

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPERATIONS AND REGULATIONS COMMITTEE

OPEN SESSION

Friday, February 4, 2005

4:48 p.m.

The Melrose Hotel
Potomac I and II
2430 Pennsylvania Avenue, NW
Washington, D.C.

COMMITTEE MEMBERS PRESENT:

Tom Meites, Chairman
Lillian R. BeVier
Michael McKay (by telephone)
Frank B. Strickland, *ex officio*

OTHER MEMBERS PRESENT:

Robert J. Dieter
Herbert S. Garten
David Hall
Maria Luisa Mercado
Florentino A. Subia
Ernestine Watlington (by telephone)

OTHERS PRESENT:

Helaine Barnett, President
Danilo Cardona, Director, OCE
Diedre Crockett, OCE Staff
David de la Tour, OCE Staff
Ronald Merryman, Acting Asst. IG for Audit
Tony Ramirez, OIG Staff
William Sulik, OCE Staff
Bertrand Thomas, OCE Staff
Richard (Kirt) West, Inspector General

C O N T E N T S

	PAGE
Approval of Agenda	3
Approval of the Committee's meeting minutes of November 19-20, 2004	4
Approval of the minutes of the Executive Sessions of the Committee's meetings of November 19-20, 2004	4
Briefing by OIG and OCE on Compliance Responsibilities	8
Consider and act on Mr. Dean Andal's petition for rulemaking to amend LSC regulations on Class Actions, 45 CFR Part 1617	
a. Staff report	
b. OIG's report; and	
c. Public comment	
Other public comment	
Consider and act on other business	
Consider and act on adjournment of meeting	
MOTIONS: 4, 4, 5	

P R O C E E D I N G S

MR. MEITES: I call the Operations and Regulations Committee meeting to order. Is Mike on the line?

MR. MCKAY: I am.

MR. MEITES: Good. Well, it is good to have you behind us.

MR. MCKAY: Thank you.

APPROVAL OF AGENDA

MR. MEITES: The first item is approval of the agenda, but I would like to move that the agenda be amended in two respects. Item 6 and 7 both use the word "briefing" and apparently that is not the word of art that we are supposed to use. We are supposed to use the word "update." I will entertain no discussion as to why. Did I screw it up already?

A PARTICIPANT: It is backwards.

MR. MEITES: Backwards. My says briefing. All of ours says briefing. I am getting expert opinion. It says briefing. Item 8. Okay. I understand. Item 6 and 7 are fine, but item 8 used the word "update," it should have used the word briefing.

So I will entertain a motion to amend the agenda by wording the word "update" in item 8.

M O T I O N

MS. BeVIER: So moved.

MR. MEITES: And a second?

MR. McKAY: Second.

MR. MEITES: And it passes.

APPROVAL OF THE COMMITTEE'S MEETING MINUTES
OF NOVEMBER 19-20, 2004

MR. MEITES: Okay. The next item on the agenda is approval of our meeting minutes for the meeting of November 19 and 20, 2004.

M O T I O N

MS. BeVIER: Move they are approved.

MR. MEITES: Seconded?

MR. McKAY: Second.

MR. MEITES: And they are approved.

APPROVAL OF THE MINUTES OF THE EXECUTIVE SESSIONS
OF THE COMMITTEE'S MEETINGS OF NOVEMBER 19-20, 2004

MR. MEITES: Next is approval of the minutes of the executive sessions of our meetings on November 19 and 20, 2004.

M O T I O N

MS. BeVIER: Move approval.

MR. McKAY: Second.

MR. MEITES: And they are approved.

The next item on our agenda is consideration of the notice and act on notice of proposed rulemaking on financial eligibility, 45 CFR Part 1611. And I have a suggestion, Mike and Lillian, as to this.

I spent most of this morning all of the other parts of 1611 as we have spent a great deal of time on group representation and retainers, but there are numerous other proposed changes in the proposed rule from what we now have. I also reviewed a staff report and on the -- brief staff report on the rest of 1611 and I read very carefully the draft notice of proposed rulemaking.

There is, in my view, no way that we can complete or even make a meaningful dent in our discussion of the rest of 1611. In addition, we have received comments from the Inspector General on the group representation and the retainer provision. Those are provisions we have -- our committee has already

passed on, but the Inspector General asked us to take a further look.

What I would propose, Mike and Lilian, that we call a special meeting of our committee not linked to a board meeting, but at a convenient time and place, which we will devote a day or two days, whatever we agree is necessary, to consideration and reaching a final recommendation on 1611.

MS. BeVIER: I really endorse that. I am not looking forward to that particular day, but I think it is important for us to -- we have done this in bits and pieces and we have only done a certain aspect of it and you are quite right that there is a lot of the rule that is being changed and we just haven't paid any attention to it and I think we need to and I am certainly inclined to think that that is a good idea.

MR. MEITES: And Mike, in addition, because of your situation, you have not been able to study the rest of 1611 and so I believe you also would need time to study the remainder. Does that make sense to you, Mike?

MR. MCKAY: Yes, I agree with both of you.

MR. MEITES: All right. Now Victor will tell us how we will call such a meeting, but we will figure out how to do it and it will be noticed in the appropriate fashion so that everyone will have a chance to make appropriate comment. So I will -- unless the staff or the OIG believe there is a need to say anything more at this time on 1611, I will ask for any public comments on 1611.

(No response.)

MR. MEITES: Hearing none, Lilian, do you want to -- I don't know if we need a formal motion. Why don't we just defer action on this. Is that satisfactory?

MS. BeVIER: Yes.

MR. MEITES: Okay. We will defer action to another meeting of this committee.

Helaine has told me that a number of her staff members are present for item 6, which is a briefing on compliance responsibilities, in the hope that we can finish this afternoon so that people don't have to come back tomorrow morning. At this time, we will turn to item 6. So if the people who are prepared to item 6

are here, if they come forward, we can begin.

Good afternoon, gentlemen. If you can introduce your name and your position, please.

BRIEFING BY OIG AND OCE ON COMPLIANCE RESPONSIBILITIES

MR. CARDONA: Thank you very much, Mr. Chairman. My name is Danilo Cardona. I am the director of the Office of Compliance and Enforcement. I have been the director of the Office of Compliance and Enforcement for the last nine years; precisely, since November the 15th, 1996, when I was appointed to the position.

The staff of the Office of Compliance and Enforcement is constituted by 12 attorneys, 2 accountants and 2 support staff. We have convened here to -- instructed to make a presentation to the Board with regards to the functions of the Office of Compliance and Enforcement and therefore we are going to proceed with it.

I have distributed some exhibits numbered 1 through 4, which describe the Office of Compliance and Enforcement, and it offers two products -- as samples of two products that are major, two products that we

deliver at the Office of Compliance and Enforcement. One of them is the results of complaint investigations and the other one is a report resulting in a compliance review called CSR/CMS review that stands for case service report/case management systems reviews.

I will take leave to proceed and describe what the missions and the functions of the Office of Compliance and Enforcement are. The Office of Compliance -- the main mission of the Office of Compliance and Enforcement is to review recipient compliance with the LSC Act, regulations, instructions, guidelines and grant assurances and further, to respond promptly and effectively to inquiries and complaints pertaining to recipients filed by members of the public.

This is -- two items of our eleven functions can be considered geared externally. One is to respond to congressional and White House inquiries and number two is to review and assess and respond to public complaints. Another function is to provide prior approvals to recipients for major expenditures. That is under Regulation 1630. A fourth function is to

review and respond to recipients' requests for waivers related to the private attorney involvement requirements, fund balance and fund deficits.

Number five is to review and approve recipient subgrant agreements under Regulation 1627. Number six is to review and approve recipient's retainer agreement under Regulation 1611.8. Number seven is to review and process disaster relief emergency grants to recipients.

Function number eight is to provide follow-up to the referrals of findings by the Office of the Inspector General through the 850 referral process.

Number nine is to initiate any follow-up question caused by matters under Regulation 1630. Number ten to investigate recipients' compliance with the regulations recipients agreed to abide by them accepting federal funding. And number eleven, function number eleven, is to review and assess equal employment opportunity statements, sexual harassment policies and notice of handicapped accessibility.

The way that we have designed this presentation so far is that we have four persons here who will describe the main areas of responsibilities of

the Office of Compliance and Enforcement.

Mr. William Sulik will describe how we investigate complaints, Mr. Bert Thomas will investigate how we conduct on-site reviews, Mrs. Diedre Crockett will describe how we process subgrant agreements, how we process disaster relief grants and Mr. David de la Tour will finally talk about one of our main components also of the Office of Compliance and Enforcement functions, which is accountability trainings and new executive director trainings in our visits to help recipients better comply with the regulations.

So with that in mind, if I can turn to Mr. William Sulik so he can explain how we go about doing some complaint investigations.

MR. SULIK: Thank you. My name is Williams Sulik. I am an attorney on the Office of Compliance and Enforcement. I have been involved with Legal Services since an internship with Legal Services of Northern Virginia just across the river here in 1980. I have been on staff since 1986.

I really love legal services and I have been

involved with legal services for over 20 years because it serves as the protectors and guardians of the poor.

Of course this brings to mind the age old question, who guards the guardians. I believe this role is filled by the Office of Compliance and Enforcement and its many functions that it serves. I am here to address one of those functions and that is the review of complaints.

Last year OCE closed 113 formal complaint reviews. Complaint are received from applicants to legal services, clients, members of Congress, opposing parties in litigation and third parties. In addition, we receive complaints from -- referred by other officers, including the Office of the Inspector General and the Office of Program Performance.

The single largest category of complaints received is from applicants who are denied assistance.

A review of those complaints closed in 2004 disclosed that nearly half, or 48 percent, were for denial of representation. Since there is no entitlement to civil legal assistance, there is little that can be done for these complainants. Rejected applicants are referred

to the local legal aids' grievance procedure.

The second most frequent complaint we receive is inadequate legal assistance. This occurs when an attorney client relationship has been created and the client is dissatisfied with the assistance provided, either the level of service or the quality of service.

These inadequate assistance complaints accounted for 14 percent of the complaints closed in 2004.

Complaints related to the level of service typically occur when the client has the hope or expectation of an extended representation relationship.

In cases where there is a court hearing and the program, through clinics and the preparation of pleadings, prepares the client to represent themselves in a hearing, the client may contact LSC seeking to obtain more extensive representation. In these instances, actually indeed with all complaints of inadequate representation, the client is referred back to the program's grievance procedure.

Complaints about the quality of assistance run the spectrum and may be as simple as a missed deadline or failure to communicate with a client or it may

become more complex. These cases are best resolved by the local program's grievance committee, which can hear the client's concerns and speak with the program staff and evaluate those concerns in light of local practices.

If having gone through the grievance process, the client or applicant still wishes to pursue the matter, OCE will evaluate and may follow up if there appears to be a violation of the LSC Act or regulations. In such an instance, OCE would review the substance of the complaint and the program's actions. Moreover, we would look at the findings of the grievance committee to determine whether the complainant was given an adequate opportunity to present the grievance.

An example of inadequate legal assistance is set forth in the materials that we passed out to you and that -- this, in particular, would be the redacted March 5, 2003, letter to a complainant. Here we have advised the complainant to pursue his grievance at the local level. He indicated he had done so, but the program would not give him a grievance hearing. In

such an instance, we will obtain written authorization from the complainant and contact the program and in effect, will conduct a paper review of that person's particular complaint.

And this is actually a good point to bring up regarding principle for complaint reviews. Our internal policy, prepared by Mr. Cardona when he was named director of OCE, provides that OCE observes "the letter and spirit of the LSC Act, Regulations, Public Law 104-134 and Fairness toward the complainant and the recipient."

Therefore, regarding the complaint that we provided by way of example, we proceeded with our review seeking to determine whether the complainant's concerns were justified and whether the program had properly responded to them. In this instance, the complainant had alleged that his case fell within program priorities and that the circumstances were sufficiently compelling that it seemed inconceivable that he was denied assistance.

Once we contacted the program and obtained an explanation and copies of materials, we found a

decidedly different story. In brief, at this point in our review, the matter becomes one of simply applying the facts and the law based on the evidence to make a determination. In our example, we found no violation by the program and explained this in detail to the complainant addressing each concern raised.

While complaints regarding denial of service and quality of service account for nearly two-thirds of the complaints received, they actually take a small amount of the time and resources to resolve. On the other hand, complaints received from program staff, that is employees of local legal aid programs, accounted for just over 5 percent of those closed last year; nevertheless, these frequently demand a large amount of staff resources to investigate. Each of these complaints are unique and really can't be reduced to generalities.

OCE is careful to explore these complaints critically to avoid being used by disgruntled staff against program management. We are thorough in our initial review and may close these without needing to contact the local programs, yet after an initial

assessment, if there is a basis for conducting a review, these may require an on-site investigation.

I believe the gravity of these complaints can best be seen in their resolution. Only two of the complaints closed in 2004 were closed with a finding of a violation and both of these were staff originated complaints.

Another type of complaint received is that from opposing parties who are plainly trying to cut off litigation. In these instances, LSC walks the fine line between appropriate oversight and not inhibiting proper litigation on behalf of the client. Most typically, this comes in the form of a complaint that the client is over the income guidelines. Income eligibility complaints accounted for 5 percent of the closed 2004 complaints.

When complaints are received from opposing parties, OCE scrutinizes closely to ensure there is a basis for the allegation. For example, when it is alleged the client is over income, we want the complainant to provide significant numbers. We look at -- we ask for the income, the source of the income,

the source of the knowledge of the income, the number of persons in the household and any other factors which might be known.

Based on this, we will give the complainant an idea of whether the person might, in fact, be over income or whether they might be qualified for services.

In addition, we will advise the complainant that the case may be funded with a non-LSC grant in which case the eligibility ceiling may be higher. For example, the Violence Against Women Act grants made by the Department of Justice uses 200 percent of the federal poverty guidelines as a ceiling instead of 125 percent, which LSC uses.

We also advise the complainant that while we will make appropriate inquiries, we are prohibited from disclosing what we have learned to anyone outside of LSC. We will not disclose the client's income, in other words, that we receive from the program.

When undertaking such a review, we will contact the program and disclose the complaint, the fact that there is a complaint, including all the allegations produced by the complainant and seek to

determine the funding source and what the applicant told the program. As you can imagine, the demand for services being what there are, there really aren't a lot of programs seeking to represent over income clients; however, it does help that on occasion that a program represents an over income client.

In most instances, it turns out that a client has not adequately disclosed all income to the program.

In one instance, which actually took place about a dozen years ago, a branch office in a rural program was found to be applying the criteria incorrectly. The director of this program conducted his own audit of files, made the determination that a handful of clients were represented who were, in fact, over income. In this instance, his initial reply to LSC was an admission and a check for costs incurred by the program, which LSC may or may not have questioned.

This essentially brings us to remedies in the case of a complaint. LSC advises each complainant that while we review and respond to each complaint, we do not have the authority to provide individual redress to each complainant. We tell them we are not a court; we

cannot award damages.

If we find a violation, we will always seek remedial action, a revision of program policies or practices, which allowed the violation to happen. Generally we will ask the program to provide a plan of corrective action and work with the program to ensure it adequately addresses the problem.

In some instances, where the program has violated an expressed prohibition and has expended LSC funds, we will question all the costs incurred in such a matter in addition to requiring corrective action. In all cases when the review is completed, we notify both the complainant and the executive director of our findings.

This has been a brief overview of the complaint process and really only touches on the more typical complaints received. There are really many other types, such as the solicitation of clients or outside practice of law. When our presentation is completed, I will be glad to answer any questions you might have. I would like to turn the floor now over to Mr. Bertrand Thomas who actually trained me when I

first started at LSC back in 1985.

MR. THOMAS: Good afternoon. My name is Bertrand Thomas and I am also an attorney within the Office of Compliance and Enforcement and I have been with LSC off and on, in one capacity or another, since I guess I trained Bill.

I have been asked to acquaint you all with the process involved in the conduct of case service report, case management system on-site reviews, or more commonly referred to as CSR/CMS reviews.

As you all are probably aware, as a result of congressional inquiry in the late eighties, early nineties and findings by the Government Accounting Office, the Office of Compliance and Enforcement undertook to assess the accuracy of case service reports submitted to the Legal Services Corporation by recipients.

The purpose of these CSR/CMS visits is quite simply to assess compliance with the CSR instructions, the LSC Act and the LSC regulations. These visits begin by selection of the recipients. The recipients are basically selected for a visit based on

self-inspection results, the length of time since the last visit, complaints. That is basically the criteria.

An initial phone call is made by the Office of Compliance and Enforcement to the recipient advising the recipient of the purpose of the visit as just stated. There is a discussion involving -- concerning the conduct of the visit, the types of information to be reviewed. And this discussion also includes OCE's access to information in the conduct of that review.

There is a determination made that the recipient is engaged concerning the number of offices, the number of staff, the distance between its offices, a number of other logistical concerns. As well, there is a discussion of dates of the visits. This is a -- pretty much a negotiation between compliance and enforcement and the recipient, although compliance and enforcement generally has a time frame in mind. This discussion is memorialized and that memo is submitted to Mr. Cardona and submitted to the person who is selected as the team leader.

In selecting the team leader, the team is also

selected. Team selection is pretty much a function of the recipient, the size of the recipient, the duration of the visit, the number of cases closed, any particular issues that might have become apparent during that initial phone call.

About the same time that this memo memorializing the phone call is issued, there is a letter that goes to the recipient that memorializes the phone call. It discusses the dates of the visit, once again the purpose. There is, again, a discussion of access consistent with the access protocol enacted by LSC and as well, this particular letter contains a list of items that OCE will require or more particularly, materials that OCE will require during the visit.

These materials include the case list, financial documentations, staff lists, materials relevant to a recipient's private attorney involvement component, materials relevant to the recipient subgrants and the like. The letter is provided to the team leader, who is then encouraged to contact the program. The idea of a team leader contacting the program provides an opportunity to develop a dialogue

between the team leader and the recipient.

I probably should digress and add that in assessing compliance with the CSR instruction and the LSC Act, the CSR/CMS reviews are, to a large extent, intended to sort of diagnose and define CSR issues. This is not necessarily a "gotcha" proposition. Consequently, the relationship building is encouraged within compliance and enforcement.

This discussion between compliance and the team leader and the recipient goes over much of the information that is contained in the letter, identifies the team and ensures appropriate access. Following that discussion, there is a letter -- a second letter that goes to the recipient that memorializes the level of access that LSC -- that OCE will have during the course of the visit.

Pending the review -- pending the receipt of the documentation requested in the first letter, there is review of available documentation concerning the recipient: financial eligibility policies and procedures, priority statements, equal opportunity statements. All of those documents that may -- that

LSC may have or that may be required as part of the reporting requirements.

Once the, for instance, the case list is received, it is then the responsibility of the team leader to make a selection of cases. The cases are selected randomly. The random selection may or may not be statistically representative.

The size of the sample selection may depend on -- well, it generally depends on the number of individuals on the team, the duration of the visits and the number of cases closed by the recipient as well as the scope of the review. Many of these CSR/CMS reviews cover approximately three -- go back probably two years.

For instance, visits now might request case lists of all cases closed in 2004 -- or 2003, closed in 2004 and open as of, for instance, February the 4th, 2005, And there would be a certain number of cases selected from each of those classes of cases if you will.

Generally, once the sample is selected, a work plan is developed by the team leader. The work plan

serves as a guide to those members of the team on the areas of the review. The team -- the work plan is submitted to Mr. Cardona for his approval and signature. Thereafter, the visit commences, commences with an on-site -- with an entrance conference when there are introductions between the recipient and the team.

Again, the recipient is advised of the purpose and the process of the review. There is a discussion of how the team will be deployed in those instances where the recipient may maintain more than one physical location. It is also an opportunity for a recipient to discuss with the team any particular concerns that it may have relative to compliance, whether it be regulatory compliance or compliance with CSR instruction.

When the review begins, the review generally includes an assessment of a recipient's intake, its financial eligibility policies and procedures, its citizenship alien eligibility policies and procedures, as well as the practices, policies and procedures relative to priorities, CSR instructions and many of

the other LSC regulations such as fee generating cases, legal assistance in criminal proceedings, legal assistance in collateral class actions, attorneys fees, legal assistance to prisoners, legal assistance in narcotics related evictions and so on.

There is also a discussion with the program as well as the --

MR. CARDONA: Assisted suicide.

MR. THOMAS: Oh, yes, assisted suicides, selected service acts.

MS. CROCKETT: Abortions.

MR. THOMAS: Oh, yes abortions, redistricting.

I sound like the regulations at this point.

There is also an assessment of the recipient's compliance with those case management aspects of the CSR instructions. And by that I mean, the CSR instructions relative to duplicate reporting, ensuring that cases included within a recipient CSR data submission are cases that are timely closed.

The other one would be an instruction by LSC several years ago to remove from its automated case management system defaults as to assets, as to

citizenship. There is an assessment of the recipient -- of many of the recipient's forms: retainer agreements, intake forms, opening memos, closing memos.

All of this takes part in interviews as well as case reviews.

The case reviews, however, focus probably more on financial eligibility determinations ensuring that they are proper, that the cases are within priorities, that the documentation requirements of part 1626 on citizenship alien eligibility are met, that there is compliance with the CSR instructions on, as I have stated, timely closing, duplication, proper application of the CSR case closing categories as well as those other regulations that I, with Mr. Cardona's help, have recited.

MR. CARDONA: You missed client statements of facts.

MR. THOMAS: Oh, yes. Client statements of facts as appropriate. The other part of the CSR review is a fiscal review. And the fiscal review is basically designed to ensure a recipient's compliance with those aspects of part 1614 or private attorney involvement,

ensuring that the expenses allocated to a recipient's private attorney involvement component are indeed appropriate. The other aspect is part 1635, which is timekeeping.

At the end of the review, there is an exit conference where recipients are presented with preliminary findings. Understanding is attempted with the recipient, but the preliminary findings are not particular etched in stone.

I recently returned from a visit where my team reviewed some 390 cases. So you can imagine it is kind of difficult that after five days to tell anyone with any scientific degree of certainty what I found in 390 cases over five days, but more often than not, the preliminary findings are extremely accurate.

The exit conference is also an opportunity for LSC to -- OCE to discuss with the recipient the process that follows from the exit conference. Generally that process is the team members are required to submit individual reports within 10 days, which are all synthesized into a draft report that is then submitted to the recipient for comment. The recipients are given

30 to 60 days to comment.

OCE receives those comments, they are carefully considered and where revisions, modifications, corrections are warranted, they are made, but in any event, the recipient's comments are incorporated into a final report that issues to the recipient.

The final report -- some final reports -- well, most final reports contain a corrective action plan. The corrective action plan is designed to assist a recipient in complying with CSR instruction or other regulatory concerns identified during the course of the visit. It should be noted that between the time of the draft report, which also issues with the corrective action plan, and the issuance of the final report, most recipients have taken the requested corrective action.

I think that pretty much describes the process and conduct of CSR visits and I will remain in the event that any of you have any questions. Thank you.

MS. CROCKETT: Good afternoon. My name is Diedre Hamler Crockett and I have been with the Office of Compliance and Enforcement as an attorney since

January of 2001. I will be discussing, briefly, the in-house functions; specifically, the 850 follow-up functions, the subgrant approval process, the prior approval process and granting of disaster relief.

The 850 follow-up process is an audit referral follow-up process that is integrated and coordinated between LSC management, in this case the Office of Compliance and Enforcement, and the Office of Inspector General. By this process, the OIG refers audit findings and grantees' independent public accountant and OIG reviewers and other authorized reviewing entities to the OCE for further review.

The referrals are to have OCE either seek corrective action or to address the audit findings by on-site reviews of the program. In accordance with congressional mandates for audit oversight, this process was developed to ensure the prompt resolution of grantees' audit findings and the implementation of required corrective actions.

Records of actions taken to ensure compliance by the grantees are maintained both by the OIG and the OCE in an interactive database that is called the Audit

Information Management System and it is affectionately called AIMS. We also keep hard files of all of our activities in our respective offices.

In 2004, 21 audit findings representing 15 grantees were referred to OCE for 850 follow-up. Such findings ranged from grantees' failures to document and publish policies and procedures to inadequate bank reconciliations and insufficient private attorney involvement expenditures. OCE followed up with all such referrals and to date awaits evidence of corrective actions from two such grantees. So far in 2005, the OCE has responded to two OIG audit referrals.

I will now discuss subgrants under 45 CFR Part 1627 of the regulations. The Office of Compliance and Enforcement has the responsibility to review and approve all subgrant agreements. A subgrant is any transfer of LSC funds from a grantee to a qualified subgrantee. The purpose of a subgrant, generally, is to conduct certain specified activities supported by the grantee and related to the grantee's programmatic activity.

Such activities usually take the form of

private attorney involvement, but also may take the form of co-clinics and to sustain legal services during mergers and transitions. During the terms of these subgrant agreements, substantial changes in the work program or increases or decreases of the particular contract in excess of 10 percent requires Office of Compliance and Enforcement Approval.

LSC regulations require that OCE use these criteria to approve subgrants. All subgrants must be submitted in writing and include the terms and conditions of the subgrant agreement and the amount of funds that is intended for transfer.

Management has 45 days to approve, disapprove or suggest modifications to the subgrant. The subgrant may not be for a period longer than one year and all funds remaining at the end of the grant period shall be considered part of the recipient's fund balance.

Subgrants must provide for orderly termination in the event the grantee is terminated or suspended. Grantees are responsible for ensuring that subgrantees comply with the financial and audit provisions of LSC and funds for the subgrants must be separately

accounted for and recorded. Grantees are responsible for repaying LSC for any disallowed expenditures of the subgrantee and finally, contracts must provide that the same oversight that applies to the recipient must apply to the subgrantee.

For 2005, OCE approved 54 subgrants for a total amount of 4,745,925, prior approvals under 45 CFR Part 1630. Under grant awards -- under all the grant awards, grantees may receive an advanced understanding from LSC to allocate special or unusual costs under the grant awards. Without prior written approval, these costs that I am going to list may not be charged to LSC funds.

Any pre-award costs or costs incurred after the cessation of funding, any purchases and leases of equipment, furniture and other non-expendable personal property in excess of \$10,000 and purchases of real property, capital expenditures to improve real property that exceed \$10,000.

Also, under the LSC Property Acquisition and Management manual, which we call the PAM, prior approvals for such expenditures must contain these

particular items. OCE receives prior approval requests from the grantee and the request must contain three quotes of competitive bidding on the item that they would like to purchase, a letter of memorandum containing a statement of need for the item, a brief description of the property to be acquired, the quantity and the total dollar amount for the property and finally a brief description of the acquisition process including the name, the sources, the amounts of the quote, a reason for selecting the particular supplier and an explanation of circumstances in the event that three quotes cannot be provided.

In 2004, OCE processed and granted 30 prior approvals for leases and purchases of personal property, such as telephone systems, copiers, computers and automobiles and for improvements of real property amounting to approximately \$1.5 million. Also under that same regulation, Part 1630, OCE provides prior approvals for the purchases of real property. The PAM also covers the criteria for assessing whether these purchases may be made.

The criteria under PAM require, from the

recipient, a statement of need explaining how the acquisition will further the delivery of legal services to eligible clients, a description of the location of the property in terms of client accessibility, an analysis of trends in funding and program staffing levels in relation to the space needs, a statement whether the property will replace or be an addition to existing offices, a brief analysis comparing the cost of acquisition versus the cost of leasing, a current independent appraisal, documentation of board approval, a statement of handicap accessibility, a statement of the acquisition agreement, an explanation of anticipated funding and, finally, a property interest agreement that is created with LSC that we prepare in the Office of Compliance and Enforcement.

In 2004, the Office of Compliance and Enforcement processed property acquisitions for four grantees amounting to purchases of real property valued at approximately \$3 million.

Finally, I will discuss disaster relief. The Legal Services Corporation has been able, on occasion, to provide special funding to meet the emergency needs

of programs in a federally designated disaster areas. Recipients submit requests in writing to the president of LSC and in real emergency situations, may make a call to OCE and we will continue a request by telephone.

When such funds are available, the Office of Compliance and Enforcement reviews and makes recommendations on the requests for such emergency funds and makes the recommendation to the executive office. In 2004, approximately \$400,000 was made available from grant recapture to serve victims of Florida hurricanes. Such funds provided needed programmatic support for three programs in the affected areas in Florida. And that is the end of my report. Thank you very much.

MR. DE LA TOUR: Good afternoon. My name is David de la Tour and I am particularly pleased to be able to make to you the technical assistance and training presentation. Coming from a family of teachers and professors, I am the only one that came off the ranch and became an attorney. So they are very proud of me that I managed to find a way to still work

this into my job.

In this area, I think it is important to give you a sense of the history because these projects, which I am about to talk about, which are basically technical assistance reviews, will be called accountability trainings and new executive director orientation, all relative new. And they came up in terms of us looking at the most effective way of getting our jobs done.

Let me say that a different way. They must be nice, they may be simple, but these are just not nice, simple things that do. These are very effective engaged tools that we use with the ultimate goal of assuring to you and to Congress that programs comply with the Act and regulations and things that they have to do.

But with that said, a lot of programs just want to know what they need to do, especially in the situation where we may have merged three programs, they have three different systems, people are confused as to who did it right. We can show up at that juncture and help them walk through that process a lot easier than

they can do it themselves. That can take the form of training or technical assistance.

Let me tell you a little bit about the very instigation of this. Under our President McKay, when we had the CSR question that came from the Hill, it was very apparent that year and the year following that we weren't quite sure what was going on, that there had not been a priority at LSC to look at the CSR's and make sure that they were good.

When we had the programs do the first self-assessment that they had to then put into LSC, we had quite a lot of large numbers. We had a number of programs that were 50, 60 percent error rates. We simply did not have the resources at that time to go and visit all the programs. So by necessity, we sat down and said, "We have to do something else." Around that same time, Mr. McKay directed and made available to us a couple of forums at NLADA and in other forums to go and talk to people to try to get the information out there.

What we did at the end of that first year where the self-inspection results came in, is that we

started -- we picked the programs that had high numbers and we went and visited them and we went for two or three days. And we went with no structure, other than we were going to come and try to figure out what is wrong and try to give you clarifying information as to how we can make this better.

What we found early on was receptivity. Again, it took a little while because of course if you call and say, "We are from the Office of Compliance and Enforcement and we would like to come and help you," of course some people might be paranoid, laugh and ask us to tell another joke. But I think after we realized that we could get the word out there that this is something you can use, we have been able to build this up.

So in the first programs we offered to several programs many took it because again, we didn't have the facilities to go out and the resources to go out and take a full team. And with some of the initial directors, they got created with us. For example, our idea was lets get the managers in a room, have them go through some of their files and let's see what is wrong

and see if we can figure out, in a diagnostic way, what they could do to make it simple. Is it a form change?

Is it a system change? Something that would include the statistics on what had happened.

The second director he went to said I have a better idea. Let's have the whole staff do this, which we wouldn't have suggested initially because it sounds unwieldy, but it ended up being spectacularly successful and with that, we have developed a technical assistance review.

So two things so far. We do an accountability training. What is good about that is it can be one program, it can be after their review, it can be before they have ever been reviewed because it is a new program, it can be with actual results that we know about them and we talk to them about. We can do, and we have done it at statewide retreats with multiple programs, it is a little more generic, but it answers questions of those specific people during it. We also can do it in a more national setting, which we have done a couple of times. So that is just one model.

The technical assistance review is much more

specific to a program. Let me give you some idea of how much of these we have done. In that first year, we did about four in that time period at the end of the year. We kind of looked at the model and spotted a few more. We have done as many as zero, which was last year, because sometimes it is opportunity and timing that makes them good. We have two scheduled already this year in the next eight weeks. We did as much as five in the prior year. So the technical assistance review is engaged. Programs have their staff come in and we go and look and we travel around the program.

The other thing I want to talk about briefly, and then just talk about some of the attributes of what we have accomplished with these models, and I think then leave it open for questions for the whole review, is the executive director orientation. It became very apparent to us, with the technical assistance review, that we have new directors.

Some come from outside the community and they have a lot of things to do. They have other trainings to go to that are not -- we are not trying to supplant, but to go through all the labor of what they have to

make sure at what time and to understand what their compliance responsibilities are and to understand what some of their financial oversight responsibilities are, since most of them are attorneys, is new to some people.

We found a couple of opportunities with new directors that were overwhelmed and made it very clear that they would like help and we went and developed what we call an executive director orientation. This is basically for new directors, not necessarily for ones that come up within the program that might have been a strong second lieutenant for a long time, but this is the basics.

Why we know those are successful, the very first one we did, we went into someone who had no financial background who was an attorney, we gave them very specific instructions about what the best role of them would be in looking at internal controls and how they should make sure that there is a segregation of duties at the program such that someone couldn't embezzle. Three weeks later they discovered an ongoing embezzlement.

So from that very get-go, we knew that we were onto something. The person was still working there, they obviously were terminated, but it was about a hundred thousand dollars and ongoing. That person attributed our visit to being helpful for them to look at what they had been told in a different way.

Again, those are also opportunity based. We have to have new directors that come up that may need them or want them, but we have another one scheduled in approximately, I think, a month and a half. So we are always looking for these opportunities to see where it is.

Here is some attributes of what we have accomplished and I think it is important for you to know. The flexibility that these tools allow us are really special. I am very proud of those, personally, on behalf of the unit. For example, if we are in a review and it is clear that there have been a merger or there has just been different management styles, which are leading to confusion, we can say to the program, "Why don't you get everyone on the phone that are your managers and let's solve all these problems while we

are here."

We can also say, "Do you want us to come back and train" and we can do that. Flexible again. A program -- it is a very expensive for a statewide program out west to get all their staff in one place. We don't mind doing the traveling. So we may go to two different centers in the state and provide training.

We will do it for another reason. We have one coming up where a program requested training subsequent to a visit because it was clear to them their staff had too many variant ideas of what they should do, but they were afraid of shutting down service, which we agreed with. So we are going to do one training on Tuesday and one for Wednesday so that if someone has to go to court, they go to the training the next day and just split the staff in half. So we have put a lot of flexibility into the system.

Let me give you an idea. We do an average of about six training trips a year, but I am saying trips because that is not necessarily the total number of training. One training trip last year, for example, was to the Southern California region in which we

covered four programs and at one program we did two different trainings at two different times. So we were actually able to do five trainings and that one trip that goes on the budget as just one trip from OCE.

Another thing about these I think there is a strong accomplishment is it is very participatory. Staff initially will sit there for about the first half hour of a training, maybe the first 15 minutes of a technical assistance review, but once they realize that every question they have ever wanted answered out of LSC they might be able to ask -- not that we have the answer, but they start to really get involved in it and I think this has been a very effective tool especially with the new programs, especially with programs that undergo mergers.

We don't always have the answer and so we bring back to LSC sometimes questions that might -- we start seeing pop-ups, things that might need to be clarified in the CSR handbook that we read it one way, but two different programs read it a different way. So let's add a footnote of clarification. We also generate some Office of Legal Affairs opinions when

questions that come up that are very reasonable that we don't know the answer to because they seemed to be something new.

The other thing I think it is worth mentioning that these are very diagnostic. We have programs that will say come in and help us figure out what we need to do. The one that we are doing in a couple of weeks, they started from just they wanted us to come train, we did that last October, and they asked us to come back and do the technical assistance review to which they insist every staff person must participate, but in ongoing e-mails and conversations, they have now asked us to do two more functions, which is to help them through PAI best practices, because they have inherited a bunch of different PAI plans and they are trying to figure out what is best, and they also asked us to sit down with all of their forums and to just be part of the manager's meeting and to help them make sure that whatever forum they adopt will be okay by compliance.

Let me give you an example. Some program may have a signature line that looks innocuous that says, "I am a citizen of the United States foreign eligible

alien.” The problem with that is we don’t know which they are attesting to and they are supposed to attest to the first and not the second. There is little subtle things people may not get and we are able to help them with those forums.

There is also ongoing other assistance and I think a lot of that is involved around this whole activity area so that programs ones engaged, and Bert touched on this, we have a relationship that opens up.

We may have gone there first doing a formal review and then we open up a technical assistance and the help function will last for several years after.

We may have the director of compliance, which some programs have, just end up putting us on speed dial and have us in their frequent e-mail queue and they send us questions every two weeks. What this has opened up is a relationship with our recipients so that they feel that they can come to the source because again, if we don’t have the answer, we can try to broker that within LSC to find the answer.

All said, this is in development and ever improving and ever going on and I think if we find that

we have some other tool or thing that would be useful, we probably will discuss that as well and it is a busy function right now. We have had a lot of people contact us in the immediate future. It seems to ebb and flow, but I am happy to report to you that there are several programs that are going to be using this to move ahead.

And I want to end on this one thought. The demonstrated results are very important. We are already in the second cycle. There are programs we went to about five years ago and we helped them with the technical assistance review, we went and trained twice and their error rate was 55 percent and then we went back and did a formal review afterwards, 4 percent error rate and those errors were just mistakes. There was no systematic non knowledge of something that they weren't supposed to be doing, it was just simply someone was having a bad day and the error rates below the LSC percentage that makes it a problem.

So we have several programs that we have been able to go back to and document that. And also another -- we have gotten consistent, positive

feedback. There may be some in that packet that were given to you, but I think the most telling positive feedback is we are also in the second cycle where a program has had enough turnover where the director has called us and said, "Can you come back and train again." And we have had three of those recently and it looks like another one is coming.

So I report to you that I think this is a function that we will continue to do and with some great success. I also will be here to answer any questions. Do you want me to turn it over to you, Danilo, or just questions generally. He is speechless.

MR. MEITES: I will start as I have memorized absolutely everything that everyone said. The reason that we asked you to come here were two. One was that our charge, I think as the Operations and Regulations Committee, is to familiarize ourselves with the operations side so we can make intelligent regulations and also to assure ourselves and assure the Board that the areas of activities of the staff are, in a very broad sense, appropriate. Not a detailed sense, but in a broad sense. That was the first reason.

The second one was that we were and remain somewhat confused about the -- any overlap of work between your office and the Inspector General. The second part still remains opaque, I am afraid, and the first two speakers, both of whom gave us some details on work in complaints and compliance sounds, at least to me, very similar to what we hear from the Inspector General in our closed sessions when we get reports from the Inspector General on the investigation that that office has conducted.

Can one or all or whatever of you try to fill us in a little bit on what you do that don't do and what they do that you don't do and how you keep from duplicating each other's efforts or maybe you do duplicate each other's efforts, but go ahead.

MR. CARDONA: I can try to answer you to the best of my ability on that. I think part of the confusion and, you know, if there is duplication, and there is up to a certain extent duplication, is the fault of the United States Congress. Back in 1994 --

(Laughter.)

MR. CARDONA: Truly. Back in 1994 when the

new administration came in at that time, they leveled off completely the compliance function. There was no compliance monitoring as we describe it right now. Prior to that, the Corporation had been doing that for the last 10 years. Congress turned over in 1994 and got increasingly worried about that.

The LSC board at the time turned the audit function over to the Inspector General. That audit function belonged to management. So the management of the Legal Services Corporation at the time was not capable of doing an audit function and fired all the staff. There was no monitoring, there was no on-site reviews at all. The LSC did not have an on-site presence for regulatory compliance up until, seriously, in 1999.

And Congress, then, came up with the restrictions and Congress said, I think, "You are not going to do the function, then we are going to have the Inspector General do it and they are going to do it through a compliance checking through the independent public accountant as part every year the law mandates that the financial statements of the recipients be

audited." And as part of those annual audits, Congress mandated that since the audit function was in the hands now of the Inspector General that they develop a compliance checking so that the auditors would go and do a regulatory compliance checking. That started in 1996.

Still, the Corporation did not do anything during those until the arrival of President John McKay somewhere in 1997 when he instructed me that LSC needed a presence in the field for compliance monitoring. He went to Congress and Congress, in the appropriation of the year 2001, ordered the Corporation to hire investigators at the Office of Compliance and Enforcement to conduct and do what we presently do. And that is my understanding of the whole thing.

Now when a complaint comes, Congress may decide to complain to the Office of the Inspector General. We don't know. If the Inspector General tells us that there is a complaint from Congress, we will know. If he doesn't want to, we will not know.

Sometimes a complaint comes to the Corporation. The Corporation then -- to the president

of LSC or to the director of Governmental Affairs. They, in turn, turn it in to the Office of Compliance and Enforcement for investigation; however, there is a rub there. If the complaint refers to waste, fraud and abuse, there is an internal protocol in the Corporation signed in 1993 that is still effective, because management has not revoked it, that says that those complaints go to the Office of the Inspector General for their determination whether they are going to accept it or not because the OIG Act tells them that that is its main function.

If you read the LSC Act and read certain sections of the LSC Act, the compliance monitoring is always a managerial function. It is in there. It is in Section 10.06(B) (1) (a), it is in Section 10.07(B), it is in Sections 10.08(A), 10.08(B) and 10.08(D). It is there galore. And so the Hill has said also that management shall do investigations and so forth.

So to the extent that there is duplication, in my opinion, the management of the Corporation and the Office of the Inspector General should get together and develop a protocol that says when those complaints come

and investigate, we have to decide who is going to take the charge. Before, waste, fraud and abuse was the dividing line, now the line has become more fuzzy.

Also, the Office of the Inspector General can undertake, under effectiveness and efficiency, all kinds of projects like the one that they are evaluating, the private attorney involvement. Yes, there is duplication. You heard it. When we go, we look at the private attorney involvement program with respect to compliance aspects, with respect to the fiscal aspects.

The inspector general prior to this inspector general decided that he was going to do that project and so he did. Whether that project is finished or not, I do not know, but that is the best way that I can explain to you or -- I don't know. I don't attempt to clarify, but to give you the background of how this possible or, in effect, duplication has happened. It is -- the United States Congress has mandated that in reaction to actions from the Corporation and to other political considerations that it is not up to me to discuss here.

MR. DE LA TOUR: Could I add something? Yes, I have something I could add to that. When he says that the compliance function stopped, there were several of us that actually left and came back. So when we talked about the number of years we worked for the Corporation, that is in two different stints.

And I think it is important to know that the staff has always worked in good faith -- there has never been a time to my awareness, and that has been a pretty long time line, in which there has been the same complaint being worked on by two divisions. That just doesn't happen.

What may have happened in the last few years is a complaint has been referred to the IG asking them to tell us whether they are going to handle it or not and we don't find out for a year that they are not and then we get it back. Okay. That was before this current IG. So I think there is room for improvement there, but there has never been a where we are actually doing the same assignment.

There is plenty of work for everyone to do. My understanding, as it has been described also from

prior directors of the Corporation in various roles and the present, is that management's function is to be able to respond in the full spectrum of responses, that they can engage with the programs, they can ask for corrective action. I think some of that is present in the 850 referral process, which is mandated by Congress. The IG is not supposed to necessarily do that, but management makes those decisions.

I think that part of the response that I talked about today of what we do in terms of technical assistance, to add to that, what we also are doing now is starting to coordinate increasingly with our Office of Program Performance because sometimes some of these technical assistance areas might also involve their input and participation together in a program. So we are doing it in a little bit broader spectrum. We are not just finding a violation. We might be thinking what does this mean and what can we do to make it better.

MS. BeVIER: I am not sure that you can actually answer this question because it may be sort of too abstract, but it seems to me that the OIG is -- I

think, Danilo, you started out by saying who guards the guardians and if we do or --

MR. CARDONA: Mr. Sulik.

MS. BeVIER: Okay. I knew that one of you had. I was paying attention sporadically.

(Laughter.)

MS. BeVIER: And I guess that it sort of seems to me that the IG is the independent guardian of the guardians and that to the extent there is duplication, of course you want to avoid it as much as is appropriate, but there is bound to be a little bit of overlap, it seems to me, given that it is the IG's job to take a fresh look, an independent look. And that is why that office was conceived of. I don't know whose idea it was, but it seems to me that that is sort of the function of that office is to check the checkers who check the doers.

MR. MEITES: If the IG -- let me just follow-up. If the IG's office, because I am not sure, find something that they believe is troublesome, do they then send it back to you to do something about it?

MR. CARDONA: Absolutely. They have no

capacity to enforce.

MR. MEITES: So that is the other part.

MS. BeVIER: Right. That is right. Or they bring it to the Board or something.

MR. CARDONA: If we look at the AIMS process, the audit information management system, for example, the idea of the IPA's, when the IPA's do the compliance checking, all right, and then they find something wrong, if they ever find something wrong, I may say, but they do from time to time. We see it. They send -- the inspector general looks at, the Office of the Inspector General looks at it, and then it refers to us for correction and enforcement. That is because the -- it is the structure of the law doesn't allow that.

Now if it is monitoring for compliance, it is a managerial function. Now if you go to Congress, Congress likes, and rightly so, compliance galore. Congress will give you money for me, you, her, everybody else in there to go and do the same thing, to go and do compliance because the first thing they will ask you when you go and ask for money in appropriation,

"What is the status of compliance and enforcement?"

They won't ask you about technology, they will give you money for technology, but they won't ask you about quality of legal services, they will ask you about compliance. That is a specific fact that has been clear to me ever since I have been heading the office in this iteration and in prior iterations of compliance and enforcement. So there it is.

The Office of the Inspector General is sometimes more powerful in investigations. They have subpoena power, which is something that I have been salivating for for many years.

(Laughter.)

MS. BeVIER: Well, they can subpoena, but you can enforce.

MR. CARDONA: Yes. They can subpoena, but I can enforce.

MS. BeVIER: Your glass is half full.

MR. CARDONA: Yes.

(Laughter.)

MR. CARDONA: So there it is, but definitely the -- unless -- of course Congress can decide who can

have it and who can check it for good and so forth, but the way it is right now, the law has split it and that has been the practice of the United States Congress and as most recently the year 2001 when they funded us to hire seven new investigators, they call it, who deal with precisely what we do.

MR. MEITES: Before I get to the Board, Mike, do you have anything that you would like to ask?

MR. McKAY: I don't. I found the presentation very helpful. I really appreciate all the good work all of you are doing.

Tom, I am sorry, I need to ring off now because my appointment, which should have been earlier in the day had to be delayed because of the doctor's schedule. So I am going to have to leave again, but will check in with the Board tomorrow morning.

MR. MEITES: Okay. We will talk to you then.

MR. McKAY: Thank you so much.

MR. MEITES: Questions from Board members?

MS. MERCADO: It is not so much a question, but it is a statement. In the reality that Congress gives -- keeps giving you more and more money for

compliance, just like they have given the IG more money for compliance. And my question to you is that when that is happening on the Hill, what data or facts or information are we providing to the Hill to say, at best, if you even have 4 percent of a complaint that are verified, if even that in a year's period of time, then how is that equal to the money that you are giving us.

Shouldn't this be money that goes to provide direct legal services to poor people out there as opposed to spending not only the hours that you pay for your additional investigators, but the hours that the grantees spend trying to find whatever problems they have committed or may not have committed these hours. I mean, some programs will spend as much as up to a million dollars of their budget in complaints, in constant complaints.

And we know which of the programs that are most actively complained about time and time again and yet you find nothing or very minuscule mistakes or oversight, not anything that is tantamount that is gross mismanagement of federal dollars, of tax dollars,

being used on behalf of poor people. What message are we giving back to Congress on that?

MR. CARDONA: Well, I tell you -- I will answer your question. Accountability is very important. This is not an entitlement program and Congress says they want compliance in order to give you money, but I tell you about if you go look at it, even if you don't find something, programs will slide. That happened in 1999 with the CSR scandals.

They went -- GAO -- to the five largest providers of legal services in this country and they found tens of thousands of cases that were not admissible. They were not eligible for services or the program could not demonstrate that these people were qualified for services. Why? Just because the Corporation slacked in its compliance and enforcement.

It didn't have any and consequently, we lost a third of our funding, a third of our staff internally in the Corporation. It was a disaster.

E V E N I N G S E S S I O N

MR. MEITES: Let me pick up on what you said because I think this is part of a longer dialogue of how we, the Corporation, can more effectively present ourselves to Congress, that from the numbers you gave us, it sounds like the compliance enforcement activities are working quite well and that if that is so, then we should tell Congress that, that the present organization and level of resources is satisfactory. Sure, we could have an investigator for every one of our 150 grantees.

MR. CARDONA: 143.

MR. MEITES: 143. But we don't need them and we have to make sure that Congress knows if we believe that is the case, that what we are doing is pretty much what we need to be doing. And if they hear -- and that is true and Congress hears that message, they are not going to keep giving us money that we don't believe we need and hopefully, to pick up your point, we can get money for other parts of our activities.

So I suppose in terms of message, that it would be helpful -- and Helaine, you should think about

this -- that to quantify the success ratio of our enforcement activities is part of our presentation to Congress both to say don't give us money we don't need, but also to reassure Congress that its concern is being met.

MS. BARNETT: I will respond that I think each year Danilo has committed to how many compliance visits he will do and he has met that quota every single year.

And I think you heard in our breakfast briefing this morning that our budget request this year to Congress will certainly have a substantial section on our compliance.

MR. MEITES: Okay.

MR. DE LA TOUR: Could I add something to that if I could.

MR. MEITES: Sure.

MR. DE LA TOUR: I was involved -- there was a bunch of questions we got from the Hill about five years ago and I remember distinctly one series of questions. It was how many programs have you visited longer than three years, longer than five years, longer -- because we had to put it together and it was

quite tedious.

So we became more aware that they had some sort of measurement in their mind of how often do you actually go out to programs. I think what is important to note is that we are going to some programs this year that we haven't been to for eight years. So I think that you can still say it is effective, but we may not be going some places very frequently.

The other thing I want to add is it is probably a good thing that it is not in the front of our minds, but there have been some serious violations and other things that have been -- occurred in the last five years or so and maybe it is good that we don't know about those up-front because we have dealt with them in a way that they didn't make the front page, but not everything is minor I guess is the best way to say it.

MR. GARTEN: I think we are hearing two different messages. We are hearing from the Inspector General he needs to increase the audit staff and do more investigations, we heard from you that at one time, their function was limited to waste, fraud and

abuse.

MR. CARDONA: That is correct.

MR. GARTEN: And that you had the auditing 100 percent.

MR. CARDONA: That is correct.

MR. GARTEN: And I think to follow up to get the story across, if we understand it now, to Congress that it is very, very important to avoid these duplications because they are not going to be happy to know that there is these duplications.

MR. MEITES: I think that is a separate message to give if we conclude that. Right now, Lilian and I being the experts, have been listening for an hour and a half, certainly have mastered everything, but before the Board is able to tell Congress and management is able to tell Congress that there enough, too little or too much as part of our presentation to Congress. I think we need to hear from the Inspector General for his side of the parallel presentation as to how he sees duplication and how he sees resources not at this meeting, but at a future meeting.

MS. BeVIER: He is on the agenda.

MR. MEITES: I understand you are on the agenda.

MR. WEST: On this subject.

MR. MEITES: Oh, and you are going to speak today?

MR. WEST: Yes. This was an OIG and an OCE presentation.

MR. MEITES: Oh. All right. It is now 6:00. Let us have a full and frank discussion of whether we are going to continue tonight or start with this tomorrow morning. Frank?

MR. STRICKLAND: I think we should inquire about -- I mean, we did run over on our meetings today and -- we were overcome by events, I guess, but what is your estimate of --

MR. MEITES: Well, I can tell you about tomorrow morning.

MR. STRICKLAND: Yes. Why don't you tell us that.

MR. MEITES: If we review our agenda for tomorrow morning, we have two items in closed session. To me they were to be too lengthy. And the

substantive matter we have for tomorrow morning is to continue our discussion of the petition regarding 1617.

I can't imagine that will take more than an hour, can you?

MS. BeVIER: No, I don't think it will. We have already taken quite a substantial amount of time on it.

MR. MEITES: So I would hope that we have two hours tomorrow morning? Is that what --

MS. BeVIER: An hour and a half. I think. Let me see.

MR. WEST: If I can help you, I think I can do this in about 15 minutes and give you some other information that would be useful to your questions.

MR. MEITES: Why don't we start and see how far we go.

MR. STRICKLAND: You only have an hour and a half.

MR. MEITES: All right. Go ahead. Okay. The Inspector General has taken the podium. Why don't you introduce yourself.

MR. WEST: Yes. Good afternoon, Mr. Chairman.

I am Kirt West, the Inspector General. I have on my right is Tony Ramirez, who is one of our staff. He has been with LSC since 1990. From '90 to '96, he worked in the LSC monitoring and compliance unit. In 1996, he was detailed in the Inspector General's office as part of the '96 changes that I will be discussing. Shortly after his detail, he became a full-time staff member.

Tony is both an attorney and a CPA. Herb, we got one that we were talking about. He has an accounting degree from Loyola College in Baltimore, Maryland and a law degree from the University of Texas.

MR. GARTEN: I knew there would be somebody like you around here.

MR. WEST: Yes. And on my far right is Dutch Merryman who is on a one year detail to my office. He was a senior executive at the Postal Service Office of Inspector General. We are paying for him to come over. He is my acting assistant inspector general for audit.

You heard from Danilo some of the things about what happened in '96. I want to stress that the compliance work that I am about to talk about is only one of the many things we do. In fact, this is

something in addition to my responsibilities under the IG Act in Title 5. These were particular responsibilities that were given to my office by Congress in 1996.

So this is above and beyond normal IG work. This isn't just all that my office does. You know, so you understand, we have authority to conduct investigations, reviews of the operations of LSC internally and I would also let you know, and this may help, is we have actually started an audit of OIG and OCE looking at this very question and we met with Helaine and Danilo and others this past week.

We will be doing the survey work of the audit and within three to four weeks, we expect to be -- have some body of work -- we expect to have some work done that we can report back and what we are really looking for is to fully understand what we do, what OCE does. I think we have the same -- I certainly have the same questions and look for areas of -- you know, if there are any areas of overlap, duplication and whether there are any efficiencies that we could say we could work -- together, we could work smarter.

You heard from Danilo the concerns of Congress and in 1996, they gave the IG significant responsibilities and they imposed a certain burden on all the grantees. The burden that was imposed upon the grantees is that every grantee is now required to have an independent public accountant come in and do a financial statement audit, an audit of the internal controls as well as a compliance, an audit of compliance of federal laws. This is done under the guidance provided by my office.

In the 1996 conference report, Congress made a couple of things very clear. With respect to the financial statement, internal control and compliance audits in the conference report, Congress said they were clarifying that only the OIG shall have oversight responsibility to ensure the quality and the integrity of the financial and compliance audit process.

They also put additional language in that report, and it is actually in the appropriations language it has passed from year to year, that it authorizes my office to conduct additional on-site monitoring audits and investigations necessary for

programmatic, financial and compliance oversight. So this just basically gives me general authority to do compliance work and reviews at my discretion and obviously, part of that is to ensure there isn't duplication.

And there was some reference to the private attorney involvement audits. We are stopping those. That was complete duplication. I think it was absolutely unnecessary from what I could see of the work and it wasn't doing what it was intended to do. So we have shut that down because we looked and saw that OCE was doing it. Why should we be doing it if we are doing the same thing.

MR. MERRYMAN: We will be issuing a letter to close out that work with some observations, but we are shutting it down.

MR. WEST: What the -- Section 509 that I am referring to, and that is the section in the appropriations language, that requires the grantees to be audited and have the three different kinds of audits I talked about, those audits are to be done under Generally Accepted Government Auditing Standards in the

guidance established by our office.

So these are what we would call yellow book audits for any of you that are familiar with the yellow book, which really sets forth a methodology that has to be followed. It is what the -- now it is called the Government Accountability Office, the former General Accounting Office, you know, sets forth and these are the auditing standards that all federal auditors follow. And that is imposed upon the IPA's in the field to follow these audits.

The Section 509 also requires that the audits be paid by the grantees and the cost of the audit is shared on a pro rated basis among all funding providers with an appropriate share being an allowable charge the funds provided by LSC. So for instance, if the grantee is getting 40 percent LSC funding, then 40 percent of that audit can be charged to LSC funds.

It also says that the audit costs may not be charged to LSC funds if the audit is not in accordance with the guidance we put forth. As information, Tony was involved in actually developing this -- the whole auditing program that is done as well as putting out

guidance. We -- and I mentioned to you before, we put out guidance to the auditors, to the independent public accountants that work for the grantees, that basically set forth what they need to look at and sets forth certain minimum standards.

We are in the process of revising those because they are somewhat outdated and that will be done I think hopefully by the middle of the year. One of the things that I am very conscious about is that we give very clear guidance to the independent public accountants, what they should do. In the past, the advice was -- to the auditors was too much written by attorneys and we need to give advice to the auditors written in audit language so they can understand what we are asking them to do.

There were other authorities that Congress provided my office as part of Section 509. If we find that a grantee has an unacceptable audit, we would recommend to LSC management, and I think that is where we would interface with OCE, they can do -- they have a couple of remedies. They can withhold a percentage of grantees' funding until the audit is successfully

completed. They can also suspend the grantee's funding until an acceptable audit is completed.

We actually have authority to suspend, remove or bar an IPA who does inadequate, inferior work. That has not happened yet and I am not sure -- I think it has happened because we haven't had enough of a rigorous program and we haven't held some of the IPA's in the field to a tough enough standard and that is part of the work we are going to be tightening up to make sure that the audits they are paying for are meaningful audits and that, you know, we get the kind of work we need.

I think you heard some about the follow-up, the AIMS system. That is how we kind of interact with OCE. And Danilo mentioned something I do want to address because it is systematic of other issues you have heard of things coming into my predecessor's office, not my office, and languishing and they are not knowing whether something is done or not. That has stopped. We get something in, we are either going to deal with it or we going to send it to OCE.

We send a lot of complaints we get to OCE

because they are really sort of some of the very things you have heard about, "My attorney didn't represent me well" or things that have nothing to do with waste, fraud, abuse and mismanagement, but they are really much more just sort of the day-to-day running of the program.

I am trying to do a shortcut here to save us all -- so we -- you know, there is certain time lines we try to follow, certain minimum requirements we want the IPA's to do. For instance, when they are out assessing a grantee's compliance, we want a certain minimum number of cases looked at. We want the staff interviewed. We review written policies and procedures, or the IPA's do, and we have them review required forms and certifications.

So I think when -- what the IPA's are doing may also be done when OCE goes out on a visit. That is one of the things we need to check out, if that is -- you know, how duplicative that is and it is part of the work we are going to do just to try to get a picture of everything everybody does because one of my concerns, and I think it sounds like, you know, a concern here

is, one is duplication, but two, every time we visit -- you know, you have got the grantees having had the IPA there.

Now if OCE is there, if we are there, what it means is we are tying up their time and time is money and we are tying up a valuable resource. So we need to be as efficient as possible. And so that is part of what I want to look at is, where are we. Where can we streamline things.

One of the things I also want to look at is is there a way of taking some of the issues we identify and then work specifically so the next year the -- when the IPA comes out, we give the IPA specific instructions, "In addition to the work you generally are supposed to do, we want you to look at A, B and C because that was flagged from the year before." So we want to look at those kinds of efficiencies and economies as well.

One of the things that we then also do is we do more in-depth -- well, we get -- all of the financial statements, the internal controls and the compliance reviews to come to us electronically. They

come into this database. I believe that is AIMS, it goes into part of AIMS. But then we also, then, on a -- it hasn't been exactly a systematic basis, but we -- in the past, my office has gone in and looked specifically at the work of a certain number of IPA's.

Rather than just looking at their reports, we go behind that.

One of the problems is we haven't really done it with a risk assessment of taking all the information and basically doing risk and figuring which programs should we really be targeting the IPA's work looking at things like a history of problems. And some of that is getting information from OCE and, you know, targeting -- looking at dollars, LSC dollars that are given, and just sort of factoring all that in and coming up with a strategic approach year by year and basically doing a stratified sampling that we would, you know, basically do our risk assessment and come up with that. And that is the IPA's we are going to review.

I think we are also looking at, from time to time, doing a much -- you know, using our authority and

maybe doing an in-depth review of, you know, what -- at a particular grantee, but that really has to be something we have specific reasons to go look at, but if we do that, we want to coordinate with other actions we are doing. So it is like one stop shopping so we don't do one review and then six months later we are looking at something else.

So we want to -- and that is part of the work plan I am trying to develop. I think you probably won't see that until next year in terms of really coherent strategy because I am sort of in triage right now and I am just trying to get us to do what we are really put on earth by Congress to do in terms of this compliance stuff and the other stuff, you know, we will -- you know, it will be better once we get there, but I have got to do my basics first.

I hope that has answered some of the questions. I guess one other thing I can tell you, we are, during the course of the IPA's -- each of the IPA's out doing the grantee, we are in contact with them. It is not like we send them out and, you know, we never hear from them. We are in contact with them.

They come up with questions. We have on our website basically a Q&A section, you know, things they need to be looking for.

We need to be more vigorous in that in terms of getting information to the IPA's so that they know exactly what they should be looking for so we get to I think what we all want is to be able to assure Congress that there is enough compliance that things are okay and they can -- Congress can take a deep breath and say everything -- you know, in particular, all the restrictions are being followed because I think that is the sort of the buzz word up there is that suspicion -- and I can just tell you from what I have heard, a certain inherent suspicion there is something going on there. And I think that is why they want us doing this compliance work as independent -- as Lilian said, sort of the guardians of the guardians.

So that is my report. Dutch and Tony can answer sort of the specific audit questions you might have and the details. Tony knows this stuff inside out, more than he would care to.

MR. MEITES: Well, actually, I have two very

brief questions for you. One is an observation. I am very pleased to hear you are doing an audit of your work vis-a-vis that of OCE. That will be very helpful to us.

The second is it is something you said earlier today and you used the word again and I was listening for it. You said that you have both financial and programmatic oversight. And the programmatic part is unusual for inspector generals. It is not unknown, but unusual.

MR. WEST: That is correct.

MR. MEITES: And would you tell us what you understand programmatic oversight to mean.

MR. WEST: Well, I would understand -- it is twofold. I think one is the review -- basically the authority given so that the IG is the one that is in charge of setting up the guidance for the IPA's and then actually reviewing the work of the IPA's financial statements, internal control audits and compliance audits. That is something specifically in Section 509 and would -- you would not find an IGA's office normally doing that.

The second is the language I read, which is also in 509, giving the IG specific authority to do on-site compliance monitoring. That is something also -- an authority above and beyond what is in the IG Act.

MR. MEITES: And we have seen, I will be very general because they are confidential. We have seen work done by, not necessarily by you, but by IG's where grantees are queried about whether various substantive activities, we are not talking dollars and cents here, we are not talking auditing, but substantive activities are appropriate or not. Would you put that under the programmatic or the on-site compliance or would it fit under both?

MR. WEST: I guess I am going to have to ask what you mean by substantive activities.

MR. MEITES: The Southern Mississippi Rural Legal Assistance Foundation is using \$11 a month to sponsor an abortion film and urging its clients to file appropriate suits in the Southern District of Mississippi.

MR. WEST: Given that --

MR. MEITES: I put money and substance on that one.

MR. WEST: Right. I mean, I think that is something that one, we hopefully would find out in the course of the independent public accountant's audit of the compliance thing and I think then we would refer that to OCE to get them to stop it.

MR. MEITES: Okay. Let's say there is no money involved. There is a sign when you go there saying, "This office will support abortion requests" or whatever challenges. Is that -- I want to know where the programmatic comes from -- where this comes from. I know you tell me it is there, but when it is detached from the dollars, that is where I have trouble -- and an auditor because the CPA's I know -- Herb, my apologies -- are not the people I want to make judgment about whether legal activities are appropriate.

MR. WEST: And I think, you know, I have the same concern. I raised that issue with sort of CRLA whether some issues are really subject to the audit process or whether there needs to be a different process. I think I have an authority to look at that

and to issue a report to management that I found this.

The real question would be coordinating it and looking into how serious it looks. And I think one of the things that we are doing now and we are doing a lot more is having a lot more conversations with OCE. We need to have meetings on a regular basis to discuss what each of us is doing so we are not tripping over each other. And so I think communication will have a lot to do with that.

Is it -- you know, I think you could argue both could do it and I think that is part of the confusion is Congress gave us authority, but it is also an inherent authority of management and to me, I want to look at significant issues. And I think that is --

MS. MERCADO: A couple of things. On -- one on this point. Let me do this one first. On the issue of the programmatic compliance and reviews, part of the concern that we have as a board is that the majority of the IPA's were, in fact, CPA's. They were accountants, they were not lawyers. And when you are looking at finances, that is great.

But when you are looking at the programmatic

end of it, whether an LSC grantee is doing something that is contradictory to the restrictions or the regulations that Congress has enacted for a legal services grantee, then at that point is someone who is not a lawyer able to do the analysis of whether or not the particular work that they are doing is within or without the confines of the work that they are doing, that is what created a lot of the problems for the investigations that were going on.

And eventually, the Inspector General hired some outside contract attorneys to assist them with it.

I think right before Mr. West came onboard, they finally hired another attorney to be in the Office of Inspector General to actually look at that substantive area, what he called substantive and I guess what I called programmatic. Both of them.

In envisioning doing this greater involvement of work by the Inspector General and making sure that there is compliance with the programmatic side of the grantees, not the finance side of the grantees, how are you going to deal with the duplication of efforts that OCE is doing in checking that, they sit there and

outline what all they do, and what you will do?

MR. WEST: Well, a couple of things and I will let Tony maybe explain specifically how that process works, but first of all, Congress gave that responsibility to my office and only my office. So that is not even negotiable unless Congress changes it. It basically says only the IG shall have oversight of this whole process.

Congress also, whether it was a wise thing or not, determined that independent public accountants would do that work. That was Congress' call, not our call. Our charge is then to put guidance out to the independent public accountants how to go about doing the compliance review and then perhaps Tony can address some of the nuts and bolts of what actually -- what guidance is actually given to the IPA's and how they could possibly check for compliance.

MR. RAMIREZ: Yes. I think that we have to go back to 1996 to recall that the entire OIG responds to this in issuing an audit guide -- it issued an audit guide at that time, but prior to that, the audit guide had come out through LSC management. As part of the

audit guide, it issued a compliance supplement and it was all in response to the 1996 Appropriations Act and it was saying that IPA's were to do this function and this was the OIG response. And the compliance supplement had a very long list of detailed procedures, which these are the regulations that are contained in there that we have the IPA's test for compliance.

Now if I think I am understanding your question correctly, the process and vision back in 1996, at least my understanding was, and you have to understand I was not privy to all of the management decisions made in OIG, my understanding was that it was envisioned from a standpoint of we had our own risk assessment going on.

We knew that maybe certain programs, either through a complaint process, maybe a referral from OCE, maybe just from something that we hear or see in the newspaper where a complaint would come in that there would be certain programs that might have a higher risk and those would be identified as perhaps candidates for a possible on-site visit by OIG staff.

In fact, the entire -- one of the processes

that we have been doing, our so-called program integrity audits, was done -- a decision had been made back in the late nineties that that was an area that perhaps that the IPA's may not be best suited to deal with. And so we would then have our own OIG staff people go.

MS. MERCADO: Well, in the audit and compliance manual that was done through the Finance Committee and the Board, is that the one that you are looking at trying to revise or revamp and update it to include whatever --

MR. WEST: I mean, we may have -- you know, I don't know what was done in the past, but certainly I might give you a draft to comment on, but, you know, it is certainly, you know, not something that will be approved by the board, but, you know, I think we have sort of, you know, discussed those ideas and we have also discussed that with LSC management to make sure that we are, you know, we are hitting it right because I don't want us giving -- you know, check for compliance to this regulation and we have got it wrong.

I mean, we want -- that is why we need to

coordinate when we say we need to check on, you know, this regulation. We need to make sure we understand fully how LSC management has been telling the grantees this is how you follow this regulation. So there is that sort of coordination.

MS. MERCADO: That may be something that the Board needs to look at, I guess, because the Board did approve the audit manual.

MR. WEST: Well, I understand, but I don't think --

MS. MERCADO: I understand, but we probably need to look at that whether or not there is something that we do or don't do.

MR. WEST: Well, you are right. I think --

MS. MERCADO: The Agency has some regulatory impact that it has on grantees.

MR. WEST: I think if you look at the IG Act in terms of -- that is not an appropriate thing for the Board to do.

MR. MEITES: Well, but Maria Luisa has a good point. It doesn't do your office any good to go find a grantee is out of compliance and then refer it to OCE

and say, "Oh, no, we read that regulation different."

MR. WEST: And that is precisely why when we do the audit, you know, this compliance supplement, that we work with LSC management to make sure that when we are saying are you complying with this, it is what LSC expects them to comply with. And that, frankly, was the whole problem with the CRLA issue because we were -- my predecessor was interpreting the regulation differently than management and the grantee was caught in the middle and that was wrong.

MR. RAMIREZ: Well, let me just add one clarification here with regard to the compliance supplement. When we say that we drafted the compliance supplement, we are talking about the procedures and the introductory procedures and what we exactly instruct the IPA's to do. The regulatory language contained therein was actually done by LSC management.

MR. STRICKLAND: Mr. Chairman, our hostess for the evening --

MR. MEITES: Right. It is now 6:30 and if there are pressing questions or comments from the Board, I will entertain them.

MR. DIETER: I have one short one.

Mr. Cardona, you said that you were visiting one program, or something, that you hadn't seen in eight years. I am just curious on the backlog, if you were to just proceed at this point with 143 grantees, how long would it take you to cycle through that whole --

MR. CARDONA: It would take me about three-and-a-half years.

MR. DIETER: Three-and-a-half years?

MR. CARDONA: Yes.

MR. DIETER: So at this point you would be reviewing --

MR. CARDONA: We only have the capacity to visit -- to do compliance visits, oversight compliance visits, about 28 or 29 of those visits in a given year because then we have to distribute the other in visits to technical assistance, on-site complaint investigations and so forth. So, you know, we are not staffed to do more than that. If we had more staff, yes, of course, we can do it in a big cycle.

MR. DIETER: That sounds like a reasonable cycle.

MR. MEITES: All right. If there is nothing else --

MR. CARDONA: Can I say something --

MR. MEITES: Please. Yes.

MR. CARDONA: -- about the IPA's. Before I retire tonight, I have to say this thing. The system prior to the IPA system when they were talking about what the IPA's do on compliance checking, let me just point you back to 1999, the time of the CSR issue, the time of the GAO investigation on CSR's. Those five grantees were the five largest grantees of LSC's, there was not finding on 1611 made by the IPA and all the violations that were discovered by GAO were on regulation 1611. They started to look at 1611.

MS. MERCADO: Well, I think it is a misstatement to say that they failed to do that when the whole issue was what is it that you consider a client. Is it a client that calls on a hotline and asks for something and then they noted it down and said they provided research and advice. And so we went through this whole promulgation of the definition under CSR of what is brief service, what is advice, you know,

what is someone -- when do we take the financial eligibility when someone calls on our hotline.

MR. CARDONA: In the audits of 1999 and 1998 hotlines were not prevalent in LSC.

MR. MEITES: Let's move on. That is background that is of some value, but in fact, what we heard, and I think Lilian will agree with me, is that both groups of witnesses are interested in trying to minimize duplication, increase efficiency and make sure that there is no unnecessary burdens on our grantees. And I think we agree that those are goals we would like to see pursued. With that, I will recess until tomorrow morning.

(Whereupon at 6:36 p.m., the Operations and Regulations Committee was adjourned.)