Okay.

18 MR. MCCALPIN: I don't think there -- there wasn't
19 a sunset provision in the act.

20 MR. ERLENBORN: It's just the authorization for
21 appropriation --

22 MR. MCCALPIN: Right.

1 MR. ERLNBORN: -- that lapsed.

2 MR. MCCALPIN: Right.

3 MS. BATTLE: I would just note, in Section 4.A,
4 that the Office of Human Resources will be establishing a
5 procedure to govern furloughs. We had that circumstance to
6 come up recently and there is not an appendix present to
7 address that particular issue, so we look forward to getting
8 that from the staff.

9 Is there anything else in -- we've got the
10 reductions in force, and severance pay, and the Section 4
11 appendix provision. Any questions about any of that?

12 (No response.)

13 MS. BATTLE: Section 5, compensation and salary
14 administration. Any questions about any of the sections in
15 Section 5, dealing with compensation and salary
16 administration? Bill?

17 MR. MCCALPIN: I have two policy questions that --
18 first of all, I think it is worth stating here that the
19 salary and compensation of the president and the IG are set
20 by the board, which is the statute. And it doesn't refer to
21 them at all, and I think it is worth stating it as a matter
22 of policy here.

1 Secondly, I -- I recollect that we had some
2 discussion about this a good long time ago. But I think that
3 we might be well advised to have a policy against awarding
4 bonuses.

5 MS. BATTLE: Is there a policy on --

6 MR. MCCALPIN: That raises all kinds of internal
7 favoritism issues and that sort of thing.

8 MS. MERCADO: Doesn't that fall under the former
9 administration (inaudible).

10 MS. BATTLE: There is no provision in here on
11 bonuses.

12 MR. MCCALPIN: No, there is not. That's why I
13 raise it.

14 MS. BATTLE: And you are suggesting a policy.
15 Okay.

16 MR. MCCALPIN: I raise it. I think that we would
17 be well served by having such a policy.

18 MR. ERLBORN: I would agree. I think it could
19 cause trouble not only internally, but externally as well, on
20 the Hill, these bonuses. Although many members of Congress
21 use bonuses for their staff, a practice that I never engaged
22 in. I told people they are entitled to what they were agreed

1 to. If they worked in the vineyard as viable (inaudible) and
2 they get what they were promised. But I would agree. We
3 ought not have bonuses.

4 DR. KIEFER: I might mention that this is addressed
5 in 6.5.

6 MR. MCCALPIN: Well, I haven't --

7 DR. KIEFER: Although I think probably not
8 addressed in a manner that you would approve of, but it is
9 mentioned.

10 MS. BATTLE: Special awards?

11 DR. KIEFER: Yes.

12 MS. BATTLE: And it says either non-monetary or
13 monetary. What's a -- a non-monetary award is like a plague,
14 or some sort of recognition?

15 MS. MULDROW: Time off.

16 DR. KIEFER: Right. Time off. Right.

17 MS. BATTLE: Okay.

18 MR. MCCALPIN: Well, I didn't get that far, so I
19 didn't see that, but I would think that we ought to have a
20 policy against awarding bonuses.

21 MS. BATTLE: What is the -- that's totally
22 different from the private sector, but what is the -- what

1 has been the experience here at the corporation on bonuses?
2 Anyone can answer. I know that John only has one year.

3 MS. KENNEDY: During this past year that I've been
4 here, there has been only one bonus awarded. And prior to
5 that, I'm not sure. Dave, can you speak to that?

6 MS. MERCADO: And I remember when we first got on
7 the board, and looking at previous administrations, there
8 were a lot of bonuses, in reviewing -- in the sense of time
9 and also any kind of benefit award pay scales that they got.

10 MR. RICHARDSON: There were two types of awards
11 that were given that Ms. Mercado is speaking of. One is
12 there is a -- we had an incentive award, where an office
13 director could recommend a \$500 incentive for an employee who
14 they felt had performed over and above their due
15 responsibilities.

16 And then the other that you're speaking of was the
17 pay system itself, where an employee who was rated a
18 satisfactory employee, would receive a 4.2 percent increase,
19 and then they would receive a .7 percent one-time payment.

20 Also, with a superior, they would receive an
21 increase into their base of 5.2 percent. Then they would
22 receive a 1.7 percent one-time payment. And if they were

1 considered outstanding, they would receive an increase to
2 their base pay of 6.2 percent, and then a two percent one-
3 time payment. That was done to try to hold down the annual
4 salaries of the employees at the time.

5 MS. KENNEDY: And when I answered that there was
6 only one award given in this past year, I was referring to
7 the first type of award, not the one that was included with
8 the merit increase.

9 MR. MCCALPIN: I'm sorry. I haven't gotten to that
10 part of this manual which would deal with that.

11 MS. BATTLE: But Dave, I guess, raised an
12 interesting point about how this award worked. Because in
13 circumstances where the prospect of an increase in salary may
14 not work, but you've got the opportunity for a one-time bonus
15 for employees, it seems to me if we cut this section out,
16 you've cut that option out completely.

17 MR. MCCALPIN: I'm willing to.

18 MS. BATTLE: And I just don't know, given our up-
19 and-down appropriations life, whether cutting that out
20 because we've got a good year and an opportunity to do that,
21 makes sense. Maria?

22 MS. MERCADO: Well, one of the things that -- let

1 me see. Mr. Richardson may correct me if I'm wrong, but we
2 went -- at least through our first couple of years on the
3 board, that our staff -- is it over a year's period of time
4 -- had not received any kind of increase because we had had
5 all the different cutbacks and reductions in positions. I
6 think we may have done, you know, one special bonus to try
7 and give them something, just in the last budget period.

8 I don't remember exactly the correct times, but --
9 I mean, I don't know that we would want to include that.

10 MS. BATTLE: Well, I'm trying to see whether or not
11 a one time across-the-board increase that's like a bonus to
12 everybody, is the same as a special award, or whether it's
13 not.

14 MR. MCCALPIN: It's not.

15 MS. MERCADO: It doesn't seem to me like it is, but
16 I want to make sure on the record that it isn't counting that
17 way because we did do one like that, because they had had
18 like about two years or something without any kind of
19 increase. Is that correct?

20 MR. RICHARDSON: We had a year without increases.

21 MS. BATTLE: A year without increases.

22 MR. MCCALPIN: A bonus is basically an

1 individualized sort of thing, rather than not across the
2 board.

3 MS. BATTLE: Yes. The section really speaks to
4 individuals or groups of employees. And so, it doesn't
5 envision an across-the-board for everybody. We've got a
6 small pot of money available; we're going to split it up with
7 everybody at the end of this fiscal year. We don't know what
8 we're going to have next year and we can't give raises
9 situation.

10 MR. MCCALPIN: Where are you looking at?

11 MS. BATTLE: I'm looking at 6.5 on special awards.
12 We kind of got ahead of ourselves, but I thought since you
13 raised the issue about bonuses, we needed to go ahead further
14 and discuss it. Suzanne?

15 MS. GLASGOW: In the ten years that I have been
16 here, I only remember one time where a special award was --
17 it may be that \$500 award we were talking about -- was given.
18 And it did cause morale problems within the corporation. It
19 seemed like more people in this department were getting the
20 awards than people in another department, and it did cause a
21 problem.

22 MS. BATTLE: Okay.

1 MS. GLASGOW: That's the only time I remember that
2 kind of award, given as a monetary award, happening in the
3 ten years.

4 MS. BATTLE: Well if we just struck in Section 6.5,
5 "these awards may be non-monetary" and to strike either "non-
6 monetary" or "monetary" -- strike the monetary implications
7 there, that gives supervisors the opportunity to do some
8 things in a non-monetary way to recognize people who do good
9 work, it seems to me.

10 MR. MCCALPIN: Well, you've still got merit
11 increases.

12 MS. BATTLE: Yes, we do. I think Ed had a concern.

13 MR. QUATREVAUX: I'm the one who gives out the \$500
14 awards to one employee, once a year. I think they are a very
15 effective and very cheap way of recognizing someone's special
16 efforts. I don't give them out every year, but I have, and I
17 don't think anyone else, who did not receive them, felt badly
18 about it. It's just an opportunity to recognize a good
19 employee, beyond the constraints that one has in the whole
20 system. \$500 is not very much money.

21 MS. BATTLE: It's not. I guess what I'm hearing,
22 at least from the board -- I've heard expressed by at least

1 two of the members of this committee -- is a policy
2 determination that there should be special awards to
3 employees, but that they be non-monetary. That's what I
4 heard from two of them.

5 DR. KIEFER: Our intention in writing the policy as
6 we did was to leave that degree of flexibility, recognizing
7 that there were some differences of opinion. Having said
8 that, monetary awards, we have found throughout the federal
9 government that they can be a very effective or a cost
10 effective way of recognizing performance. I would hope that
11 you would not decide to preclude that possibility altogether.

12 MR. FORGER: I would point out also, it is the
13 president has to approve that, and I suppose you can
14 eliminate discretion from the president and make things more
15 automatic. It doesn't make for the best kind of managed
16 entity.

17 So I don't -- if you have confidence in whoever is
18 the president, it would seem to me that you would let the
19 president manage. I can't believe that there are ways that
20 you would say the president can't do certain things because
21 it may not be in the best interests of the corporation. I
22 mean, then you fire the president, I guess.

1 MS. MERCADO: So are you saying that you would not
2 exclude the opportunity of having monetary --

3 MR. FORGER: I would always err on the side, in the
4 management context, of giving management discretion, rather
5 than less. I mean, that's one of the big problems we have
6 had with this corporation with Congress. We try to have some
7 funds with which you can innovate or do things, and Congress
8 has said no, you can't have any discretion. You have to
9 spend \$1.29 in these specific ways.

10 It is more difficult to manage an entity where you
11 don't have an outlet of discretion.

12 MR. ERLBORN: This might be a midpoint here where
13 monetary awards could be limited, no more than \$500.

14 MR. MCCALPIN: I hope you'll think about it and
15 come back to us with something on the subject. I think
16 it's --

17 MS. BATTLE: Well, I think that Bill started with
18 discouraging and not necessarily eliminating. I think that
19 was your language initially, that we not make bonuses
20 something that we do all the time. But I don't think that
21 you initially said none.

22 But I did hear from at least two board members that

1 you didn't think it was a good policy to reward people using
2 money.

3 MR. FORGER: Everything you do is a potential for
4 bad morale, whatever. It's room assignments. It's raises.
5 It's promotions. It's virtually everything you do with your
6 employees. And this is just one piece of it, I suppose, that
7 fits into that whole package.

8 I don't think there is any way of circumscribing
9 the authority of the president, such that you will always
10 have happiness and peace throughout an entity, because he was
11 not able to abuse common sense.

12 MS. BATTLE: Suzanne?

13 MS. GLASGOW: In my memory there was only one
14 occurrence. It was a very long time ago. So I -- you know,
15 based on that one time, you know (inaudible).

16 MS. MERCADO: And I think just from the finance
17 position, I know that there was some abuse in that system,
18 and I'm not saying necessarily when we came in. It's just
19 that we were looking at some of those leave packages as to
20 people who had received tremendous amounts of bonuses and,
21 you know, additional leave, and everything else, as compared
22 to others.

1 And I think that that's what we are talking about,
2 that we would hope that management has that discretion to
3 have the common sense or whatever. But that's where some of
4 the problems came up.

5 I'm not necessarily saying that it is the folks who
6 are running the show right now.

7 MS. BATTLE: Well, why don't we do this?

8 MR. MCCALPIN: One of the problems is that the
9 bonuses could be given by a president who is on his way out
10 the door.

11 MR. FORGER: Present company --

12 (Laughter.)

13 MR. ERLENBORN: There again, you might have some
14 monetary limitation with the exception that if the board
15 approved the bonus, it could be greater.

16 MR. FORGER: I have no intention of giving cash
17 bonuses at the present moment. I'm safe.

18 MR. MCCALPIN: I was speaking historically, not
19 prospectively.

20 MS. BATTLE: Okay. Well, why don't we go back and
21 look at this, after having the discussion that we've had, and
22 come back with a suggestion, taking into account the --

1 MR. MCCALPIN: Although it's a good idea.

2 MS. BATTLE: -- concerns that have been raised by
3 various board members during our discussion of it.

4 Do we have any other suggestions or observations on
5 Section 5, which addresses -- I see it is an attendance
6 policy in here, as well as compensation and salary
7 administration?

8 MR. MCCALPIN: Can I raise one other question in
9 five?

10 MS. BATTLE: Sure. Yes.

11 MR. MCCALPIN: Does the interrelation between 5.6,
12 the first sentence, and 5.7, the first sentence, open the
13 door to flex time?

14 DR. KIEFER: Yes.

15 MR. MCCALPIN: It does?

16 DR. KIEFER: Yes.

17 MR. FORGER: We're opening that door as a
18 prospective policy.

19 MR. MCCALPIN: You know, we talked about flex --
20 flex place policy at the top of page 33. We didn't
21 specifically mention flex time. And I -- as I looked at the
22 flex place at the top, and then I looked at five, six, and

1 seven and said, do we or do we not have flex time provisions.

2 MR. FORGER: I don't know it's a formalized policy,
3 but I would certainly hope we would have that authority.

4 MS. KENNEDY: We do not have a formalized written
5 flexi-time policy. But if you'll look under the section that
6 deals with flexi-place, flexi-time is referenced. And we do
7 have a practice of utilizing flex time.

8 MS. BATTLE: So maybe what we need to do is just
9 break that out and say that if we do have a practice on flex
10 time and give some guidance to the employees as to how that
11 will occur.

12 MS. KENNEDY: On page 59, Section 2, work schedule
13 review and flexi-time and implementation. Perhaps what we
14 need to do is add additional language to clarify the use of
15 flexi-time in the corporation as well.

16 MS. BATTLE: Yes. Yes. And this would be the
17 place to do it.

18 MR. MCCALPIN: Well, do you want to do it in a
19 paragraph that's headed "Flexi-place Policy"?

20 MS. BATTLE: You do it with a separate paragraph
21 that is headed "Flexi-time."

22 MR. MCCALPIN: Okay. Because 7.8 is --

1 MS. BATTLE: Flexi-place.

2 Okay. Anything else in Section 5? And I just
3 mention in 5.8, when you deal with compensatory time, of
4 course, there again take a look at the law and see if there
5 have been some changes to its application to non-exempt
6 employees.

7 MR. MCCALPIN: Let me -- Appendix B to Section 5,
8 paragraph B(1), when it says "double time will be paid for
9 overtime worked on LSC holidays," now does that mean that you
10 get double time pay for any work on the holidays? Or does it
11 mean only that if somehow or other the holiday hours get you
12 above 37 1/2 for the week, because we don't have daily
13 overtime policy, that you get double time?

14 I rather suspect what it means is if you work on
15 the holiday, you get double pay, but that is not necessarily
16 overtime.

17 MS. BATTLE: I think that's a good point,
18 particularly when you set out earlier on what the work week
19 hours are. If the person has not met their work week hours,
20 they may not be in an overtime status.

21 MR. MCCALPIN: That's right.

22 MS. KENNEDY: Our intent in Section B(1) was that

1 it would be applicable in excess of 37 1/2 hours a week.

2 MR. MCCALPIN: What that means then is if you work
3 five days during the week and get in 37 1/2 hours, and one of
4 those days happens to be a holiday, you don't get anything
5 extra for it.

6 MS. MERCADO: That's right. If you are only using
7 (inaudible).

8 MS. KENNEDY: I see your point.

9 MS. BATTLE: Okay. We will need to redraft that to
10 take into account the very skillfully observed concerns with
11 the overtime provision in paragraph B(1).

12 MS. KENNEDY: This is a section in the manual that
13 speaks directly to holiday pay. I'm trying to find it
14 hurriedly.

15 DR. KIEFER: Section 7.

16 MS. KENNEDY: 7.1, on page 51.

17 MR. FORGER: Don't you have to work 37 1/2 hours,
18 Bill?

19 MR. MCCALPIN: Pardon?

20 MR. FORGER: Don't you have to work 37 1/2 hours --

21 MR. MCCALPIN: Yeah. But if those 37 1/2 hours
22 includes 7 1/2 on a holiday, then you don't get anything

1 extra for having worked on the holiday.

2 MR. FORGER: That's right. You get comp time, or
3 something like that.

4 MS. ROGERS: No. You don't get anything.

5 MS. BATTLE: You don't get anything, based on the
6 way this is worded.

7 MS. ROGERS: The way it's worded, you don't --

8 MR. FORGER: Don't you get a Tuesday some day, if
9 you worked --

10 MR. MCCALPIN: No.

11 MR. FORGER: -- on Sunday?

12 MR. MCCALPIN: Well, but that's --

13 MR. ERLBORN: Bill, I think the answer is that
14 the holiday extra pay doesn't belong in the overtime section.

15 MR. MCCALPIN: I think that's right.

16 MR. ERLBORN: And you will find it, as was just
17 mentioned, in Section 7 -- 7.1 -- which addresses
18 specifically working on holidays. Page 51.

19 MS. KENNEDY: So if we take out Section B(1) that
20 speaks to double time on holidays, then we probably have it
21 fixed.

22 MR. MCCALPIN: Well, it doesn't -- yeah, but 7.1 --

1 I'm just looking at it quickly for the first time -- doesn't
2 say what you get for working on the holiday.

3 MR. ERLBORN: My only point is that this ought to
4 be under a holiday pay provision, rather than an overtime
5 provision. Your holiday pay is not overtime.

6 MS. FAIRBANKS-WILLIAMS: It says they will be paid
7 for holidays that fall on a day on which they are regularly
8 scheduled to work. They would be paid two days, one for
9 their regular day of work, and one for the holiday.

10 MS. MERCADO: The language does say that they would
11 get paid for the hours worked on that day.

12 MS. BATTLE: Can we do this? Can we take the
13 reference to holiday pay and move it over to the Section 7.1,
14 and then in overtime, simply deal with the issue of working
15 an excess of 37 1/2 hours per week? And then that way you're
16 addressing the holiday pay issue in your section on holidays.
17 Okay?

18 Anything else in Section 5? Bill?

19 MR. MCCALPIN: No.

20 MS. BATTLE: Okay. We are at the end of Section 5.
21 It is right at one o'clock, and I put the note that a hot --
22 with "hot" underlined -- lunch, meaning it is hot at one

1 o'clock and it is going to be cold at 1:05, is going to be
2 available to us.

3 My goal is this. When we come back, why don't we
4 try to complete Section 6 -- Bill, I know you haven't had a
5 chance to read it -- Sections 6, 7, and 8, and then get this
6 to the committee, and then I would like to hear from the
7 committee where you need some guidance from us on those
8 sections you may need to implement in the interim before
9 December. Okay? Did you get that, Joan?

10 MS. KENNEDY: I'm sorry. I didn't --

11 MS. BATTLE: Okay. Suzanne can tell you.

12 MS. KENNEDY: Okay.

13 MS. BATTLE: Why don't we take a lunch break now.

14 MS. MULDROW: Madam Chair, before you break for
15 lunch, I'd just like to say, on behalf of the Office of
16 Personnel Management, that it has been a joy for us to have
17 worked with you for the last six months, and if at any time
18 in the future, you feel the need of our services, please feel
19 free to get in touch with us.

20 MS. BATTLE: Okay. Thank you, very much. And we
21 really do appreciate all of the expertise that you have put
22 into putting this manual together. I mentioned yesterday,

1 when I talked to Joan and Suzanne, it is really a first-rate
2 product, and we certainly do appreciate your help in putting
3 it together.

4 (Whereupon, at 1:00 p.m., a luncheon recess was
5 taken.)

6 (End tape 1, side 2.)

A F T E R N O O N S E S S I O N

(1:55 p.m.)

MS. BATTLE: Well, I think we have at least our committee members here, so we are going to go back on the record and see if we can complete our review of the other sections of the personnel manual as we can this afternoon.

Just immediately prior to the break, we had completed Section 5, and so we have before us Section 6, which addresses performance management, and merit increases. And in part we already addressed our concerns about 6.5, which addresses special awards.

Are there any other issues in Section 6 that any of the board members would like to raise?

(No response.)

MS. BATTLE: I would just like to note that in my review of Section 6, the performance appraisal form has a front and back to it, and I think that Joan explained to me that there is another component to this that I think you need to explain to the other board members.

DR. KIEFER: Yes. I think what we are referring to here is the performance standards and the outline for writing those is set forth in the manual itself. That is, for each

1 position, there will be performance standards which specify
2 the critical elements for that job.

3 MS. BATTLE: Okay. And by doing so, you make
4 specific for each employee how they are to be rated and
5 evaluated based on the actual duties and responsibilities of
6 that particular job.

7 DR. KIEFER: Exactly. Yes. The goal is to make it
8 as specific to the occupation and the job as possible, so
9 that everyone has clear expectations.

10 MS. BATTLE: Yes. That makes sense. And so, you
11 know, when you read that form by itself, it just appears that
12 you do an overall rating when, in fact, you do rate all those
13 other aspects of the job before reaching your overall
14 performance rating.

15 DR. KIEFER: Right. The form reflects the summary
16 evaluation. Right.

17 MS. BATTLE: Okay. And, Joan, as I understand it,
18 this was one of the forms that we did want to consider
19 implementing now, so that you could take that into account in
20 how we develop our new fiscal practice, as it relates to
21 evaluating performance.

22 MS. KENNEDY: Yes. It has been the expectation of

1 the staff throughout this process that this section of the
2 manual at least would be effective and could begin with the
3 new fiscal year.

4 And so, to the extent that we can provide for that
5 and some other areas of the manual to be effective the
6 beginning of the fiscal year, we would recommend that.

7 MS. FAIRBANKS-WILLIAMS: And are these performance
8 standards already written?

9 MS. KENNEDY: No, ma'am. They are not already
10 written. These performance standards are to be developed in
11 conjunction with the supervisor and the staff people. We are
12 in the process of preparing to develop those performance
13 standards if they are to become effective with the manual in
14 the next fiscal year.

15 MR. MCCALPIN: Let me see if I -- are you saying
16 that you need Section 6, Appendix A, by the beginning of the
17 fiscal year?

18 MS. KENNEDY: No. What we are saying is that there
19 are sections in the manual to include Section 6, that have
20 time consequences for implementation. There are some
21 preliminary steps that must be taken in order for us to make
22 it effective with the new fiscal year. And to the extent

1 that we delay the implementation of this, it delays the
2 implementation in the fiscal year.

3 So we would hope that we would be allowed to move
4 ahead in some manner approved by the board with Section 6 and
5 other sections that we would --

6 MR. MCCALPIN: Well, I am just quickly looking at
7 this for the first time, and I see that the evaluation takes
8 place in January.

9 MS. KENNEDY: Yes.

10 MR. MCCALPIN: I don't quite understand why the
11 approval has to be given by the first of October if the
12 evaluation is going to take place in January.

13 MS. KENNEDY: There is a process that needs to be
14 finalized before the evaluations can actually become -- can
15 take place in January.

16 We need to develop performance standards. It is a
17 very involved process, where we sit down -- each manager sits
18 down with each employee, develops those performance standards
19 for that position, agrees to them, we incorporate that into
20 the process, and prepare for the evaluation cycle to begin in
21 January.

22 So it's not just a matter of this form that remains

1 to be finalized.

2 DR. KIEFER: Since the employees will be evaluated
3 on the basis of these new standards that will be developed
4 -- are set to be developed in January, as a matter of equity,
5 we wanted to have the standards in place for a reasonable
6 period of time so that everyone will have some understanding
7 that what they would be evaluated on for 60, or say 90 days,
8 prior to the evaluation itself.

9 MS. BATTLE: Edna, did you have a question?

10 MS. FAIRBANKS-WILLIAMS: I was going to say, are
11 you going to have these standards ready for our December
12 meeting?

13 MS. KENNEDY: They will be ready prior to December,
14 yes. If we are allowed to move ahead with this, it will be
15 ready prior to December.

16 MS. FAIRBANKS-WILLIAMS: Okay.

17 MS. BATTLE: This is a new form. I think this
18 probably will be helpful to the committee.

19 This is a new form and a new approach to doing the
20 performance appraisal. And in order to have that in place to
21 effectively do the performance appraisals in January, there
22 are preliminary things that would have to be done. If we

1 don't make a decision now, then the staff would really be
2 left with do we use our old forms that we used to use for
3 doing our performance appraisals, or do we now use this new
4 form that really fits with the entire process that we have
5 developed for how we are going to do performance management.

6 And I think that the issue for us is though we may
7 find some changes to wording, or clarifications that we might
8 want to make to the remaining sections, that overall that if
9 we agree that this is the proper form, I think the staff is
10 requesting that we adopt, just subject to whatever amendments
11 we might make to it, this form, to allow them to begin that
12 process of developing performance standards that will go into
13 the performance appraisal.

14 MR. MCCALPIN: I don't see why we can't simply
15 formally or informally authorize them to go ahead and begin
16 developing performance standards; without specific reference
17 to any particular paragraphs or provisions of Section 6.

18 MS. FAIRBANKS-WILLIAMS: I second that. I don't
19 see any reason why they can't begin.

20 MS. BATTLE: Well, that's what they want to see,
21 that we don't see any reason why they can't begin. And as
22 long as they hear that from the board, then they are in a

1 position to be able to do that.

2 MR. MCCALPIN: I think they just go ahead and begin
3 developing their standards.

4 MS. BATTLE: If I understand it, this touches not
5 just on Section 6, but really there are provisions in two
6 through eight that will -- that fit into this whole process.

7 That doesn't mean that we can't continue what it is
8 that we're doing, so that the final published manual has been
9 fully reviewed by this committee, but that they've got, for
10 example, this form -- there are other examples throughout.
11 And, Joan, you need to help me with where they are in here.
12 Payroll procedures, potentially.

13 MS. KENNEDY: Yes.

14 MS. BATTLE: That will need to be --

15 DR. KIEFER: Yes. Change in the calculation of
16 leave, for example, and things like that.

17 MR. MCCALPIN: Calculation of?

18 MS. BATTLE: Leave.

19 DR. KIEFER: Leave. Yes.

20 MS. KENNEDY: And the manner (inaudible).

21 MR. MCCALPIN: Does that have to be made effective
22 before the 1st of January?

1 MS. KENNEDY: Yes.

2 MS. BATTLE: As I understand, for the fiscal year,
3 the program begins October 1. So I think that there is an
4 expectation from the staff -- management has kind of approved
5 a new procedure which involves a change in calculation of
6 leave, a change in the performance appraisals, a change in a
7 number of things, that they are at a position that they want
8 to begin to implement effective October 1.

9 Now this is not -- it doesn't mean that there might
10 not be changes that we implement ultimately, based on our
11 review, but at least they want to have the process in place
12 to begin this work.

13 MR. MCCALPIN: It's pretty hard to change something
14 that's already in effect and operating.

15 MS. BATTLE: Well, the entire manual is subject to
16 change once it is in effect, anyway. So I -- I see the
17 concern that the staff has at this point for being able to do
18 this.

19 I think we have given our comments about all the
20 sections up through six. Why don't we go through the rest of
21 it and then come back to this issue and deal with it, once we
22 have done our complete review.

1 Is there anything else in Section 6, dealing with
2 merit increases, and performance improvement plans, training
3 and career development, that anyone has questions about?

4 MR. MCCALPIN: I must say that not having read
5 this, I really don't understand this "fully successful, not
6 fully successful, exceeds fully successful." I'm not sure
7 what all that is. I haven't had a chance to read this.

8 I see that, apparently, there is some dollar
9 significances to those categorizations. I haven't had a
10 chance to think about it.

11 DR. KIEFER: If you would like, I would be happy to
12 summarize and touch on that.

13 MS. BATTLE: Okay. Could you?

14 DR. KIEFER: In terms of the changes that are
15 reflected here, what has happened is we have gone from a five
16 level to a three level evaluation scale.

17 And the descriptors that we use are fully
18 successful, exceeds fully successful, and not fully
19 successful. Those are the gradations. And we wanted to use
20 somewhat different terminology so as to avoid confusion with
21 the past practice.

22 So that's why we, for example, called it exceeds

1 fully successful, rather than outstanding, which is the
2 former term.

3 Now the particular evaluation fully successful, or
4 exceeds fully successful, in turn provides the basis for
5 merit increases. And depending on the available resources
6 and decisions that are made as to how that money will be
7 allocated, then a rating of fully successful, or exceeds
8 fully successful, will translate into a particular percentage
9 pay increase.

10 The key to it being that corporation wide, all
11 employees who are evaluated as fully successful receive the
12 same percentage increase.

13 All who are evaluated exceeds fully successful
14 receive the same percentage increase, assuming that there is
15 any merit increase at all.

16 MR. MCCALPIN: And I see something about 70 percent
17 and 30 percent. Those numbers caught my eye.

18 DR. KIEFER: That's strictly a hypothetical example
19 to try and illustrate how it would work to give -- give some
20 tangible picture to it. There is nothing that says it would
21 have to be that.

22 But it does -- the system does envision a situation

1 in which the president would make a decision that of the
2 available money for merit increases, say, 70 percent would go
3 to exceeds fully successful employees, and 30 percent to
4 fully successful, although that could be 50/50, or 80/20, or
5 whatever.

6 Again, the idea is to set up the structure and to
7 allow maximum flexibility, given the available financial
8 resources can vary from year to year, so that we are not
9 locked in to any particular percentages, or any particular
10 payout.

11 MR. MCCALPIN: At what level or levels are these
12 fully -- whatever the terminology is -- determined? Is that
13 determined by the immediate supervisor, a supervisor above
14 that, or is it ultimately determined by the president, or IG?

15 DR. KIEFER: In each case, the initial evaluation
16 is by the first line supervisor. There is also the provision
17 that there must be higher level review. Presumably that
18 would be by the office director, or at a higher level it
19 might be by someone in the executive office.

20 But there is always a reviewing official, so that
21 two levels of review are required to finalize a rating.

22 MS. BATTLE: The way that this works, the employee

1 has an opportunity comment. Is there any opportunity for an
2 employee, for example, to appeal a rating, if they view the
3 rating as not being satisfactory, based on their perception
4 of their performance?

5 DR. KIEFER: Appeal in a formal sense, no.

6 MS. BATTLE: I guess the question I'm asking then,
7 the -- since there is two levels of supervisory involvement
8 in how the rating is done, after the initial rater does the
9 rating, does the employee have any input before the reviewing
10 official makes the determination to sign off on it?

11 DR. KIEFER: The intention is to provide for the
12 employee to have an opportunity to be part of the process at
13 all points. That would include --

14 MS. FAIRBANKS-WILLIAMS: On page 44 --

15 DR. KIEFER: Yes.

16 MS. FAIRBANKS-WILLIAMS: -- it says a quarterly
17 basis to discuss job performance, noting both accomplishments
18 and potential performance problems.

19 DR. KIEFER: Right.

20 MS. FAIRBANKS-WILLIAMS: The third paragraph from
21 the top.

22 DR. KIEFER: Exactly. So we have built in, first

1 of all, a provision for quarterly conferences between
2 employees and supervisors, and also provisions for a
3 discussion at the time of the initial rating for an employee
4 to make his views known.

5 MS. BATTLE: So those views would be made known to
6 the actual rating official, the person who is doing the
7 rating.

8 DR. KIEFER: Rating official.

9 MS. KENNEDY: You will note on the actual form, on
10 the back part of the form, there is, about mid way on the
11 page, there is an opportunity for the employee, if he indeed
12 wishes to, to attach an addendum, which can be any concerns
13 they may have about the overall rating or any matter relating
14 to the performance appraisal.

15 MS. BATTLE: Okay.

16 MR. FORGER: This, I think, substitutes a much more
17 manageable system, and I think a fairer system, in respect of
18 compensation.

19 Our current system has, I think it is, five
20 gradations and you have to check off outstanding, or -- and
21 virtually everybody ends up being outstanding.

22 And then I think if you have an outstanding

1 category, then it has to go to the president of the
2 corporation, if I'm not mistaken, to sign off on it. That
3 has always struck me as strange to have that level of
4 involvement of a person's job with which I am not that
5 intimately familiar.

6 But I think putting it down on a different basis
7 and having three categories -- either you're not doing as you
8 should, or you are doing as you should, or you are doing
9 better than we expect -- are sufficiently broad categories to
10 make for a better administration of that. And also the
11 involvement of the employee to discuss this. And the staff,
12 Joan, has had an opportunity to participate in the drafting
13 of this, I believe.

14 MS. KENNEDY: The staff has had an opportunity to
15 comment throughout this process on as early on as the time
16 OPM joined us, through the focus group meetings, through the
17 development of occupational profiles, which we usually call
18 position descriptions, and we anticipate continued
19 involvement in the development of the performance standards.
20 So the staff has been a full participant in this process.

21 MS. BATTLE: Are there any other questions about
22 the performance appraisal, or the performance management

1 system set out in Section 6?

2 (No response.)

3 MS. BATTLE: I note that Section 6.7 sets out a
4 performance improvement plan and it is designed to allow
5 employees that get less than successful, fully successful, an
6 opportunity to improve their employment.

7 What is envisioned if an employee is not able to do
8 that?

9 I guess the last paragraph tells me what the answer
10 is. You look at it for a period of 90 days and then if they
11 are not improved, they may either be demoted or terminated.

12 DR. KIEFER: Yes. There would be some sort of
13 action including termination.

14 MS. BATTLE: Okay.

15 MS. FAIRBANKS-WILLIAMS: One thing -- training and
16 career development if they decided to take, say, a computer
17 course or something to improve themselves, if they were so,
18 could that be completed within the 90 days, or would it count
19 if they were three-quarters through it and had improved some,
20 or whatever?

21 DR. KIEFER: Well, these two -- training and career
22 development in performance improvements are somewhat

1 different concepts.

2 All employees -- we're talking about all employees
3 under training and career development trying to create an
4 environment in which people are encouraged to develop their
5 careers, and to enhance their training.

6 Performance improvement plans are very specific by
7 their nature, and are designed to deal with a specific
8 situation. So they would detail the specific training, or
9 other kind of remedial action, that just looks to the
10 expectations (inaudible).

11 MS. FAIRBANKS-WILLIAMS: But if that wasn't
12 completed -- what I'm saying is, if that wasn't completed in
13 the 90 days.

14 MS. KENNEDY: You're correct. If the standards
15 that the employee and the supervisor had agreed upon, as they
16 laid out the terms of the proposed improvement plan, were not
17 met within that time frame, then the options that are
18 identified in that last paragraph, demotion or termination,
19 could be exercised within that 90 day period.

20 MS. BATTLE: Or (inaudible).

21 MS. KENNEDY: That is another option. Or the --

22 MS. FAIRBANKS-WILLIAMS: But it doesn't say that

1 there.

2 MS. BATTLE: It says, for example, 90 days. So 90
3 days is not really etched in stone as the period, it seems to
4 me, for the evaluation.

5 MS. FAIRBANKS-WILLIAMS: Well, I just wondered if
6 they were taking a course -- I know some of the courses that
7 they take at night extend beyond --

8 MS. BATTLE: 90 days.

9 MS. FAIRBANKS-WILLIAMS: -- 90 days sometimes.

10 MS. BATTLE: I think the 90 --

11 MS. FAIRBANKS-WILLIAMS: So I think that it should
12 be up to the supervisor. If they have gone three-quarters of
13 the way through a course and had improved some, but not to
14 completely successful standards, that they should be given an
15 extra 30 days, or something, to complete a course, or
16 whatever.

17 MS. KENNEDY: Yes. We hear your concern and if you
18 like, we can go back and reword that to reflect that. But
19 the intent of this section was to provide that the supervisor
20 and the employee would negotiate a time frame that was
21 realistic, depending upon the circumstances, that could be
22 workable. So it wouldn't always have to be 90 days, as

1 someone said earlier.

2 MS. BATTLE: I heard something -- the supervisor
3 and employee would negotiate a time period. The language
4 that we've got here for a time period specified doesn't
5 really --

6 MS. KENNEDY: No. I didn't mean to say negotiate,
7 if I used that word.

8 MS. BATTLE: Okay. All this section is intended to
9 do is to set out that the review would take place for a
10 specified, and not an indeterminate, period of time.

11 Okay. Bill?

12 MR. MCCALPIN: Let me ask Alex a question. I ought
13 to know the answer, but I don't.

14 I see that in 6.6 it says that paid training,
15 approved by the office director, and the supervisor. Alex,
16 how many office level directors do we have? How many offices
17 do we have? That's the word that is used here. OGC?

18 MR. FORGER: Comptroller.

19 MR. MCCALPIN: Pardon?

20 MR. FORGER: Personnel, or human relations,
21 comptroller, inspector general.

22 MR. MCCALPIN: OGC.

1 MR. FORGER: Program operations.

2 MS. BATTLE: They are listed on page -- Section 6,
3 the appendix, page one, when it says "organization, office
4 location." I think all of them are listed.

5 MS. KENNEDY: They are.

6 MS. BATTLE: On page 49.

7 MR. MCCALPIN: Sorry.

8 MS. BATTLE: If you look in the middle of that
9 performance --

10 MR. MCCALPIN: Seven of them?

11 MR. FORGER: Yes. And what used to be OPER and OPS
12 is now OPO.

13 MS. KENNEDY: Actually, there are five directors.
14 Included in that section are the inspector general and the
15 executive office, but they are actually five office
16 directors.

17 MR. MCCALPIN: Is there an Office of Information
18 Technology?

19 MS. KENNEDY: Yes, there is. There is a director
20 of the Office of Information Technology.

21 MR. MCCALPIN: I was just wondering to the extent
22 to which those office directors who are referred to here

1 would have sufficient budgetary information to be able to
2 authorize paid training. I suppose --

3 MR. FORGER: I would think so.

4 MS. BATTLE: Okay. Are there any other concerns in
5 Section 6?

6 (No response.)

7 MS. BATTLE: If not, let's move on to Section 7,
8 employee benefits.

9 We have already discussed in 7.1 addressing the
10 issue of overtime as it relates to how it impacts holidays
11 here.

12 We also talked about -- 7.8 actually sets out this
13 flexi-place policy, and we talked about flexi-time, and the
14 fact that we don't have a provision in the manual at present
15 that addresses flexi-time, though there is already existing a
16 policy of allowing flexi-time under certain circumstances.

17 So we may want to amend seven to include a flexi-
18 time provision. And can we get some explanation of the
19 flexi-place policy, and how that works?

20 DR. KIEFER: Well, the policy that you have in here
21 is based on the government-wide policy, which is pilot tested
22 and refined over a number of years.

1 And, in essence, it reflects a decision that it can
2 be in the interest of the corporation, or the employer and
3 the employee, to allow the employee to work some or all of
4 his regularly -- his or her regularly scheduled time at home,
5 or actually some other -- at a satellite work location which
6 normally means home, but simply means not being at the
7 official duty station.

8 And so, the policies in here can reflect the
9 experiences that we've had in working with this and setting
10 up a system that's fair for the employee or the employer, in
11 terms of his responsibilities, the length of time for testing
12 it, all of which is based on the fact -- I guess this is
13 worth mentioning -- that it is, in all cases, not a right,
14 but it is an option.

15 Employees do not have a right to flexi-place, but
16 if it is something which is approved by the supervisor, it is
17 something the employee wants, then an agreement can be
18 concluded.

19 MS. BATTLE: In looking at the flexi-place work
20 agreement, I mentioned yesterday to Joan that it -- and I
21 think that this probably follows pretty much the standard
22 format which you've got in the government for flexi-place

1 work agreement, that we may need to include the at-will
2 language because here we are contracting for a -- one of the
3 terms and conditions of employment, which is where you will
4 work, and it needs to be clear that this does not, in any
5 way, change the nature of the fact that this is an at-will
6 employee.

7 DR. KIEFER: Yes. A good suggestion.

8 MS. BATTLE: Yes.

9 MR. MCCALPIN: I'm having difficulty because I
10 haven't seen this before, but if you go back to 7.1, the
11 third paragraph says "temporary contract employees won't be
12 paid for regular holidays and so on," and we agreed awhile
13 ago that there ought to be a difference between temporary
14 employees and temporary contract employees. And I would
15 think that it would be unusual for a temporary employee to
16 get that kind of benefit, particularly if you hire them from
17 a temporary employee source, like Manpower, or somebody like
18 that.

19 Then I noticed the next line says "employees,
20 including temporary, who are required to work or travel on a
21 holiday, may receive compensatory time." Well, that gets
22 back to what we were talking about before. Apparently, under

1 this, if an employee worked on a holiday, he would not get
2 holiday pay plus the working --

3 MS. BATTLE: Yes, that person would. I had it
4 explained to me in a way that I understood better, during the
5 break.

6 As I understand it, you're going to be paid the
7 holiday pay, which will equal the basic 37.5 hours. If you
8 actually work on a holiday, then your hours for that week
9 would exceed the 37.5 and you have an entitlement to the
10 double pay for holidays.

11 MR. MCCALPIN: Here it says you get compensatory
12 time, not additional pay.

13 MS. KENNEDY: That's for exempt employees, not --

14 MR. MCCALPIN: Pardon?

15 MS. KENNEDY: That explanation refers to exempt
16 employees, not non-exempt employees. And I understand the
17 problem, because it relates to what you were saying earlier.
18 We need to clean up our language, and we will go back and
19 make a clearer distinction between temporary employees and
20 contract employees.

21 MS. BATTLE: And exempt and non-exempt as well.

22 MR. MCCALPIN: Yes. This basically says all

1 employees.

2 MS. BATTLE: It does.

3 MR. MCCALPIN: Including temporary.

4 MS. BATTLE: Well it needs to say exempt employees.

5 MS. KENNEDY: It should. It was intended to mean
6 exempt employees.

7 MS. BATTLE: Okay. Let's amend that to say exempt.

8 MR. ERLENBORN: Can I ask a question about sick
9 leave, 7.3, starting with page 52.

10 MS. BATTLE: Okay.

11 MR. ERLENBORN: I didn't see anything here
12 concerning the payment for unused sick leave at time of
13 termination, retirement.

14 I assume that means that accumulated sick leave is
15 not paid when the employee retires. I hope that's what it
16 means.

17 MS. KENNEDY: That is correct. And it is stated
18 that way somewhere in the manual, although I can't point to
19 it directly right now, but that is true.

20 MR. MCCALPIN: Some of these things I see are
21 related to per pay period. Are there 24 or 26 pay periods in
22 the year?

1 MR. FORGER: Twenty-six.

2 MS. KENNEDY: Twenty-four.

3 MR. FORGER: Yes. I'm sorry. Twice a month.

4 MS. BATTLE: Twice a month.

5 MS. KENNEDY: Not every two weeks.

6 MR. FORGER: Not every two weeks. Twice a month.

7 MS. BATTLE: Any other questions in Section 7?

8 (No response.)

9 MS. BATTLE: I would just mention, just following
10 what we just discussed, Joan, that we've got the term regular
11 employees; we have exempt employees; we have non-exempt
12 employees; we have temporary employee; and we have contract
13 employees. Somewhere in the manual, we need to define all
14 those different things so that as you use those terms
15 throughout, you -- it's real clear what you're referring to.
16 Then you talk about regular employees and temporary
17 employees.

18 MS. KENNEDY: Yes, and we will do that.

19 MS. BATTLE: Okay. Is there anything else in
20 Section 7? Any other concerns?

21 (No response.)

22 MS. BATTLE: Section 8, employee relations. Now we

1 get down to the grievance procedure. I think there was a
2 question earlier on about what can be grieved and whether a
3 termination is a grievable event. And in reading the
4 section, it really doesn't address that issue directly.

5 MS. FAIRBANKS-WILLIAMS: There was one question I
6 wanted to ask the -- it says on 59, the voluntary nature of
7 their agreement.

8 Are these agreements all in writing?

9 MS. BATTLE: 59? I'm sorry.

10 MS. FAIRBANKS-WILLIAMS: The flexi-place work
11 agreement or the flexi-time agreement, or any of these, are
12 these agreements all in writing?

13 MS. KENNEDY: Yes. They are intended to all be in
14 writing.

15 MS. BATTLE: Right. If you'll look at the next
16 page, page 60, there is an example of the flexi-place work
17 agreement that I think is intended by that section, in part.

18 DR. KIEFER: The last -- on page 63, the last
19 sentence, just above 8.2, is -- does address the issue of --

20 MS. BATTLE: Okay.

21 DR. KIEFER: -- selection and termination being
22 non-grievable.

1 MS. BATTLE: Okay.

2 DR. KIEFER: The judgment being that those were --
3 could be adequately addressed the EEO provisions, not to be a
4 grievable issue.

5 MS. BATTLE: Okay.

6 MR. MCCALPIN: It seems to me that there -- I
7 apologize. I haven't read it. But there is not a clear
8 connection between questions or problems in the first
9 sentence under 8.1 and the word "grievances" in the next
10 sentence. Is every question or problem a grievance?

11 MR. ASKEW: It implies if you have a question or
12 problem, you have to file a grievance?

13 MR. MCCALPIN: Well, it --

14 MR. ASKEW: It implies that if you have a question
15 or a problem, you have to file a grievance? That first
16 sentence may not be necessary.

17 MR. MCCALPIN: I suppose that's -- I guess it takes
18 up with the office director any question or problem. But --
19 because that -- it says it takes a grievance, but if every
20 question or problem is a grievance, then any question can go
21 up there.

22 MS. KENNEDY: If you look at that section in

1 context with the last statement in 8.1 on page 63 --

2 MR. MCCALPIN: That's the one that you just quoted.

3 MS. KENNEDY: Right. Except selection and
4 termination issues.

5 MS. BATTLE: So really you're not going to engage
6 in -- some systems engage in a real formal process of
7 determining what's grievable and what's not. And what I'm
8 hearing here is we're just simply going to say, if you've got
9 a question about anything, and you want to treat it as a
10 grievance, you can't. And there is nothing, absent your non-
11 selection or termination, that you cannot grieve.

12 MR. ERLBORN: This would seem, and I think this
13 is what Bill was suggesting, to raise every question and
14 problem to the level of a grievance. Questions and problems
15 ought to be resolved informally with the supervisor and not
16 raising it to the level of a grievance.

17 So I think, as someone suggested, you might just
18 strike the first sentence and talk about grievances. Or you
19 may want to say in the first sentence that questions and
20 problems should be addressed informally with the supervisor.
21 Either way.

22 MR. MCCALPIN: Outside of the formal grievance --

1 MR. ERLÉNORN: Outside of the grievance procedure.

2 DR. KIEFER: Obviously we are talking about a
3 formal process with informal procedures at work.

4 MS. ROGERS: Prior to filing a grievance.

5 MR. ERLÉNORN: Avoid the grievance, if you can.
6 Just have an informal discussion with the supervisor and
7 resolve it.

8 MS. BATTLE: I think that's a good suggestion, to
9 attempt to address questions and resolve questions and
10 problems informally. And if they cannot be resolved
11 informally, then one can go forward with a formal process,
12 which will address grievances.

13 Any questions on the equal opportunity complaint
14 procedure, or anything else in Section 8?

15 MR. MCCALPIN: 8.6 is tobacco or drug.

16 MR. ERLÉNORN: I think that question is being
17 explored.

18 (Laughter.)

19 MR. MCCALPIN: There is a question --

20 MR. ERLÉNORN: It won't be resolved until after
21 the election.

22 MR. FORGER: We are smoke-free here, anyway, I

1 believe.

2 MR. MCCALPIN: Well, I guess the question is, this
3 is alcohol and drug-free work place --

4 MS. BATTLE: It's a smoke-free work place.

5 MR. MCCALPIN: -- the use of legal drugs -- well, I
6 just wondered if this was intended to codify the smoke-free
7 environment.

8 MS. BATTLE: On 8.7, on the next page, Bill, is a
9 smoke-free work place --

10 MR. MCCALPIN: Oh, I see. I hadn't gotten that
11 far.

12 MS. BATTLE: Yeah. So that's actually addressed
13 separately.

14 MR. ERLBORN: And the district has some rather
15 strict laws that apply to that as well.

16 MS. BATTLE: That I think are wonderful, actually.

17 MR. FORGER: This means the board couldn't have a
18 reception here and serve wine; right?

19 MS. BATTLE: Yeah. That's right.

20 Tape recording policy. I mentioned yesterday to
21 Joan how many interesting cases I've had over the years where
22 an employee goes into a supervisor with a tape hidden in

1 their purse and sits down and has a conversation about some
2 issue that they want to get the supervisor on record with.
3 And this would prohibit that undisclosed taping of a
4 conversation.

5 MR. MCCALPIN: In 8.9, the third paragraph, what is
6 liberal leave? In cases of liberal leave.

7 MR. FORGER: Oh, that's a federal government term.
8 Even in a conservative administration -- Joan, or Dr. Kiefer,
9 would you please explain what "liberal leave" is, even with a
10 conservative administration?

11 DR. KIEFER: It simply addresses the issue of
12 whether or not prior approval is required.

13 MR. FORGER: If there is a lot of snow, but we
14 haven't declared a snow day, the government can declare the
15 liberal leave day.

16 DR. KIEFER: Yes. Which is technically without
17 that -- if you simply didn't -- if you called and said, "I'm
18 not coming in today," that would be asking or taking leave
19 without pre-approval, which could be a disciplinary action.

20 This is simply stating that that particular
21 stipulation is waived, if there should be any question.

22 MR. FORGER: So it would be better termed if the

1 government doesn't use it for a permitted leave day.

2 DR. KIEFER: Actually, I'm not --

3 MR. MCCALPIN: Is that declared by the government?

4 MR. FORGER: Yes. It's on the radio. Liberal
5 leave today.

6 MR. ASKEW: So that means only liberals don't have
7 to come to work?

8 MS. BATTLE: I'm going to go back to 8.5 and raise
9 just another issue, just as a practicality.

10 Are we really trying to prohibit undisclosed tape
11 recording of conversations or all taping of conversations,
12 because these days when you leave a voice mail message,
13 that's a tape recording.

14 Sometimes -- I don't know the way that our system
15 works, you can't have a conversation with a voice mail, but
16 maybe sometimes you can, in some circumstances. And are we
17 attempting to prohibit undisclosed tape recordings, or all
18 tape recordings?

19 You might want to, in a conversation that you're
20 having, just to discuss what needs to be done on a
21 regulation, tape it so that you've got all the information
22 and it is not a board meeting. And so I really think that

1 that's what you are trying to get at there, isn't it?

2 MS. KENNEDY: That is it, and you raise a good
3 point, and we will go back and look at that.

4 MS. BATTLE: Okay. All right.

5 Anything else in Section 8?

6 MR. FORGER: Yes. 8.10. I have to make a
7 confession.

8 MS. BATTLE: Okay.

9 MR. FORGER: I have received three T-shirts and one
10 plastic paperweight, as I have been out in the country, and I
11 take it that that is a violation of 8.10, since there is no
12 diminimous exception, except for entertainment and booze.

13 Therefore, I think rather than be the subject of an
14 investigation, and a report to Congress, I would rather be in
15 compliance. And I think this happens on regional meetings
16 and folks giving out something.

17 MS. BATTLE: Yes. A paperweight, or something like
18 that, that you might get after giving a speech.

19 MR. FORGER: Well, I've given most of the T-shirts
20 away, but that doesn't save me under this.

21 MS. GLASGOW: We can just add a diminimous
22 exception.

1 MS. BATTLE: Why don't we do that. Let's add a
2 diminimous exception.

3 MR. FORGER: Except it may be an extra large T-
4 shirt.

5 MR. ERLNBORN: Then you want to keep it.

6 MS. BATTLE: Okay. Anything else?

7 (No response.)

8 MS. BATTLE: What about anonymous notes to the
9 president? How do you feel about that, Alex?

10 MR. FORGER: Oh, I love to get them.

11 MS. BATTLE: 8.11 --

12 MR. FORGER: 8.11?

13 MS. BATTLE: -- gives employees the opportunity to
14 send you anonymous notes.

15 MR. FORGER: Love it, so long as they identify
16 themselves.

17 MS. BATTLE: I just raise that -- there are
18 instances in which it becomes a matter of whether you have to
19 do an investigation into something that you receive
20 anonymously, as opposed to something that you receive that's
21 signed by the person who is making whatever the charges are.

22 MS. FAIRBANKS-WILLIAMS: Well, if they can't sign

1 their name, there is no need to investigate. That's the way
2 I feel about it.

3 MR. MCCALPIN: I don't know that I would state that
4 flatly. But the IG has a hotline, Renee, does he not?

5 MS. SZYBALA: He has a hotline and he gets
6 anonymous -- we get anonymous complaints by mail. We have a
7 postal drop line, and by telephone, and we have rules about
8 getting proper predications for taking something further that
9 we would get on the hotline.

10 We do preliminary inquiries to see if there is
11 anything at all to what someone has said, to analyze whether
12 it is truly a violation of anything, or whatever, depending
13 on the circumstances.

14 MR. FORGER: If I receive anything anonymously, if
15 it is a suggestion or, you know, a comment, rather than a
16 complaint, that's fine. But I think an anonymous complaint,
17 I would just turn over to the inspector general.

18 MS. SZYBALA: And we would be happy to accept
19 complaints by law, and if they are anonymous, we have to
20 (inaudible) the identify. And this is especially true here
21 where you are talking about at-will employment, where they
22 can be fired for pretenses, from the employee's point of

1 view, if they criticize it in any way.

2 So the ability to make anonymous suggestions or
3 complaints is really important.

4 MS. FAIRBANKS-WILLIAMS: But it is important to
5 make it to the IG, not to the president.

6 MS. BATTLE: No. They can still make them to the
7 president. I wanted to just raise this point to see just how
8 the president felt about how this section would operate. I
9 think that it is clear that management employees ought to be
10 able to, or IG employees might want to, make suggestions to
11 the president for whatever reason. That that's still
12 something that we would want to have happen.

13 MR. FORGER: I think if the complaint came
14 anonymously --

15 MS. BATTLE: I don't like those coffee -- for
16 example, somebody could send a little note that's saying, "I
17 don't like these new coffee containers that you've bought. I
18 wish you would go back to the old ones. The coffee tasted
19 better."

20 That's not something I think the president has to
21 turn over to the IG for -- you know, it's a complaint, but he
22 may be able to pull the old coffee mug -- you know,

1 containers out and put one out there, so that person can --

2 MS. FAIRBANKS-WILLIAMS: Every time Smegal and
3 (inaudible) we complain because there is no real milk.

4 MS. BATTLE: You can make an anonymous complaint,
5 Edna.

6 Okay. Is there anything else that we need to look
7 at as we go back through overall -- just as an observation,
8 there is no procedure at all in here about disciplining
9 employees, and I think that's because we are being consistent
10 with our at-will status.

11 And there are a lot of provisions that address the
12 whole question of fairness, and equity, and how we implement
13 this policy that we'll have.

14 My first impression is, again as I said at the
15 onset, that this, I think, is an excellent document. It is
16 state-of-the-art as it relates to personnel policies. It
17 brings us up to where things are currently in all these
18 various areas, and I think that that's very good.

19 Once we get back the changes that we have made at
20 this time, and I'd like to invite the board members to look
21 further at this, and see if there is anything else that you
22 have -- I'm sure overall, because of what we've heard so far,

1 that we don't have a problem with going on and implementing
2 using a performance appraisal system that has three, as
3 opposed to five, items. That kind of thing.

4 MR. MCCALPIN: I thought maybe we ought to get a
5 statement of precisely what are the things that the Office of
6 Personnel needs to be working on before the December meeting.
7 We have already said go ahead, you know, with performance
8 standards, by all means. What else do you have to have
9 before the December meeting?

10 MS. KENNEDY: We need authorization from you to
11 proceed with the classification sections, Section 4, the
12 issues with respect to the occupational profiles, and the
13 classification of those occupational profiles, the current
14 classification schedule, the -- the issue of pay banding, and
15 the inclusion of all positions, with the exception of the
16 inspector general and the president, into a band.

17 We need the compensation and salary administration
18 section directed -- direction from you on that, as well as
19 the performance management section, and the employee benefits
20 section, because there are procedures that have to be put in
21 place before we can begin to return to a system of accrued
22 leave, and capturing all the data that is necessary to be

1 captured. And that takes some time to implement if it is to
2 be effective by January.

3 MR. MCCALPIN: It seems to me you are asking for us
4 to approve the whole damn manual, and I'm not ready to do
5 that.

6 MS. KENNEDY: I understand. And we're not asking
7 for approval of the whole manual. What we would prefer is
8 that the manual be issued with the exception of the revisions
9 that the board has made today, Sections 2 through 8, with the
10 understanding that the Section 1 has large policy issues for
11 the board, and that you some more information on it before
12 you would like to act on it.

13 MR. MCCALPIN: I would not be in favor of that.
14 There is too many open areas, it seems to me. I think that,
15 sure, go ahead and write profiles, if that's what you call
16 these position descriptions. You have given us a table here
17 that has bands, and -- it's on page 36 -- and I think that --
18 I don't know that anything has to be done with respect to
19 that because now and then -- I don't have any particular
20 objection to that.

21 But as far as putting into effect leave policies,
22 benefits, and that sort of thing, I'm averse to doing that

1 until we get the whole thing in front of us.

2 MS. BATTLE: Is there -- Suzanne, is there another
3 way we can go at this? I really don't want us to end up with
4 a bifurcated year, where we've got, on the one hand, a new
5 appraisal system, and we -- but we don't have the underlying
6 documents approved to be able to implement that appraisal
7 system.

8 MS. GLASGOW: Could we get authority to go forward
9 based on the general standards, and process, and sections
10 which would allow us to go forward with the classification
11 and pay system. Without adopting them, just authorize us to
12 go forward with (inaudible) set out in those sections.

13 MS. BATTLE: The general process and then --

14 MS. GLASGOW: Standards set out in those sections
15 that would allow us to go forward with the classification and
16 employee benefits. Sections 4, 5, 6, 7, basically.

17 MS. BATTLE: Now tell me which sections you're
18 saying? Four, five, six, and seven?

19 MS. GLASGOW: Six and seven, I think are the most
20 important ones.

21 MS. BATTLE: All right.

22 MR. MCCALPIN: I don't want you to tell me in

1 December, well, we're already done something on holidays and
2 vacation leave, or something like that, so you can't change
3 it.

4 MR. FORGER: On vacations, Bill, I would like us to
5 implement that starting Tuesday, with going back to the
6 accrual of vacation, which we suspended and then eliminated.
7 I think that it is consistent with what the federal
8 government does, and I think that's an important benefit that
9 the employees here should have.

10 We've gone from 120 employees down to 68, and many
11 of them view this as sort of a safety, if they are not using
12 their vacation, at least to have something if indeed there is
13 a further RIF. And I just think that would be a good one to
14 implement right now.

15 MR. MCCALPIN: Okay. I don't have any --

16 MS. FAIRBANKS-WILLIAMS: Well, I would agree with
17 that.

18 MR. MCCALPIN: I don't have any particular trouble
19 with that.

20 MS. BATTLE: Well, when we take a look at -- I'm
21 sorry, Bill. Did you have something else?

22 MR. MCCALPIN: No.

1 MS. BATTLE: When we take a look at Sections 4,
2 which deal with classification; Section 5, which deals with
3 compensation and salary administration; Section 6, that sets
4 out the performance management, and the performance
5 appraisals that we discussed; and Section 7, which deals with
6 benefits, it seems to me that our review -- now, Bill, I
7 recognize you haven't read seven, but you had read up --

8 MR. MCCALPIN: Not six, either.

9 MS. BATTLE: Or six. Okay. Those are the two that
10 you had not read.

11 MR. MCCALPIN: Or eight.

12 MS. BATTLE: But we're now just going to deal with
13 those four sections, four, five, six, and seven. That if we
14 are comfortable with the underlying procedures to be
15 implemented, we may change -- for example, we may come back
16 and say, well, on this form, that actually you're not going
17 to use until January, let's put this line, or that line.
18 That doesn't mean you can't start now doing your evaluation
19 of the jobs and developing the standards with your employees,
20 because that's something that the board is not going to need
21 to be involved in anyway.

22 So I'm comfortable with us adopting, in principle,

1 the procedures outlined for how our classification system
2 will change. Compensation and salary, performance
3 management, and employee benefits.

4 MR. FORGER: And the benefits, LaVeeda, are
5 basically the vacation and the flexi-place, I think.

6 MS. BATTLE: Right.

7 MR. FORGER: As to which, I guess, there wouldn't
8 be any difference of philosophy as implementing that.

9 MS. BATTLE: Okay. It's just a matter of accruing
10 now vacation.

11 MR. FORGER: Right.

12 MS. BATTLE: Which we didn't in the past. Flexi-
13 place has already been in place. We have already done flexi-
14 place.

15 MR. FORGER: Flexi-time, yeah.

16 MS. BATTLE: Yeah. Flexi-time. And now we will
17 have a written agreement, which you will utilize if a
18 supervisor actually agrees to flexi-place.

19 MR. FORGER: So, I think that's -- I don't think
20 much else is changed in benefits, has it, Joan?

21 MS. KENNEDY: No, it has not.

22 MR. FORGER: It's just sort of restated it,

1 although there may be improvements, if we want to make them,
2 in some of that language.

3 MS. KENNEDY: The most substantive change to
4 benefits is return to accrued leave, and the way in which we
5 capture that.

6 MR. FORGER: Right. And I think the employees are
7 expecting that and hope that that would occur. So I would
8 like to be able to do that.

9 MR. MCCALPIN: You know, I don't want us to get
10 something like this on Wednesday and be asked to approve it
11 on Sunday.

12 MS. BATTLE: I agree with that, but this is where
13 we are. I agree that this was a short period of time for us
14 to have to review, digest, and dissect, and put together a
15 manual.

16 There are reasons why this thing was held up, that
17 made it difficult for the staff to get it to us in the time
18 -- I think I talked two or three weeks ago with the staff
19 about attempting to try to get this, and they weren't able to
20 get it out because they got some comments in, I think, from
21 the inspector general about a week ago.

22 And my suggestion was that we try to incorporate,

1 as we could, as much from that into this process, so that did
2 slow the process down.

3 MS. KENNEDY: Well, actually, we received comments
4 from the Inspector General's office on September 6th.

5 MS. BATTLE: September what now?

6 MS. KENNEDY: Sixth.

7 MS. BATTLE: Sixth. Okay.

8 MS. KENNEDY: It was not a week ago.

9 MS. BATTLE: Okay. I'm sorry.

10 MS. KENNEDY: But the process has been very
11 involved, and if we were to maximize the involvement of
12 staff, it required an extensive period of time. So all of
13 those things combined made the process --

14 MS. BATTLE: The dilemma we face is this. If we
15 don't approve it, then we're going to have a bifurcated year
16 where for some part of the year, people don't have accrued
17 vacation; for other parts of the year, they do. And I just
18 think at this point, even if we change our minds in December,
19 it makes more sense to start with what we believe to be a
20 good personnel policy in place for this fiscal year.

21 MR. FORGER: Does this show up in the SAR, Renee?

22 MS. SZYBALA: I don't see how.

1 MR. FORGER: Oh, I thought that was one of the
2 expectations, maybe, of what would be in place.

3 MS. SZYBALA: There's nothing open that would
4 require (inaudible) our office.

5 MR. FORGER: I thought somewhere that there was an
6 expectation --

7 MR. ERLBORN: There is the travel clause in
8 there.

9 MS. BATTLE: I will entertain a motion from any of
10 my committee members that we adopt, in principle, the
11 procedures set out in paragraphs -- in Sections 4, 5, 6, and
12 7, subject to any changes which the board might make at its
13 December meeting to either of those sections, or any
14 sections, one through eight, in the manual.

15 M O T I O N

16 MS. ROGERS: So moved.

17 MS. FAIRBANKS-WILLIAMS: Second.

18 MS. BATTLE: Okay. Nancy, you're not a member of
19 this committee.

20 MR. FORGER: Well, this is a joint committee.

21 MS. BATTLE: You can. That's right. This is a
22 joint committee meeting. It's been moved and seconded that

1 we adopt, in principle, the general process and standards set
2 out in Sections 4, 5, 6, and 7 of the personnel manual, as
3 revised September 30th, 1996, taking into account the
4 suggestions that have been made by the board today, and
5 subject to any changes that we might make at our December
6 meeting.

7 All in favor?

8 (Chorus of ayes.)

9 MS. BATTLE: All opposed?

10 MR. MCCALPIN: Aye.

11 MS. BATTLE: Motion carries.

12 Okay. Dr. Kiefer, we want to thank you for all of
13 your hard work in helping us through this process. We are
14 the better for it. We appreciate your hard work.

15 MS. KENNEDY: Madam Chair, may I say for the
16 record, too, that I want to thank Suzanne Glasgow of the
17 Office of General Counsel and Merceria Ludgood, the Office of
18 Program Operations, and Lluana McCann, who is no longer with
19 the corporation, but who worked with the committee for a
20 period of time, and most recently Laurie Tarantowicz of the
21 OIG.

22 MR. FORGER: May I add Joan Kennedy, who has been

1 the leader in this effort and has, in her usual calming way,
2 all-inclusive, has done a magnificent job in putting this
3 together.

4 MS. BATTLE: We thank you.

5 Let's move on. The next issue that we must address
6 is the frequent flyer policy that the board agreed to adopt.

7 We undertook this sometime ago. I think the
8 inspector general raised the question about whether there
9 might be a conflict of interest inherent in employees of the
10 corporation being able to utilize, for their personal use,
11 frequent flyer points that they accrue with various airlines,
12 in part because we had a contractual relationship with Omega,
13 in which, as a government entity utilizing Omega, normally
14 frequent flyer points become government property.

15 And so, we undertook to look at that issue. There
16 is a recommendation from management on this, and we are at a
17 point now where there has been some additional work done by a
18 paid consultant, TravelWare, on the issue of whether or not
19 there would be an effective savings if we were to capture our
20 frequent flyer points. And we'd like to hear now from our
21 staff as to where we are on this.

22 MS. KENNEDY: I believe the board received a memo,

1 dated September 23rd, from the president, laying out the
2 background that led to development of this policy and
3 discussing our findings with respect to TravelWare.

4 Originally, when we came to you, I believe at your
5 May meeting, we came to you with a recommendation that we
6 begin to treat the frequent flyer awards, frequent travel
7 awards, as the property of the corporation.

8 The board deferred action on that particular
9 recommendation and asked us to go back to further study. At
10 that time, we worked with TravelWare. We looked at all of
11 the travel of the corporation within a period of one year's
12 period of time, and with the goal of determining whether or
13 not there were any financial benefits to be derived from such
14 a policy recommendation.

15 And we determined that in the first year of
16 implementation, there were no financial benefits to be
17 derived.

18 In the second year, there were minimal.

19 And in the third year, there were some benefits,
20 assuming that we would start, for lack of a better term, at
21 ground zero.

22 So the work group looked at where we wanted to be

1 with respect to a recommendation, since there were no
2 financial gains. They came up with three options that you
3 will see in your position paper on page two.

4 Option one, prohibiting travels from using frequent
5 flyer milage incurred as a result of LSC-related travel for
6 personal use, and contract with TravelWare, the consultant,
7 to recoup those miles for LSC use. For maximum advantage to
8 the corporation, all travelers would be required to make
9 their arrangements through Omega, which our travel management
10 consultant.

11 Option two. To prohibit travelers from obtaining
12 frequent flyer miles for personal use, but permit and
13 encourage them to use LSC earned miles for LSC travel, either
14 for purchase of tickets for LSC travel, or for upgrading
15 flights taken for LSC.

16 And finally, option three. To permit travels to
17 retain frequent flyer miles, earned as a result of LSC travel
18 -- LSC-related travel, for personal use, while noting the
19 existence of potential conflict of interest in the selection
20 of a carrier. And the management is recommending option
21 three, which is the practice under which we are operating now
22 at the corporation. In any event, management is recommending

1 that we do clearly establish a written policy. We do not, at
2 this current time, have a written policy.

3 As additional information, we provided to you an
4 opinion rendered by our Office of General Counsel with
5 respect to our requirement to operate under the federal
6 travel regulations, and you will note in that memorandum, or
7 that opinion, the general counsel has concluded that we are
8 not bound by those.

9 MS. BATTLE: Okay. So it is within our discretion
10 to develop our own policy with regard to how we treat
11 frequent flyer miles, according to our Office of General
12 Counsel?

13 MS. KENNEDY: Yes.

14 MS. BATTLE: Okay. Bill?

15 MR. MCCALPIN: It seems to me that if we refer to
16 the first page of that 36 omnibus travel policy document that
17 we got the administrative manual, and looked at the first
18 sentence in paragraph B, it says, "Only travel which is both
19 necessary to accomplish LSC business and undertaken in the
20 most effective and economical manner available, shall be
21 authorized and approved."

22 It seems to me that if we insist that air travel is

1 employed in the most effective and economical manner
2 available, then there is no potential for a conflict of
3 interest.

4 And if we do that, and make sure that the
5 corporation gets the benefit of the most effective and
6 economical air travel available, then we permit the travelers
7 to retake their frequent flyer miles.

8 I don't think there is a conflict of interest if we
9 follow that policy.

10 MS. BATTLE: Okay. I think that that policy does
11 inherently assure that those traveling on behalf of the
12 corporation would make their decisions based on what's most
13 effective and economical, and not based on what gets them the
14 most frequent flyer miles.

15 MR. MCCALPIN: That's exactly right.

16 MS. BATTLE: Nancy?

17 MS. ROGERS: Does the Inspector General's Office
18 have a reaction to this?

19 MS. SZYBALA: We had recommended --

20 MS. BATTLE: Can you come up to the mike, Renee,
21 when you speak? That way we can make sure that your voice is
22 recorded.

1 MS. SZYBALA: Sure. At this point, we think you
2 have considered it, I guess, and we don't really have much to
3 say.

4 One of these options came from our comments on this
5 and we had recommended that option, which is not the same
6 option that management recommends.

7 There are -- if people follow the policy that you
8 have to use the cheapest, the most efficient, then they will
9 not have a conflict of interest. The point is, that's not
10 monitored, and that is not checked up on, unless -- except
11 occasionally, when something looks wrong. And you'll only
12 know after the fact that someone had a conflict of interest.

13 And what brought this to our attention and to yours
14 was findings in an inspection that was not looking for this.
15 It was not an inspection of frequent flyer, but it noted a
16 pattern of turning in the government tickets and getting
17 other tickets.

18 So the potential for conflict of interest
19 appearance, and actual, still exists because people don't
20 necessarily follow the rules to the letter.

21 MS. BATTLE: It seems to me -- I think that your
22 point is well taken, that there is the potential for some

1 conflict of interest if a person follows a methodology of
2 making decisions to do their travel in a way that is not most
3 economical to the corporation, but in a way that maximizes
4 their frequent flyer miles.

5 When that occurs -- the other issue you raised had
6 to do with monitoring. And what I think we found here is
7 that to monitor, capture, and keep would cost us more than it
8 is worth on that issue. But to monitor overall, to make sure
9 that people are doing what they are supposed to do, is it --
10 Joan, now you help me -- is it inherent in how the travel is
11 reviewed anyway?

12 In other words, don't you have how much it costs to
13 travel using government travel, already available to you, and
14 how much it would cost to use other than government travel,
15 available on each route?

16 Most of us are, by and large, coming to Washington
17 for meetings. At least the board members are, and I do know
18 that members of the staff do travel to other places for other
19 reasons. But there is always the opportunity to do that
20 comparison to determine whether a person is making a decision
21 that is not economical to the corporation.

22 MS. KENNEDY: Yes. That opportunity does it exist.

1 We have a travel coordinator who works with the travel
2 management consultant, Omega, and if -- you don't have a
3 choice. I mean, they are always going to give you the
4 government rate.

5 But we also have a means for comparing any other
6 travel to the government rate. So, yes. The answer is yes.
7 And the monitoring is done at that level.

8 MS. BATTLE: All right. So that monitoring, it
9 seems to me, would address whether a person is making
10 decisions that are uneconomic and potentially just based on
11 wanting to use or maximize their frequent flyer points.

12 MS. KENNEDY: Yes. We believe so.

13 MS. ROGERS: There was something Renee said that I
14 didn't understand, and that's the turning in the ticket. I
15 assume that if you are scheduled to go on one airline, and
16 then you show up and turn in your ticket to go on another
17 airline, is there -- and they accept that ticket, and put you
18 on for the flight, is there a negative implication --
19 financial implication there -- for the corporation?

20 MS. SZYBALA: Not necessarily. No. No. The
21 pattern that showed up in the records was travel on one
22 airline, no matter what was the city (inaudible) or what

1 particular ticket was issued. And that had raised questions
2 about why.

3 MS. BATTLE: And I think it may be that the way
4 that we address that is if there is an issue that comes up
5 under a scenario as you have suggested, that we look at that
6 to make sure that it is not done in order to maximize
7 frequent flyer points, and that it is done in the most
8 economical way. But that, overall, the policy that we have
9 adopted does not inherently create any kind of conflict of
10 interest. Edna?

11 MS. FAIRBANKS-WILLIAMS: I never collected any
12 frequent flyers, but I absolutely refuse to fly into Boston,
13 so maybe it costs you more money to fly me through
14 Philadelphia or Newark, but I will not fly into Boston
15 because they close the Boston Airport, and then I'm stranded,
16 and I don't get home. So I won't fly into Boston.

17 So maybe those type of decisions will come up in
18 this investigation, and so on. And so I think that if there
19 is something happening, that we should look at all the
20 reasons why before we decide that they are trying to steal
21 frequent flyer coupons.

22 MS. BATTLE: Yes. Okay. I think your point is

1 well taken. Alex?

2 MR. FORGER: Renee, I think when you talk about
3 conflict of interest, you're talking, at least in this
4 context, of misconduct. And I think that, for example, we do
5 not monitor sick leave. We do not require a doctor's
6 certificate, that I'm aware of, that you were sick. And,
7 therefore, there is a conflict, because you could be at the
8 movies all day.

9 MS. FAIRBANKS-WILLIAMS: But you are requiring it
10 in here now.

11 MR. FORGER: Yeah. Well, we're saying -- and we're
12 saying that you shouldn't use facilities or resources of the
13 corporation. It would be easier for me to use all the
14 pencils, pens, and papers. Of course, I'm in a conflict. I
15 can use it personally.

16 And, therefore, if we say that we believe that
17 there is an element of presumption of honesty and loyalty --
18 now, don't shake your head no -- there is a presumption.
19 There is a presumption of loyalty and honesty and, moreover,
20 unlike sick leave, we do have a monitoring function. I mean,
21 everything in the world doesn't have to be monitored in order
22 to be true.

1 MS. SZYBALA: The monitoring is working because
2 it's in management's memo. That's what brought it up. They
3 recommend against an option because there is no system for
4 monitoring. None of this is monitored.

5 MR. FORGER: Well, I'm just adding, in addition to
6 relying on honesty, we can double check.

7 MS. SZYBALA: Right.

8 MR. FORGER: So we have belts and suspenders.

9 MS. SZYBALA: We have no (inaudible).

10 MR. FORGER: Okay. So you had no objection to our
11 -- if the board were to adopt to retain the miles.

12 MS. SZYBALA: Right. We have no objection.

13 MS. BATTLE: Okay. It seems to me there is no
14 objection that's been voiced by the inspector general. This
15 issue was raised initially because there, through an
16 investigation, was an issue perceived to be a conflict of
17 interest in how travel might occur without a written policy.

18 So I think that I'm prepared to hear a motion by
19 someone on this committee -- we can speak to it in just a
20 minute -- that we recommend to the board option three, which
21 is that we permit travelers to retain their frequent flyer
22 miles, earned as a result of LSC travel, for personal use,

1 and just note that it is our policy, as already stated in our
2 administrative manual, to do our traveling the most
3 economical and efficient way.

4 First of all, do I have anybody --

5 MR. MCCALPIN: Wait a minute. Before you do, our
6 conscience, the general counsel, has just drawn to my
7 attention Section 3.05(A) of the by-laws, which reads, "No
8 member of the board may participate in any decision, action,
9 or recommendation with respect to any matter which directly
10 benefits such member or pertains specifically" -- the
11 question is, if retaining these frequent flyer miles
12 personally is a benefit to a member of the board, are we
13 competent to pass on the policy?

14 MS. BATTLE: Well, this is the first I've heard of
15 it.

16 MR. MCCALPIN: Well, he just handed it to me.

17 MS. BATTLE: Yeah.

18 MR. FORGER: I wish you wouldn't say "competent,"
19 Bill, whether we are competent to pass on it. Is there
20 another word?

21 MR. MCCALPIN: I suppose we could certainly adopt
22 it for the rest of the corporation. I don't know what we do

1 with respect to us. Even the president can't do it, because
2 he's a member of the board.

3 MR. ERLBORN: Well, Bill, maybe --

4 MR. FORGER: But without a vote, so I can vote for
5 it.

6 MR. ERLBORN: Since that's a technical point,
7 maybe there is a technical way around it. If you all will
8 stay here to constitute the quorum, I will cast the only
9 vote, and if that carries the issue -- I live here. I don't
10 travel. I have no conflict.

11 MR. FORGER: One of legislative and parliamentary -

12 - MR. MCCALPIN: Worthy of a former member of the
13 House of Representatives.

14 MR. ERLBORN: Always a way.

15 MR. FORTUNO: Well, it may be that there are other
16 directors that also don't avail themselves of that particular
17 perk, in which case it is entirely possible that they could
18 cast a vote.

19 I think the conflict would be for those who, in
20 fact, do have a membership in frequent flyer programs.

21 MS. ROGERS: Those are two different things.

22 Whether we avail ourselves of frequent flyers when we are

1 traveling at LSC expense, and whether we belong to --

2 MR. FORTUNO: Sure.

3 MS. FAIRBANKS-WILLIAMS: Well, another thing, too.

4 After looking at the amount that I had accrued, I never
5 bothered with frequent flyers. I could always save my
6 frequent flyers to go to the pro bono rule conference, or to
7 NLADA, or something, which I don't get to go to because I
8 can't afford it. And that would still be something to do
9 with legal services.

10 So then if you had frequent flyer certificates, you
11 would have to figure out what they use the frequent flyer
12 certificates for, if they went to other things that wasn't
13 paid for by the corporation.

14 MS. BATTLE: Why don't we consider this and,
15 Victor, I'd like to hear from you as to whether or not it is
16 visible to pass -- to make a recommendation to the board that
17 the staff follow a -- this issue didn't come up as a result
18 of something that was reviewed by -- based on board travel.
19 It was a staff travel issue.

20 Can we pass a resolution to apply to the staff this
21 option three. And that way we don't have -- it's not
22 something that will apply to the board, necessarily. It will

1 apply to the staff and it will address a concern that was
2 raised by the inspector general from the onset about staff
3 travel.

4 Most of us, quite frankly, are just flying in and
5 out of D.C., so it's not really for us as much an issue as it
6 is members of the staff who fly to various different places,
7 and have different routes that come up.

8 MR. FORTUNO: I think that your proposal wouldn't
9 implicate Section 3.05 of the by-laws.

10 MS. BATTLE: Okay. Well then I'll entertain a
11 motion to that effect.

12 M O T I O N

13 MR. ERLENBORN: So moved.

14 MS. BATTLE: And a second?

15 UNIDENTIFIED VOICE: Second.

16 MR. FORGER: And I think the word "staff," John,
17 may be too narrow. Do we not have readers and other
18 reviewers who are flying, or Merceria.

19 MR. MCCALPIN: All persons, other than board
20 members, traveling while on corporation business.

21 MR. ERLENBORN: I think it ought to be worded more
22 carefully so that we don't make it appear that we are leaving

1 ourselves unregulated, which is the case, but --

2 MS. BATTLE: Yes. Instead of saying "other than
3 the board," let's pick out all the people that are other than
4 the board and put them all in our statement of policy.

5 MR. FORGER: So would it be, John or Merceria,
6 employees, and consultants, and those on contractual
7 arrangements?

8 MS. BATTLE: Can we come up with some language,
9 Suzanne, to write --

10 MR. FORTUNO: Some of the points that are being
11 raised are -- it's not just corporation employees and
12 consultants, but Linda raised the point of someone who is
13 invited to attend a corporation function, or maybe speak, and
14 for whom we purchase a ticket. They may be a member of a
15 frequent flyer club.

16 So language that would be broad enough to encompass
17 that, but -- that's just a drafting matter, which I assume we
18 could handle, you know, without much ado.

19 MS. BATTLE: Okay. Can we do that? I've got a
20 motion and a second. Are we ready for a vote? All in favor?

21 MS. FAIRBANKS-WILLIAMS: One question. You said
22 somebody who was a member of a frequent flying thing. Isn't

1 those frequent flyer miles issued in that person's name?

2 MR. FORTUNO: Yes.

3 MS. FAIRBANKS-WILLIAMS: So how would Legal
4 Services collect --

5 MR. MCCALPIN: We're not going to.

6 MR. ERLBORN: They keep them. The individual
7 keeps them.

8 MS. FAIRBANKS-WILLIAMS: So if he never traveled
9 for us again, he'd have them in his pocket when he died at
10 95?

11 MR. FORTUNO: Yes.

12 MR. FORGER: That's right.

13 MR. FORTUNO: We buy the ticket when the person
14 shows up at the airport and checks in, presents his or her
15 card -- member card, and they credit the miles to that
16 account.

17 MS. BATTLE: Okay. Any other discussion on the
18 motion?

19 All in favor?

20 (A chorus of ayes.)

21 MS. BATTLE: All opposed?

22 (No response.)

1 MS. BATTLE: Motion carries.

2 And I'd like to once again thank you, Suzanne and
3 Joan, on getting to us, and Victor, a legal opinion and
4 enlisting professional assistance in determining whether it
5 was economical to capture the frequent flyer points, and
6 coming up with a comprehensive recommendation that has been
7 accepted by management, as well as the inspector general. We
8 do appreciate it.

9 MS. KENNEDY: Thank you, very much.

10 MS. BATTLE: Next on our agenda -- do we need a
11 break or all you all ready to go. Let's take a break before
12 we do our regs. Everybody is gone, anyway.

13 (A brief recess was taken.)

14 (End of tape 2, side 1.)

15 MS. BATTLE: We are going to start with the regs,
16 and I may reorganize this. Let's take the easy ones first.

17 MR. MCCALPIN: What are you going to do?

18 MS. BATTLE: The regs. Consider public comment on
19 these interim regs.

20 MR. MCCALPIN: Are we going in sequence there?

21 MS. BATTLE: No.

22 MR. MCCALPIN: What files do I get out?

1 MS. BATTLE: Get out your eviction proceedings,
2 redistricting, and class actions first. We're going to go
3 back on the record.

4 Bucky has requested that we -- as soon as the
5 inspector general is available, go into and address the
6 issues that he has on the agenda, so that -- he's got
7 committee members that might have a conflict later on.

8 So right now Ed is giving testimony before the
9 Finance Committee, so he's not available, and we can start
10 our process, and I'm hoping if we start with the easier ones,
11 we can get them out of the way and then move on --

12 MR. MCCALPIN: The easier ones? That's 1732.

13 MS. BATTLE: 1632.

14 MR. MCCALPIN: 1632.

15 MS. BATTLE: 1632 is the very easiest.

16 MS. PERLE: Why don't we start there.

17 MS. BATTLE: We can make 1632 number one, 1633
18 number two, and then 1617 number three, and 1610 number four.
19 So we'll be all warmed up and ready for 1610.

20 MR. MCCALPIN: 32, then 17 --

21 MS. BATTLE: 32, 33, 17, and then 10, in that
22 order.

1 MR. MCCALPIN: I used to have a paralegal to help
2 me keep track of exhibits.

3 MS. BATTLE: Hate to do it yourself, don't you?

4 I don't think there was a single comment on 1632,
5 was there?

6 MS. PERLE: Yes, there was.

7 MS. BATTLE: That's right. The omnibus comments.

8 MS. PERLE: Keep it the way it was.

9 MS. BATTLE: Yeah. That's right.

10 Here is Suzanne. Suzanne, we are now going to
11 begin to consider public comment on the four interim regs
12 that we published on August 13th. And we are going to
13 readjust the order somewhat of our consideration of these
14 regulations and take my view of the easier ones first, and
15 leave the more difficult ones for later.

16 And therefore, we'll start with, as our first one,
17 1632, and then do 1633, and then do 1617, and then 1610,
18 which will mean we will deal with redistricting, and then
19 certain eviction proceedings, class actions, and then use of
20 non-LSC funds, in that order.

21 MS. GLASGOW: Okay.

22 MS. BATTLE: Okay. And I made the comment, as you

1 were coming in, with the exception of class, who did say
2 everything was fine with redistricting, we didn't get any
3 other significant comments on redistricting; is that correct?

4 MS. GLASGOW: That's correct.

5 MS. BATTLE: So we are in a position where we can
6 adopt, as our final reg, the interim reg, with no changes.
7 Is that your recommendation?

8 MS. GLASGOW: That's right.

9 MS. BATTLE: Okay. Are there any questions from
10 any of the members of the committee or the board about going
11 forward on 1632?

12 MS. WATLINGTON: Only to say that we should accept
13 that.

14 MS. BATTLE: That recommendation?

15 MS. WATLINGTON: Yes.

16 MS. BATTLE: Okay.

17 M O T I O N

18 MS. WATLINGTON: I would so move.

19 MR. MCCALPIN: I assume that the motion is that we
20 recommend to the board adoption of interim regulation 1732 as
21 a final regulation.

22 MS. BATTLE: That's exactly right. 1632 as a final

1 reg.

2 MS. WATLINGTON: Did my motion get a second?

3 MR. MCCALPIN: Yes.

4 MS. BATTLE: Okay. It's been properly moved and
5 seconded that we recommend to the board that they -- that the
6 board adopt the interim regulation we published on August
7 13th, 1996 for 1632 as the final regulation.

8 All in favor?

9 (A chorus of ayes.)

10 MS. BATTLE: Okay. Motion carries.

11 UNIDENTIFIED VOICE: Madam Chairman, may I just say
12 one thing that might have been helpful to say before, but two
13 preliminary matters that do affect adoption of these. And
14 one is that the inspector general asked of us that we
15 recommend to the committee that the -- that the final regs
16 not become effective until December -- or until January 1st,
17 1997, at the earliest.

18 The concern the inspector general has is that they
19 are now preparing and about to send out a compliance
20 supplement, advising the program auditors as to how to audit
21 for compliance, and they are deeply concerned that having
22 different pieces of the year governed by different rules

1 would make it extremely difficult, if not impossible, for the
2 auditors effectively to carry out their responsibilities.

3 This particular reg that the -- that the motion
4 just pertained to doesn't -- doesn't involve that question,
5 but some of the others do. So we have told them we would --
6 would recommend to you that these -- that any action which is
7 taken now, that when they become effective, that you would
8 make them effective not before January 1st, of next year.

9 MS. BATTLE: Okay. I think we can accept that as
10 an amendment, that this particular reg and all others that we
11 consider today to become final, would not become final until
12 effective January 1st, 1996 (sic).

13 MS. GLASGOW: 1997.

14 MR. ERLBORN: Could I ask a question about that.
15 Some of these have been published as interim regulations with
16 immediate effect.

17 MS. BATTLE: That's true.

18 MR. ERLBORN: So delaying --

19 MS. BATTLE: Has no legal effect, really. I mean,
20 my only concern is this, as I understand it. If we make
21 changes, then the audit guide will go out with an interim
22 reg, where we have actually made changes in a final reg. And

1 rather than have that happen, if we say that all of our
2 interim regs will be effective January 1, that gives them an
3 opportunity to then publish what will be all the final regs,
4 effective January 1.

5 MR. ERLBORN: But these interim regs will
6 continue in effect until then?

7 MS. BATTLE: That's correct. Yes. Okay.

8 MS. GLASGOW: Linda just pointed out that because
9 this has been adopted essentially the same as the interim
10 reg, there is no reason to hold it up, but then there is no
11 reason to necessarily have to publish it quickly for
12 effective date either, because it is -- the interim reg will
13 control until it --

14 MS. BATTLE: I think we can throw them all in the
15 mix in the same pot.

16 MR. MCCALPIN: Do we specifically say in them that
17 they replace the interim reg?

18 MS. GLASGOW: We will when we publish them. As a
19 matter of fact, the other point that we wanted to point out
20 is that the memos you received today on these regs do not
21 constitute the preamble that usually goes before the text of
22 a rule when we publish it. There just wasn't sufficient time

1 to prepare the preamble.

2 So these are just discussions of the comments with
3 recommendations, and we will still need to prepare the
4 preambles, supplementary information provisions for the rules
5 when they do go into the Federal Register.

6 MS. BATTLE: And that's another reason to have them
7 for our December meeting.

8 Any other questions on 1632?

9 (No response.)

10 MS. BATTLE: Hearing none, we can move on then to
11 1633, restriction on representation in certain eviction
12 proceedings.

13 We did have some comments on this and as I took the
14 count, all of the comments that we received basically
15 approved as written the reg, with the exception of one group
16 that felt that we should adopt the HUD guideline, and I think
17 you need to address that.

18 MS. GLASGOW: Correct. And basically the issues
19 raised by the Housing Association, one was that they -- one
20 was a suggestion that we should change the rule to meet other
21 members of the family. So if another member of the family
22 who is the one who is convicted of a drug offense, that we

1 should change the rule to reflect that.

2 And basically we looked at the statute behind our
3 rule, and it repeatedly speaks to the person who is charged
4 with the offense. And therefore, we don't recommend revising
5 our rule to go any further than that, because there is
6 nothing in the HUD guidelines, or our act, that says we
7 cannot represent a family member when some other person
8 connected with that family is the person charged.

9 Indeed, one comment pointed out that very often
10 family members need protection from the person who is the
11 drug offender, often in abuse cases, and that our rule would
12 allow representation of a person who needs that type of
13 protection.

14 So we don't recommend changing the rule for that
15 comment.

16 MS. BATTLE: Okay. So are there any changes at all
17 recommended to 1633?

18 MS. GLASGOW: We recommend making one change for
19 the one-year provision in Section 3(A). The Housing
20 Association raised the issue that putting in the one-year
21 provision would allow people who are a threat to the health
22 and safety of the Housing Association or the housing area to

1 be allowed representation.

2 And when we looked at our rule, we basically
3 decided that it's the -- it's a decision by the housing
4 authority who is bringing the proceedings against the person
5 who has been charged with the drug offense, to decide whether
6 that person is a threat to the health and safety of that
7 association. And they have to come forward with evidence to
8 show that there is such a threat. And if they come forward
9 and say nothing more than, well, ten years ago this person
10 was convicted or charged with an offense, then they are going
11 to have trouble showing that there is a threat to the health
12 and safety of the tenants.

13 And so we revised two changes to this. If we take
14 out the clause "within one year prior to the date when
15 services are requested from a recipient," then in paragraph B
16 -- and this does not show in your copy. It's something we
17 have been talking about since then. We would say in B "the
18 eviction proceeding is brought by a public housing agency on
19 the basis that the illegal drug activity for which the person
20 has been charged, or for which the person has been
21 convicted," and we would cross out "did or does now," and put
22 "threatens the health or safety of other tenants residing in

1 the public housing project or employee for the public housing
2 agency."

3 MR. ERLBORN: Could I ask a question about that
4 language?

5 MS. GLASGOW: Sure.

6 MR. ERLBORN: As I understand it, it would read
7 that a person has been charged with or has been convicted.
8 What if someone has been charged and found not guilty? He's
9 already been -- he's been charged, which is one of the
10 elements here, even though he may have been tried and found
11 not guilty.

12 MS. GLASGOW: I believe that at one point in these
13 regulations, there was a statement that the charge was still
14 pending, and I don't know where that dropped out along the
15 line. I know that there was some discussion about that, to
16 deal with this very instance, or a situation where the person
17 had been charged, but had not -- the prosecution had not been
18 -- they had not gone forward with it, and there was nothing
19 really pending with the person, but there was still the
20 charge hanging out there.

21 MR. ERLBORN: The case may have been dismissed by
22 the prosecutor. But just the fact they are charged alone

1 ought not be the criteria.

2 MS. GLASGOW: I agree with you.

3 MS. WATLINGTON: Because some of those can continue
4 on for two years and then be dropped.

5 MS. GLASGOW: That's a good point.

6 MS. PERLE: I mean, I think that we need to have
7 some break point at which the charge that's floating around
8 is no longer the basis for denying representation.

9 I mean the Housing Authority could still use it as
10 a basis for bringing an eviction proceeding, but it -- and I
11 think what Suzanne said is that they have to make -- they are
12 put to their proof. But the problem is that, of course, if
13 it has -- the language in here that says there was the
14 charge, then they are not permitted to get representation,
15 even if there really is no connection. That's the objection
16 that I have to taking out the one year time frame.

17 MS. BATTLE: How do we address this, Suzanne?

18 MS. GLASGOW: Well, I'm looking at the --
19 unfortunately, I didn't help work on this rule at the earlier
20 stages. But I'm looking at the language -- the beginning
21 language for Section 3 is "Recipients are prohibited from
22 defending any person in a proceeding to evict." And I'm

1 wondering if the proceeding would be dropped if the person is
2 found not guilty of the drug charge. And, therefore, once
3 that proceeding had been dropped to evict, we could represent
4 that person --

5 MR. ERLENBORN: Not necessarily.

6 MS. GLASGOW: -- and I'm not familiar enough with
7 the proceedings to know that.

8 UNIDENTIFIED VOICE: I think that actually Linda
9 remembers correctly, and what she remembers is that the
10 definitions define charged with in a way which I think
11 addresses your concern, Mr. Erlenborn. A person who has been
12 charged with means engaging in illegal activities that a
13 criminal proceeding has been instituted against such person
14 by a governmental entity with authority to initiate such a
15 proceeding, and such proceedings ending.

16 So the definition of charge does contain, I think,
17 a --

18 MR. ERLENBORN: Is that the language from the
19 statute?

20 MR. UNIDENTIFIED VOICE: No. That's the language
21 that's actually in the regs.

22 MS. ROGERS: Flip back one page, John.

1 MR. ERLENBORN: Oh. Okay.

2 MS. BATTLE: Part of the history of this is that
3 the language in the appropriations law included the term
4 "charged with." And we felt that in order for us to do our
5 job, we needed to interpret what charged with meant, and that
6 charge inherently includes something more than conviction.

7 MR. ERLENBORN: Would it be reasonable to have, in
8 this .3(A) say persons who have been charged with, as defined
9 in .2(C), because -- or is that necessary?

10 MS. BATTLE: I think we have done that.

11 MR. ERLENBORN: Oh, this is a definition.

12 MS. BATTLE: Yes. This is the definition of
13 "charged with." So when it is used anywhere in that
14 regulation, it's used in the context of the definition.

15 MR. ERLENBORN: All right. It doesn't really read
16 that way. The first two it says "controlled substance has
17 the meaning. Public housing has the meaning." A person is
18 charged with, and so forth, doesn't say it has that meaning.
19 That may be a concern as well.

20 UNIDENTIFIED VOICE: Well, that could be changed
21 then to say that the term "charged with" shall mean when a
22 person has been --

1 MS. BATTLE: Has engaged in illegal drug activity.

2 UNIDENTIFIED VOICE: There is an allegation --

3 MR. ERLÉNORN: I think if you add the fact that
4 this has the meaning, it would then clearly be a definition
5 that would control the balance of the regulation.

6 MS. GLASGOW: You can make the term being defined a
7 person has been charged with means engaging. In other words,
8 increase the words that you're defining.

9 MR. ERLÉNORN: I think I would be more
10 comfortable, knowing how picky some defense -- or some of the
11 members on the Hill might be, looking at this, in any event.

12 MS. BATTLE: And that makes it clear that what we
13 are attempting to do here is to interpret the language
14 "charged with" which comes straight out of the appropriations
15 law.

16 MR. ERLÉNORN: Yeah.

17 MS. BATTLE: Okay. That's a good point. Bill?

18 MR. MCCALPIN: I have two points I would like to
19 raise, and one of them is a follow-up on something that
20 Suzanne had said a minute ago, when she talked about the
21 fellow who had been convicted ten years before and threat.

22 It really raises the question which is referred to

1 in the public housing director's letter of how, when, and by
2 whom is the threat to the other tenants and employees
3 determined.

4 I had always thought that it would be a part of the
5 pleading in the eviction case that so-and-so has been charged
6 with. Does that mean, though, that if the pleading does not
7 contain that allegation, then the program is free to
8 represent the defendant?

9 Conversely, I would be a little concerned about the
10 housing authority, belatedly, at some other point, making
11 some sort of a statement about the threat to the other
12 tenants or employees. We haven't said that it has to be
13 included in the pleading, and I don't know that we should,
14 but it does seem to me it brings out into the open the
15 question of how is that second condition of the threat to the
16 other employees and tenants brought to the -- put on the
17 record.

18 MS. BATTLE: I think your point is well taken that
19 normally one would look to see if it's in the pleading filed
20 for the eviction, saying we want you evicted because we think
21 you are a --

22 MR. MCCALPIN: You have been charged with and you

1 are a threat.

2 MS. BATTLE: You have been charged and you are a
3 threat to health and safety.

4 If the eviction is on some other ground, then -- I
5 think we had this discussion when we did our drafting. If
6 the Public Housing Authority has not made a determination
7 that this person is a threat to the neighbors in that
8 particular housing project, then part two in this does not
9 kick in.

10 It is the housing authority that makes the
11 determination and not us, or not us in evaluating how the
12 housing authority does its work.

13 MR. MCCALPIN: My point is, if the pleading in the
14 eviction case only says that the defendant has been charged
15 with the sale or distribution of a controlled substance, it
16 says nothing about threat to other tenants or employees, does
17 the program represent the defendant?

18 MR. FORGER: I don't think so.

19 MS. BATTLE: They had the option. I don't know
20 that you necessarily said they can't, or that they will, but
21 they have the option available, looking at, of course, the
22 totality of the circumstances as to whether it --

1 MS. WATLINGTON: It makes it difficult.

2 MR. FORGER: Yes. That gets us into all kinds of
3 trouble.

4 MR. ERLNBORN: I think this language really is
5 fairly clear because it says the eviction proceeding is
6 brought by the public housing agency on the basis that the
7 illegal drug activity which person has been charged with and
8 was then found guilty, does now threaten the health or
9 safety. I think that's pretty specific.

10 If they don't say that the specific charge or
11 conviction does now threaten, then there is no reason not to
12 represent them.

13 MS. ROGERS: Well, it doesn't say on the basis. It
14 says "because."

15 MR. ERLNBORN: "The Public Housing Authority, on
16 the basis that the illegal drug activity which a person has
17 been charged" -- am I reading the right thing?

18 MS. BATTLE: Yes. You're reading the right thing.

19 MS. ROGERS: I must be reading the wrong thing.
20 Section 5.04 of the -- oh, we're reading the rule.

21 MS. BATTLE: We're reading the rule, if you're
22 looking at 5.04.

1 MS. ROGERS: I'm looking at -- the statute?

2 MR. ERLBORN: Yeah, the statute.

3 MS. ROGERS: The statute says -- it's not as clear,
4 I don't think. The eviction proceeding is brought by a
5 public housing agency because, in the statute, I think,
6 unfortunately.

7 MS. BATTLE: It says "because" and we say "on the
8 basis that." I think that's pretty synonymous, actually.

9 What we are doing is tracking the language of the
10 statute when we include this second layer of test, and it
11 comes straight out of the statute. So --

12 MR. ERLBORN: Well it's not using the same
13 wording as the statute. "On the basis of" is probably a good
14 deal more specific than "because."

15 The housing agency could file the suit not on the
16 basis and then send out a press release saying that they are
17 doing this because. I think that's the point that Bill made.

18 MS. ROGERS: And it is also tied in together. I
19 mean, the restriction on the corporation's recipients is in a
20 certain circumstance, they can't take on a client. And it's
21 not saying that we determine when that proceeding starts.
22 It's very clear that the housing authority starts that

1 proceeding.

2 And I think reading through the HUD guidelines and
3 everything that's associated with that, they are bringing
4 these proceedings, based on drug activity that's a threat to
5 the housing association, so they are the ones that make that
6 determination. And once they have done that, that's when our
7 restriction kicks in and says we can't take that person on as
8 a client.

9 We won't second guess them. We won't fight their
10 decision to do it. Once they have started that proceeding,
11 based on that, we're out of the picture.

12 But we don't make any decisions leading up to that,
13 or second guess them. And I think just from reading the
14 comment from the Housing Association, they represent, I
15 think, something like 1,700 housing authorities, they are
16 very aware of our rule, and when we put the final rule out
17 with the commentary, we'll make it clear that we see that
18 they are the ones that make that decision and, you know, let
19 them know that they are going to have to make it clear
20 because that's when our restriction kicks in.

21 MS. BATTLE: Yeah. Is there any concern -- I'm
22 hearing this from both John and from Nancy -- that the

1 language should be, instead of "on the basis" that "because"?
2 Use the term "because" instead of "on the basis that."

3 MS. PERLE: Well, I think it's not clear what
4 "because" means. And I don't think that there's a clear
5 demarcation of that.

6 I mean, you wouldn't say "because." It could be
7 what's in some housing authority's office official's mind,
8 rather than what they put on the eviction notice.

9 MS. BATTLE: We certainly need --

10 MS. PERLE: I think there has to be something clear
11 upon which to base the decision not to undertake
12 representation.

13 MS. BATTLE: Yes.

14 MR. ERLNBORN: I would agree. I think that the
15 language in the statute is a bit vague, using "because." I
16 feel comfortable with this, although it may not track the
17 statute.

18 MS. BATTLE: I think the purpose of this was so
19 that we're giving notice as to how we are making our
20 decisions, and we're informing housing authorities that if
21 it's their position that health and safety is threatened by a
22 particular person staying in the housing development who has

1 been charged, or convicted of some criminal activity related
2 to drugs, then say that and you won't have to worry about us
3 being in the case.

4 MS. GLASGOW: How else would we know that that's
5 why they brought it, so that we can comply with our
6 restrictions.

7 MS. BATTLE: Yes. Exactly.

8 MS. GLASGOW: We can't second guess --

9 MS. BATTLE: We need something definitive in order
10 to comply.

11 MS. GLASGOW: Right.

12 MS. BATTLE: And I think that your comments -- you
13 had just a brief commentary and you were specific in how you
14 developed it -- is well taken, to let them know that we
15 aren't going to second guess.

16 I think their concern was who. Are you going to
17 decide whether it threatens health and safety? And the
18 answer is no. It's going to be up to the housing authorities
19 to make that call, and we will honor it when you make that
20 call, but you must make it in your pleading so we know.

21 MS. PERLE: Right. Right. I mean, the point is
22 that you -- if you're going to base it on that judgment, then

1 you have to state that that's the basis on which you made it.

2 MS. BATTLE: Right.

3 MS. PERLE: And I think, you know, the statute --
4 the language in the statute is vague, the corporation has the
5 authority to make -- to take the language in the statute and
6 determine it in a way that makes sense, and gives clear
7 guidance to those people who are living under it.

8 So I think that's what this rule does, the language
9 in this rule.

10 MS. BATTLE: Okay. Is there anything else on B?
11 Now we are just in 1633.3(B). Is there anything else?

12 MR. MCCALPIN: I think so.

13 MS. BATTLE: Okay.

14 MS. WATLINGTON: That is actually working because,
15 as you know, I'm directly involved in that, and it's in your
16 lease, and it's also -- the housing authority, when it is
17 that, then attorneys can't do that. So it's really -- it's
18 working. I mean, we have to, you know, go through that, but
19 they have to prove it first to even my tenants.

20 But because I'm involved with Legal Services, my
21 tenants can't use -- my evictions have to be pro bono because
22 Legal Services attorneys can't handle them.

1 MS. BATTLE: Okay. Bill?

2 MR. MCCALPIN: I'd like to go back to another issue
3 which was considered a long time ago. Let me preface it by
4 saying that there has always been some tension between the
5 concept that our recipients represent individual clients, and
6 indirectly, vicariously, that's our concern, too, and the
7 concept which I first heard enunciated by Mickey Cantor when
8 he was a member of this board, that we, and the legal
9 services community, ought to consider itself as general
10 counsel for the poor. Obviously, there is a tension in those
11 remarks.

12 I have generally favored the historical one that we
13 deal with individuals, and our programs deal with
14 individuals. And I have also certainly recognized that we
15 are a creature of the Congress, and we do what the Congress
16 tells us to do, even though we arrive at these seats where we
17 sit by appointment of the executive branch of government,
18 subject, of course, to confirmation by the Senate.

19 Within these parameters, and having in mind the HUD
20 administrative -- administration position through HUD, I
21 think we have the opportunity to serve the general community,
22 to serve for the purposes of what I can see that Congress was

1 getting at, by including manufacture and use in the charged
2 with.

3 I appreciate the fact that the Congress did not put
4 those words in. They are recommended in the HUD policy.
5 And, incidentally, the HUD policy has now become permanent.
6 There was a notice to that effect just the other day.

7 And it -- I don't think it dis-serves what the
8 Congress has said. I think it tends to make public housing
9 areas more safe and secure for the tenant population who live
10 there. And it doesn't do violence, and I think that we
11 certainly have the right to do it, given the Texas legal --
12 the Texas rule on the legal case, and the redistricting
13 regulation that was done, without any statutory authority.
14 And I think that this is within the framework of that
15 authority. It is consistent with the HUD policy, and I do
16 not think it is inconsistent with what the Congress has
17 written into the appropriation act.

18 So I would amend 13.33.3(A) to include charged with
19 manufacture and use, as well as sale and distribution, a
20 position, incidentally, which was in an early draft of this
21 regulation, and then many months ago we took it out, I think
22 simply because it wasn't in the statute. I don't think that

1 we are required, slavishly, to adhere to the language of the
2 statute. I think we meet the spirit of the statute, if we
3 include manufacture and use.

4 MS. BATTLE: Are there any other comments on Bill's
5 observation?

6 MS. FAIRBANKS-WILLIAMS: Just one thing. Some
7 asthma sufferers use marijuana. Would you say just plain
8 use, or would you say excessive use?

9 MR. MCCALPIN: I think it is use which threatens
10 the health and safety of other tenants and employees. They
11 still have to meet that test of threatening the health and
12 safety of other tenants and employees, and a medicinal use,
13 it seems to me, could not come into that rule.

14 MR. ERLENBORN: And they also have to be charged or
15 convicted.

16 MR. MCCALPIN: Absolutely.

17 MR. ERLENBORN: It isn't just the use. It's being
18 charged or convicted --

19 MR. MCCALPIN: That's right.

20 MR. ERLENBORN: -- for the use.

21 MR. MCCALPIN: Plus the threat.

22 MR. ERLENBORN: My reaction is favorable.

1 MS. GLASGOW: We would like to perhaps suggest a
2 little amendment to that, since it is not in the statute and
3 we have some discretion. Perhaps say manufacture and
4 possession with intent to sell, rather than applying it to
5 everyone who would use -- you know, has smoked marijuana, or
6 whatever.

7 MS. PERLE: I mean, you know, I don't want to sort
8 of suggest that all public housing authorities are, you know
9 -- don't come at this issue with the best of intentions. But
10 I'm concerned about --

11 MS. FAIRBANKS-WILLIAMS: Well, I know they don't.

12 MS. PERLE: -- the situation of an individual who
13 might, in the privacy of their apartment, use illegal drugs,
14 with no effect on anybody other than themselves, but the
15 housing authority making an allegation that it causes harm
16 goes to evict that person, and then they are denied the
17 ability to have representation.

18 I think that -- you know, I don't have a great deal
19 of difficulty if they are convicted or charged with
20 possession with intent to sell. I think that does pose a
21 danger to the community.

22 MS. ROGERS: I think that makes some sense. There

1 is some overbreadth in here, anyway, because the
2 representation is denied even if they are charged. And, of
3 course, they could be charged and not found guilty.

4 MS. BATTLE: Convicted. Yeah.

5 MS. ROGERS: And so I would hate to extend the
6 number of charges too much, because we are not limiting it
7 just to convictions.

8 MR. ERLBORN: I think we have to remember that
9 charge is not a charge brought by the housing authority.
10 It's a charge brought by the state's attorney --

11 MR. MCCALPIN: That's right.

12 MR. ERLBORN: -- the district attorney. And so
13 it has to be something serious enough to have --

14 MS. PERLE: But they can be charged with, you know,
15 a misdemeanor possession charge, which really doesn't affect
16 anyone other than themselves.

17 MR. MCCALPIN: Well, who says?

18 MS. PERLE: Well, it may or may not. I mean, the
19 point is that if the housing authority is going to charge --
20 if they are going to be charged with, or convicted of
21 possession, and then the housing authority brings an eviction
22 based on that charge, making an allegation that there is harm

1 to others in the community, it strikes me that they should be
2 able to have representation to negate that charge.

3 MR. MCCALPIN: We have just recently adopted a
4 policy that this corporation is drug free. And what we are
5 saying is, we're not willing to make the same drug-free
6 requirement for a public housing project.

7 MS. PERLE: I don't think it is the same thing
8 because --

9 MS. WATLINGTON: It isn't.

10 MS. PERLE: Because, you know, you're basing it --

11 MS. WATLINGTON: We're not getting to issues of
12 manufacturing and possessing. We're saying for our employees
13 here who work, that we do not want you to come to work
14 stoned.

15 MR. MCCALPIN: We are saying that it's drug free.

16 MS. PERLE: I don't think that we -- that we, the
17 corporation, should be making the decision about what happens
18 in a public housing -- public housing project.

19 And the fact that HUD has made new guidelines as to
20 what constitutes a basis for eviction, that they have to make
21 the proof of that in an eviction hearing. And don't forget,
22 you -- what you are doing is you're not saying -- you're not

1 MS. PERLE: They give out drugs in order to get
2 young people addicted, so that they later will buy.

3 MS. BATTLE: Okay. Can we work on the language to
4 reflect this manufacture and possession with intent to sell,
5 illegal sale or distribution of a controlled substance, as
6 the standard. And you are comfortable with that, Nancy?

7 MS. ROGERS: Yes.

8 MS. BATTLE: Bill? John?

9 MR. MCCALPIN: Yes.

10 MS. BATTLE: Edna? Ann? Okay. Everyone is
11 comfortable with that.

12 Is there anything else. Now we are striking this
13 within one year prior to the date when services are requested
14 from a recipient; right?

15 MS. PERLE: Right. But you're also striking the
16 language that "did, or does now, threat," so that it makes --
17 although it is not as clear as the one year, it does suggest
18 that there is some --

19 MS. BATTLE: Present pending. Yes.

20 MS. PERLE: Between what the charge and conviction
21 is and the current threat. It is consistent with that.

22 MS. BATTLE: Okay. Is there anything else then

1 that we need to look at in 1633?

2 (No response.)

3 MS. BATTLE: Okay. If not, with the amendments
4 that we have now discussed, we can make a proposal to the
5 board that will be effective January 1, 1997, on our drug
6 eviction reg.

7 MR. MCCALPIN: We need a motion.

8 MS. BATTLE: A motion to that effect?

9 M O T I O N

10 MR. MCCALPIN: I move we recommend to the board
11 adoption of interim Rule 1633, as amended, as a final rule
12 for adoption effective January 1, 1997.

13 MR. ERLBORN: Second.

14 MS. BATTLE: It's been properly moved and seconded.
15 All in favor.

16 (A chorus of ayes.)

17 MS. BATTLE: All opposed.

18 (No response.)

19 MS. BATTLE: Motion carries.

20 Okay. Let's move on -- well, I did agree, and I
21 see Bucky is out, to allow him, because he wants to be able
22 to get done while he's got members of his committee, to

1 address issues that he has on our agenda, if we can take them
2 out of order. Bucky, are we ready?

3 MR. ASKEW: Yes.

4 MS. BATTLE: Okay.

5 MR. ERLNBORN: Are you suggesting Bucky is out of
6 order?

7 MS. BATTLE: No.

8 (Laughter.)

9 MR. ERLNBORN: Nothing has changed.

10 MS. BATTLE: So I'm going to turn over the
11 chairmanship -- chairwomanship --

12 MR. ASKEW: Chairpersonship to me. I'm working on
13 my feminine side. That's fine with me. Thank you.

14 MS. BATTLE: The chairship.

15 MR. ASKEW: We are going to skip down to items
16 seven, eight, nine, and ten on today's agenda.

17 Item seven is the approval of our minutes from the
18 May 19th meeting.

19 M O T I O N

20 MS. ROGERS: So moved.

21 MS. FAIRBANKS-WILLIAMS: Second.

22 MR. ASKEW: All those in favor?

1 (A chorus of ayes.)

2 MR. ASKEW: The minutes are approved.

3 I'm going to ask John and Merceria to come forward.

4 And I asked them to give us reports -- status reports on two
5 issues that we have been hearing about for the last many
6 committee and board meetings, implementation of competition
7 for FY '97 is the first.

8 John, could you bring us up-to-date on the status
9 of that for this year, or for grants for next year?

10 MR. TULL: Merceria will do that. But before she
11 does, I did want to cover one general item involving the
12 division and then to let you know that we also intend to make
13 these reports exceedingly brief, because we recognize that
14 the committee has an enormous agenda still ahead of it. But
15 I certainly do want to let you know generally that the areas
16 that you have asked us to speak to are going in exceptional
17 -- exceptionally well and Merceria will give you some figures
18 regarding competition and what's happened there.

19 What we do want to let the committee know formally,
20 what I think many of you know, is that for some time the
21 divisions OPS -- Office of Program Services -- and the OPEAR
22 -- Division of -- or the Office of Program Evaluation,

1 together, we're going to both lean into the mike and do a
2 little duet here.

3 The notice from the Congress came -- it was
4 actually some weeks ago. Merceria and I had been working --
5 I guess what we should also let you know, which many of you
6 know, is that Gerry Singsen has now left the corporation and
7 though he was not -- his official title was the program
8 officer, I think all of you know from your work with him that
9 he was an enormously important staff member. He is now the
10 director of a program in central Massachusetts, which is
11 currently a grantee, but has not applied to be a grantee in
12 -- for next year, so will not be one of our recipients.

13 The occasion of Gerry's leaving, and the occasion
14 of us officially and formally being one division, has given
15 rise to a significant amount of rethinking about our own
16 organization and how we should function. So the ongoing saga
17 or the never-ending saga of how we organize/reorganize
18 ourselves goes on, and Merceria and I are engaged deeply in
19 thinking through that now.

20 MR. ASKEW: Great. Terrific. Thanks.

21 MS. LUDGOOD: I'll give you a shorthand kind of
22 update on where we are in competition, and then in our next

1 single proposals to provide services in a service area. We
2 have at this moment 36 areas where -- 36 service areas where
3 we have more than one applicant.

4 Now the regulation provides a different level of
5 evaluation for the service areas where we have more than one
6 applicant, and so we'll have, this round, review panels
7 composed of attorneys, and client or client representatives,
8 who will convene here in Washington together to review those
9 proposals from those areas, and then they will make
10 recommendations to the president.

11 Their work will be informed by staff
12 recommendations, by the reports from capability assessment
13 visits, and all of the other information that we have here at
14 the corporation that will help them provide -- that will help
15 them make the best decisions that they can. I think the reg
16 gives us the authority to look back at six years' worth of
17 history on our relationships with programs, assuming we have
18 a relationship.

19 We expect to make grant decisions in two levels.
20 The first round of grant decisions which we hope to make
21 earlier, rather than later, are those areas where there is
22 only one applicant, and we expect later, probably as late as

1 to the request for proposals, and whether or not those
2 responses cover every service area in the country?

3 MS. LUDGOOD: We have one native -- I think native
4 Connecticut is the only one for which we don't have a
5 proposal, but every other area is covered, either by --
6 either by a current grantee or a new applicant.

7 MR. MCCALPIN: And how many responses did you get?

8 MS. LUDGOOD: 298.

9 MR. MCCALPIN: For 325 service areas?

10 MS. LUDGOOD: 352 -- some of those -- for example,
11 if Legal Services of Alabama submitted a proposal, it may
12 have submitted for a migrant service area as well. So that
13 would, in essence, be two service areas.

14 MR. MCCALPIN: How many service areas do we have
15 right now, today?

16 MS. LUDGOOD: 353.

17 MR. MCCALPIN: 353.

18 MS. LUDGOOD: Yes.

19 MR. MCCALPIN: And we have 298 proposals in to
20 serve those 353 areas?

21 MS. LUDGOOD: Right.

22 MR. ASKEW: You made some other reference to 315

1 proposals. That's what confused me.

2 MS. LUDGOOD: 315 service areas --

3 MR. ASKEW: Okay.

4 MS. LUDGOOD: -- only have one applicant. And that
5 includes basic field, basic field native, and basic field
6 migrant.

7 MR. ASKEW: Okay.

8 MR. TULL: And every state has a migrant service
9 area, and some states have multiple Native American service
10 areas, so where a basic field program -- a program which has
11 a basic field service area, also serves those Native
12 Americans, as well as migrants, or some portion -- that's the
13 reason that there is such a discrepancy.

14 MR. ASKEW: Okay.

15 MS. LUDGOOD: Do you want to talk about multi-year
16 grants.

17 MS. TULL: What we intend to do this year, as well,
18 is to make grants -- under the appropriations, 104-134, we're
19 empowered to make grants for up to five years.

20 What we have recommended to the president, and he
21 has agreed is appropriate, is that we make grants for up to
22 three years. We believe that a five-year grant puts up out

1 of the consideration of the applicant too long, if there is a
2 performance problem, or a problem with compliance, and the
3 three years is an appropriate time.

4 And if we -- what we intend to do is to stagger the
5 grants, so that one-third of our grantees are competed every
6 year. And we want to begin to move to that immediately. So
7 we have -- what we would propose to do is have approximately
8 one-third of our grantees get a one-year grant this year,
9 approximately one-third get a two-year grant, and
10 approximately one-third get a three-year grant.

11 The way we have approached that is, first, we have
12 made a judgment that we will better be able to compete in
13 each area if we -- if the recommendation as to who is
14 entitled to a one, or a two, or a three-year grant is based
15 on the state that they're in.

16 In other words, we will also have some portion of
17 the states have one-year grants, and two and three, so that
18 all the programs within that state would, presumably, receive
19 a grant that would be the same term as all the other programs
20 in the state. And the thinking behind that is that as we
21 were able to do two years ago, when we called for a planning
22 process involving the state bar and the judiciary, et cetera,

1 to adjust to the changes, that there is a benefit in having
2 -- in the face of competition, having each state have an
3 opportunity for a planning process in which they might think
4 through ways that they may change their system in ways that
5 might involve more than one grantee.

6 Obviously, the choice as to who gets a three-year
7 versus a one-year grant is a matter of moment, because those
8 who get a three-year, who are entitled to a three-year grant,
9 would not be faced with competing again for a longer period
10 of time than those who are in a one-year cycle.

11 What we -- the means by which we decided to divide
12 the group up -- the states up -- is based on the number of
13 programs in the state that serve fewer than 50,000 clients.
14 The percentage of the programs in the state that serve fewer
15 than 50,000 clients, so that programs that are on the one-
16 year list would include those -- I'm sorry -- states that are
17 on the one-year list are those in which a percentage of the
18 programs who serve fewer than 50,000 clients is above 45
19 percent.

20 Those who are on the two-year list are those who
21 have 20 percent to 45 percent of their programs serving fewer
22 than 50,000 clients.

1 And those who are on the three-year list would be
2 those who have below 20 percent.

3 The thinking behind that is that in those states
4 which do have many programs serving a smaller number of
5 clients, those states are -- have been in a planning process,
6 engaged in questions of reconfiguration and how they might
7 restructure themselves, where they do have small -- a number
8 of small programs. In many of those states, there are
9 ongoing discussions of merger that have been going forth, but
10 where they have not come to fruition.

11 And in order to give those states a longer period
12 of time to address the issue of their internal structure, we
13 deemed it appropriate to have those be the ones that are on
14 the one-year cycle.

15 Having said that a state is -- that we have divided
16 it up by state, the assumption is not that a program within a
17 state would automatically -- if a state, for instance, is
18 entitled to a three-year -- is on the list for a three-year
19 grant, it does not mean that every program within that state
20 would automatically get a three-year grant. The judgment of
21 each individual applicant as to its quality and its capacity
22 to comply with the restrictions is an independent judgment

1 that needs to apply to each. And one of the things that we
2 consider to be a necessary part of our decision making is a
3 judgment, as to any individual applicant, is whether they
4 should get a three-year grant.

5 So we -- we may, and if we feel that a performance
6 of an applicant is not adequate, or there are indications
7 there are problems with compliance, give them only a one-year
8 or even less grant, even though other programs in their state
9 might get a three-year grant.

10 MR. MCCALPIN: John, how do you determine how many
11 clients a program serves?

12 MR. TULL: It's not service. It's the number of
13 eligible clients in their service area.

14 MR. MCCALPIN: Oh.

15 MR. ASKEW: So the first level of determination is
16 the state level, to determine whether it is one, two, or
17 three years. And then you look at each individual program
18 within the state to determine.

19 MR. TULL: And that's -- the look at each
20 individual program is the system of looking at the
21 competitive grants.

22 MR. ASKEW: Okay. And you are hoping to get

1 approximately one-third of the grantees on the three-year
2 cycle in the beginning?

3 MR. TULL: Yes.

4 MR. ASKEW: The first year. So you are looking at
5 the number of grantees, not the number of service areas, or
6 clients.

7 MR. TULL: It's the number of service areas.

8 MR. ASKEW: Service areas. So, one-third of --

9 MR. TULL: So that those would be divided up by
10 thirds.

11 MR. ASKEW: Okay.

12 MR. TULL: And what we -- the wrinkle in this, in
13 terms of service areas that we also wrestled with was the
14 question of Native American service areas and migrant service
15 areas.

16 And on reflection on that issue, we felt that it
17 was appropriate to treat a migrant or a Native American
18 service area as being within the state, and therefore
19 entitled to being a one, or a two, or a three-year grantee,
20 based on what the state within which it is located is
21 entitled.

22 MR. ASKEW: Is it possible that a basic field

1 program would get a three-year basic field grant, and a one-
2 year migrant grant? Are you going to try to keep them all
3 the same?

4 MR. TULL: No. Try to keep them the same.

5 MR. ASKEW: Okay. Any other questions?

6 MR. TULL: I have one quick report on -- which will
7 take about two sentences -- and that is the other item on the
8 agenda for the committee is a report on the transition cases.

9 We submitted a report to Congress on the 23rd of
10 August, consistent with our requirement that every 60 days we
11 report on the class actions, aliens, and representation of
12 prisoners, cases which are prohibited under 104-134, but
13 which programs were able to have until August 1st to end
14 their involvement in such cases. And we were instructed to
15 keep Congress informed of the progress of that.

16 We reported on the 23rd of August a really, I
17 think, exceptional report, which is that whereas we had 630
18 class actions, 428 cases involving persons incarcerated, and
19 2,993 cases involving aliens at the beginning of the period,
20 what we reported is actually now down to -- there's only four
21 programs involving five cases that are in the prohibited
22 areas.

1 We have those four programs on a corrective action
2 plan, and which we are carefully monitoring their plans to
3 get out of the cases. They are ones in which the court has
4 not let them out, but they have submitted to us a detailed
5 plan as to what steps that they intend to take in order to
6 terminate their involvement as quickly as possible.

7 We have asked for a report from those programs on
8 the 30th of September. We will look at their compliance with
9 their corrective action plan, as a matter of great import to
10 us as to their eligibility for future funding, and have so
11 advised them in a letter, which they got last week.

12 So I think the response of the corporation and the
13 system to these restrictions is really quite exemplary.

14 MR. ASKEW: Great. Any questions about that?

15 (No response.)

16 MR. ASKEW: Well, I think you all have done a
17 terrific job on both of these fronts. Competition last year
18 was implemented in quite a hurry and, as far as I know, we
19 didn't get substantial complaints from any of the
20 constituencies of what we were doing, including the Congress,
21 about the results of competition last year. And it looks
22 like you are following up this year and that's quite

1 important and we appreciate that.

2 Bill?

3 MR. MCCALPIN: Merceria, are there any areas in
4 which there are more than two contestants?

5 MS. LUDGOOD: I can't think of one right off the
6 top of my head, and I didn't bring my report down with me. I
7 know in the last round, we did have some. There may be some
8 California programs that have more than two. More than two.
9 There may be some in California. But I can let you know.

10 MR. ASKEW: Thank you. I'm going to ask Ed
11 Quatrevaux, the Inspector General --

12 UNIDENTIFIED VOICE: He's not here.

13 MR. ASKEW: Okay.

14 (End tape 2, side 2.)

15 MS. FAIRBANKS-WILLIAMS: While we are waiting, I
16 would say (inaudible) I heard from them that they are doing a
17 review and actually seeing that those programs that submitted
18 those proposals did not just do so in writing, but actually
19 following up on them.

20 MR. ASKEW: Yes.

21 MS. FAIRBANKS-WILLIAMS: That's my concern, is the
22 client out there. You can make something look ever so good

1 on paper, but actual implementation is a whole different
2 story.

3 MR. ASKEW: No. I think as they did last year,
4 there is a federal review in looking behind the proposal very
5 carefully.

6 I would excited to hear John and Merceria's report
7 about the merger of the two divisions, because they
8 approached me excitedly in the hallway to say that the two of
9 them had something they needed to tell me and my heart sank,
10 thinking that John was going to tell me he left his wife to
11 marry Merceria.

12 (Laughter.)

13 MR. ASKEW: They said, "No, our divisions merged."
14 I said, "Thank goodness."

15 MS. BATTLE: Oh, we have something to tell me.

16 MR. ASKEW: Yeah. "We have something we need to
17 tell you before the committee meeting." I said, "Oh, my."

18 The last item is the status report on the proposed
19 revisions to the LSC audit guide. In fairness to Ed, I
20 should tell you there may have been a little mis-
21 communication. Ed thought this report was going to be on the
22 meeting -- board meeting tomorrow, and so the staff person,

1 Charmaine, I believe, who was going to be here with Ed was
2 not told to be here today. So he's flying on his own today,
3 without the staff person he thought was going to be with him,
4 and we'll take that into account, Ed, as we hear your report.

5 MR. QUATREVAUX: Thank you, Mr. Chairman.

6 MR. ASKEW: And I had asked Ed, originally -- I had
7 put this on the agenda when Victor and I first discussed the
8 agenda for the Provisions Committee meeting, and then I spoke
9 to Ed about it, and it's an information report, not an action
10 item for the board. And I will ask Ed to speak to that as he
11 makes a report, why it is an information item, rather than an
12 action item. Ed?

13 MR. QUATREVAUX: Thank you, Mr. Chairman.

14 I guess there are a few pieces of guidance on this
15 issue that -- the first is the IG Act itself. The IG Act
16 does charge the IG with the responsibility to provide -- and
17 I'm quoting -- "to provide policy direction for, and to
18 conduct, supervise, and coordinate audits and
19 investigations."

20 The board's resolution of last year transferring
21 the audit function to the OIG said, and I quote, "The Board
22 of Directors hereby transfers to the OIG responsibility for

1 establishing a policy governing financial statement audits of
2 recipients of the corporation."

3 Last is the specific language of the 1996
4 appropriations bill, which says that these audits will be
5 conducted in accordance with generally accepted government
6 auditing standards and the guidance established by the Office
7 of Inspector General.

8 So that's -- those things form the view that it is
9 our responsibility within the OIG to establish policy for how
10 audits are to be conducted.

11 Can I take any questions or discussion on that?

12 MR. ASKEW: Well let me just mention -- I put this
13 on the agenda originally for the committee because I thought,
14 mistakenly, that the committee had to review and approve, and
15 then recommend to the board, changes in the audit guide.

16 And Ed called me to tell me that based on the
17 policy statement that we adopted last year, we had now
18 delegated that responsibility to the IG, and so the committee
19 would not be reviewing changes to the audit guide, or -- and
20 the board would not be approving changes to the audit guide.

21 And that's why I wanted it raised today so that the
22 committee members are aware that Ed is making an information

1 report to us, but that the changes in the audit guide are now
2 the responsibility of the IG, based on the policy adopted
3 last year by this board, but also Ed's interpretation of
4 Section 509 of the Appropriations Act.

5 MS. BATTLE: I wanted to just try to get some
6 background and understanding because this is, in fact, a
7 transfer of responsibility from one entity within the
8 corporation to another.

9 How was the audit guide adopted and implemented in
10 the past? And how does that relate to how it's done now?

11 In other words, I'm trying to determine was there
12 board involvement in the adoption of the audit guide when it
13 was handled by management? And if we transfer that function
14 to the Office of the Inspector General, did we then transfer
15 what had been handled by management to the inspector
16 general's office and retain whatever our relationship was
17 with management, as it related to how that policy was
18 adopted? Or is there something different? I'm just trying
19 to understand what the history is.

20 MS. SZYBALA: Last year, if you recall, the board
21 approved the audit guide. The audit guide last year made a
22 monumental change to government auditing standards.

1 And what the resolution to transfer the authority
2 said is -- let's see -- "In advance of decision making, the
3 OIG will -- the IG will report to and fully consult with the
4 Board of Directors on policy matters that significantly
5 affect or impact resources and/or activities of the
6 corporation's grantees."

7 The point here is this audit guide is more of the
8 same. It's the same as last year's audit guide, except that
9 it implements the statute. This audit guide reflects nothing
10 other than last year's audit guide, with the new stuff that
11 Congress implemented in 509 in it.

12 And, you know, I have no other way to explain that,
13 except that in our view there is nothing in here that is
14 significant.

15 MR. ASKEW: To answer LaVeeda's question, I think
16 the history of the corporation has been that the board always
17 approved the audit guide and changes to the audit -- at least
18 that's my understanding.

19 MR. QUATREVAUX: My -- if I can, Mr. Chairman. My
20 limited understanding is that there was an attempt to have an
21 audit guide approved in 1986. It was abandoned with a
22 compromise that both that version that was being proposed and

1 the one that was developed or came into effect in 1981,
2 despite the fact that they were inconsistent with one
3 another, both would remain in force, or at the option of the
4 grantee, and the grantee's auditor.

5 So there is no regular process. This is something
6 that should have been maintained on an annual basis, but
7 through failure to do that, which I guess we shouldn't
8 characterize, failed to take place.

9 MR. ASKEW: Well, perhaps I'm wrong and I'll be
10 corrected. But I thought the history had been, in the
11 seventies and into the eighties, that the audit guide and
12 changes thereto are always reviewed, approved, adopted by the
13 board, and published for comment, and then adopted as a
14 regulation, or am I wrong about that?

15 MS. SZYBALA: I'm not sure. But there was no IG
16 then. That was before the IG Act was applicable here.

17 MR. ASKEW: I'm not talking about the IG. I'm
18 talking about the history of the corporation, in terms of how
19 audit guides were written and approved.

20 MS. SZYBALA: Right.

21 MR. ASKEW: And the only reason I point this up, is
22 that's what led to the misunderstanding on my part about why

1 I had put this on for approval by this committee, was I
2 thought that had always been the history, and I didn't
3 realize this policy had changed that procedure, and I wanted
4 to make sure that the other committee members, the other
5 board members, understood that we had made that change last
6 summer. And now --

7 MS. BATTLE: I'm not sure that was what was
8 envisioned.

9 MR. ASKEW: Well, that may be another discussion.
10 I'm just telling you that the IG's position is that we
11 delegated that authority to the inspector general last summer
12 when we made -- when we adopted this policy, and that is
13 consistent with his interpretation of Section 509 and,
14 therefore, the board does not now maintain authority, if I'm
15 stating this correctly, to review and approve changes to the
16 audit guide. Is that correct?

17 MS. SZYBALA: To the extent that they are not on
18 the significantly -- the significant -- no?

19 MS. BATTLE: It says or impact -- resources and/or
20 activities.

21 MR. QUATREVAUX: We're talking about the resolution
22 of the board last year and that's -- I'm sorry.

1 MS. BATTLE: I'm still trying to understand --

2 MR. QUATREVAUX: One could argue, regardless, of
3 whatever that --

4 MS. MERCADO: (Inaudible) today and did away with
5 that resolution, too.

6 MS. BATTLE: Well, but this says three different
7 things. It says "significantly affect or impact resources
8 and/or activities."

9 So if there is any impact on resources or
10 activities, that's separate from significant impact. So it
11 seems to me that there is an interpretation being given to
12 this that doesn't meet that reading, just a fair reading of
13 it.

14 MR. QUATREVAUX: Well, one could maintain that that
15 resolution, whatever it said, was overtaken by the
16 appropriation law that's in effect regarding these audits.

17 I mean, the language of the statute is as clear as
18 it can possibly be as to congressional intent.

19 MR. ASKEW: Bill, did you have a question?

20 MR. MCCALPIN: Yeah. I was confused when I read
21 the Federal Register publication of the audit guide of August
22 the 13th. Just at the end of supplementary information is

1 the sentence, "Because the appendices themselves establish no
2 new rules, regulations, or guidelines for recipients, they
3 are not published for comment and will be promulgated without
4 formal adoption by the appropriations board of directors."

5 I read that as implying that except for those
6 materials, there would be approval by the board of directors.
7 That was what was published in the Federal Register on the
8 13th of August.

9 MR. QUATREVAUX: I think that language is a
10 carryover from the prior year, frankly, to attempt to explain
11 how that language is there. That's what we did the year
12 before when we were publishing the audit guide -- not
13 publishing, but submitting the audit guide -- proposed audit
14 guide to the board for approval, the prior year. And the
15 plan was --

16 MR. MCCALPIN: This indicated to me we were going
17 to do it again.

18 MR. ASKEW: Ernestine?

19 MS. WATLINGTON: I just have a practical concern
20 that's in the community and that is the change from the 90
21 days from the 120. That's going to be quite, you know, a
22 concern for programs in -- statewide and things. I just

1 wanted to bring that to your attention that that's going to
2 create some problems.

3 MR. ASKEW: Okay. We'll get on to the comments
4 about any -- about the changes you're making.

5 MS. MERCADO: That goes to the impact of the
6 resources and the --

7 MR. ASKEW: Yeah. We're going to discuss that in a
8 second, but I wanted to wrap this piece up, so that we all
9 understood where we were with the adoption of the audit
10 guide.

11 MS. MERCADO: Well, I guess since I'm the Finance
12 Committee chair, the audit guides went under my committee,
13 and they began under my committee. But because there was
14 going to be this question of whether or not programmatically
15 the IG ought to take over that function, we went to the
16 provision (inaudible) services to deal with that aspect. It
17 was going to be part of compliance and oversight.

18 But as far as the process, the board did approve
19 that audit guide would be -- the difference, of course, as
20 Renee pointed out a little bit earlier, is that during the
21 other formal approvals of other audit guides, there had not
22 been an IG involved in that process.

1 And so the question is whether or not we still, as
2 the board, or as the head, whether IGs still have to approve
3 it. You know, whether or not we actually -- we are not
4 taking over the function or anything, but just that it has to
5 provide notice to the head of what it is that is being done
6 with this, because we do have all these grantees that are
7 going to be affected by the audit guide. And it would seem
8 to me that it still has to go before the board.

9 MR. ASKEW: Any --

10 MS. BATTLE: I guess I'm still -- I heard that part
11 of the reason for the audit guide, the position at least that
12 the IG has taken, is that the audit guide should not come
13 before the board for approval before it becomes a final rule,
14 has to do with the language in the Appropriations Act and
15 just resolution that we enter, the IG Act, those three
16 documents, read in tandem.

17 And I have some concern, when you read those three
18 documents in tandem, along with the LSC Act, that any
19 statement that goes out in the Federal Register that says,
20 "For reasons set forth above, LSC proposes an audit guide,"
21 gets there without LSC being the board of directors who has
22 the final authority for promulgating any rules, interpreting

1 anything that comes from Congress on us, is not involved in
2 that process. I just don't see -- I think you have to add
3 that act to the other three to give your interpretation of
4 where we are on this.

5 And I think that if there is a conflict, the
6 question becomes, if Congress has, in the act, delegated to
7 us the ultimate responsibility -- and by "us" I mean the
8 board -- for interpreting any of its bills that relate -- or
9 laws that relate to us, that that, I don't think, has changed
10 by this particular appropriation.

11 MS. SZYBALA: You have to reach your own decisions
12 here and your own point of view. I tend to think, given
13 language in this appropriation, if the bottom line on this
14 audit guide is it goes out and it's published, and it's in
15 effect, it would be wrong to have that described as the Board
16 of Directors of Legal Services Corporation issued an audit
17 guide for auditors to follow.

18 Under 509, I think Congress wants to hear that the
19 OIG issued guidance for the auditors. And, you know, I don't
20 know how else to explain it.

21 MS. BATTLE: I guess this August 13th issuance,
22 which I saw after August 13th, that went out, says "For

1 reasons set forth, the LSC proposes this audit guide." And I
2 guess --

3 MS. SZYBALA: It went out for comment.

4 MS. BATTLE: Yeah. But going out for comment
5 without it hitting any of the committees of the LSC is of
6 some concern because, ultimately, whatever it is that we do
7 to interpret our responsibility that Congress has given to
8 us, it seems to me has to come -- and I know that the board
9 doesn't get -- the board itself, meaning the board of
10 directors, meeting in a board meeting -- does not get interim
11 determinations, but certainly the interim determinations come
12 before some committee before they go out.

13 And I just don't see how, if you read all four of
14 those things in tandem, you get to the point that it is
15 issued without some review by a committee. Now that's --
16 that's the concern that I still have at this point.

17 MS. SZYBALA: That may be valid. That process is
18 the same process that was done last year, and it was the
19 process that management set up, that we should issue it for
20 comment and come back to the board after we have the
21 comments.

22 MS. BATTLE: Yes. But the issuance for comments

1 comes through a committee.

2 MS. SZYBALA: But last year it didn't. That's all
3 I'm saying. So that was just a continuation of last year.
4 That's not a procedure that has to remain that way.

5 MR. ASKEW: But didn't we last year -- did we
6 approve the audit guide last year?

7 MS. SZYBALA: Yes. Because it was the change of
8 government auditing standards.

9 MS. BATTLE: That's right.

10 MR. ASKEW: Right.

11 MS. BATTLE: And I thought we approved the interim.
12 I mean, in other words, the proposed.

13 MS. SZYBALA: No, you didn't.

14 MS. BATTLE: Didn't your committee?

15 MR. ASKEW: Well, I'm trying to remember whether we
16 did or not. If Renee says we didn't, then we didn't.

17 MR. ERLBORN: I believe that's correct. Last
18 year we went through an internal process and published it for
19 comment, and I believe we advised the committee that that's
20 what we were doing, but when it came to substantive issues
21 for review for final adoption, it was after the publication
22 had taken place.

1 MR. ASKEW: And to be honest, I thought that's what
2 we were going to do this year, and that's why I put it on the
3 agenda, and that's why the issue came up, and that's why
4 we're having the discussion today, because we won't be doing
5 that; correct?

6 It won't be coming back to us for review and
7 approval once you get ready to implement changes?

8 MR. QUATREVAUX: No. The timetable that we worked
9 out a long time ago with all the players concerned, if we're
10 going to make this new compliance system work through grantee
11 financial statement audits, we need to get the guidance out
12 to the auditors who are going to do the work.

13 If we don't do it, and we have a date of the 2nd of
14 October, which is Wednesday, if we don't do it then, it's not
15 going to happen.

16 MS. BATTLE: Given the time restraints, I just --
17 from the standpoint of the board -- think that we might need
18 to just clear the process issue up at some point, probably
19 when the board meets tomorrow.

20 MR. QUATREVAUX: Right.

21 MS. BATTLE: That if, in fact, as Renee has said,
22 and John has said, that the interim audit guide went out

1 without some committee oversight, that certainly before the
2 final audit guide goes out, there has to be board approval
3 for that final rule. And that was the procedure last year,
4 and if our statement in our resolution is unclear, we may
5 need to give more clarity to it.

6 MS. SZYBALA: That's just a resolution now.

7 MS. BATTLE: I understand. It's those four things
8 that we talked about, but it's the IG Act, and the LSC Act
9 that we must have, it seems to me, the responsibility for
10 interpreting our responsibilities under. And I just don't
11 see how we can delegate one of those responsibilities that
12 Congress has tasked us with to anyone, and particularly when
13 it comes to a final decision on an audit guide, or a final
14 decision on a reg.

15 MR. ASKEW: Let me ask one other question. Since
16 the resolution we adopted last year says that the IG will
17 report and fully consult with the board on policy matters
18 that significantly affect or impact resources or activities,
19 so the changes you are anticipating making, or proposing to
20 make, do not -- your opinion is they do not significantly
21 affect or impact resources or other activities of corporation
22 grantees?

1 MR. QUATREVAUX: That's correct.

2 MR. ASKEW: Okay. Well --

3 MR. QUATREVAUX: If there is any impact, it comes
4 from the restrictions passed by the Congress, not by any
5 change in audit guidance.

6 MR. ASKEW: Okay. Well, let's -- Ernestine has
7 raised one issue of concern to her, and some programs that
8 she is aware of, so let's talk about that one, and use that
9 standard to apply to that one, and see whether we agree with
10 that.

11 MR. QUATREVAUX: That was, I think, the principal
12 comment. We didn't get many comments back, frankly, from
13 anywhere.

14 MR. ASKEW: Right.

15 MR. QUATREVAUX: But that was the principal one,
16 and I know, in discussing it with some other folks, that
17 seems to be the one of principal interest, so let's talk
18 about the 90 day requirement, to make sure that we all
19 understand what we're talking about.

20 The audit guide has a provision that says within 90
21 days of the close of the fiscal year, the audit report will
22 be provided -- is due in to here.

1 The previous year it was 150 days. We changed it
2 last year to 150 days because of the significant change
3 involving the implementation of government auditing
4 standards, the representation that many of the independent
5 public accountants who performed those audits, or IPAs,
6 heretofore had not had that experience and, therefore,
7 additional time might be necessary for them to become
8 trained, or for other audit firms to be engaged that were, in
9 fact, qualified to do that.

10 Prior to last year, it had been 90 days. So we are
11 simply returning to what has been. I think that's useful to
12 point out.

13 I think it's also useful to point out that this
14 audit process is in replacement of a grantee monitoring
15 process that it was my understanding that many believed to be
16 burdensome to our grantee. So it's a replacement for a
17 process which has been eliminated.

18 It is also the case that one need not wait until
19 the end of the fiscal year, until the books are closed, to
20 begin audit work. Much of the audit work is in the nature of
21 survey and could be conducted in November and December, if --
22 for those whose fiscal years close at the end of the calendar

1 year.

2 There is also a problem. When we moved to 150 days
3 last year, we discovered a problem with respect to
4 management's responsibility in approving unbalanced excess
5 and deficiency waivers, because that required -- that has a
6 120 day limit on it, and it's the audit that establishes what
7 the fund balance is. So if it's not due for 150 days, and it
8 happens to report that there is an excess fund balance, then
9 the grantee is automatically out of compliance with the fund
10 balance requirement.

11 Another problem we have is the chronic failure of
12 our grantees to provide audit reports on time. It runs about
13 one-third late, and it doesn't matter what the deadline is,
14 or if it's 90 days or 150 days. We are still working with 20
15 reports of organizations whose fiscal years ended ten months
16 ago.

17 So I also have to tell you that one of the elements
18 that affect the value of any audit work is the timeliness
19 between the close of the reporting period and the time that
20 the audit report itself is received.

21 I also want you to know that we have had to do an
22 awful lot of work, once we receive the initial blast of audit

1 reports, because they are not in good shape, and we have to
2 spend a lot of time physically contacting audit firms to try
3 to bring those reports into compliance with government
4 auditing standards.

5 The last thing is that you're in a competitive
6 grant-making process, under conditions which require
7 consideration of a grantee's compliance with restrictions and
8 the corporation's regulations. And you need to have that
9 information in order to use that, to incorporate it into that
10 grant-making process.

11 So if we have to maintain a 150 day deadline and we
12 have a third of the reports late, who knows when -- whether
13 you're going to have information on as many as a third of the
14 grantees in that respect for consideration in the competitive
15 grant-making process.

16 So I think there's lots of good reasons to go back
17 to the 90 day requirement. I hope I have -- I've enumerated
18 a sufficient number of them to convince you of that.

19 MR. ASKEW: One of the comments I've heard and I
20 think other board members have heard, is that this will
21 increase the cost of audits for grantees because they will
22 have to be competing with other entities that are trying to

1 get audits done before the end of the tax year, and that CPAs
2 typically say, "I'll do it for you, but I'm going to charge
3 you a premium for doing it for you if I have to do it during
4 my heavy audit season."

5 Do you give any credence to that argument, or do
6 you believe that's a real serious concern for grantees?

7 MR. QUATREVAUX: I think, to the degree it may be
8 true, and I'm not subscribing to its accuracy, that it can be
9 -- that effect can be minimized by starting the audit
10 engagement process earlier, and having the auditors on the
11 scene in what is their low period of November and December.

12 I think in many cases there is not that head-on
13 competition. In some cases, there is. But I think --

14 MR. ASKEW: Back when we had a 90-day requirement,
15 one of the things I always heard was that the grantees who
16 were late getting their audits in were late because their
17 auditor or CPA couldn't get the work done before April 1,
18 because of the tax season, and carried it over until after
19 the tax season, both because of heavy workload, but also
20 because it saved the grantee some money. Not that that
21 excused the grantee, but that money really was a critical
22 factor there for the local program.

1 And the extension to 150 days made the situation a
2 whole lot better for grantees, and allowed them to both save
3 money and have possibly a more qualitative report done.

4 And that's why I'm raising it, one reason, because
5 of the resolution which says affect or impact resources of
6 grantees. So if this is something that impacts the resources
7 of the grantees, does that mean it has to come back to the
8 board for approval, or should be given as notice to the board
9 before it is implemented. That's one of the questions here.

10 Maria?

11 MS. MERCADO: Yes. I'm not sure what percentage of
12 our grantees have their fiscal years that end in December of
13 the calendar year. I mean, most of them do, don't they?

14 MR. QUATREVAUX: Five. Six. About five, six.

15 MS. MERCADO: So that we are dealing with pretty
16 much the bulk of the grantees that are going to have the
17 difficulty in the financing and trying to get their local
18 CPAs to get this done within that period of time. Whereas,
19 it would seem like the 150 days does allow them to deal with
20 that high tax season.

21 I mean, if it were that all of them landed in
22 October, that's one thing. You're making -- your comments

1 earlier said that the auditors could deal with this during
2 the October/November season, when it is not a high tax
3 season, but the fact is that their fiscal years don't end
4 until December.

5 MR. QUATREVAUX: But the earlier point was, that
6 goes with that, is that work can be done in advance of the
7 closing of the books, in advance of the closing of the fiscal
8 year. There is an awful lot of survey and preparation work
9 that auditors go through.

10 MS. MERCADO: I mean, we were just talking in our
11 Finance Committee about budget and your stuff -- and stuff
12 that you haven't even expended are going to go into the next
13 year. I don't see how we can ask our grantees to tell us in
14 October, when they still have two or three months left of
15 their finances, whether or not, and how it is that they are
16 going to expend the remainder of those funds.

17 MR. QUATREVAUX: They don't have to do that for the
18 auditors to begin the audit work, the portion that takes up a
19 considerable amount of time. But you have raised an
20 alternative that this board may wish to enter a dialogue
21 about, and that is the fiscal years.

22 If this -- you know, if this is a very serious

1 concern, this competition, that our grantees, as opposed to
2 other federal grantees seem to have with the commercial --
3 with the private sector, then perhaps we could consider other
4 fiscal years.

5 MR. ASKEW: Are government accounting standards 90
6 days or 150 days?

7 MR. QUATREVAUX: The government auditing standards
8 do not have a specific timing. There is the audit follow-up
9 process, which is enumerated, I think, and laid out in Office
10 Management Budget Circular A-133, I think is where it is.
11 I'm sorry -- well, we don't have the auditors here to get
12 ours A's correct.

13 MR. ASKEW: But there is -- the 150 day standard
14 came from somewhere else; right?

15 MR. QUATREVAUX: No.

16 MR. ASKEW: Bill?

17 MR. MCCALPIN: I was told on --

18 MR. ASKEW: It's A-133.

19 MR. MCCALPIN: I was told --

20 MR. ASKEW: Yeah. I told you.

21 MR. MCCALPIN: -- when I met with your staff the
22 other day that the requirement is 13 months, presently being

1 reduced to nine.

2 MS. SZYBALA: That's right.

3 MR. QUATREVAUX: I thought it was 18 being reduced
4 to nine. That's correct.

5 MR. MCCALPIN: Well, your staff told me it was 13
6 months, being reduced to nine.

7 MR. QUATREVAUX: I'm sure they're -- nine months
8 being audits due at the end of the fiscal year. Nine
9 months --

10 MR. MCCALPIN: Nine months after the end of the
11 fiscal year.

12 MR. QUATREVAUX: That time period is designed to
13 accommodate single audit act, which you have to remember that
14 unlike a single non-profit submitting an audit report, there
15 are entities such as the University of California, or any
16 major research organization, that may have, literally,
17 hundreds or thousands of sub-grants, and that's what accounts
18 for that time, that lead time.

19 MS. MERCADO: But the reality is, though, that we
20 are governed by -- that technically, if we wanted to, we
21 could say, you know, if people got their audits in within the
22 nine month period, they would be within the average time that

1 under GAGIS most agencies and federal programs end up
2 submitting their audits. Isn't that correct?

3 133. I'm sorry.

4 MS. SZYBALA: That's probably is correct. I don't
5 -- well, I don't know where we are going with this.

6 MR. ASKEW: So when you say that --

7 MS. MERCADO: I'm just asking why it is that we are
8 restricting the time to -- doing it in (inaudible) time that
9 normal federal grantees or federal agencies are having to do
10 their audit. I mean, why is it that we are putting this
11 great a burden on our grantees?

12 MS. SZYBALA: Because these audits serve an
13 important purpose, we think, from Congress' point of view,
14 beyond just checking on a financial statement.

15 MS. MERCADO: But why don't they think that of all
16 the other agencies and federal grantees? Is Legal Services
17 the only one that is special?

18 MS. SZYBALA: In terms of Congress --

19 MS. MERCADO: Why are we getting a greater burden
20 of having a document submitted which most agencies get
21 between nine months and 13 months of them saying need to
22 submit it, and we're being asked to do it in a third of that

1 time, or a fourth of time.

2 MR. QUATREVAUX: We're being asked -- we are
3 suggesting that we return to what had been the standard here
4 before.

5 MR. ASKEW: I was only raising the question of 133
6 because of your statement that our grantees seem to be having
7 a problem that other federal grantees are not having, which
8 is getting them done in 90 days, while other federal grantees
9 don't have to get them done in 90 days.

10 MR. QUATREVAUX: Well, I was referring at the time,
11 Mr. Chairman, to the statement about the competition with the
12 private sector for audit industry services.

13 MR. ASKEW: Bill?

14 MR. MCCALPIN: Ed, you said awhile ago that the
15 reason we went to 150 days last year was because the local
16 CPAs were being asked to audit according to government
17 auditing standards for the first time, and needed the
18 additional time to get acclimated.

19 This year we are requiring them to do compliance
20 audits for the first time. Why wouldn't the same rationale
21 apply that they need the additional time to get acquainted
22 with compliance auditing, the same as they did last year,

1 with government auditing standards?

2 MR. QUATREVAUX: Well, I would think -- well, I
3 know the government auditing standards, and I would think by
4 now that the auditors that our grantees are going to use are
5 qualified under government auditing standards and compliance
6 auditing is a basic type of audit under government auditing
7 standards.

8 MR. MCCALPIN: Yeah, but they have to get
9 acquainted with compliance with our requirements --

10 MR. QUATREVAUX: But they have to do that --

11 MR. MCCALPIN: -- which are different from any
12 other entity they may wish to audit.

13 MR. QUATREVAUX: Well, that's in the nature of
14 doing audits. Audit firms perform audits on a multitude of
15 varied types of organizations, with different sorts of
16 compliance requirements, whether they be medical, or from the
17 securities industry, or -- I --

18 MR. ASKEW: I would just think, and I may be wrong,
19 that it is going to be more complex this year than it was
20 last year, or has been in previous years for these auditing
21 firms because of these new compliance requirements. It just
22 seems natural to me.

1 Maybe I'm wrong, but that just seems -- it's going
2 to be a tougher job this year. And to do it within those 90
3 days, when it's so stressful, supposedly, for CPAs, and going
4 to be more expensive for programs, is not a necessary change
5 this year.

6 But we -- Harrison has been asking to be
7 recognized. Let me recognize Harrison McIver from PHE to
8 make a comment.

9 MR. MCIVER: Harrison McIver with the Project
10 Financial Group. Just on the last point, and I think the
11 board has really identified several of the issues that --
12 about which the programs have been concerned.

13 In fact, at a session of the Management Information
14 Exchange, at which a representative from the OIG office was
15 present, they heard about the concerns about the 90-day
16 period. And in rural area, these -- the concern is much more
17 exacerbated because you have very few auditors in those areas
18 who are even competent to handle these A-133 audits.

19 And so, as a consequence, compounding that with the
20 fact they have only 90 days within which to complete, that
21 some of these programs will have some difficulty. That is
22 what the representative heard, and that is what was captured

1 in the comments that the PAG submitted to the OIG.

2 About the original issue of whether the board
3 should review before final publication, PAG, on behalf of
4 programs, has urged that that be done. It's the precedent
5 that you have set in the past, and that it would be, from our
6 perspective, incumbent upon you to continue to exercise your
7 responsibility, if you will.

8 It's from LSC, unless it's going to say LSC/OIG is
9 publishing those things. It's come from LSC and the board is
10 looked upon as the highest authority within the Legal
11 Services Corporation.

12 I'll stop there, but there are some other issues.
13 As a compromise, one -- I think Mr. Quatrevaux indicated --
14 Ed indicated that there was a concern about 120 days, in
15 terms of (inaudible). Even if you came down to 120 days,
16 that would be much more helpful to address the issue than the
17 90 days and that shorter period of time.

18 In addition to which, we don't even -- we haven't
19 even seen the compliance supplement, which is another big
20 issue that -- that is alluded to throughout and basically
21 alluded to throughout the audit guide that was published.
22 And I understand there is no intention of that even being

1 published and for programs and auditors to even have a chance
2 to review and send in comments. Maybe that has changed, but
3 that's not our impression.

4 MR. ASKEW: Thank you, Harrison. Any questions of
5 Harrison?

6 MS. BATTLE: I don't have a question of Harrison,
7 but I did have a question of Ed. And I guess Harrison's
8 statements helped me with this.

9 My curiosity was as to whether Ed had received
10 comments in about this 90-day provision and what his -- you
11 know, what information had you received from the field. And
12 I guess Harrison has addressed some of that. But I wanted to
13 find out if there is more that you've already heard from as
14 to that. And particularly as it relates to your concern
15 about the chronic lateness of the receipt of all of the
16 audits so far.

17 I guess the concern I have is whether, if what
18 you've heard from the field is that using a 90-day time frame
19 will make it difficult for them to be able to secure auditors
20 who can do the work, particularly with the government
21 standards and the new standards.

22 And we've also heard the problem of rural programs

1 being able to secure people that can do the work. And you've
2 got a problem of chronic lateness. Do you think that giving
3 some flexibility in that time frame may cure part of your
4 concern about the chronic lateness?

5 MR. QUATREVAUX: Well we take as evidence this
6 year's increase from 90 to 150 days and no change in the
7 proportion that are late as evidence to the contrary.

8 MS. BATTLE: What else have you heard from the
9 field -- what else have you heard in comments?

10 MR. QUATREVAUX: Well, I have before me a few of
11 what I believe are the larger issues. I don't have, because
12 I wasn't prepared to do this today --

13 MS. BATTLE: Sure. Fine.

14 MR. QUATREVAUX: -- all of them, so if you take it
15 with that understanding.

16 The other areas I see here are just -- this is the
17 subject. I'm not sure of the issue. Five-day recipient and
18 auditor reporting requirements. I'm not sure what the
19 objection was. Of course, that is just implementation of
20 what's in the statute.

21 I should also tell you, I got back in town about --
22 I got home about one a.m. Saturday morning.

1 MS. BATTLE: Well, if you don't have them readily
2 available -- just a sense for -- what I wanted was a sense,
3 since I took your initial presentation to mean, though you've
4 heard and received comments on this issue of changing from 90
5 to potentially 150 or 120 days, or some other number, that
6 you had a list of reasons why 90 was appropriate. And I just
7 wanted to have some understanding of considerations that you
8 may have given to what you received in, in making that
9 decision. And I understand you are not prepared, possibly,
10 to go into all of that.

11 MR. QUATREVAUX: Well, I've got it here. We can --
12 I guess I should have said with respect to the 90 day
13 requirement that there are other purposes to which this
14 information will be put. The corporation's management needs
15 the information in order to do its job, as I outlined before,
16 but the Congress also has a right to expect the information
17 as well.

18 We are going to go into hearings, as you know, in
19 April or May. And this is an appropriation bill that
20 implemented this process of monitoring grantee compliance
21 with practice restrictions through audits. And it's going to
22 -- I would like to have some information to report at that

1 time.

2 I think it would be very difficult -- it would not
3 be beneficial for the corporation if I was to say, "Well, we
4 haven't gotten the audit reports in yet, so we don't know how
5 well that system is working."

6 MR. ASKEW: Well, that might raise another concern,
7 Ed, which is using the raw data from these audit reports that
8 are received the end of March to report to Congress in April
9 about what those audit reports show. And I'd be a little bit
10 concerned about the risk in doing that, because, as you said
11 last year, you had to go back to a large number of these
12 grantees with questions or clarification. I think you gave
13 us a report at the May meeting about the number of audits
14 that you found were "out of -- which showed compliance
15 issues."

16 And if that raw data is released to the Hill, I
17 think it may raise more questions than answer questions about
18 the status of grantees, a lot of which I understand are
19 resolved fairly soon after contact is made with the program
20 or with the CPA, so that the issue tends to get resolved and
21 is a non-issue, but at least on first reading, they raise a
22 concern that there may be a problem here.

1 MR. QUATREVAUX: Well, we're never going to provide
2 raw data to anyone, so --

3 MR. ASKEW: But that's really all you've got in
4 April, isn't it?

5 MR. QUATREVAUX: Well, no, because in this process,
6 there are resolution points built into this thing, just as
7 part of the government auditing standards. When the auditor
8 believes that he's got a finding of non-compliance, that
9 auditor has to discuss that with grantee management and get
10 grantee management's views as -- if they disagree as to why
11 they disagree.

12 The audit guide is going to instruct him to call
13 here to the corporation. We're going to work within the
14 corporation's interpretation, and with the Office of General
15 Counsel and program management to resolve that as best we
16 can.

17 And when the -- even the next point is the exit
18 conference, and the draft report. Still, this is before any
19 reports have come in here.

20 And with the audit report coming in, there's a
21 requirement that the grantee address those findings and state
22 whether they agree or disagree, and if they agree, what their

1 corrective action plan is.

2 So I don't think it's going to be quite as raw as
3 you might think. But we would certainly not provide
4 information which might be -- which might misrepresent
5 situations.

6 MR. ASKEW: Yes. I wouldn't characterize it as
7 misrepresentation. I would characterize it as saying the
8 report we heard from you in May, that based on your initial
9 review of audit reports of 119, 98 -- I think was the number
10 you cited -- had problems of some kind or another with the
11 audit. And I was sitting there at that meeting and was
12 shocked to hear that.

13 Then when you look behind it, we found out that
14 many of those were inconsequential, or the kind of things
15 that were resolved very quickly, or with a phone call, or
16 whatever, and the number dropped quickly, so that by some
17 date in the future, June or July, those are mostly settled.

18 My concern would be that if you go public with a
19 number like that, it could raise a spectrum of all kinds of
20 problems that don't exist. And it's not a misrepresentation.

21 MR. QUATREVAUX: I'm sorry. I misused that word.

22 MR. ASKEW: Yeah.

1 MR. QUATREVAUX: But just to respond once again,
2 the numbers we were talking about, you always have lots of
3 little itchy-bitsy sort of findings with these audit reports,
4 so it's a matter of categorization. And our intent is to
5 stick with the practice restrictions and focus there, because
6 that's clearly what the interest of the Congress was in
7 setting up this process. And that's what the compliance
8 supplement covers in the practice restrictions.

9 MR. ASKEW: Maria?

10 MS. MERCADO: Yes. I guess I go back to my point
11 again that if the majority of the government agencies and
12 federal grantees are submitting their audits within nine to
13 13 months, that perhaps there might be a reason why you would
14 have audits that would have a lot of mistakes that were later
15 corrected, months later. That would not -- I mean, you are
16 in effect making grantees come up short, or not do everything
17 within the time requirement that you have, by cutting their
18 time to a third or a fourth of what most agencies have, and
19 most federal grantees have.

20 You are already guaranteeing that you're going to
21 have those problems. When we went and changed it to the
22 GAGIS and to the compliance requirement for our grantees, if

1 all the rest of the federal agencies and grantees are
2 primarily taking nine through 13 months to do this stuff,
3 then how do we expect to go up to the Hill, within two or
4 three months, to get it done, and get it done appropriately,
5 where there are no questions about whether or not everything
6 was covered or wasn't covered, with fiscal years that are
7 ending in December for the most part.

8 MR. QUATREVAUX: I would just respond that the
9 nature of our grantees' organizations and the difficulty of
10 auditing, though, is not in the same -- is not of the same
11 degree as it is of these -- these organizations which receive
12 -- I started to say multi-million, but just an awful lot of
13 money, which is parceled out in lots of places, that has to
14 be reassembled in order to make a coherent call.

15 MR. ASKEW: Nancy?

16 MS. ROGERS: I haven't read any of the comments and
17 I wondered whether either you, Ed, or you, Harrison, have any
18 idea of how much money we are talking about, in terms of the
19 extra money that it might cost if the reports were due in 90
20 days, versus 150?

21 MR. QUATREVAUX: We certainly have no information
22 to support that there is any difference at all. Harrison may

1 have some data.

2 MR. MCIVER: I'm not aware that there is an
3 increased cost because of the time period.. But we do know
4 that, in talking (inaudible) some programs have experienced
5 \$3 to \$4 thousand increase in one of the two programs I have
6 talked with a sort of a mid-sized LSC budget.

7 So there is additional cost that's resulting from
8 the new requirements that are being proposed. And this year,
9 and I think one of the (inaudible) since 1995 and going into
10 '96, based upon 20 -- at least 28(A) (14) there are additional
11 requirements that are being asked this year that weren't last
12 year, and a much greater burden.

13 And one thing that will happen in the 90 days, if
14 you are concerned about the product, I can assure you that
15 the product will not be as qualitative as that product would
16 be with some more time within which for (inaudible) to work,
17 especially during the tax season, when they are just sending
18 people to (inaudible). So your concerns about quality may be
19 enhanced or addressed if there were more time.

20 MR. ASKEW: Edna?

21 MS. FAIRBANKS-WILLIAMS: Well, I guess I have to
22 take Ed's part, which may not make me be popular, but since I

1 have to do with a number of organizations in Vermont and
2 chair several, and have to do with money that comes in from
3 the feds, and money that comes in from the state, and money
4 that comes in from other places, we start our procedure a
5 damn sight earlier than the 15th of December to know what we
6 are doing for audit. We have already talked to some of our
7 auditors in July, asking them what they want, and how we
8 should put things together for their easy access, and talk to
9 them weekly from some of the organizations, to make sure that
10 we have everything ready.

11 We have some that have to be done the first of
12 July, some that have to be done the end of October, and some
13 that have to be done in January. And regardless of which
14 time you do it, you always run into something else that has
15 to be audited.

16 On the last part of July on things, we run into the
17 school audit that have to go for the states, so before the
18 next school thing starts in September.

19 In October you have some of the federal audits, and
20 some of the state audits on grants.

21 In December you have the income tax.

22 So if you are going to say that you can't do it

1 when something else is going on, you can't say that in the
2 state of Vermont. I don't know about any place else, but you
3 can't say it in the state of Vermont. So you have to prepare
4 yourself ahead of time so that you have a small block of time
5 the auditor tells you he is going to have his time or her
6 time, which we have a couple of good CPAs that work for the
7 state that do do some non-profit stuff, and just plan to be
8 ready.

9 And if you're not prepared ahead of time, that's
10 what makes the audit go so bad. So it's incumbent on whoever
11 gets the money and whoever is the grantee to have themselves
12 in compliance. It just works that way. That's all there is
13 to it. And after 25 years of experience, I think I can say
14 that.

15 MR. ASKEW: Thank you, Edna. Bill?

16 MR. MCCALPIN: Bucky, I'd like to ask a question of
17 John or Merceria.

18 What is the date by which you would need the
19 information from these audits to evaluate or judge
20 applications or bids for funding?

21 MS. LUDGOOD: We would have to use prior year,
22 because we will make our decisions before the end of this

1 year.

2 MR. MCCALPIN: Yes. But the -- the fiscal '96
3 audits will come in by, under this rule, March 31, 1997.
4 When in '97 would you be using the information from those
5 audits to evaluate bids or applications made in 1997 for
6 funding?

7 MS. LUDGOOD: If we use the same schedule we are on
8 this year, it will be the Fall of '97.

9 MR. MCCALPIN: September?

10 MS. LUDGOOD: September, October, and November.
11 October and November, or somewhere around there.

12 MR. MCCALPIN: So that you don't need that
13 information before September?

14 MS. LUDGOOD: No.

15 MR. ASKEW: Any other committee members have
16 questions? Board members?

17 MR. FORGER: Partly out of ignorance and -- your
18 principal reason, as I understand it, to do this in 90 days
19 is in order to be available to testify to Congress in April,
20 if we happen to have an appropriation hearing in that month
21 as to the degree of compliance of programs with respect to
22 the restrictions that the -- now being audited under your

1 supervision?

2 MR. QUATREVAUX: That was one consideration, right.

3 MR. FORGER: Is that the principal one?

4 MR. QUATREVAUX: No. I wouldn't say that. We have
5 operational reasons, which I think we covered prior to your
6 arrival, but such as the one you just heard.

7 We also have work to do with the auditors to get
8 the reports in place and in proper order.

9 MR. FORGER: Do you find that when you set a date
10 everybody waits for that last date?

11 MR. QUATREVAUX: Yes.

12 MR. FORGER: And do you think, again, that Congress
13 would feel that somehow or other you hadn't discharged your
14 responsibility if you did not have something to report in mid
15 April?

16 MR. QUATREVAUX: No. I wouldn't draw that
17 conclusion. I have no idea what they -- what the Congress
18 thinks or feels. I just feel like this is a new system in
19 place and it was put in place by the appropriators, and the
20 appropriators would normally be expected to have some
21 interest in its efficacy.

22 MR. FORGER: But I suppose at least in the last

1 couple of years, this appropriations process has been pretty
2 prolonged. And in the course of that, I know management has
3 issued and delivered to the appropriators a lot of reports
4 and statistics that it is sort of an ongoing process. So it
5 would seem to me it wouldn't be unreasonable if there is
6 legitimacy to the concern of the grantees to say to Congress
7 that the reports are not yet in because there was not a
8 sufficient time within which the programs had to prepare
9 their audits and submit them to you, at least until four
10 months or five months.

11 I wondered whether they would think that was an
12 unreasonable period. I just don't know what would be in
13 their minds, but you could always send that information along
14 as it came in, and as you had analyzed it. Because, you
15 know, sometimes decisions aren't made until the following
16 year.

17 MR. ASKEW: Any other questions?

18 (No response.)

19 MR. ASKEW: Thank you, Ed. Oh, you want --

20 MR. QUATREVAUX: Let me just say that there -- I
21 want to -- there is an issue -- we got some comments on audit
22 cost allocation, and we thought those were good comments, and

1 we have to figure out how to make that work. It's a complex
2 technical issue and I don't think you want to hear about it.
3 But we agree with the comments and we will work with
4 management and the commentators to clarify the language.

5 MR. MCIVER: May I (inaudible). Is this the issue
6 of pro rata cost sharing?

7 Again, Harrison McIver. Is this the issue of the
8 pro rata cost sharing of the audits?

9 MR. QUATREVAUX: Yes. To which funding sources and
10 in what amounts the costs of the audits are charged. Yes.

11 MR. MCIVER: And you are prepared to amicably work
12 that out where it makes sense in some situations, because
13 some programs -- I know you are trying to move --

14 MR. ASKEW: We're not prepared to go into that,
15 Harrison.

16 MR. MCIVER: I know time is becoming of the
17 essence, but programs are concerned about where they have
18 already engaged in a contract with a funding source and now
19 having to renegotiate or put that funding in jeopardy because
20 heretofore programs have not had to charge all audit costs
21 and the like to those small grants and contracts. So there
22 is some concern about that that were reflected in our

1 submission that the OIG has.

2 Hopefully, I assume that can be worked out and I
3 won't need to go into any greater detail. But that is a very
4 significant issue within the legal services community, and
5 hopefully it will be --

6 MR. ASKEW: Okay. For what I --

7 MR. QUATREVAUX: What we have to do is strike a
8 balance between practical considerations and the notion that
9 we are, in fact, when we do pay -- if we do pay -- for audits
10 that benefit others, that we are, in a sense, carrying some
11 of their costs on their behalf. That might be the Department
12 of Education or HSS, et cetera, but I think we can work this
13 out to everyone's satisfaction.

14 MS. FAIRBANKS-WILLIAMS: Charge them a percentage.

15 MR. ASKEW: Charge them a percentage?

16 MS. FAIRBANKS-WILLIAMS: Charge them a percentage
17 of what they get.

18 MR. QUATREVAUX: Well, we had -- I believe, in the
19 guide we had it was just pro rata, according to fund source.
20 So we're looking at it to see what we can do.

21 MR. MCIVER: And there are ways, I think, that were
22 suggested that could probably be consistent with the statute

1 (inaudible).

2 MR. QUATREVAUX: The information I have is that we
3 can find a solution to it.

4 MR. ASKEW: Okay.

5 MR. MCCALPIN: Bucky, I think I should not let the
6 conversation end without saying that I contacted Ed after I
7 got the class comments and had the draft audit guide sent to
8 me, and he arranged for me to meet with his staff on Friday
9 morning, and we covered 12 points, some of which were very
10 technical, and others of which have been raised here today,
11 and Ed did make five members of his staff available to
12 discuss this audit guide with me on Friday morning.

13 MR. MCIVER: I have one quick question. Will the
14 compliance supplement -- all be given an opportunity in the
15 community to review it?

16 MR. QUATREVAUX: Yes.

17 MS. SZYBALA: Can I -- Mr. McIver had this feeling
18 that the compliance supplement is late, and I think it is,
19 too, except I need to explain why. Ultimately the culprit is
20 Congress. Congress put these new compliance requirements in
21 effect in April and the interim regs, the main group of them,
22 didn't get out until late August. And only after those

1 interim regs were out could management give to the OIG the
2 compliance requirement statements that need to go in the
3 compliance supplement. And only after we had those
4 compliance requirement statements could we draft the guidance
5 to the auditors on the audit procedures.

6 And that document, with management's compliance
7 requirements, and OIG auditor guidance, is back with
8 management for review. And right when it comes back, and all
9 meetings are held, and it's agreed to, it goes to the field.
10 It doesn't get published. This is the same thing as last
11 year, because this has no requirements on grantees. These
12 are auditor requirements. But we promulgate it to the field
13 for comment.

14 MR. MCIVER: Oh, you will give it to the --

15 MS. SZYBALA: Absolutely.

16 MR. MCIVER: And as a suggestion that as, I think
17 has been happening with the -- this is not an issue of
18 criticism of the OIG -- but you want to make sure from a
19 management perspective, as well as OIG, that when these
20 regulations are published, then until we get this on
21 Worldwide Web and everything is in place, that many programs,
22 especially in rural areas, don't have access, as we at PAG

1 don't, that you could just mail those things out to make sure
2 that all the field -- all the current providers receive those
3 regulations -- proposed regulations.

4 MR. QUATREVAUX: I believe we mail them.

5 MR. MCIVER: I don't believe so. The guide
6 (inaudible).

7 MR. ASKEW: Thank you, Harrison. Is that it?
8 Ed, do you have anything further, you want to
9 offer?

10 MR. QUATREVAUX: No, Mr. Chairman.

11 MR. ASKEW: Thank you. When I naively put this on
12 the agenda, thinking that the committee had to act upon it --

13 MR. QUATREVAUX: Let me just say, you know, I -- I
14 detect a sense of the intensity of the interest in that
15 particular 90-day requirement and I'm going to review it
16 again with audit staff, and with others. I'm mindful of the
17 views I've heard.

18 MR. ASKEW: Great. Well, that's part of what I was
19 going to say to end this was that I wanted you to get a sense
20 of the intensity of feeling of board members and the field
21 about that one particular issue, but this issue about the
22 delegation of authority that occurred last summer, that there

1 was confusion on the board about that. I think it deserved
2 to be brought up and cleared, so that everybody would
3 understand what occurred last summer, with the board's policy
4 statement. And so we accomplished that here today, I think,
5 so thank you.

6 MR. QUATREVAUX: Thank you, Mr. Chairman.

7 MR. ASKEW: Back to you, LaVeeda.

8 MS. BATTLE: Yes. I'll use this mike. I'll let
9 you all share that one.

10 You know, because of the lateness of the hour -- if
11 I can gather my staff back to the table, and field
12 representative to the table. We have two final regs to
13 address.

14 And my initial question, because these are the two
15 more weighty regs that we've got, is where we are and how we
16 ought to proceed. And I'd like to get some guidance on that.
17 If everybody is still up to it, we can dive right in and
18 finish these last two, if my committee is up to it.

19 The next one up is class action, 1617. I think,
20 Suzanne, did you have another draft that you wanted to share
21 with us on that?

22 MS. GLASGOW: Yes. We've been scribbling words.

1 They were moving words around so much, I decided to get a
2 fresh draft to look at.

3 MS. BATTLE: Okay. I think Suzanne is providing us
4 with a new draft of the actual reg on class action 1617.

5 We should have before us now a draft of the reg
6 that Suzanne has done, taking into account the comments and
7 concerns. And also Renee has handed out a copy of some
8 alternative language in 1617 that we will come to when we
9 address 2(B).

10 Now, my -- just as a general overview on class
11 actions, most of the issues that I read about -- there was
12 one interesting issue in a defendant class action situation,
13 in the very last comment that we got, that I had never heard
14 of, so -- it was trying to determine when our clients are
15 defendants as opposed to members of the class, certified as
16 plaintiffs, how that might somehow be excluded from this
17 process. I don't think that we can, but I thought it was an
18 interesting comment.

19 The other comments had to do with some of the
20 language that we used in our definition, non-adversarial,
21 monitoring. And I think that this new proposal may address
22 some of those concerns.

1 So, Suzanne, can you tell us where we are, the
2 issue being -- well, there are several issues.

3 One is that -- so long as -- we still have those
4 around, don't we -- so far as you're concerned, we still have
5 those "so long as's" around.

6 But we've got a situation where I think we needed
7 greater clarity to certain aspects of this rule. And,
8 Suzanne, can you tell us what you're proposing on that?

9 MS. GLASGOW: Actually, we are editing, even as we
10 sit here. There have been so many changes to this today that
11 -- I still didn't get it right.

12 MS. BATTLE: Let's kind of take the issues and then
13 the proposals together.

14 In other words, starting with the issue of --
15 really, I guess the issue that comes out of B(1).
16 1617.2(B)(1) is the first section where there is an issue,
17 and it has to do with how we define initiating or
18 participating in any class action, and tell us what the
19 issues are.

20 MS. GLASGOW: There's really where most of the
21 comments focused. And the whole issue here is what
22 initiating or participating in a class action means. And we

1 tried to distinguish between adversarial versus non-
2 adversarial. We tried to throw in language that gave
3 examples or kind of a general idea of what adversarial versus
4 non-adversarial is, and we have really been struggling with
5 that, and seem to be continuing to do that.

6 Right now the language that we're proposing is in
7 B(1), "Initiating or participating in any class action means
8 any involvement in any stage of a class action prior to or
9 after an order granting relief. Any involvement includes
10 acting as amicus curiae, co-counsel, or otherwise providing
11 representation relating to a class action."

12 MS. ROGERS: Suzanne, is that what's written in the
13 last draft you just gave us?

14 MS. GLASGOW: Yes.

15 MS. BATTLE: Yes.

16 MS. ROGERS: Okay.

17 MS. GLASGOW: Number two, on the next page, is an
18 attempt to say what is not included in that definition.

19 "Initiating or participating in any class action
20 does not include individual representation of a client
21 seeking to obtain the benefit of relief ordered by the
22 court."

1 And we want to move some language into that.

2 "Representation of clients seeking to withdraw from, or opt
3 out of a class, or obtain the benefit of relief ordered by
4 the court, or non-adversarial activities."

5 And the reason we want to put "withdraw from or opt
6 out of the class" is basically because that's an effort to
7 stay out of class action to prevent another party, when your
8 case is pending, like suddenly motion the court to turn it
9 into a class action. This is just an attempt to either get
10 your client out of that case or oppose its being a class
11 action.

12 MR. TULL: Can I add to what Suzanne said? There
13 is really two separate issues that are reflected in what she
14 described.

15 One is an effort to address what I think was
16 confusion in the previous language about the intent of the
17 committee regarding what is not participation in a class
18 action, and that is the -- the previous language which spoke
19 to non-adversarial monitoring.

20 And the comments that we received and interaction
21 with programs in various presentations we've made regarding
22 the rule, made it clear that people didn't have a clear

1 understanding of what a narrow exception the committee
2 intended when it adopted that language.

3 So this -- some of this language, and the language
4 which will go in the commentary, is an effort to make clearer
5 the -- what is deemed to be not participation in a class
6 action and, therefore, acceptable. It's not an exception to
7 the rule. It's not saying these are areas in which you can
8 participate. It's saying that this is not participation.

9 The language regarding opting out of a class, the
10 previous definition of participation in a class action did
11 include, as prohibited participation, any effort to opt out,
12 or to withdraw from a class. Comments came to us, saying
13 that that -- that where an individual has -- would be
14 adversely affected by being a member of the class, but seeks
15 to protect their right to pursue -- to pursue their claim
16 individually, that they should be entitled to that, because
17 that's what Congress intended was individual representation.

18 The commentary, or the recommendation that Suzanne
19 makes in her description of what needs to go into the
20 commentary, we'll make clear, and we'll need to make clear,
21 that it's a very limited exception. It does not mean that a
22 person can file a motion saying, "This shouldn't apply to my

1 client, and we're seeking to not have it -- the results of
2 this class action apply to my client," and then to stay in
3 the case and to participate in all of its activities. It is
4 a very limited exception, only to say -- to get an order that
5 whatever order affecting the class would not apply to the
6 client.

7 MS. BATTLE: Yeah. Well, before we go too much
8 further, let me say, I know that over the last two or three
9 weeks that both John and Linda have done a yeoman's task on
10 so many various different things. My sense is, now that we
11 are in the midst of class action, it is going to need some
12 more work. We don't have a preamble.

13 It may make sense, since we are not going to adopt
14 this until our next meeting, that we just defer. You've got
15 before us something; you've already made an additional
16 amendment to it. We are going to have to have a chance to
17 look at the preamble language.

18 It may make sense if I can get my committee to go
19 along with it, for us to just go ahead and take this back.
20 Unless there are just some comments that you think will guide
21 this process on this one now, that's my sense of where we are
22 now. Go ahead, Bill.

1 MR. MCCALPIN: I have a question and a suggestion.
2 My question is, where are you changing the language of B(2)
3 in -- as handed out to us within the last few minutes in your
4 comments a few moments ago?

5 MR. TULL: Yes. There was a typo in it which
6 didn't -- so that it doesn't state what we intended to
7 recommend. And the typo was that the language on -- in bold
8 on B(2) that starts after "including efforts to withdraw,"
9 that the efforts to withdraw from or opt out of the class
10 action should have come after "seeking to withdraw from or
11 opt out or to obtain the benefits of." It should have been
12 moved up to the previous clause, so that it would come after
13 "does not include individual representation of a client
14 seeking to" and then it would go "withdraw or opt out of a
15 class action" -- or probably "opt out of a class, or to
16 obtain the benefit of the relief ordered by."

17 MS. BATTLE: Yes. I see. That makes more sense.

18 MR. MCCALPIN: What about the last part? "Or
19 intended to inform, explain, clarify, educate, or" --

20 MR. TULL: That is intended to stay where it is
21 after -- that is a description of, or an explanation of what
22 is non-adversarial -- what are non-adversarial activities, so

1 that stays where it is.

2 MR. MCCALPIN: Well then I have a question. As I
3 recall, it was one of the comments that suggested it might be
4 difficult to advise a client with respect to opting out
5 unless counsel had the opportunity to talk to class counsel.

6 And as I understand, "intend to inform, explain,
7 clarify, educate, or advise" about the terms of an order
8 granting relief, so that this -- to the extent, if it does,
9 open the door to conferring with class counsel, it only does
10 it have an order granting relief.

11 And I understood the comment was that we ought to
12 authorize a legal services lawyer representing an individual
13 client to talk to counsel for the class, so as to be able to
14 advise the client whether or not to withdraw, and is that
15 permitted?

16 MR. TULL: This language was not intended to
17 address that situation. I believe that the rule -- the
18 definition of participation in class action would permit what
19 you described. That is, to call up a lawyer and say what's
20 this action about would not be prohibited under the
21 definition of participating in a class action.

22 The fact that we got a comment about that would

1 suggest that we need to address that in the commentary to
2 make sure that that is understood.

3 This language about efforts to find out -- to
4 inform goes to the exception which the committee heard
5 explicitly last time, which is where there are reports that
6 come regarding the implementation of it, some of which come
7 years afterward.

8 An example that was given was where, under the
9 terms of the order, in a case in which the court has long
10 since relinquished jurisdiction -- I think it is ten or 12
11 years -- that the program is still getting reports, because
12 they were supposed to, that that would be permitted.

13 We ended up trying to find language which was
14 broader than "receive reports," because it just -- that
15 didn't seem very artful, I guess.

16 MR. MCCALPIN: My suggestion with respect to that
17 is to take the word "individual" at the end of the first line
18 and move it to precede "client." "Does not include
19 representation of an individual client."

20 MS. BATTLE: That makes sense. "In efforts to
21 withdraw from or opt out of a class, or seeking to obtain the
22 benefit of relief ordered by the court." That's a good idea.

1 Well, are there any other comments that we can take
2 back on this?

3 MR. ERLENBORN: Is these terms of art, "opt out" --

4 MR. MCCALPIN: Oh, yeah.

5 MR. ERLENBORN: -- as distinguished from "withdraw
6 from"?

7 MS. BATTLE: Yes.

8 MR. MCCALPIN: Yes.

9 MR. ERLENBORN: Okay. I'm not a litigator.

10 MS. BATTLE: In or you can opt out. Okay. Are
11 there any other --

12 MR. MCCALPIN: You can also opt in.

13 MS. BATTLE: You can opt in. That's what I said.

14 MR. ERLENBORN: That's wonderful language. I
15 wonder who devised that. It must have been a litigator.

16 MS. GLASGOW: I guess just to clarify, so are we
17 saying that if an individual client needs representation to
18 opt out, then would that client continue to be represented in
19 their individual case, but the nature of the fact that the
20 litigation is ongoing in the class action?

21 Like one of the examples that was sent in on
22 mortgage interest and so forth, is that LSC grantee going to

1 be allowed to represent that client?

2 MR. TULL: They can represent the client, but not
3 in that action. So if the client wants to file a separation
4 action, claiming or seeking to establish the remedy that she
5 or he feels that they are entitled to, that they could do,
6 but not as a part of the class action.

7 MS. BATTLE: Okay. Now, based on what I've said, I
8 did want to get the comments out on the table on this, so
9 that as we do our redrafting on class actions, we can take
10 them into account. But I'd like to go ahead and put this on
11 the calendar and on our agenda for our meeting in December.

12 MR. TULL: Could I just suggest and Mr. Forger can
13 probably speak to this issue better than I, that in -- I
14 believe that the committee did just address all of the issues
15 about which we suggested change.

16 This is a rule which has been the subject of
17 considerable attention and there is some concern that we have
18 that the lack of clarity of what is permissible under the
19 interim rule, and the fact that it is being interpreted far
20 more broadly by some programs than we believe is appropriate
21 or may be, and that we've been questioned by that from a
22 number of places, that we feel we need to respond to, that

1 while the rule -- we don't perceive this as changing what the
2 committee intended. We believe that what -- intended when it
3 adopted the interim rule.

4 But this language is intended to allow us to be
5 much clearer with programs as to what is permissible. And
6 the risk of waiting until December before the board itself
7 taking any action on this is that it will -- we will not have
8 a basis on which to communicate with programs about the
9 precision with which the committee adopted the areas of
10 acceptable activity in class actions, or related to class
11 actions.

12 MR. FORGER: I think, John, particularly the word
13 "monitoring" had a connotation of more activity than you
14 wished to ascribe to it, and that's why you have purposely
15 put some passive receipt language in there --

16 MR. TULL: Correct.

17 MR. FORGER: -- in the place of monitoring.

18 MS. BATTLE: Well, if -- are you then, based on the
19 comments -- are there any other comments? Let me just say
20 that first.

21 If there are no other comments, then have we given
22 you sufficient information for you to come back to us with a

1 final for tomorrow?

2 MR. TULL: I believe so. Yes.

3 MS. BATTLE: Okay. And then I will give oversight
4 to the preamble language, and we may be able to get this one
5 out with the other two.

6 MR. TULL: That would be very helpful.

7 MS. BATTLE: All right. I'll take a motion to that
8 effect.

9 MR. MCCALPIN: Do you want a motion?

10 MS. BATTLE: Yes.

11 M O T I O N

12 MR. MCCALPIN: I move that we recommend to the
13 board the adoption of interim rule 1617, as amended, for
14 promulgation as a final regulation.

15 MR. ERLNBORN: Second.

16 MS. BATTLE: Properly moved and seconded. All in
17 favor?

18 (A chorus of ayes.)

19 MS. BATTLE: Opposed?

20 (No response.)

21 MS. BATTLE: Motion carries.

22 Okay. Well, we got that one out of the way.

1 (End tape 3, side 1.)

2 MR. TULL: And it is my understanding it will
3 become effective with the rest?

4 MS. BATTLE: Yes.

5 MR. TULL: December 31st, or --

6 MS. BATTLE: Yes.

7 MR. TULL: -- not until after December 31st.

8 MR. MCCALPIN: January 1.

9 MS. BATTLE: January 1.

10 MR. TULL: Thank you.

11 MS. BATTLE: We have one final one. Where are we
12 on the final one?

13 MR. TULL: It's absolutely crystal clear, and there
14 is no questions involved, and it ought --

15 MS. BATTLE: Is the committee up to it? Do you
16 guys want to stay for one more?

17 MR. MCCALPIN: I hope the programs can understand
18 this one, because I can't.

19 MS. BATTLE: Okay. 1610.

20 MR. TULL: This is actually --

21 MS. BATTLE: Are we prepared to look at the use of
22 non-LSC funds, and how they travel?

1 MS. GLASGOW: I think that the best way to go
2 through this rule is to start with the text and we can just
3 briefly discuss a few preliminary changes before we get to
4 the really big issue.

5 MS. BATTLE: Okay. There were -- I guess -- and I
6 will characterize it as I saw it, and then you can certainly
7 help me with it, but most of the comments on 1610 had to do
8 with the broader application that one could make to that
9 language, so that if we received or sent out money to pay for
10 services, or to pay for a Xerox machine, that we would have
11 to send Xerox corporation a list of our restrictions because
12 that is -- that's a transfer of funds from us to them, even
13 if it is to pay for goods and services.

14 And some of the comments said surely you don't mean
15 that we've got to start tagging that along with our bills as
16 we send them out any time they are over \$250. And so you're
17 proposing some language to fix that.

18 And then there was some concern about how far this
19 restriction travels. Does it travel with non-LSC funds that
20 happen to be part of the grantee, as they go out? Does it
21 travel only with LSC funds, as they go out? Does it travel
22 with mixed funds that go out? And just, you know, some

1 clarity as to how this restriction would work.

2 So I'm sure that you can clarify it in two or three
3 words for us.

4 MS. GLASGOW: Basically, what we tried to do was --
5 well, we drastically redrafted two sections of this and added
6 definitions to clarify those issues.

7 And I guess the best way to explain this is to
8 basically picture a recipient having two bags of money, one
9 that's LSC money, and one that's non-LSC money. And we give
10 LSC money out as a grant to a recipient, and they become a
11 recipient because they get a grant from us.

12 And if you picture that bag of LSC money having a
13 hook to it, which means that anybody that gets that bag of
14 LSC money, that bag hooks onto the other funds of that
15 entity, except for those situations that we talk about in
16 this rule, and I'll get to those later.

17 So if we give a bag of LSC money to a recipient, it
18 hooks on to their non-LSC funds, and their non-LSC funds, by
19 and large, are restricted, depending on whether the
20 restriction comes -- to a certain extent -- depending on
21 whether it comes out of the LSC Act, or out of the
22 Appropriations Act.

1 If then the recipient transfers that money out,
2 certain things happen. If the recipient transfers out that
3 bag of LSC funds with the hook on it, and it goes out to a
4 person or entity who receives those funds, then those funds
5 again hook onto the non-LSC funds in most situations.

6 However, if the recipient transfers out the bag of
7 non-LSC funds that has no hook on it, the restrictions go
8 with those funds, but they don't hook onto the other funds of
9 the entity.

10 So it's basically picturing a bag of LSC funds with
11 that hook, so wherever it goes, it hooks on to the non-LSC
12 funds, but the bag of other funds of the recipient does not
13 do the same thing. But wherever a recipient's LSC funds or
14 non-LSC funds go, whatever activities those bags of funds
15 fund, those have to be done according to the restrictions.

16 And legally, the Appropriations Act speaks only to
17 recipients. It doesn't start talking about transfers of
18 funds.

19 Historically, the corporation has dealt with
20 transfers through our regulation, part 1627. But because we
21 didn't have the type of restrictions we now have in the
22 Appropriations Act, it only dealt with transfers of LSC

1 funds, and that's what we defined as a sub-grant.

2 Now we are in a situation where restrictions travel
3 with non-LSC funds when they are transferred from a
4 recipient, and so we've developed for this rule definitions
5 for a transfer of LSC funds, and a transfer of non-LSC funds,
6 to meet those types of transfers which now the corporation
7 will regulate in some instances, and the conditions go with
8 those funds.

9 So you will see on page 11 two new definitions that
10 are not in the interim rule, and one is a transfer of LSC
11 funds, and this language is taken really from the core
12 definition, out of 1627, which defined a sub-recipient. So
13 we've defined a transfer of LSC funds means a transfer of a
14 recipient's LSC funds for the purpose of conducting
15 programmatic activities that are normally conducted by the
16 recipient, such as the representation of eligible clients, or
17 that provide direct support to the recipient's legal
18 assistance activities.

19 And we suggest stopping there and getting rid of
20 "such as training or other support activities," and just
21 leave the general definition.

22 MR. MCCALPIN: Well, you're going to take that out?

1 MS. BATTLE: Okay. You're going to take out "such
2 as training" --

3 MS. GLASGOW: "Such as training or other support
4 activities."

5 MS. BATTLE: You don't have any examples then?

6 MS. GLASGOW: No.

7 MS. BATTLE: Okay.

8 MS. PERLE: The reason is because other support
9 activities is just duplicative. Training is a situation
10 where you could give a sub-grant for someone to do training,
11 but you also could just purchase training materials, or you
12 could pay --

13 MS. BATTLE: For CLE.

14 MS. PERLE: -- for CLE, and that would not be a
15 sub-grant.

16 So we thought that by including training, it was
17 confusing.

18 MS. BATTLE: Okay.

19 MS. GLASGOW: And then we have a transfer of non-
20 LSC funds means a transfer of a recipient's funds that is
21 consistent with the definition in this part of transfer of
22 LSC funds, except the funds transferred are non-LSC funds.

1 So it's basically the same thing. It's just one is LSC, and
2 one is non-LSC funds.

3 MS. BATTLE: Well, in H, when you -- I think I've
4 got that picture in my mind. I wonder if we can put it in
5 the regulation with the bags and the hooks, because it kind
6 of works for me. But --

7 MR. MCCALPIN: How about magnets?

8 MS. BATTLE: But truly is the transfer of non-LSC
9 funds consistent with the transfer of LSC funds, since the
10 transfer of non-LSC funds does not attach all other funds,
11 but the transfer of LSC funds does, when it leaves? I mean,
12 it attaches to everything else that you're doing.

13 MS. GLASGOW: Well, that will become clear when we
14 actually get into the Section 7 that deals with what happens
15 to these two types of different transfers.

16 All we're saying here is that what we mean by a
17 transfer of funds is something that goes out to basically do
18 the same programmatic activities that the recipient would do,
19 as opposed to making payments for services or goods. We'll
20 explain that in the commentary.

21 MS. BATTLE: Okay. All right. Let's move on.

22 MS. GLASGOW: We suggested getting rid of three

1 definitions there that are no longer applicable, and I'll
2 explain that when I get to Section 6.

3 MS. BATTLE: Private attorney. And I saw some
4 comments saying, "What is a law firm? Aren't we a law firm?"

5 MS. GLASGOW: Right.

6 MS. BATTLE: So I guess you're saying well, we
7 won't even --

8 MS. GLASGOW: Since we are on the definition of
9 transfers, we probably should skip right to Section 7,
10 because that's where we deal with that, and then we'll go
11 back to some of the other changes.

12 MS. BATTLE: Okay. Transfers of recipient funds is
13 1610.7.

14 MR. MCCALPIN: What page is that?

15 MS. BATTLE: Page 14.

16 MS. GLASGOW: Page 14.

17 MR. MCCALPIN: I thought -- there is also a seven
18 on page 15.

19 MS. GLASGOW: That's correct. It's a typo. It
20 should be eight now.

21 MR. TULL: We wanted to see who would catch it
22 first.

1 MS. BATTLE: Okay. Let's talk about 1610.7.

2 MS. GLASGOW: Okay. Paragraph A talks about a
3 transfer of LSC funds. And for a transfer of LSC funds, the
4 prohibitions and requirements referred to in this part,
5 except as should be modified by Paragraph C and D of this
6 section, will apply both to the funds transferred and to the
7 non-LSC funds of the person or entity.

8 That's basically saying your bag of LSC funds has a
9 hook, so if you transfer it out to another entity, the other
10 entity is private and non-LSC funds will be affected by the
11 conditions, as set out in the rule.

12 Paragraph B, for a transfer of non-LSC funds, the
13 prohibitions and requirements referred to in this part,
14 except as should be modified by Paragraph C and D of this
15 section, will apply to the funds transferred, but will not
16 apply to the other non-LSC funds of the person or entity.
17 And that's because the non-LSC funds don't have that hook on
18 them.

19 Congress put the hook on the LSC funds, in essence.
20 It says, if you get LSC funds, your non-LSC funds are
21 affected. But they didn't put that hook on other funds.

22 Paragraph C(1) deals with some of these

1 modifications. And one of the -- several of the comments
2 raised the issue that there are different types of conditions
3 that affect the funds.

4 Some conditions are prohibitions. Other conditions
5 are requirements. And the two we identified as very
6 important requirements are timekeeping and priorities. And
7 we applied those in such a way that we felt would implement
8 the concerns Congress has, but also recognized the different
9 types of entities that may be getting some of these grants.

10 So in C(1), we said in regard to the requirement on
11 priorities, persons or entities receiving a transfer of LSC
12 funds or non-LSC funds, shall either use the funds
13 transferred consistent with the recipient's priorities, or
14 establish their own priorities for the use of funds
15 consistent with part 1620.

16 In regard to the requirement in 1610.2(B)(6) on
17 timekeeping, persons or entities receiving a transfer of LSC
18 or non-LSC funds, are required to comply with the timekeeping
19 requirements in 1635, only for the funds transferred.

20 MR. MCCALPIN: Is that -- would that apply to both
21 LSC and non-LSC funds transferred?

22 MS. GLASGOW: Correct.

1 MS. BATTLE: But only to those funds, and not to
2 other funds. Not to other funds of the entity or person.

3 Okay. I think I'm with you.

4 MS. GLASGOW: Okay.

5 MS. BATTLE: We can move on to D.

6 MS. GLASGOW: And John is showing you some changes
7 that have been made while I was working on the personnel
8 manual.

9 Paragraph D. For a transfer of LSC or non-LSC
10 funds to bar associations, pro bono programs, private
11 attorneys, or law firms, or other entities for the sole
12 purpose of funding private attorney involvement activities,
13 pursuant to 45.6CFR, part 1614, the prohibitions or
14 requirements of this part shall apply only to the funds
15 transferred.

16 This is in response to comments from bar
17 associations, American Bar Association and others, who
18 basically brought to our attention the fact that if we
19 strictly applied paragraphs A and B of this section to the
20 PAI activities, they simply would probably not exist anymore
21 because there is just no way that bar associations, or some
22 of these entities that are doing the PAI work for our

1 recipients, are going to accept those grants if all their
2 other funds are restricted, in essence.

3 And this is a recognition that, you know, to the
4 best of our knowledge, this is a program and a project that
5 Congress approves of involving the bar, and the provision of
6 legal assistance to the poor, and that our recipients are
7 required to meet a certain requirement under PAI, and that
8 probably a lot of them would have a lot of trouble doing that
9 if we strictly applied the policies set out in Paragraphs A
10 and B to these types of entities.

11 MS. BATTLE: In D you add pro bono programs. Is
12 there anything else that you're adding to that?

13 MS. GLASGOW: "Pro bono programs, private attorneys
14 or law firms, or other entities for the sole purpose."

15 In essence, we're recognizing there is a lot of
16 models of PAI out there, so we wanted to make sure we're
17 including all the types of models that they would have to --
18 it has to come under the PAI requirement in 1614.

19 In other words, if a recipient allots this to his
20 PAI requirement, then the prohibition requirements part only
21 apply to the funds transferred.

22 So we've always said, and part 1614 makes it clear,

1 any activities you do for PAI have to be consistent with
2 requirements and restrictions of the LSC Act. So they can't
3 do any litigation or anything that they are not supposed to
4 do under PAI.

5 MS. BATTLE: How does that work? Let me just ask a
6 practical question. I'm a PAI attorney out in private
7 practice. I get sent a case through the program. Do I have
8 to do timekeeping on that particular case? Do I have to set
9 priorities on that particular --

10 MS. GLASGOW: No. If you are just a private
11 attorney and you take a case or two a year, what you're going
12 to get -- if you're doing it pro bono, you probably won't get
13 paid anything except the cost. If you're doing a reduced fee
14 PAI project, what you're going to get is a fee for service,
15 and that does not fall within the definition of a transfer of
16 funds, so that's not reached by this at all.

17 MS. BATTLE: Okay. That was my question.

18 MS. GLASGOW: It's only when it reaches the
19 proportion of being a grant or a transfer of funds to
20 programmatic programs.

21 For instance, if the bar association takes a grant
22 to set up an intake and referral, and then refer the client

1 that they decide to refer out to the private attorneys that
2 they have identified to take cases, that intake and referral
3 project would be funded, allotted to the recipient's PAI
4 project, and that type of grant would not have to -- the
5 funds to that grant would be restricted, but none of the
6 other funds of the bar association who does that would be
7 restricted.

8 MS. BATTLE: Okay.

9 MS. PERLE: Can I make a --

10 MS. BATTLE: John, did I see -- I'm sorry. John,
11 did I see you wanting to say something?

12 MR. ERLBORN: No. Let her go first.

13 MS. BATTLE: Linda, you can go first.

14 MS. PERLE: You know, I think that Suzanne's kind
15 of description of the bags of money with the hooks is a sort
16 of apt description of what -- the way the corporation
17 interpreted the congressional mandate.

18 But Congress never said that you have to -- you
19 know, never said in any direct fashion that you have to apply
20 restrictions to the non-LSC funds of recipients. I think
21 that the corporation made a general -- made a reasonable
22 interpretation to say that's really what Congress meant, that

1 you shouldn't be able to get around the restrictions by just
2 taking the money you get from the corporation and sub-
3 granting to someone else, so that their non-LSC funds would
4 be unrestricted.

5 So the corporation has kind of developed this
6 policy, rationale, which was stated in the program letter
7 that went out to programs.

8 But I think that what became very clear quickly was
9 that when you applied that to PAI, it had an unintended
10 consequence. It was going to undermine efforts and
11 relationships that had been built up over the years that
12 Congress clearly wishes to see continue.

13 I mean, Congress has said, time and time again,
14 that they think that the wave of the future is for the
15 private bar to be handling these cases.

16 So I think that -- all that I'm saying is that I
17 think that it's perfectly reasonable for the corporation to
18 adopt these kinds of exceptions for PAI programs. It's not
19 inconsistent with the language of the Appropriation Bill. It
20 just sort of -- it suggests that the corporation's
21 interpretation shouldn't be interpreted in a way that
22 undermines the ability of programs to conduct PAI and to

1 involve private attorneys.

2 So what I'm trying to say is that if you do adopt
3 this, I don't think this means that it is inconsistent with
4 what Congress said.

5 MS. BATTLE: Sure. I understand. I think that's
6 right, too.

7 What we are attempting to do here is to carry out
8 the spirit which goes beyond actually the letter of the
9 Appropriations Act by making sure that we have gone on record
10 as to how sub-grants and other entities that actually do the
11 work that legal services grantees do, will handle those
12 funds.

13 Are there any other questions about this? This is
14 remarkable, the way that you have walked through it, because
15 it's a complex concept and I certainly think that it will
16 take some explaining for programs to fully understand how
17 this is going to work in a real practical sense, and to
18 implement it, but --

19 MS. MERCADO: If you could just do a cartoon to go
20 with that.

21 MS. BATTLE: Yes.

22 MS. GLASGOW: We'll send a picture with it.

1 MS. BATTLE: Send the money bags picture.

2 MR. TULL: A whole bunch of bags and hooks.

3 MS. PERLE: I mean, I think there is still some
4 work that needs to be done on some of this language. John
5 and I were suggesting some ways that -- an additional way
6 that it might be explained in a way that will be a little
7 less confusing.

8 MS. BATTLE: Can we do this and, Suzanne, we talked
9 about this, if there is -- because of the complexity of it, I
10 think clarity is important. And it may be that we can, in
11 the interim, get a program letter out, or something to
12 explain, in the best way that we can, to programs how this is
13 to operate, and let's revisit with whatever your changes are
14 and adopt a final regulation in this area that is as clear as
15 possible -- crystal clear -- as to how non-LSC funds will
16 operate in this new environment. Does that make sense?

17 MS. GLASGOW: Should I just briefly run you through
18 the other changes?

19 MS. BATTLE: Yes.

20 MS. GLASGOW: Okay. Number one, we were thinking
21 of just doing one definition of transfer of funds, because
22 they are basically the same, and it would be clear once you

1 get in the prohibition.

2 On Section 6, on applicability --

3 MS. BATTLE: What page is that?

4 MS. GLASGOW: That's page 13.

5 MS. BATTLE: Okay.

6 MS. GLASGOW: The language in the interim rule was
7 an attempt to implement what is an exception in Section
8 10.10(C) of the LSC Act. And as you know, Section 10.10(C)
9 says, if you can't use your LSC funds for a prohibited
10 purpose, then you also can't use your private funds.

11 And then they had exceptions for that for
12 attorneys, law firms, entities of attorneys, or public
13 defender programs, or projects of a legal aid society. And
14 we attempted to implement that.

15 However, looking at the law, as we were dealing
16 with transfers and other issues, we realized that the new
17 legislation, the Appropriations Act, makes it more difficult
18 to apply that exception as broadly as the LSC Act does. And
19 that for many of these situations, anyway, they would be
20 taken -- at least when it deals with a transfer, they'd be
21 taken care of in the transfer language.

22 And we feel that now the exception in 10.10(C)

1 really only applies to legal aid -- legal aid programs that
2 have a public defender -- only applies to their public
3 defender program. When the LSC Act was implemented by
4 Congress, they recognized that most of the grantees were your
5 basic staff attorneys, basic field programs, that did legal
6 aid to the poor, and instead of judicare programs or
7 whatever, and there was a big debate in Congress about what
8 type of program they wanted to fund under the LSC Act.

9 But they also gave the corporation discretion to
10 try demonstration projects, or to do contracts with a private
11 attorney, or private law firm, and they didn't want to tie up
12 their private funds.

13 And the one thing they wanted to protect is they
14 knew some of the legal aid societies had public defender
15 programs that did criminal representation. And so we feel
16 that protection still exists in the law. And all we are
17 saying in this provision is that if a recipient or a sub-
18 recipient has a public defender program, the restrictions in
19 this part, dealing with criminal representation, or prisoner
20 litigation, don't apply to the activities done in that public
21 defender program.

22 MS. PERLE: I think that what Suzanne, I think, was

1 trying to say is that what we are trying to do with this
2 provision is to say that if under the LSC Act an entity could
3 do criminal representations, that we shouldn't take these
4 restrictions that are now imposed on the entity and prevent
5 them from doing criminal representation, because the
6 restrictions are really -- really deal with civil
7 representation.

8 So that, to the extent that a program has a public
9 defender program that represents people with misdemeanors,
10 which is apparently a fairly common kind of project, and it
11 could do the criminal representation, but some of the people
12 are already incarcerated, or some of the people may be
13 aliens, or you know, those are the two principal areas. We
14 shouldn't restrict them from being able to continue to do
15 their criminal representation. We shouldn't allow them to do
16 civil representation on behalf of those people, because
17 that's clearly what Congress did not want.

18 So that's really what this does. And it also deals
19 with court appointments which said that if you're -- if you
20 receive a court appointment, under the same conditions that
21 other private attorneys or law firms in the jurisdiction
22 have, you can take those, regardless of these other

1 restrictions. That's really all. It's fairly narrow.

2 MS. GLASGOW: It's a very narrow protection for
3 public defender programs or court appointments. And that's
4 why we felt that was a different issue than transfer of funds
5 and that's why we --

6 MS. BATTLE: Broke it out.

7 MS. GLASGOW: -- made a new section on the transfer
8 of funds.

9 MS. BATTLE: Okay.

10 MS. GLASGOW: And then if we go backwards to page
11 nine, in the definition of purpose prohibited by the LSC Act,
12 the interim rule took out something that's been in that
13 definition, I think since the rule was actually implemented
14 years ago, dealing with fee-generating cases.

15 And we took it out basically under the theory that
16 the LSC Act doesn't really prohibit taking fee-generating
17 cases, per se. It simply says you have to jump through
18 certain procedural hoops.

19 Revisiting the issue, we feel that what it really
20 says, and what the rule -- fee-generating rule -- really says
21 is, you're prohibited from taking any fee-generating cases
22 that the private bar is willing to take. So it's a limited

1 prohibition and we just felt that it should go back in here
2 and that it really -- what it does is it restricts a
3 recipient's private funds and taking fee-generated cases,
4 unless they first go through the process of making sure the
5 private bar doesn't want those cases.

6 If the private bar doesn't want them, they can take
7 them. And we felt that was not too great a burden to
8 continue. Basically, it's been an historical part of the
9 definition from the corporation.

10 MS. BATTLE: Well, the only thing -- the only
11 concern I have, when you put it back in, does it communicate
12 that you're restricted from taking fee-generated cases, or
13 does it communicate that you may take fee-generated cases
14 under our reg, which --

15 MR. TULL: It's the latter.

16 MS. BATTLE: Okay.

17 MR. TULL: It was taken out in the interim rule
18 really on a -- almost a semantic basis, which is a very
19 narrow question about whether, when you say you can't take
20 cases -- the act says you cannot take -- a program cannot
21 take fee-generating cases, except pursuant to rules adopted
22 by the corporation. And whether that is a provision or not

1 is really almost a philosophical question.

2 And based on -- one way of interpreting that, the
3 recommendation of the committee was to take it out. It did
4 have the very small impact that it meant that programs could
5 use private funds the same way they can now use public funds
6 to take those cases. That change was read by some people and
7 some members of the congressional staff as being a very
8 significant change, that we were somehow treating this as not
9 a prohibition, saying there was not a prohibition on fee-
10 generating cases.

11 And in light of the fact it was really a very -- it
12 was intended for a very minor purpose, but it was read as
13 having a significant symbolic value, our judgment was that --

14 MS. BATTLE: To put it back in, and leave it --

15 MR. TULL: -- we should put it back in.

16 MS. BATTLE: -- the way it was.

17 MR. TULL: It will have --

18 MS. BATTLE: All right.

19 MS. PERLE: And I don't think that from the field
20 perspective it was going to have a significant enough impact
21 for any purpose that it was -- it was something that we
22 really needed to dig our heels on. And I think that the --

1 that we didn't get any comments from the field saying that
2 this was an important issue for them.

3 MS. BATTLE: Okay.

4 MR. MCCALPIN: I think you may need to give some
5 elaboration of that in the commentary.

6 MS. GLASGOW: Yes.

7 MR. TULL: Yes.

8 MS. BATTLE: Okay.

9 MR. TULL: There is one other change which you
10 don't have and I promise this is the last.

11 MS. BATTLE: Okay.

12 MR. TULL: I shouldn't promise that. That's a
13 dangerous thing to do.

14 On page 12 and 13, the very bottom of page 12,
15 1610.5, notification, and the full text is on page 13.

16 We received a comment literally this morning, faxed
17 by a Native American program, who -- with regard to the
18 notification section and what it requires, who pointed out to
19 us that because tribal funds are not covered by the
20 restriction -- the 504 restrictions, that is a program which
21 receives tribal funds can use them for activities which would
22 otherwise be prohibited under the Appropriations Act, that we

1 shouldn't require them to notify the tribe that they are
2 prohibited when, in fact, they can do them.

3 And the way this language would read, it could be
4 read to require them to give notification of restrictions
5 which don't apply to them.

6 So the suggested change would be to Paragraph A.
7 The last clause that begins "that the funds may not be
8 expended for any purpose." The second to the last line. To
9 change that so that it would read "of the restrictions which
10 apply to those funds," so that the whole section would now
11 read, "except as provided in Paragraph B of this section, no
12 recipient may accept funds from any source other than the
13 corporation, unless the recipient provides written
14 notification to the source of the funds of the restrictions
15 which apply to those funds."

16 It would also solve another problem which -- which
17 is that some of the restrictions which are in the act, but
18 not in the -- in Public Law 104-134 --

19 MS. BATTLE: Do we strike the rest of that?

20 MR. TULL: Correct. And the rest of the funds --
21 the rest of that language is struck.

22 It also solves the problem that restrictions in the

1 act, but not in the Appropriations Act, which can be -- in
2 which a program can use its public funds to do those
3 activities, that similarly we would not require them to
4 provide notification about restrictions which don't apply to
5 those public funds.

6 MS. BATTLE: Okay. Anything else from anyone?

7 (No response.)

8 MS. BATTLE: Given the point raised about clarity
9 for 1610, are we -- are we at a point -- have we clarified
10 all the issues in 1610, or where are we?

11 MS. KENNEDY: I think we have given you all the
12 language that we have talked about.

13 MR. TULL: This is a matter for the commentary, I
14 believe, but Linda raised the issue. The language in
15 1610.7(C), which relates to timekeeping, that what we need to
16 make clear in the commentary is that if a program -- what we
17 say is that timekeeping applies to the funds which are
18 transferred from our recipient to some other entity, that as
19 to those funds transferred, they do have to keep time,
20 consistent with the regulation.

21 What Linda asked that we make clear in the
22 commentary is that if the program that is the entity, which

1 is the -- which receives the funds from one of our
2 recipients, has a timekeeping system, it does not have to
3 adopt a new and special one, which directly addresses our
4 funds, if the one that they have would sufficiently establish
5 that they are using the funds for -- not using the funds for
6 a prohibited purpose, and that seems perfectly appropriate.

7 MS. BATTLE: Okay.

8 MR. MCCALPIN: Is there a compelling reason to
9 adopt this as final at this time?

10 MR. TULL: We did -- the comment regarding the fee-
11 generating cases was one which was raised with us.

12 MR. MCCALPIN: The what?

13 MS. BATTLE: Fee-generating cases.

14 MR. TULL: Regarding the fact that we had treated
15 fee-generating cases not as a prohibition -- as a
16 prohibition, is one.

17 And the other is, there is a significant concern
18 with bar associations, specifically right now, because they
19 are having to address the question of whether they are going
20 to unmake a set of relationships which have existed over
21 time. And the interim rule would suggest that they would
22 need to do that.

1 So I would suggest that, again, this would not be
2 effective until the 31st. The language in the interim rule
3 does not specifically say -- it refers to 1627, and our
4 interpretation of it, and our interpretation in the interim
5 rule is stated in a way which has suggested to bar
6 associations, because of the program letter that we sent out,
7 that they -- that bar associations are bound by the
8 restrictions as to all their funds.

9 It would be helpful if it were adopted and that we
10 could then send the program letter, advising programs that as
11 to bar associations, et cetera, and other entities involved
12 with private attorney involvement, that they -- that they
13 don't have to unmake those relationships. So there is a
14 reason for acting now.

15 MS. BATTLE: So we should really be prepared
16 tomorrow to present to the board 1610, 1617, 1632, and 1633,
17 based on our discussion today, subject, of course, to the
18 commentary being developed and approved by the chair.

19 MR. TULL: Correct.

20 MS. BATTLE: Okay. Do I have a motion with regard
21 to 1610?
22

M O T I O N

1
2 MR. MCCALPIN: Same motion as before.

3 MR. ERLENBORN: Same second.

4 MS. BATTLE: Okay. It's been properly moved and
5 seconded. All in favor?

6 (A chorus of ayes.)

7 MS. BATTLE: Same favor, huh? Okay.

8 MR. TULL: I would point out, we have the advantage
9 that everyone is so exhausted, the chances of coming up with
10 any new language is --

11 MR. ERLENBORN: Let's throw all these other regs
12 out then.

13 MR. MCCALPIN: This is exactly what happens the
14 last day of the congressional session.

15 I have just gone over 37 1/2 hours for this week.
16 Do I have --

17 (Laughter.)

18 MS. BATTLE: We'll give you compensatory time.
19 We'll give you a month off, Bill.

20 Well, thank you, very much, to our staff.

21 MR. MCCALPIN: Do we need a motion to adjourn?

22 MS. BATTLE: Yeah. I want to thank everybody

1 first.

2 I really appreciate all of the work that you all
3 have done and particularly Suzanne because you were involved
4 in both the work that was done on the personnel manual, as
5 well as the work on these regulations, and they are done as
6 professionally as always done by you. I certainly appreciate
7 it, and appreciate, John, your work, and Linda as well.

8 I will now entertain a motion to adjourn.

9 M O T I O N

10 MR. MCCALPIN: So moved.

11 MR. ERLBORN: Second.

12 MS. BATTLE: Okay. It has been properly moved and
13 seconded. By acclamation, we are now adjourned.

14 (Whereupon, at 6:15 p.m., the joint meeting of the
15 Board of Directors and Operations and Regulations Committee
16 and Provision for the Delivery of Legal Services Committee
17 was adjourned.)

18 * * * * *

