LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPERATIONS AND REGULATIONS COMMITTEE

Friday, April 1, 2005

9:20 a.m.

University of Virginia School of Law
580 Massie Road
Charlottesville, Virginia

COMMITTEE MEMBERS PRESENT:

Thomas R. Meites, Chairman
Lillian R. BeVier
Michael D. McKay

BOARD MEMBERS PRESENT:

Florentino A. Subia
Ernestine Watlington (by telephone)

NOMINEES PRESENT:

Thomas A. Fuentes (by telephone)
Bernice Phillips

STAFF PRESENT:

Helaine M. Barnett, President
Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary
Jonathan Asher, Acting Special Counsel to President
Laurie Tarantowicz, Assistant Inspector General and Legal Counsel
Ronald Merryman, Assistant Inspector General for Audits
Michael Genz, Director, Office of Program Performance
Mattie Condray, Senior Assistant General Counsel
Patricia Batie, Manager of Board Operations
Tom Polgar, Acting Director of Governmental Relations and Public Affairs

MEMBERS OF PUBLIC PRESENT:

Linda Perle, Center for Law and Social Policy
John Whitfield, Executive Director, Blue Ridge Legal Services
Charles Wynder, National Legal Aid and Defenders Association
Don Saunders, National Legal Aid and Defenders Association

C O N T E N T S

P R O C E E D I N G S

CHAIRMAN MEITES: This is a meeting of the operations and regulations committee of the board of the Legal Services Corporation. Victor will assure us that proper notice has been given of this meeting.

The committee has determined at its last meeting that in order to get a handle on all of 1611, that we would call a special meeting of our committee. As you all know, we have spent a considerable period of time on two portions of the proposed amendments to 1611, the retainer agreement and the group representation.

Although we received some additional comments on both those today, and we are prepared to address -- consider those today, although --

MS. BeVIER: Laurie is on her way.

CHAIRMAN MEITES: Laurie's on her way. We'll hold off on that. But what the plan is is we're just going to start with line 1 of the proposal and work our way with everything else that we haven't done yet.

Much of this rule is the result of a joint rulemaking that commenced some time ago. And Linda --

MS. PERLE: I'm here.

CHAIRMAN MEITES: -- if you want to come up here, since you were a member of the joint rulemaking, you probably could help answer some of the questions.

MS. PERLE: Okay. I just want to let you know that John Whitfield, who is here, was also on the --

CHAIRMAN MEITES: Well, if he'd like to join, that's fine, too.

MS. PERLE: As was John Asher. I don't know if --

CHAIRMAN MEITES: Come on up if you want to. What I thought we'd do is rather than have a formal staff and public comment section, we'd kind of go through it together, which should expedite matters a bit.

Unless anyone has a better way of doing it, I propose to start at the beginning. Do you want to make any introductory remarks, Mattie?

MS. CONDRAY: Yes, just a few.

CHAIRMAN MEITES: Please go ahead.

MS. CONDRAY: In your materials was a short memo providing kind of an overview of what the

rulemaking was intended to do. And I guess I just want to kind of reiterate that because I think that is going to be very helpful for the context of the specific individual changes.

The current version of 1611 dates back to 1983. And I can say, and Linda can back me up on this, that this is probably one of the rules that engenders the most number of requests for opinions, both formal ones from us and informal advice where the field just wants to call Linda. And that is largely because the rule as it is written now is not particularly well organized and easy to follow.

A lot of the questions we get are questions that are easily answered. The answers are actually in the regulations. But it's hard for people, even those people who work with it day to day, to read it and follow it and find the answers they want.

So a lot of the charge that the working group had was even if we made no substantive changes, we would want to significantly reorganize the contents of the rule to make it more easily readable and understandable. So that was part of what we were

looking to do, and that's a lot of what's reflected in here.

And in addition, there were a number of substantive changes that the working group agreed upon. You've already talked about the two that engendered some controversy.

The rest of the substantive changes were changes that the Office of the Inspector General, LSC management, and the field all supported to try to help make the regulation more streamlined, easier to apply, easier for the Corporation to enforce, and to remove some administrative burdens.

That said, there were a couple of things that we wanted to do. One is clarify the distinction between determinations of financial eligibility and the decision to provide services.

There's a rule on priorities, and the decision of whether to provide services to any person who has already been deemed eligible is a separate question than whether they meet the basic financial eligibility threshold.

And some of the language in the current rule

talks about "may provide services to," which the working group felt was a blurring of that distinction between the decision to provide -- to decide people were eligible, and then you make a determination of whether you're going to take their case or not.

So some of the examples of that is clarifying that focus by the use of the phrase "applicant," determinations of financial eligibility in accordance with a recipient's policies, and adding the word "financial" to the title.

Part of the reason we would like to add "Financial" to the title of Eligibility is because this section deals with financial eligibility, and to distinguish that from, say, 1626, which deals with citizenship and alien status, which is also an eligibility requirement.

As I noted before, the current regulation is not well organized. Requirements for who may be found eligible are spread across three different sections of the rule. And provisions providing exceptions are in two different sections of the rule.

So we're hoping to reorganize the overall

structure of the regulation and move the group representation portions, which you've already talked about extensively, into a separate section.

Some of the substantive changes to the rule that we're looking at were --

CHAIRMAN MEITES: I prefer to go through it section by section rather than an overview of the substantive changes.

MS. CONDRAY: Okay. That's fine, then.

CHAIRMAN MEITES: All right. According to the current version, this rule was last amended 22 years ago, in 1983.

MS. CONDRAY: That's correct.

CHAIRMAN MEITES: And when did this joint rulemaking committee commence its work on this?

MS. CONDRAY: In 2000, I believe -- 2001. We started working on 2001.

CHAIRMAN MEITES: If you could put on the record the history of that committee's efforts and our predecessor board's work with regard to this rule.

MS. CONDRAY: Sure. The previous board identified financial -- 1611 as an appropriate subject

for rulemaking, and determined that it would be done by a negotiated rulemaking in accordance with the rulemaking protocol that was in effect at that time.

A working group -- a notice of the working group appointment was published in the Federal Register. We had expressions of interest from a number of people, and a working group was appointed by the then-president of -- then-chair of the operations and regulations committee.

And it involved representatives from CLASP and NLADA of a variety of individual programs, rural, local, urban, as well as a member from SCLAID, from the Standing Committee on Legal Aid and Indigent Defendants from the American Bar Association, and staff.

And we had staff people from the Office of Program Performance, the Office of Compliance and Enforcement, myself, and Laurie Tarantowicz, the liaison from the Office of the Inspector General.

The working group met three times in person in the development of a draft notice of proposed rulemaking. There was also discussions and draft shared electronically. We had a third party neutral

hired facilitator to facilitate the discussions at the sessions.

The result of all of that discussion was a draft notice of proposed rulemaking was brought in front of the then-operations and regulations committee in 2002. And they made some changes to the draft that was presented to them and recommended that the board issue the notice of proposed rulemaking for comment, as revised, which the board did. And on November 22, 2002, the Corporation issued a notice of proposed rulemaking for public comment on this matter.

Comments were received and a draft final rule was developed. On the eve of the presentation of the draft final rule to the then-operations and regulations committee, we received a letter from Chairman Sensenbrenner asking the Corporation to withhold action on this matter.

The letter expressed some concerns about some of the substance, but also primarily expressed concern that the board was taking action while the appointment and confirmation of a new board was imminent.

So action was withheld on that draft final

rule at the time. Once the new board was constituted, as you know, the staff presented this to you so you know what was going on.

There was a decision made first to hold off any action until a new president was appointed so that the management could then take another look at the matter; after Helaine was appointed, kind of geared back up on this, and are now in the position of presenting an item back to you.

Management made a recommendation, with which the committee agreed, that given that it had been several years, instead of just coming back to you with a draft final rule, although we could do that, that it really made more sense to go back out for another round of public comment, given the passage of time and given the fact that you were coming in on the tail end of this process.

So that is why we are now here with a draft notice of proposed rulemaking that, with whatever changes you wish to recommend, you'd make a recommendation to the board. And if the board so approves, this notice of proposed rulemaking will be

published in the Federal Register for additional public comment. And then we would continue on with the preparation of a final rule, of a draft final rule, thereafter.

MR. McKAY: Can I just follow up on that?

MS. CONDRAY: Sure.

MR. McKAY: So could you discuss the process, assuming that we recommend to the board that this be adopted? And so the draft notice is published for further commentary. Could you walk through the process after that, please?

MS. CONDRAY: Sure. Presuming that the committee comes up with a draft that it's happy with and recommends to the board that the board publish it for comment, which would presumably happen at the meeting in Puerto Rico, the board would approve the notice of proposed rulemaking for publication.

I would make sure that it's cleaned up, and we would get it sent over to the Federal Register for publication shortly after the meeting. So presumably, you know, it would be published by early to mid-May.

I think what we have in here is a suggestion

of a 30-day publication date. The LSC Act requires notices of proposed rulemakings to have a minimum 30-day publication period. The committee could ask for it to be longer.

Part of the reason that we've been suggesting the 30-day date is to the extent that what's currently here isn't much different than was -- is really no different other than the group representation and retainer agreement sections than what was proposed previously on the hope that it wouldn't take the folks in the field, anyone who wanted to comment that long, to gear up to provide comments. But, of course, you can extend the comment period.

At the close of the comment period, we will take all the comments. We'll send you copies of the comments. We post all of the comments we get to the internet. So they're up on the LSC -- they'll be up on the LSC website. We can send them to you in whatever format you like.

We would -- staff would work on a draft of a final rule, get management's blessing on it. Presumably there would be a -- the comments themselves

would be discussed in the preamble plus whatever, you know, cover memo was appropriate.

Then we would come back at a board meeting. You know, depending on what the -- if it's published by mid-May, if there's a 30-day comment period mid-June, I believe there's a late July meeting. So with a 30-day comment period, hopefully we would be able to come back at the July meeting with a draft of a final rule.

Depending on if there's a longer comment period or if the comments were very extensive and raised really different issues that we hadn't really contemplated before, I could see that that might push it back, but I would hope at the very least we would have a draft final rule at the meeting -- hopefully at the July meeting; if not, at the meeting after that.

And then the committee would again have a chance to take a look at the final -- the draft final rule, recommend any changes it wanted, make a recommendation to the board. If the board agreed with the recommendation of the committee to publish the rule, then the rule would be published and it would become effective 30 days after the date of publication.

CHAIRMAN MEITES: If we -- when it comes back to us after the comment period and we recommend changes in response to the comments, do we have to send it for comment publicly?

MS. CONDRAY: As long as what you're contemplating is within the scope of what was already noticed, the answer would be no.

CHAIRMAN MEITES: So that we don't have to go through the same iterations?

MS. CONDRAY: No. If you decided to do something brand-new that hadn't -- wasn't within the scope of the notice, you might want to go back out for comment on that. But that's pretty rare that something would come up that's entirely outside the scope of --

MS. BeVIER: You mean the generic scope. You don't mean the substantive scope?

CHAIRMAN MEITES: We could make small changes or we can adopt some of the comments without having --

MS. CONDRAY: Right. Right. If it's something that was brought up by comment, that's within the scope of the --

MS. PERLE: I mean, I would imagine if some

comment came up with something that was just like out of left field, you know, that hadn't been discussed before, and the board decided to put it in, there might be some objection to doing that without sending it out for comment again.

CHAIRMAN MEITES: Right. But in the normal course, we can expect there's only one comment period and one chance to review those comments and respond to them?

MS. PERLE: There is some precedent -- and Mattie, you may remember, or maybe this was before your time, when the rules were being done after the '96 changes.

My recollection is that there were a couple of instances, or maybe only one, where as a result of the comment, there was some area of a rule where there was some change. And what the committee did was sent the rule out as final except for that section, and then asked for comments again on that section.

CHAIRMAN MEITES: Right. So that we could --

MS. CONDRAY: Right. You could do that, certainly. If there was one section that you wanted to

get -- that engendered some comment that you wanted to think more about, but you were comfortable with the rest of the rule, you could adopt as final the rest of the rule and ask for comment on that one particular issue.

CHAIRMAN MEITES: Let me give you an idea what I'd like to do. I'd hope that we can something so we can consider it when we're in Puerto Rico.

Mattie, let me appoint you our de facto secretary because we're going to go through a lot of very specific points and we'll trust you to keep track of what consensus is. And whatever we decide today, you'll present to us.

MS. CONDRAY: Absolutely.

CHAIRMAN MEITES: Because our memories -- I'm getting older.

MS. CONDRAY: In fact, we've got the transcript.

CHAIRMAN MEITES: That's great. Okay. Let's start, and I propose to start on the first line of the rules. And let's work from your proposed amendment.

MS. CONDRAY: Okay. You're looking at the

draft redline?

CHAIRMAN MEITES: Yes. First of all, the rule used to be called -- I'm going to call it the existing rule and the proposed rule. The existing rule is called Eligibility, and as you indicated in your remarks, you're now going to call it Financial Eligibility.

MS. CONDRAY: We would like to do so.

CHAIRMAN MEITES: And that's consistent with the idea of focusing this particular rule just on the financial aspects of eligibility, not on all the other reasons an applicant may or may not be eligible.

MS. CONDRAY: Correct.

CHAIRMAN MEITES: Okay. In the first section, this Purpose preamble, as I understand it, what you did is to make this distinction clear. You're talking about applicants and you're talking about financial eligibility.

Is there anything else in our existing rules that suggests that a person who is otherwise eligible, financially eligible, for assistance has any claim to services of any grantee?

MS. CONDRAY: No. But part of the reason that this was in here was in the discussions of the working group, it was clear that this something that people come up against, that programs have come up against, of clients filing complaints because they said, well, I'm eligible. Therefore, I should get service. This says, you can provide me service.

CHAIRMAN MEITES: All right. So is there anything else about this Purpose section that has a substantive purpose other than -- in here that you'd like to call to our attention?

MS. CONDRAY: The only other thing I would call to your attention is the sentence that we are looking to take out, talking about "criteria that give preference to the legal needs of those least able to obtain legal assistance."

That language was originally in the rule because it was originally in the Act. That language was taken out of the Act in -- I guess it was the '77 amendments. But it was never taken out of the regulation.

But we wanted to take that out because, A,

it's no longer in the Act. B, the "preference for those least able to obtain legal assistance," that's a service determination. And there is a whole separate regulation required through the '96 appropriations law on priorities that dictate what your service determinations are. So we wanted to take that out.

And I draw that to your attention because that sentence was focused on in one of the letters by Chairman Sensenbrenner. We responded to him at the time, explaining just what I've said to you now.

MS. PERLE: And as I recall, you haven't really gotten anything --

MS. CONDRAY: Further.

MS. PERLE: -- anything else from him.

MR. McKAY: In writing.

MS. CONDRAY: Yes. I believe that was --

MR. McKAY: At some point, and maybe it's premature, I'd like to explore in detail the follow-up verbal communications because we've seen all the written stuff.

MS. CONDRAY: Sure.

MR. McKAY: But maybe that's

appropriately -- maybe it can be discussed later on.

CHAIRMAN MEITES: Well, do you want to do it now or should we wait?

MS. BeVIER: It's hard to know the right sequence because there are really substantive issues there that we need to talk about before or maybe at the same time that we talk about what we've done with Congress.

Maybe we should go through and just find staff's view, and then -- I mean, period, and ask some questions about it, but not --

CHAIRMAN MEITES: Well, let's do this. Let's ask Mattie to highlight for us those portions of the proposal that the congressional committee did comment upon so we'll know where we're at.

MS. CONDRAY: Okay.

CHAIRMAN MEITES: Okay. If there's nothing else on this introductory purpose, let's consider the Definitions. Now, we've discussed several of these definitions already.

MS. CONDRAY: Yes.

CHAIRMAN MEITES: And those are (a) advice and

counsel, (b) applicable rules of professional responsibility, (e) brief service, (f) extended service, and that's it.

MS. CONDRAY: I believe that's it, yes.

CHAIRMAN MEITES: And we discussed all those in conjunction with the retainer.

MS. CONDRAY: That's correct, because that's where those --

CHAIRMAN MEITES: Let me just ask you a summary question. Is there anything in the definitions as presented here that is in any way inconsistent with our prior discussions about retainer agreements?

MS. CONDRAY: No.

CHAIRMAN MEITES: That's fine with me. We can go on.

Okay. Let's then go on to applicant. Now, is this a new definition?

MS. CONDRAY: This would be a new definition.

CHAIRMAN MEITES: Okay. Applicant means an individual who is seeking legal assistance -- I see, okay -- from a recipient that is supported with LSC funds. I got the clauses wrong, but I understand. So

that any person who asks any of our grantees to provide assistance is an applicant for purposes of this proceeding.

MS. CONDRAY: If they're seeking services that would be funded with LSC funds. The way the financial eligibility rule works is it -- a program may legally serve a over-income client who has an otherwise not restricted matter as long as they provide that service with non-LSC funds.

CHAIRMAN MEITES: Okay. And has that been a consistent practice?

MS. CONDRAY: Yes.

MS. BeVIER: I have a question about this. Why does it not include a group, corporation, or association?

MS. CONDRAY: Because the way that we had proposed and so far you have looked at the group representation, the group representation portion of the regulation is a complete stand-alone portion.

And so we wanted to -- it's easier to deal with groups completely in a separate section. The group representation section, as you may remember,

talks about which groups may be eligible and what the standards for eligibility are and what the standards for documentation are. Those are separate everywhere else. We use applicant throughout the rule. It's talking about the provisions of the proposed rule that would apply to individuals.

MS. PERLE: There are a few sections where it applies to both.

MS. CONDRAY: But it's clear.

MS. PERLE: But it's clear that it applies to both applicants and to groups.

CHAIRMAN MEITES: And the groups are handled by 1611.6. Is that correct?

MS. CONDRAY: I believe that's correct.

CHAIRMAN MEITES: And that's one we've already discussed. Okay.

Next is assets. "'Assets' means cash or other resources that are readily convertible to cash, which are currently and actually available to the applicant." Now, you elsewhere talk not in terms of -- I'll use the word resources because that's not a term we use here -- you talk about resources not just to the

applicant, but of the applicant's household, I believe.

MS. CONDRAY: That's correct.

CHAIRMAN MEITES: And so is it consistent -- why do you choose to define assets just in terms of the individual who comes in the door and not in terms of the individual's household if in fact eligibility, financial eligibility, is to be made on the basis of the household?

MS. PERLE: I think, Mattie -- I may be wrong about this, but I think because we have this new provision with regard to the assets of domestic violence victims --

MS. CONDRAY: Violence victims. That's part of it.

MS. PERLE: -- that we wanted to limit it in terms of the definition to those of the applicant. But in other places, it says the assets of the applicant and the household. So it does encompass it.

CHAIRMAN MEITES: Right. If you look at, for example, 1611.3(d)(1) on page -- I have it -- "As part of its financial eligibility policies, every recipient shall establish reasonable asset ceilings for

individuals and households."

Do you see where I'm coming from?

MS. CONDRAY: Yes. I can see where you're coming from. I think the thinking was that with the exception of -- like in the domestic violence case, which there's a statutory requirement that you not -- that you only consider the assets of the battered -- of the domestic violence victim, and that gets to the fact that he or she may not have access to those other assets of the household, I think are generally deemed to be available to the applicant unless they're clearly not -- you know, if there's a member of the household that has an asset that the other person cannot legally get at.

CHAIRMAN MEITES: Yes. My concern is that you define assets in the definition one way, and then you use it, at least in (d)(1), elsewhere -- I'm not going to say inconsistently, but in a somewhat different context.

MS. BeVIER: Why don't we -- could we take "to the applicant" out? Because --

CHAIRMAN MEITES: Yes. Actually, "available"

period does --

MS. BeVIER: Because this has to do with whether you can get at it or not, sort of the liquidity/not liquid idea rather than --

CHAIRMAN MEITES: To whom it's available?

MS. BeVIER: -- to whom its available. Does that work? No?

MS. CONDRAY: No. It's both.

MS. PERLE: No. I think it is really to the -- it's to the applicant, perhaps "to the applicant and the applicant's household."

MS. CONDRAY: And the applicant's household.

MS. PERLE: But for example, in the past, there were situations where there was a person who had been deemed incompetent and had assets, but their guardian had control. And they were available to the guardian but not to the person who was trying to challenge the guardianship.

And the Corporation took the position that those assets were not available to that person and that they could be represented, which I think was the appropriate -- so I think you have to focus on who

they're available to.

MS. BeVIER: But don't you do that in the other sections?

MS. CONDRAY: But there could be a household asset that's available to the applicant, but there could be household assets that are not available to the applicant.

CHAIRMAN MEITES: Right. But Lillian's point, I think, Lillian's point, I think, is that the rest of the regulations tell you where to look with regard to availability of the asset. This is just the fact whether it's in cash or it's in my grandmother unsaleable diamond ring.

MS. BeVIER: Whether it's an asset or not.

CHAIRMAN MEITES: Well, why don't you consider dropping "to the applicant" as we work through this.

MS. CONDRAY: Okay.

MS. BeVIER: I have another question about this, and that is this ready convertibility to cash. Because "all liquid and non-liquid assets" seems to me to be much more inclusive than ready convertibility to cash.

CHAIRMAN MEITES: Where are you reading from?

MS. BeVIER: I'm reading from the old --

CHAIRMAN MEITES: The old one?

MS. CONDRAY: We just -- although I will say --

MS. BeVIER: No. I'm reading from --

MS. CONDRAY: The preamble?

MS. BeVIER: Actually, I'm reading from your -- the NPR --

MS. CONDRAY: Yes.

MS. BeVIER: Okay. And so what you're -- you're not trying to charge it. Right? You say you're not trying to charge it, but --

MS. CONDRAY: That's right. It's not an intent to charge it, but the terms liquid and non-liquid were very confusing to people. And even sitting around the table, when we were just talking about, well, what does a liquid asset mean to you and what does a non-liquid asset mean to you, we got conflicting definitions, which meant that people were applying it in their programs in conflicting manners.

MS. BeVIER: Okay. I understand that. But it

does seem to me that if you have a non-liquid -- if you're talking about liquid and non-liquid assets, you're talking about a much larger category of assets than you are when you're talking about assets that are readily convertible to cash.

MS. CONDRAY: Well, I think that -- I think you're hitting on the exact problem we had, is that the regulation has been intended over the years to mean those things that are readily convertible to cash, but the use of the terms liquid and -- liquid and non-liquid means something to you. That doesn't -- they don't necessarily mean the same thing to everybody else.

What we did agree on is regardless of those phrases, what we meant, what the regulation has meant and we wanted the regulation to continue to mean, was ready convertibility to cash without any --

MS. BeVIER: In other words -- in other words, the original -- the reg that you're changing, the language you're changing, was just over-inclusive. You never meant that. Is that right?

MR. McKAY: Or even under-inclusive but not

clear. I mean, it's just -- different people felt something was liquid or non-liquid.

MS. CONDRAY: Yes. To those people who thought non-liquid and liquid was a broader category than this, the original regulation was over-inclusive. For those people who had a different understanding of what terms liquid and non-liquid assets are, the regulation was under-inclusive.

CHAIRMAN MEITES: I have a three-year-old car. Is that a liquid or illiquid asset? Is that readily convertible to cash?

MS. CONDRAY: I would say that's -- well, other than the fact that you can carve out -- the program can allow a car that's needed for transportation.

CHAIRMAN MEITES: For work?

MS. CONDRAY: Your third -- it's your third car. Right, I would think that that's readily convertible to cash.

CHAIRMAN MEITES: I think it is, and I think it would be seen as an illiquid asset. So I think that this may be a step in the right direction, this readily

convertible.

MS. CONDRAY: Yes. Right. Well, so long -- I mean, so long as ready convertibility is understood to mean -- it's not the same thing as money. It's something you can sell.

MS. PERLE: Relatively easily.

MS. CONDRAY: Right. Ready convertibility of the asset to cash, I think, intends that it's not cash now but it's going to become cash once you sell it.

MS. BeVIER: Right. I understand that. But I can also understand making an argument, if you're trying to get someone to be eligible, that --

MS. PERLE: But there are other examples. I'm trying to remember. A long time ago, there was an issue that came up where a person owned a piece of property. It was landlocked. It had no intrinsic value. And they had tried to sell it for years and couldn't sell it.

And the argument was made that it was an asset and it had some value. But if they couldn't convert it, there was no --

MS. BeVIER: Well, what about a piece of

property that's not landlocked?

MS. PERLE: If it's readily convertible or they could get a mortgage on it.

MR. McKAY: And by definition, if they tried to sell and weren't able to sell it, it wasn't readily convertible to cash.

MS. CONDRAY: Right. Exactly.

MS. PERLE: Right. But it was -- but people were saying, but it's a non-liquid asset.

MS. CONDRAY: But it's still a non-liquid asset.

MR. McKAY: Yes. Well, I think there's an agreement here that this language makes it clearer. And that's a step forward.

MS. CONDRAY: Yes. Okay.

CHAIRMAN MEITES: All right. The next one that we have is government program. As I understand the change, you've eliminated the word "poor" and instead included "low income."

MS. CONDRAY: Yes.

CHAIRMAN MEITES: And I guess poor and low income are the same? Are not the same? I don't know.

Is poor a word that's no longer used? I'm not familiar with the nomenclature of --

MS. CONDRAY: Part of -- poor -- I think it was a feeling that poor is a more pejorative term than low income. A little bit of PC, but not serious.

CHAIRMAN MEITES: I think that poor and low income are not necessarily the same. I think low income is probably a better describer of what our grantees are --

MS. PERLE: Especially since what we're talking about is income.

CHAIRMAN MEITES: And it'll get rid of "the grantee is supposed to focus on the least able" because that was amended. Okay.

Next, you made some changes on the income provision.

MS. CONDRAY: Did you not have any issue with the governmental program for persons with persons with disabilities?

CHAIRMAN MEITES: Oh, is that --

MS. CONDRAY: That's a new definition.

CHAIRMAN MEITES: That's new? Oh, I'm sorry.

I skipped that one.

MS. PERLE: It's a parallel definition to low income.

MS. CONDRAY: To low income.

CHAIRMAN MEITES: I see.

MS. BeVIER: As I recall, the IG had a program with that. But maybe we'll wait till the IG comes.

MS. CONDRAY: I don't believe the IG had a program with that. This was one of the issues that was raised -- I was going to wait -- rather than the definition section, then we get to mention that --

MS. BeVIER: Fine. Fine.

MS. CONDRAY: There was an issue with one of the congressional letters in the substantive portion. But I think it's easier to explain it --

MS. BeVIER: Sure. Absolutely.

MS. CONDRAY: -- in that section.

CHAIRMAN MEITES: Okay. Income. As I understand your comment, this is -- except for the change from "household" to "family unit," in large part this is reorganized to put the income items first and then the exclusions from income later --

MS. CONDRAY: Correct.

CHAIRMAN MEITES: -- which is reasonable by the definition. But in the course of reorganizing this, there apparently are several substantive issues.

MS. CONDRAY: There are a few substantive issues, yes.

CHAIRMAN MEITES: And I'll start with my own hobbyhorse. I simply do not begin to understand why we look at pre-tax. When a person brings home a paycheck, unless I am thoroughly wrong, they do not get the full amount. They get what's called a net amount. They never see the amount the government takes out.

How in the world is that --

MS. CONDRAY: Well --

CHAIRMAN MEITES: Wait -- is the gross amount relevant for anything? Lillian gets paid $1.3 million a week by the University of Virginia Law School. She does not get $1.3 million. She gets a pittance of that because the United States, and perhaps even the state of Virginia, takes a lot of it.

And that's wonderful. We all agree that's how our system should work. Why in the world do we look

at the gross amount?

MS. CONDRAY: Well, I will say that this is an issue that's gone back to -- it's been gross amount since the very first adoption of the regulation. And the reason that it's been gross income -- that income is gross income, and then you can look at other things as exceptions later.

It's not like we're not saying that you can't look at taxes -- in fact, we're proposing to change that to be able to let the program look at taxes as an exception -- is our guidelines is 125 percent of the federal poverty guidelines that are issued annually by the Department of Health and Human Services.

The Department of Health and Human Services determines what the annual poverty guidelines are under Directive -- I believe it's Directive 14 from the Office of Management and Budget, which requires that they use as a baseline the Census Bureau's definition of the poverty line. The Census Bureau's definition of the poverty line includes gross income, and it is income before taxes.

So our -- we're just tracking with the

government's requirement is. Whether -- interestingly, when the original -- this is a little bit of a diversion, but when the original poverty line definitions were being developed, the woman who originally came up with them conceived of them as after taxes. But the only decent nationally available baseline was the Census Bureau, which looked at before taxes. And so that was what was adopted.

And although there have been a couple of discussions over the years about changing that, that basic change has never been made. So by using -- we're tracking that. And so if the government standard comes from a standard that is before taxes, and then we change it to after taxes, you're really kind of changing the number of people who are going to be eligible. And so that's where that comes from.

CHAIRMAN MEITES: I'm with you on all that, accepting that we're inheriting a bad situation.

MS. CONDRAY: Yes.

CHAIRMAN MEITES: We'll agree with you on that. But why then -- rather than taking the basic measure as 125 percent of the poverty line, why don't

we take 137-1/2, or build back into our base, into our inflator, not -- leave the base, but increase the inflator because we don't agree that the base is an accurate reflection of income?

MS. CONDRAY: Well, the 125 percent had to be --

CHAIRMAN MEITES: Do we get that from somebody else, too?

MS. CONDRAY: No. We adopted that. But that -- let me find my copy of the Act.

MS. PERLE: It has to be done in consultation with OMB.

MS. CONDRAY: It has to be -- that's right. That 125 percent was adopted in consultation with OMB. And to change that would require additional consultation with OMB. It's not something that the Corporation has the ability to change by itself.

CHAIRMAN MEITES: Why not?

MS. CONDRAY: Because the Act requires that it be done in consultation with OMB.

MS. PERLE: But I do think that we have -- we don't have to follow the pre-tax/post-tax --

CHAIRMAN MEITES: I understand.

MS. PERLE: And I think that at the time that this rule was adopted, it was not nearly as much of a problem because very few of our clients worked.

CHAIRMAN MEITES: Or if they worked, very few of them paid taxes.

MS. CONDRAY: Right. Which --

MS. PERLE: Or paid taxes on what they -- now our client base, and John can confirm this, I think, is largely people who are the working poor. And they do not have access to money that they pay in payroll taxes and whatever small amount they pay in income taxes. And, you know, they may get some of the income taxes back at tax time, but that becomes an asset.

CHAIRMAN MEITES: That's a different issue. If you go in on February 1st and say, we ought to get a refund in a year and three months for my work --

MS. PERLE: Right.

CHAIRMAN MEITES: Now, we are free to change the definition of income without OMB's --

MS. CONDRAY: That's -- yes. That's correct. But I would caution that if you do that --

MS. BeVIER: It's going to change --

MS. CONDRAY: -- it's going to change significantly the whole thing.

CHAIRMAN MEITES: It'll change the whole thing.

MS. CONDRAY: And there are other things that we allow programs to take a look at as exceptions to -- if somebody comes in over 125 percent, there's a laundry list of things that people can take a look at which affect their ability to afford --

CHAIRMAN MEITES: So your recommendation is it's better we handle it the way you've done it?

MS. CONDRAY: That way, yes. Because otherwise, I'm afraid you're going to end up counting certain things twice unless you make a variety of other changes, such as we allow the program to look at medical expenses.

Well, medical expenses affect net income. If they affect your taxes, if you've already taken those out --

CHAIRMAN MEITES: But you've actually put your finger on really a deeper issue. Do we want to

increase -- given our limited funding, and given our apparent inability to persuade Congress that we should get more money, do we want to encourage our -- do we want to allow our grantees to serve a larger universe of people? That's a substantive issue that's --

MS. CONDRAY: That is a substantive issue. We touch on it a little in the course of this because one of the proposals that we did make was increasing the overall absolute top ceiling from 187-1/2 percent to 200.

CHAIRMAN MEITES: Okay. Let me ask you: Why do our grantees want the flexibility to serve even more people when they keep telling us they don't have anywhere near the resources to serve this limited universe?

MS. CONDRAY: I'll let you guys address this. But my understanding -- the feedback that we got was that although it would increase the potential pool of people who could be found eligible, that it wouldn't increase it hugely, and that -- but that it might permit them to better reflect the poverty populations in their area, given the number of working poor, which

have become increasingly to dominate the applicant pool.

CHAIRMAN MEITES: Well, it's --

MS. CONDRAY: And that with respect to -- they would still have their priorities, which would dictate who they choose to give service to. And the other reason for doing it was the simplicity, that 187-1/2 percent is just kind of a weird number.

CHAIRMAN MEITES: Let me ask --

MR. WHITFIELD: If I may -- John Whitfield with Blue Ridge Legal Services -- one point where it does become relevant is the tax issue. If someone's gross income puts them over 187 percent, we can't help them. We can't deduct the taxes. They're out of the set of eligible folks.

CHAIRMAN MEITES: I understand. So for a working family who actually pays real taxes, doesn't have the money because they pay the taxes, raising the limit allows the grantees to do what I suppose we want them to do, be able to make the choice of their own priorities.

MS. PERLE: Right. Right.

CHAIRMAN MEITES: But we would hate to state that if grantees are taking on an even bigger universe when we keep hearing that they don't have the resources to take on the universe that --

MS. PERLE: I don't think -- I mean, I think it's -- John can address this better. But I don't think it expands it in any, you know, hugely significant way.

It's only around the margins, and it will mean that for an individual applicant who comes in and asks for service who has a particularly deserving case who's just over that 187-1/2 percent or 200 percent, whatever it is that we finally set, and has, you know, a case that's important not only for themselves but for their families and their communities, it would give the programs slightly more flexibility to look at those cases.

CHAIRMAN MEITES: Do we have any idea -- does the staff or -- does anybody have an idea of how many more potential recipients of service these changes would make?

MS. CONDRAY: Not in a numeric sense. Just

sitting the working group, the sense I got was that it would increase it slightly but not significantly. But it would be at the margins in those cases and that flexibility.

The feeling was that the slight increase in the applicant pool would not be significant enough to really be overwhelming programs in terms of then having to select from the eligible population, but that it would provide enough flexibility to help them.

CHAIRMAN MEITES: I'm asking a really much more simple question. Why do our grantees want this? They already don't -- can barely handle getting up on the morning. Why do they want even more people who can make a claim on their services?

Go ahead.

MR. ASHER: Excuse me. Mr. Chairman, I'm Jon Asher, temporarily working. Two things that happened --

MS. CONDRAY: Temporarily working.

(Laughter.)

MR. ASHER: Am I? It's more than temporary.

MR. McKAY: It depends on how you do today.

MR. ASHER: Over the past number of years, a much higher percentage of our clients are working, as Linda said. There was a time when the eligibility limit made very little difference to most of our clients.

They were on public assistance, SSI or AFDC, and they were always somewhat below 125 percent. And that predominated our caseload. There were other issues that made financial eligibility sometimes difficult to determine.

Over the number of years, many more of our clients work, and they come in and out of the 125 percent level when they're working. Full-time, they may be a little over. When their hours get cut, they're then eligible. We then have to redetermine eligibility.

And we have always felt that even though we meet a very small percentage of the legal needs of the potential client community, that decision ought to be made based on the critical legal needs at issue and whether legal intervention will make an appropriate difference in their lives.

And wherever we set the guideline, some people will be just above it. But the greater the pool, the greater our ability to set carefully crafted priorities, to decide where there's merit and where -- in foreclosures or other consumer problems, as our clients become the working poor, we're able to make those critical differences in their legal lives.

Now, what I've explained, you have a client who comes in with $20,000 a year in income. Okay? What's 187 percent of that? Maybe one of you could tell me. What's 200 percent? Our intake workers, we will increase our ability to make accurate eligibility decisions to be in compliance because 187-1/2 percent, you need a calculator all the time to do it carefully.

We will increase the pool slightly. It is a pool that the reg-neg group, both field and staff, felt we ought to be serving. They are in fact people who are now working at low wages, have important legal needs, and it will simplify the rule in a way that will significantly increase compliance.

CHAIRMAN MEITES: John, you were -- your practical experience is from your work in Colorado.

Why don't you tell us a little bit what your responsibilities were in Colorado.

MR. ASHER: I was and will be executive director of Colorado Legal Services. I've worked in legal services in the state of Colorado in both a rural program, urban program, now a statewide program, for 33 years.

CHAIRMAN MEITES: I don't have your last name.

MR. WHITFIELD: It's Whitfield.

CHAIRMAN MEITES: And you're --

MR. WHITFIELD: I'm the executive director of Blue Ridge Legal Services.

CHAIRMAN MEITES: Is that one of our grantees?

MR. WHITFIELD: It's a grantee. We cover the Shenandoah Valley of Virginia, just across the Blue Ridge.

CHAIRMAN MEITES: And that is a rural area?

MR. WHITFIELD: Predominately, yes.

CHAIRMAN MEITES: And you heard Jonathan's description. Is that problems you encounter as well?

MR. WHITFIELD: Sure. It's similar, yes. That's right.

MS. PERLE: And just to reiterate, both John and Jon were members of the reg-neg working group.

CHAIRMAN MEITES: You don't think if we increase the limit, you're going to be swamped with even more people you can't help?

MR. WHITFIELD: We're already swamped. So we have to make decisions other than just on financial eligibility to decide who we assist.

CHAIRMAN MEITES: And you like this additional flexibility?

MR. WHITFIELD: It helps those folks at the margin who are working who are unfairly excluded, while people who aren't working, who don't have taxes, get in when they have the same net income. And that just doesn't seem fair. So this actually helps address that.

MS. CONDRAY: If I can say, I think the impression that we got was, to the extent that our programs are already swamped, that at a certain point you can't get wetter. You know? If you're standing in a certain point, they're as wet as they're going to get. They're not going to get wetter by having

additional applicant -- a small additional applicant pool.

MS. PERLE: I just don't -- I want to make one overall point, that this was definitely a consensus work, this proposed rule. And it was one that we all decided we could live with.

But with regard to this issue of pre-tax and after-tax, that we were -- that the field programs were definitely in favor of doing an after-tax --

CHAIRMAN MEITES: We'll get to that because I know that you have a provision for taking the taxes out later on. We can come back.

But I appreciate those remarks from the field people.

MS. BeVIER: In particular, I think just how easy it is to do 200 percent, that that's -- you know, it's relatively trivial and yet it can make such a difference in terms of how clean your calculations are and how quickly you're able to do it. And so that just makes a lot of sense to me.

CHAIRMAN MEITES: All right. We'll go on, then. The other -- and we'll come back to the taxes

issue later.

MS. CONDRAY: Okay.

CHAIRMAN MEITES: And also the 200 percent because that's later.

You've changed the definition of the applicable unit of consideration from family unit to household. And you've got to tell me what the difference is between family and --

MS. CONDRAY: There isn't one. It's just -- previously, there were -- well, the word "household" is a little more user friendly than the word "family unit." We have any number of OLA opinions out there saying family unit equals household, and it's within the discretion of the program, within reason, to define what they define as who's in that family unit.

And I think we may have had -- I'm trying to remember if in the current reg it says it different places or not.

MS. PERLE: I think that --

MS. CONDRAY: I think it says -- it uses both phrases throughout the course of the current reg. And it was like better to use just one phrase throughout

the regulation. And everybody decided that household was just more user friendly.

CHAIRMAN MEITES: All right. The other -- we talked about taxes. The other point that you at least noted for us is this reorganization that you have, such that income is "total cash receipts" --

MS. CONDRAY: Right.

CHAIRMAN MEITES: -- a certain snapshot. Then you go on at the bottom, "Total cash receipts do not include" -- that's the third sentence in this discussion.

Are there any changes? Are any of these exclusions new? I couldn't quite figure out if there are new exclusions or --

MS. PERLE: The Native American trust income is new.

MS. CONDRAY: It's new to the definition.

CHAIRMAN MEITES: I understand. If there's one thing this committee is not going to touch, it's Native American trust income. Let's go on.

MS. CONDRAY: It's not -- it's new to the definition. It's not new to practice.

CHAIRMAN MEITES: Okay.

MS. CONDRAY: Otherwise, no. This was just a reorganization and making it much more easily read. Because the current regulation kind of -- it skips -- there's a definition of total cash receipts in the current reg which says, it does include this but it doesn't include that but it does include that, and we get a lot of questions about that.

CHAIRMAN MEITES: Yes. The only one that caught my eye is gifts. Not that I see this as a major issue. But --

MS. CONDRAY: Gifts are already included in the reg. They're already part of the current regulation. That's nothing new.

CHAIRMAN MEITES: I understand. But I am -- why --

MS. PERLE: Because they go to assets. They become assets rather than --

CHAIRMAN MEITES: Gifts become assets. Rather than income?

MS. PERLE: Rather than income.

CHAIRMAN MEITES: Okay. That's fair enough.

Okay. That's a good answer.

Okay. That, I think, concludes the definitions. We'll come back to the taxes later on.

Does anyone -- do we really have to talk about the Indian trust funds? Because I know -- I actually know something about them, and it's an incredibly complicated area. This $2,000 figure that you have is based on what? Why is it 2,000, not 10,000 or 10,000?

MS. CONDRAY: Because I think that's -- where is it? Somewhere else.

MR. ASHER: I think it's set by the Department of the Interior.

MS. CONDRAY: It's set by the Department of the Interior.

MR. ASHER: It's an exemption -- whether it's Justice or -- I think it's Interior.

MS. CONDRAY: Interior, Indian Affairs, or something like that.

MR. ASHER: It establishes that --

CHAIRMAN MEITES: I believe it is. It would be helpful if you included in your comments the source of the $2,000.

MS. CONDRAY: Okay.

CHAIRMAN MEITES: Do you want to --

MS. CONDRAY: It's probably in the old opinion.

CHAIRMAN MEITES: Is there a sampling of Indian trust funds?

MR. McKAY: Don't even want to touch it.

CHAIRMAN MEITES: Okay. We'll go on.

MS. CONDRAY: Yes. I can -- we can add that -- we cite the Office of Legal Affairs opinion which discusses it. But we can also cite the underlying source.

CHAIRMAN MEITES: Okay. You say that in the current regulation, total cash receipts appears elsewhere. But I didn't really --

MS. CONDRAY: Yes. The only place that the term "total cash receipts" exists in the current regulation is in the definition of income. So it seems silly to have a definition of a term that we were defining previously as opposed to just --

CHAIRMAN MEITES: I see you've spent a lot of time doing corporate trust income.

(Laughter.)

CHAIRMAN MEITES: Okay. That takes us to 1611.3. And I need a big picture here. 1611.3(a) says, "The governing body of a recipient shall adopt policies consistent with this part for determining the eligibility of applicants and groups."

MS. CONDRAY: Right.

CHAIRMAN MEITES: And there was presumably something like that --

MS. CONDRAY: That's correct. This is a restatement of what's currently found in 1611.5(a), 1611.3(a) through (c), and 1611.6.

CHAIRMAN MEITES: Tell me what one of these policies looks like. Does it say that we'll take people who arrive on Monday, or does it say we'll take people with certain kinds of claims before people with certain other kinds of claims? Does it say, we'll take 11 of category A and 13 of category B?

MS. CONDRAY: No. It's just financial --

MR. WHITFIELD: It's purely financial.

CHAIRMAN MEITES: Oh, okay. So it does not go to -- so your organization has some document somewhere

which says, we will take people who have up to X?

MR. WHITFIELD: That's right.

MS. PERLE: And there are some programs that don't use 125 percent. There are some programs that use 100 percent of poverty.

MS. CONDRAY: Right.

CHAIRMAN MEITES: Well, whatever it is. Right. So that each grantee has a written document that lays out this policy?

MS. CONDRAY: Yes. Right. As Linda just noted, our grantees are permitted to set their levels at 125 percent, but they don't have to. So they have to have their own policies, but they could set it at 100 percent, at 110 percent, depending on what the population is in their area.

CHAIRMAN MEITES: But not higher than 125 percent?

MS. CONDRAY: But not higher than 125 percent.

CHAIRMAN MEITES: Do some of them actually set it lower than 125 percent?

MS. CONDRAY: Yes.

MR. WHITFIELD: Yes. We do for some of our

cases.

CHAIRMAN MEITES: Oh, okay.

MS. PERLE: I think fewer. Not many, but some do.

MR. ASHER: But before the merger of the three programs in Colorado, one of the programs had financial eligibility at 100 percent, not 125.

CHAIRMAN MEITES: All right. So that's what those policies are.

MS. CONDRAY: Right. Well, they also encompass a lot of other things.

CHAIRMAN MEITES: I understand. I was just -- MR. ASHER: No. Our policy, though, would define an income ceiling. It describes what assets are excluded in the asset determination, how we will make exceptions, all that.

CHAIRMAN MEITES: Let me ask you, could you two for our next meeting get a copy of your current policies so we can see what they look like? That would be reassuring to check. We'll just take you because you're both here.

MR. WHITFIELD: Yes.

MS. PERLE: And those policies might have changed somewhat under the new rule.

CHAIRMAN MEITES: I understand. But I just want to -- it helps me if I can actually see what the document looks like.

MS. CONDRAY: Yes. And one of the things that is a substantive change in this section is -- aside from the reorganization, of putting things that are scattered in three different sections in one, currently the regulation requires the governing body of the recipient to review its financial eligibility policies annually.

And we are proposing that that go to a triennial --

MS. BeVIER: Three -- every three years.

MS. CONDRAY: Yes, every three years. I think that's triennial.

MS. BeVIER: Yes.

MS. CONDRAY: And part of the reason for that was it's been our experience that although conditions change, the annual review, what we heard, came to be fairly perfunctory. And that every-three-year review

would be administratively less burdensome but would really give the program the incentive and the ability to focus on what's really changed over three years, that that was a good event horizon for looking at changed conditions that might affect what your financial eligibility policies were.

I believe one of the other substantive changes is currently the regulation requires those policies to be submitted to the Corporation compliance. We get some; we don't get all of them. We have not --

CHAIRMAN MEITES: Well, if compliance is interested, they can always --

MS. CONDRAY: They can always get them. And compliance reports that they have never had problems getting them if they want to get them. So having, again, just the administrative burden of having them sent in to us when we're not particularly using them in a global way didn't seem to make continued sense since if a particular program -- if OCE has a need for any particular one, they can get it whenever they want. Or if they wanted to do a review of them generally, they could get them.

CHAIRMAN MEITES: Well, it would help if we could see what these look like.

MS. CONDRAY: Yes.

CHAIRMAN MEITES: But I don't think that -- if they're available, I don't know why more pieces of paper have to flow here.

MS. CONDRAY: That was our thinking.

MS. BeVIER: Yes. I agree with that.

CHAIRMAN MEITES: (b), 1611.3(b). This is the first time that groups is mentioned here. But again, let's hold off groups until the end unless there's -- this is consistent with our --

MS. CONDRAY: This is consistent -- yes. And it's consistent with practice. This is a statement that has not heretofore been in the regulations. But it's of necessity true that they can't adopt financial policies that are going to allow people who wouldn't be eligible under the regulations.

CHAIRMAN MEITES: Okay.

MS. CONDRAY: So we just thought if we're redoing this, let's put it all in there.

CHAIRMAN MEITES: Let me ask you kind of a

question that goes the other way. Somewhere here, and we're not there yet, it states that a grantee -- a recipient -- no, a grantee, one of our grantees, can -- a recipient only can represent people who would not be eligible if they used non-LSC funds.

MS. CONDRAY: Financially over income. That's correct.

CHAIRMAN MEITES: You've got to explain to me how this works because since money is fungible, I need some help as to how one of our recipients keeps track of what are our money and what is --

MS. CONDRAY: No. Well, they keep track of that --

MS. PERLE: We do it all the time.

MS. CONDRAY: -- all the time.

MR. WHITFIELD: Oh, absolutely.

CHAIRMAN MEITES: How do you do it? Two sets of books? Two bank accounts?

MR. ASHER: With -- no. With accounting software. I mean, we have grants -- about half of our granting comes from the Legal Services Corporation.

CHAIRMAN MEITES: Right. This is fairly

typical.

MR. ASHER: Right. Well, I wish it were. It varies a good deal. But -- so, for example, we'll get an Older Americans Act grant which specifies that we have to serve elderly who are in the greatest economic and social need. The federal statute says you can't use a means test.

And so we separate out those clients for whom we report we're serving under the Older Americans Act, and we have a contractual relationship with the funder. We have sophisticated accounting software. We not only have to report to you that we're not doing anything with your money that we shouldn't but that we are doing with their money what they're purchasing.

So it is complicated. As programs multiply their funding sources, it gets more complicated. But it is doable and it is our administrative responsibility to make sure that we account appropriately for every grant, contract, funding source we get.

Now, we get some money where they want us to serve low income, but it comes with somewhat fewer

restrictions -- IOLTA money in many states; charitable contributions from lawyers, law firms, and the public. That money can be tracked general fund resources for whom we can use that money to serve clients who are not restricted by the LSC Act but where they're over income. But we can use other sources of funds to do that.

CHAIRMAN MEITES: Is that what you do here as well?

MR. WHITFIELD: That's similar, yes, because we certainly do track our time so we can account using the hours that staff spent if they use multiple funds. In some instances, we have staff that are purely paid by one funding source, so we just track their --

MS. BeVIER: That's -- so some people get -- when they get their check, do they get six checks if they --

MR. WHITFIELD: No.

MS. BeVIER: They get one check that is sort of drawn from one, two, three, four different accounts?

MR. WHITFIELD: Right. Yes.

MS. BeVIER: But they're full-time employees

of LSC. And so LSC's benefits --

MR. ASHER: No.

MS. CONDRAY: No. They're not employees of LSC. They're employees of the --

MS. BeVIER: I'm sorry. Of the grantee. Right. Right. Okay. And so whatever benefits program --

MS. PERLE: That's all allocated appropriately.

CHAIRMAN MEITES: When our compliance people go out and they were to ask this question, do they ask questions like this?

MS. CONDRAY: Yes.

MR. ASHER: No. They more than ask. They look. It would be easy if they just asked. But they don't stop there, and appropriately so.

CHAIRMAN MEITES: All of our recipients, then, are aware of these requirements --

MS. PERLE: Yes.

CHAIRMAN MEITES: -- and have set up internal systems so they can keep track of this. Right?

MR. ASHER: Absolutely.

MS. PERLE: And it's interesting --

CHAIRMAN MEITES: Otherwise we would have heard about it?

MR. ASHER: Absolutely.

MS. PERLE: It's interesting, too, because John said we do it with accounting software. But in fact, this rule -- this provision has been in the rule since the beginning. And, you know, when the Corporation came into existence in '76, there wasn't accounting software. It was all done by hand.

And they developed very sophisticated systems to account for it. And now it's easier because there is the software.

CHAIRMAN MEITES: See, the reason I'm asking this, and it's fairly obvious, is that there are very substantial restrictions in our statute and our regulations about what is appropriate or not.

And we have never -- although we're the operations committee as well as the regulations committee -- we have never asked those questions. And I thought this was a good time to ask it.

But I'm impressed that both these two grantees

apparently are -- you know, they've been doing this for years.

MS. CONDRAY: Oh, yes. And if I can address this kind of issue vis-a-vis like the restrictions, the Act talks about restrictions on the funds. So prior to the '96 restrictions, when there -- there are some -- you know, both the application of the income that the Corporation has to develop income guidelines, the application of those income requirements for grantees.

And there are some other substantive restrictions in the Act. Okay? Those all -- originally all went to services provided with LSC funds. And grantees were permitted to do other things with their non-LSC funds.

With the restrictions in '96, the legislative language of those restrictions is not, these funds can only be used for X, Y, Z. It's no recipient of these funds may A, B, C.

CHAIRMAN MEITES: Regardless of the source of the money.

MS. CONDRAY: Right. And in the restrictions,

it also -- it required that things that are otherwise impermissible, those restrictions with the -- with just LSC funds become restrictions with the other funds, with certain exceptions.

And the income exception, the you can still serve over-income people with non-LSC funds, was carved out. So that legislative authority remains.

CHAIRMAN MEITES: Okay. So that --

MR. WHITFIELD: The way --

CHAIRMAN MEITES: Well, let me make sure I -- so in talking about financial eligibility, we don't have the bigger question of a recipient can't do it at all?

MS. CONDRAY: No.

CHAIRMAN MEITES: And the statute still permits over-eligibility if it's served by non-LSC funds.

MS. CONDRAY: That's correct.

CHAIRMAN MEITES: And you've explained to us that the grantees are aware of this and are --

MS. CONDRAY: And it's typically part of their -- it may be part of their grant, depending on

where they get --

MR. ASHER: The way I explain it to a new intake worker or a new staff attorney, what I say is there are some things we can't do with anybody's money, period. They are restricted, prohibited. There are other things we can't do with LSC funds, but not only can we, we're contractually obligated to do with other money.

And that makes your life difficult, but that's the rules of the game and you're responsible for knowing what we can't do at all and what we can do with non-LSC funds and the like.

And your timesheets are therefore important to track that. Accounting records are important. This, you know, is a complex world, but it's the one that's conditioned by the receipt of LSC funding.

CHAIRMAN MEITES: And again, that's the same predicate in the Blue Ridge?

MR. WHITFIELD: Exactly. For instance, we for a number of years received a Department of Justice grant to help victims of domestic violence. And under that, we set out guidelines at 200 percent of poverty.

CHAIRMAN MEITES: And you're able to keep track of all this?

MR. WHITFIELD: Yes.

CHAIRMAN MEITES: Okay. Thank you. That's helpful.

MS. BeVIER: That was very -- that's very helpful. It really is.

MS. CONDRAY: Good.

MS. PERLE: Thank you, guys. I'm glad you were here.

MS. BeVIER: Yes.

MR. ASHER: I assume it's still going that way back in Colorado.

MR. McKAY: Let the record reflect a little distance here.

CHAIRMAN MEITES: Yes. That's (a) and (b). Now we're on (c). And this is what we've talked about, that they can establish -- a recipient can establish a ceiling of less than 125 percent.

MS. CONDRAY: That's correct.

CHAIRMAN MEITES: And you say some of your grantees actually --

MS. PERLE: I think fewer and fewer as time goes on.

MS. CONDRAY: But they have that --

MS. BeVIER: But as John said, for some --

MS. CONDRAY: And it may be for certain matters.

MS. BeVIER: For certain matters. Yes.

CHAIRMAN MEITES: And we talked about where this federal poverty guideline thing comes from.

I got lost here. Okay. We're now in (c)(2). And the authorized exceptions are talked about later on?

MS. CONDRAY: Right. Right. This section is just on what has to be and what may be in the policies.

CHAIRMAN MEITES: Okay. So there are two parts in the policy, at least in this -- first of all, 125 is the largest number we're going to see in anybody's policy. And in addition to that number, they may have a list of exceptions.

MS. CONDRAY: Right.

CHAIRMAN MEITES: Don't have to, but they co.

MS. CONDRAY: That's right.

CHAIRMAN MEITES: But the only exceptions that are permissible are those that we're going to talk about in 1611.5. Is that right?

MS. CONDRAY: Correct. Correct.

CHAIRMAN MEITES: Okay. (d)(1). Now we're talking about asset ceilings. And this is what we talked about as cash or readily available.

MS. CONDRAY: Correct.

CHAIRMAN MEITES: Give me an idea what a typical asset ceiling is. Is it $100,000? Is it $1.1 million? Fifty cents? What is it?

MS. PERLE: $5,000.

CHAIRMAN MEITES: We have no idea what typically --

MS. PERLE: I think in reading the reports and talking to programs, I think the highest asset ceiling that I can recall was one program had $10,000 in assets. But most of them are --

CHAIRMAN MEITES: It's quite low?

MS. PERLE: It's quite low. Oh, yes.

MR. ASHER: No. If somebody is sitting on -- I mean, there --

CHAIRMAN MEITES: I understand. But we have no idea what the reality is. It might be helpful if we -- I don't want you to do a survey because I know that's a lot of work. But why don't we see what your two look like. Maybe that would give us an idea.

MS. CONDRAY: You could just --

MR. WHITFIELD: Well, we have -- we go down a slightly different path on this at Blue Ridge. Instead of having a static number, flat ceiling, we make it a function also of their income.

For instance, if someone has one dollar a year in income, and for the size of their household the ceiling is 20,000, we'll allow them to have $19,000 in assets, in liquid assets, because they're really poor and they're going to need every bit of that just to make it through the year.

While another household that has $19,999 in income, one dollar below the ceiling, they don't need -- they're not going to need those assets to keep the roof over their head and to eat. And so we will count that excess as assets.

CHAIRMAN MEITES: So you're --

MR. ASHER: That's rational, but not how we do it.

MS. PERLE: Yes. I don't think many people -- I don't know. I shouldn't say that.

MR. WHITFIELD: We may be the only one.

MS. CONDRAY: I've heard of a few -- no, I don't think you're the only one, but I've heard of a few.

CHAIRMAN MEITES: In Colorado --

MR. ASHER: It's about 5,000 at the most. I think it's lower than that in terms of cash. And then we exempt the house.

CHAIRMAN MEITES: We understand the exemptions, but -- yes.

MR. ASHER: Yes.

CHAIRMAN MEITES: All right. But it is --

MS. CONDRAY: It's low.

CHAIRMAN MEITES: It's not a big number we're talking about.

MR. ASHER: No.

CHAIRMAN MEITES: And you say excluded --

MR. ASHER: Let me -- and that's in part

driven by the lawyers on our boards of directors. I mean, they want to make sure that if somebody is sitting on significant cash, that it goes to a private lawyer in legal fees. Yet they want to make sure that those who are in need of assistance get it and we don't drive them into the poorhouse, further poor. So they're pretty good about that.

CHAIRMAN MEITES: In your (d)(1), you do include -- exclude certain assistants.

MS. CONDRAY: Correct.

CHAIRMAN MEITES: You use family's principal residence. Shouldn't this be household rather than family? Because I thought we got rid of the word family.

MS. CONDRAY: Oh, yes. You're right. Yes. You're right.

CHAIRMAN MEITES: What do you mean by "assets used in producing income"? You know, I know the shovel and the hoe. But in a realistic world --

MS. CONDRAY: If you -- if how you make income is by selling hot dogs from a cart, the cart is an asset that you need to produce your income.

CHAIRMAN MEITES: Okay. And --

MS. PERLE: I think there's some discussion of that in the --

CHAIRMAN MEITES: Is there in the comments?

MS. PERLE: I believe so. Maybe I'm wrong, but --

MS. BeVIER: I don't think we actually really did discuss that.

CHAIRMAN MEITES: We talked about the assets exempt from bankruptcy proceedings. And I am prepared to discuss that at almost length in light of the new bankruptcy bill. But I'm not sure anyone wants to hear my views on the new bankruptcy bill.

But suffice it to say that for certain states of the union, perhaps Virginia, you can have unlimited assets excluded in the bankruptcy bill.

MR. WHITFIELD: Certainly not in Virginia.

CHAIRMAN MEITES: You're not one of those states?

MR. WHITFIELD: No.

MS. BeVIER: It's not the way we do things here.

(Laughter.)

CHAIRMAN MEITES: At any rate, Congress has made a decision what that is, and I doubt very much --

MS. BeVIER: Why don't we postpone the discussion on the bankruptcy bill.

MR. MERRYMAN: My name is Ronald Merryman. I'm with the IG shop. Just a quick question.

CHAIRMAN MEITES: Come on up. Come closer so we can hear you better.

MR. MERRYMAN: Thank you, sir.

CHAIRMAN MEITES: gay.

MR. MERRYMAN: Just a real quick question on this discussion. Not to muddy it up or anything, but the term asset has been defined as liquid.

CHAIRMAN MEITES: Well, they change it to readily convertible to cash.

MR. MERRYMAN: Right. A house, those types of things, are not readily convertible to cash, I think, under your idea of asset.

CHAIRMAN MEITES: Yes.

MR. MERRYMAN: So I think you need to clarify is there a different set of assets we're talking about

here?

MS. CONDRAY: Well, there's a difference between assets which may be excluded, like a primary residence, regardless of how readily convertible to cash it is, and other assets that are included that may be readily --

MR. MERRYMAN: That's not the definition.

MS. BeVIER: A house is readily convertible to cash. All you do is you put it on the market.

MS. CONDRAY: Right. Right. But they're allowed to exclude certain assets. Even readily convertible assets to cash may be excluded from the ceiling, by definition.

MS. BeVIER: I see. I see. I got it.

CHAIRMAN MEITES: All right. Are we okay on this? Okay. Had we talked about taking a break?

MR. McKAY: I think the vote is unanimous.

CHAIRMAN MEITES: All right. It's now 10:30. Let's take a short break for about ten minutes or so.

(A brief recess was taken.)

CHAIRMAN MEITES: Let's go back on the record.

We were at -- we'd finished, I think -- well,

we talked about (d)(1). But I note in the comments that some members of the working group wanted the exclusions to be illustrative rather than exhaustive. And the staff recommended, and this version has, that they be limited to these particular categories.

I guess my thinking on that is that since in (d)(2) you allow -- I believe regulations would provide that the executive director or the executive director's designee could waive the ceiling under unusual circumstances. That probably at least some -- goes some way towards giving an escape clause to the exclusiveness of this list.

MS. PERLE: I was thinking of the example in rural areas, and John or Jon could confirm this, that, you know, this says vehicles required for work. But in a rural area, there's no public transportation.

Maybe people don't work, or maybe only one -- you know, one member of the family works. But you can't do anything without a vehicle. You can't get to a doctor's appointment. You can't get to a school appointment for your kids. You can't go grocery shopping unless you have a vehicle.

So if it's only one that's required for work and that's the only that can be excluded, then --

MR. WHITFIELD: For instance, a disabled person.

MS. PERLE: Or a disabled person.

CHAIRMAN MEITES: So you're suggesting that this limitation to required to work may be too --

MS. PERLE: I think that it may exclude consideration of -- I think it should say "of such things as the household principal residence," so it gives some flexibility for local circumstances.

MR. MERRYMAN: But doesn't (d)(2) give you that flexibility?

MS. PERLE: But you have to go through a process of waiving it for each person, whereas if you're in a rural area where everybody needs some kind of vehicle to just carry on their lives, you have to do a waiver for each person.

MR. McKAY: But in a city where there's tons -- if there is tons of public transportation, that's not an issue.

MS. PERLE: But it's not -- so it may not be

an issue. But the point is (d)(2) is for an individual situation. (d)(1) is for the programs' overall policy. So that in an urban situation, you may not have to say that another vehicle or a vehicle for the household.

CHAIRMAN MEITES: No. I don't agree with you. I think (d)(2) -- "under unusual circumstances." It doesn't say "under unusual circumstances for that individual." I would think if there were a rural community where because there's no way you could get anywhere except by using a car, the executive director could say, in our situation --

MR. WHITFIELD: That's not the way it's set up.

MS. PERLE: No. It's not really the way it's intended. (d)(2) is really --

MS. CONDRAY: It's an individual waiver. But they could give individual waivers and --

MS. PERLE: Right. But then you have to go through that process, and the executive director or designee has to make that determination in each instance.

MR. WHITFIELD: That would be burdensome.

MS. PERLE: That would be burdensome.

MS. CONDRAY: Although presumably that's what they're doing now.

MS. PERLE: Are you?

MS. CONDRAY: Because currently, the only excludable asset right now --

MR. ASHER: We're excluding --

MS. CONDRAY: -- is the principal residence, so that what management was proposing includes additional things beyond the principal residence to provide some additional flexibility.

MS. PERLE: I will tell you, though, that in fact, programs use other things besides the principal residence now as their generally excludable --

CHAIRMAN MEITES: Such as?

MS. PERLE: Such as vehicles. And the Corporation is not enforcing that provision.

CHAIRMAN MEITES: Well, the vehicle is an issue because -- what you're saying is that --

MS. PERLE: What I'm saying is that a program should have the flexibility to determine what makes sense to exclude or to include in their own particular

service areas. It could be different for -- for John's program, both of them serve both urban and rural areas. And it may be that you have different exclusions in the urban areas from the rural areas.

CHAIRMAN MEITES: Yes. I would rather -- if you think there are more things we should exclude, I would prefer --

MS. BeVIER: To list them.

CHAIRMAN MEITES: -- to list them. What's your sense?

MS. BeVIER: Yes.

CHAIRMAN MEITES: Well, why don't we do this. If you all want to try to put more exclusions into this list, why don't you try that first before we make it broader. So, you know, we're going to see you in a month in Puerto Rico.

If the field or the staff wants to come up with some more phrases to add here, why don't we do that first. Does that make sense, rather than trying to broaden it?

MS. BeVIER: Yes. It does to me. I think that -- yes. It makes sense. I think there are sound

policy reasons for having it to list what --

MS. CONDRAY: And that's what the staff recommendation was, to make --

MS. BeVIER: In general, yes.

CHAIRMAN MEITES: We're open to suggestions of --

MS. BeVIER: You can add explicit things, you know. In rural areas, automobiles, for example.

MS. PERLE: I guess the problem is that -- you know, for the three of us or whoever it is to think of what might be the appropriate thing to --

CHAIRMAN MEITES: Well, do what you can.

MS. BeVIER: Do what you can.

MS. PERLE: And then we'll have an opportunity to comment after that.

CHAIRMAN MEITES: Right. Okay. No. 2 is the waiver provision, which I misread. So if one out of three misread it, then your success rate is only going to be 66-2/3 percent because I am certainly no more skillful at reading this than anybody.

So this is individual waiver.

MS. BeVIER: And here there's a change to

"unusual" instead of "unusual or extremely meritorious."

MS. CONDRAY: Right. And that was intended to provide additional flexibility.

MS. BeVIER: Yes. I understand that. And all I'm wondering is it's just -- I don't want to quibble about words. But sometimes, of course, you just have to, whether unusual is -- conveys the right sense of what you're getting at.

If you're talking about an individual waiver for person with -- it seem to me -- well, you might want to have something that says extraordinary rather than unusual. If you were thinking of extremely meritorious as being sort of equivalent to unusual in the initial one --

MS. CONDRAY: No. I think we were thinking that extremely meritorious was too restrictive.

MR. WHITFIELD: Also, extremely meritorious goes to the merits of the case, and this is a financial eligibility policy.

MS. CONDRAY: I don't -- I understand your quibbling with unusual. But I think we thought that

extremely meritorious was going a little too far, farther than we needed to go in the regulation. But we could afford some additional flexibility, and felt that keeping unusual -- but if there's another word that you think reflects that better, that's, you know --

MS. BeVIER: Yes. Maybe unusual is the best you can do. And I suppose of it is an individual look at what's going on, and the executive director is going to be responsible and, you know, make the individual assessment.

MS. PERLE: Do we need to add something to this to make it clear that it's individual?

CHAIRMAN MEITES: Yes. I would make asset ceiling something like on a case-by-case basis, or on an applicant-by-applicant basis.

MS. PERLE: I'm sorry. Where --

MS. CONDRAY: I guess waiver of its asset ceiling --

CHAIRMAN MEITES: On an applicant-by-applicant basis, or something along those lines.

MS. BeVIER: Oh, right. Asset ceilings on a case-by-case basis.

CHAIRMAN MEITES: Well, whatever language is consistent with the phrasing that you use rather than what I thought that they could --

MS. PERLE: Can we just add "for specific applicants" after "asset ceilings"?

CHAIRMAN MEITES: Fine. Whatever -- we'll leave that, Mattie, to you. You've got the sense of what we want.

MS. CONDRAY: Yes.

CHAIRMAN MEITES: The second sentence essentially provides there has to be an audit trail if we want to go look at it.

MS. BeVIER: Right. And that's what will be sufficient to keep the executive directors in line.

CHAIRMAN MEITES: That's fine.

MS. PERLE: We've had this provision for a long time.

CHAIRMAN MEITES: No, that's good. That makes sense.

MS. PERLE: So people understand it.

MS. CONDRAY: Something I can also point out about the asset ceilings is that the current

regulation -- this is another one of those paperwork things -- requires that asset ceilings be submitted to the corporation. And we're looking -- again, that's another -- if any of the folks here want them, they can get them. We don't need to have them submitted.

CHAIRMAN MEITES: Under (e), this is -- why are we commenting on domestic violence?

MS. CONDRAY: Because there's a statutory provision in -- I think it was the '98 appropriation that's been carried forward that requires our programs not to consider jointly held assets for victims --

CHAIRMAN MEITES: Oh, just jointly held assets. I misread this. I see. So --

MS. CONDRAY: Yes. They're required to consider only the assets of the victim of the domestic violence and not jointly held assets. And that's a statutory change.

CHAIRMAN MEITES: I got you.

MS. PERLE: Right. And this language, I think, is just pretty much verbatim from the statute.

MS. CONDRAY: From the statute.

MS. PERLE: It's a little awkward, but --

MS. BeVIER: I take it that this means assets jointly held with the perp, not assets jointly held with anybody else?

MS. CONDRAY: Yes. Yes.

MS. BeVIER: Would it make any sense to clarify that?

CHAIRMAN MEITES: Yes, it does.

MR. ASHER: Well, except the amendment itself, unfortunately, only refers to children and spouses, not to other perps, the Kennedy amendment.

MS. PERLE: No. This isn't the Kennedy amendment.

MR. ASHER: No. But you don't want to muck -- different exceptions apply to --

MS. BeVIER: Yes. Well, all I'm thinking of is you could have jointly held assets with somebody who wasn't battering you, and those we would want to include in the asset ceiling. So asset jointly held with any perpetrator. Right?

MS. CONDRAY: Right. Any victim of domestic violence, it's any asset jointly held with the perpetrator of the domestic violence.

MS. PERLE: What if there are assets held by a child, but the -- who remains with the perpetrator and, you know, the victim has left? I'm trying to think of --

MS. BeVIER: I don't see it.

CHAIRMAN MEITES: Try that again. I don't think we followed that.

MS. PERLE: You're suggesting that it's those that are jointly held with the perpetrator.

MS. BeVIER: Right. And that's what we're trying to exclude.

MS. PERLE: Right. But what if there are other assets of the household that the perpetrator may have control over and that the victim doesn't have access to?

MS. BeVIER: This doesn't exclude them anyway, does it?

MS. CONDRAY: I mean, we took the language directly as it is in the statute.

CHAIRMAN MEITES: That's what it says in the statute?

MS. CONDRAY: Yes. The statute says, "In

establishing the income or assets of an individual who is the victim of domestic violence under Section 107(a)(2) of Legal Services Corporation Act to determine if the individual is eligible for legal assistance, a recipient described in such section shall consider only the assets and income of the individual and shall not include any jointly held assets."

MS. BeVIER: I think the intent of that is assets jointly held with the perpetrator. And I, for one, think we should include that in this regulation.

CHAIRMAN MEITES: We can do better than Congress -- in this one modest instance, never as a general statement.

MS. CONDRAY: So I would say assets jointly held with the perpetrator of domestic violence.

MS. BeVIER: With the perpetrator. Yes.

CHAIRMAN MEITES: Okay. Do we get separate domestic violence funds? Do our grantees get separate domestic violence funds?

MS. CONDRAY: Some of them.

MS. PERLE: Not from us. From others.

CHAIRMAN MEITES: Does Congress appropriate

that?

MS. CONDRAY: There's a Justice Department Violence Against Women Act, a grant program for the Justice Department.

MS. PERLE: And some of our recipients get --

CHAIRMAN MEITES: They apply to the Justice Department for grants?

MS. CONDRAY: Yes. There's a variety of other federal grant programs that our grantees get -- some grantees get grants from. There's IRS grants. There's BAWA grants. There's HUD grants, Housing & Urban Development. There's a variety of other grant programs --

MS. BeVIER: They're not all domestic violence grants.

MS. CONDRAY: No, no. Just a variety of federal programs.

CHAIRMAN MEITES: Why didn't Congress funnel that through us?

MS. CONDRAY: Because they're substantive -- I don't know. I mean, part of it is they're substantive areas.

MS. PERLE: Well, they go to other domestic violence providers as well.

MS. CONDRAY: Who are not LSC providers as well.

CHAIRMAN MEITES: Why does that Justice Department pass out money to our recipients rather than us?

MS. CONDRAY: Well, they also -- those grant monies go not just to LSC grantees but to other organizations as well.

MS. PERLE: They go to other organizations.

CHAIRMAN MEITES: Oh, I see.

MS. PERLE: They go to domestic violence shelters. They go to coalitions.

MS. CONDRAY: Then can go to --

MS. PERLE: Our grantees are one subgroup of the grantees of those funds.

CHAIRMAN MEITES: Okay. So they're just like federal monies for all kinds of programs.

MS. PERLE: Right.

MS. CONDRAY: And our grantees sometimes get them, sometimes don't. Sometimes have a grant for a

few years and then lose it. You know, the agency gives the grants --

MS. PERLE: They like to shuffle the money around.

CHAIRMAN MEITES: Is this a deep pocket that there's something we can to exploit it?

MS. CONDRAY: We're trying.

CHAIRMAN MEITES: And the rest of the federal government. Is there any coordination among our recipients so that they all know about what federal funds are available?

MS. PERLE: Yes. And NLADA is very -- NLADA is working very hard to make sure that that information goes out to programs we monitor. Don is here. I mean, Don Saunders knows a lot about it.

But we monitor that money very carefully. We find out which programs are getting it, which ones aren't getting it. We work with programs to encourage them to apply, to help them apply, to find out, if they don't get the money, why. I mean --

CHAIRMAN MEITES: Do our recipients get any preference for this, or are they just --

MR. WHITFIELD: I don't think so.

MS. CONDRAY: I doubt it.

CHAIRMAN MEITES: Shouldn't we get a preference? We think we should. If the federal government is trying to fund legal services to the poor, and they're giving us X dollars, which we tell them is not enough, but they have other pots of money that are also available, why shouldn't our recipients have a preference for that money?

MS. BeVIER: Well, I'm not sure that legal services are the preference. I'm sorry. I hate to speak against interest.

CHAIRMAN MEITES: No. Go ahead. No, that's all right.

MS. BeVIER: But, you know, I mean, there are other services that --

MS. CONDRAY: Other service providers.

MS. BeVIER: -- victims of domestic violence need.

CHAIRMAN MEITES: As much as our recipients.

MS. BeVIER: Yes. And so, I mean, they probably need them all equally. But it's not clear

that they first need ours.

MS. PERLE: And there are other providers of legal services out there as well.

MR. WHITFIELD: But there is one pot of money called civil legal assistance.

MS. BeVIER: Well, I think that should go to --

MR. SAUNDERS: Excuse me.

CHAIRMAN MEITES: Go ahead.

MR. SAUNDERS: Good morning. I'm Don Saunders with NLADA. First question: We do a bimonthly newsletter called Advocacy Funding Facts where we try to track for the field, both LSC and non-LSC, all the federal funding that might be available for advocacy.

There is a program in the office on violence against women called Legal Assistance to Victims. It's roughly $40 million a year. It's been at that level for a number of years. And I would say probably half of those resources go to LSC recipients. It is designated for legal assistance.

So there's a whole -- there's much other money available for domestic violence victims. But there's

one targeted program. At one point, the previous board sought funding for domestic violence as an earmark and end the Commerce/Justice state debate. Then-Chairman Hal Rogers pretty much directed DOJ to work with the Corporation. And your predecessor board and staff have actually met on a number of occasions with Diane Stuart and talked about the needs for LSC.

CHAIRMAN MEITES: Who's Diane Stuart?

MR. SAUNDERS: She is the director of the Office on Violence Against Women in the Department of Justice. It might well be time to reestablish a relationship because I think that agency-to-agency is more effective, frankly, than our advocacy. So it might well -- because a lot of programs are losing like $650,000 grants, and it's pretty disruptive.

CHAIRMAN MEITES: That's a kind of sidetrack. But that's -- okay. That takes us to (f). And (f), I think --

MS. CONDRAY: Yes. That is new.

CHAIRMAN MEITES: Why don't you explain. I think that --

MS. CONDRAY: Okay. For a long time -- and

I'll give you a little background -- for a long time, the Corporation has permitted grantees, when they establish their asset ceilings, to take -- if the grant -- if the applicant is receiving government assistance and the program through which they're receiving assistance, whether it's AFDC or whatever the successor program is, had an asset ceiling that was at or lower than the one that they otherwise had, the fact that they were eligible for the benefits that they were getting was enough to demonstrate that they were going to be eligible within the asset ceiling.

It was asked that we talk about in the working group of basically applying that on the income level. And it seemed to make sense, that if somebody is receiving -- if all of their income comes from this benefit program and that benefit program has been looked and determined to be at or below what the program's income is, that that's good enough. That's going to be good enough proof.

If they've got income from that benefit program and something else, then they walked outside of that little box.

CHAIRMAN MEITES: But you talk here -- as I understand it, since you use the word financial eligibility, that includes both prongs, both income and the assets. Is that right? So the government benefit program would have to be consistent on both those elements.

MS. CONDRAY: Yes.

CHAIRMAN MEITES: Okay. Is that -- are you all in agreement on that?

MS. PERLE: Yes. I mean, if you look at the next page under 1611.4(c), I think it says the same thing. And I've never been quite sure we need this -- why we need (f) because I think it's just repeating it.

CHAIRMAN MEITES: I understand. But --

MS. PERLE: But substantively, we're all in agreement.

CHAIRMAN MEITES: It's both the income side and the asset side?

MS. PERLE: Yes. Yes.

MS. CONDRAY: And the reference should be 1611.4(c).

CHAIRMAN MEITES: Okay, (g). And this gives a directive to our recipients as to what they should look at in determining financial eligibility.

MS. CONDRAY: Right. And this comes from the previous reg and is referenced, I believe, in the Act.

CHAIRMAN MEITES: Is any of this in any of our authorizing acts or statutes, these --

MS. PERLE: It's in the LSC Act.

MS. CONDRAY: It's in the LSC Act.

CHAIRMAN MEITES: These elements?

MS. CONDRAY: Yes. And these --

MR. ASHER: There are two of you who do better than Congress.

MS. CONDRAY: -- elements have been in the regulation for --

CHAIRMAN MEITES: No. If Congress doesn't think so, our recipients should look at this. That's fine because it's not the only thing they can look at.

MS. CONDRAY: Yes.

MS. BeVIER: Including but not limited to.

CHAIRMAN MEITES: Right.

MS. CONDRAY: Exactly.

CHAIRMAN MEITES: 1611.4, Financial Eligibility for Legal Assistance. Now, we've already talked about financial eligibility for legal assistance. Isn't that what we've been talking about until now?

MS. CONDRAY: Well, that section, section 11.3, is the requirements of the policies. Because right now the current reg requires them to have policies and talks about what the policies have and have not to do. We wanted to put that in one place.

And then this is the -- some more of the substantive, you know, description of what --

CHAIRMAN MEITES: I got you. And so 1611.4(a) says you can only provide assistance to people who are within the guidelines established by your policy.

MS. CONDRAY: Right.

CHAIRMAN MEITES: Your policies are 1611.3. Very logical.

MS. CONDRAY: And it repeats the statement that you're allowed to provide legal assistance that's otherwise permissible to someone over income if there's another source of funds for it.

That's currently in the regulation. It's always been true. It's just we're putting it in this like one concise section statement to make it clear because we get questions about it.

MS. PERLE: I get questions all the time about it. Can I --

CHAIRMAN MEITES: And this is the point that we discussed earlier.

MS. CONDRAY: Right.

CHAIRMAN MEITES: There are some things that the recipient can't do, but there are other things that the recipient can do as long as it does it with other funds. And that's what this says.

MS. CONDRAY: Or, really, what this is getting at, that there are other people that the recipient can accept as clients.

CHAIRMAN MEITES: Right.

MS. CONDRAY: What they're doing for the clients has to be permissible regardless of the --

CHAIRMAN MEITES: That's a good way of putting it.

MS. CONDRAY: Yes.

CHAIRMAN MEITES: All right, (b).

MS. CONDRAY: And this is, I believe -- and here again, some of the language where the language used to be "may provide services," we've gone to "may determine an applicant to be eligible."

CHAIRMAN MEITES: Because you don't want there to be a reference to entitlement.

MS. CONDRAY: Right. And the reference -- and "consistent with the recipient's financial eligibility policies," kind of again referencing back that the recipient has to adopt policies consistent with our regulation and then they can make -- they can determine someone to be financially eligible consistent with those policies.

And this is really kind of the meat of the eligibility determination, that they're within the asset ceilings or the asset ceiling has been waived, and the applicant's income is at or below the income ceiling, or the applicant's income exceeds the ceiling but one or more of the authorized exceptions applies.

CHAIRMAN MEITES: Now, that -- you went too fast for me. That's (b)(1) or (b)(2)?

MS. CONDRAY: Correct.

CHAIRMAN MEITES: And the exceptions are in the next section.

MS. CONDRAY: Correct.

CHAIRMAN MEITES: Then we get (c). And we've pointed out that we've more or less already said (c).

MS. CONDRAY: Right.

CHAIRMAN MEITES: And we say it again because?

MS. CONDRAY: Again, this is the -- 1611.3 is what has to be written down in the policies and what can be provided for in the policies. And this is the substantive stuff, that we want it not just to be -- we don't want the policies to just say, well, our policies are consistent with the regulation. We actually want the policy to have some specifics in it.

CHAIRMAN MEITES: All right. Now, why in 16.3(f) --

MS. BeVIER: 1611.3(f).

CHAIRMAN MEITES: -- do you say much less than you do in 1611.4(c)?

MS. CONDRAY: Well, I think partially because since it is cross-referenced in here, the policy -- if

you're going to have -- if your policy is going to address it, you know, you have to address it. But --

CHAIRMAN MEITES: Okay. You could -- in terms of drafting -- not that we're to be compared with our predecessor committee in the least, ever, but they were apparently much more careful word for word than we are -- wouldn't it be better to put the 4 definition first?

MR. WHITFIELD: The what definition first?

CHAIRMAN MEITES: If you look at 4(c), it's spelled out in detail what they're actually doing. And I could suggest that you put the detail in 3(f) because usually you like to cross-reference backwards rather than forwards.

Do you follow any of what I just said?

MS. CONDRAY: Yes. I am following you. If you prefer that, we can certain do it --

CHAIRMAN MEITES: No. This is purely for what will make it easier for recipients to understand. I have no pride of authorship. If you think it's clear enough to the recipients written, these are the policies and these are how you apply the policies --

MS. PERLE: Don't look at me because I've always thought that this was confusing. And (f) -- I would prefer just to say -- you know, just have (f) be a reference to 11.4(c) or leave it out entirely. I just --

MS. CONDRAY: Well, I don't want to leave it out because I want to say that this is something that can be --

MS. PERLE: You may do it. You don't have to do it.

MS. CONDRAY: Right. A program could choose that regardless -- even if applicants come in and all of their income is from a government benefits program, that may -- they may want to do a complete independent review regardless.

CHAIRMAN MEITES: I don't want to spend a lot of time. Why don't you look at this and see if you think it reads better to flip it, to put entry 4(c) where 3(f) is.

MS. BeVIER: I guess I don't think it works better that way, but --

MS. PERLE: I wouldn't flip it. I would just

say as part of its financial eligibility policies, the recipient may adopt policies consistent with 1611.4(c) of this part. Because I think the other language is confusing.

MS. CONDRAY: Well, you can do it that way, although within --

MS. PERLE: I'm sorry.

MS. CONDRAY: It doesn't tell -- I think including the whole sentence gives you an idea of what those -- what 1611.4(c) is.

CHAIRMAN MEITES: You need that. Only the Internal Revenue Code can make cross-references --

MS. CONDRAY: A cross-reference without giving you a clue of what the cross-reference is about. And I would rather do that.

MS. BeVIER: Because if you did, then the people who adopted it might actually know what they were doing.

CHAIRMAN MEITES: Okay. Well, we'll leave that draft to you. Okay. Thanks.

MS. CONDRAY: I'll think about that. I have a feeling that I know there was a reason why we elected

to do it this way, but I've got to think about that.

MS. BeVIER: You have to remember it.

MS. CONDRAY: Yes. It's been a while since we drafted these.

CHAIRMAN MEITES: Okay. Now, that is the end of 1611.4(c). And we're about to get to 1611.5, which is the exceptions.

MS. CONDRAY: I'm trying to think was there -- yes. Oh, yes. Okay. We'll just move on.

CHAIRMAN MEITES: Now, the way this is written, maybe I don't understand it. Do you contemplate that a recipient would include these exceptions in its policies or would do this on a case-by-case basis?

MS. CONDRAY: Well, they could kind of --

MS. BeVIER: In its eligibility policy, is what you say.

MS. CONDRAY: Their policies, yes. That they would -- if they're going to have things that are standard exceptions, it should be in their policies, yes.

CHAIRMAN MEITES: And in fact, we included in

the policy section, 1611.3 --

MS. CONDRAY: There is a --

CHAIRMAN MEITES: -- that they could include these exceptions.

MS. CONDRAY: Right. Now, they could choose -- there's a list of things that they can look at as exceptions.

CHAIRMAN MEITES: Yes.

MS. CONDRAY: And also one of them is "other significant factors."

CHAIRMAN MEITES: Right.

MS. CONDRAY: A program could choose not to include some of these exceptions if it wanted to.

CHAIRMAN MEITES: Right.

MS. PERLE: Or none.

MS. CONDRAY: Or none.

MS. PERLE: There are programs that do none.

MS. CONDRAY: Yes. So it's a -- if you're going to have exceptions, they need to be in your policy and you need to have thought them out. But you don't have to pick -- you don't have to just simply adopt all of this list. You can adopt some of it, none

of it.

CHAIRMAN MEITES: Got it. Okay. And the predicate is that the asset ceiling is still in place. So you meet the asset ceiling or you have a waiver, and then you look at the income side.

MS. CONDRAY: Right. you have -- well, you have both.

MR. WHITFIELD: You also have the absolute ceiling of 200 percent.

MS. CONDRAY: Right. And then there's an absolute ceiling, which is currently 187.

CHAIRMAN MEITES: Oh, that's No. 4.

MS. CONDRAY: Right. The current absolute ceiling is 187 --

CHAIRMAN MEITES: I understand.

MS. CONDRAY: -- and a half.

CHAIRMAN MEITES: So that even if you meet -- let's say that the applicant is seeking legal assistance to maintain benefits provided by a governmental program, is No. (a)(1).

MS. PERLE: There is no --

MS. CONDRAY: That's right. There's one

exception.

CHAIRMAN MEITES: And nonetheless, the ceiling cannot exceed 200 percent. No.

MS. CONDRAY: If somebody comes in -- regardless of how many assets that I have and what sort of exceptions to income that I have, if I walk in, I'm not going to be eligible, you know, because my -- you take all of that, I exceed 200 percent.

MS. PERLE: Right. But if a working -- in (a)(1) -- but if a working poor person who gets TANF funding, Temporary Assistance for Needy Families, in addition to having a part-time job, and they're threatened with loss of those benefits, by a combination of their TANF -- I don't know if this happens, but the combination of their TANF and their part-time job is 250 percent of poverty, they would still be eligible under (a)(1).

CHAIRMAN MEITES: I understand. That's not my point. No, I understand that. My point is, as usual, much simpler.

MS. PERLE: I'm sorry.

CHAIRMAN MEITES: This is -- and/or/or/or/or, so as written, if any of these conditions are met, not all of them, so that if the applicant is under (1) but making $250,000 a year, the recipient could represent them.

MS. PERLE: I'm sorry. If they're under --

MR. WHITFIELD: (a)(1).

MS. PERLE: -- (a)(1). But that's not going to happen because they're not going to be getting government benefits.

CHAIRMAN MEITES: Well, let's take No. (2), which they wouldn't have a very good case.

MR. WHITFIELD: That's right.

CHAIRMAN MEITES: I understand all that. But the 200 percent is not a necessary condition.

MS. CONDRAY: Well, with the medical --

CHAIRMAN MEITES: I probably didn't say it right. Is the 200 percent a necessary condition for representation?

MS. CONDRAY: For everything except (1) or (2). In other words, if you look at (3), (3) starts the 200 percent.

CHAIRMAN MEITES: For exceptions (3) and (4), 200 percent is a part of the definition.

MS. CONDRAY: Yes.

CHAIRMAN MEITES: But (1) and (2) are without regard to the 200 percent.

MS. CONDRAY: No. (1) and (2) are --

MS. BeVIER: Right. (1) and (2) you have 125 percent.

MR. WHITFIELD: No. You have no ceiling.

MS. CONDRAY: No. It's if it's over that. That's right. That's right.

MS. BeVIER: Oh, you have to meet the assets test.

MS. CONDRAY: Right. If you meet the assets test -- so we'll use the medical -- the nursing home expenses example because it's a little better because it's someone seeking to maintain benefits. It's not going to be likely.

CHAIRMAN MEITES: It's like (2).

MS. CONDRAY: So if somebody makes $100,000 a year but they spend $98,000 of it per year in medical home expenses, so you look at what's left, what's left

is $2,000 a year. That's going to be under the income that --

CHAIRMAN MEITES: I got you.

MS. CONDRAY: You know, you can look at that and go, is that going to get them under the income?

MS. BeVIER: But if the same person --

MR. ASHER: A practical example: Somebody comes to us who had gotten child care assistance under TANF. They have just inherited $250,000. Okay? Under this regulation, our intake worker would not kick them out because they have the 250,000.

They would get to a lawyer to say -- or more likely a paralegal to say, you aren't going to get TANF until you've spent down, you know, the money you just got. Thank you and goodbye.

They would be -- they will not get representation, but that will be based on the merit and they will be told what the issue is. They will not be found in the first instance financially ineligible at the -- you know, right at the --

MS. PERLE: What about their assets?

MR. ASHER: Well, they would be then. That

may not -- it would be income, not assets. But --

CHAIRMAN MEITES: Well, you've given a partial explanation. Now let me ask a more general question.

MR. ASHER: And let me -- I don't feel as strongly about this. A lot of programs felt they ought to be able -- on somebody who's being terminated or denied benefits, be able to talk them rather than have that be, you know, simply financial.

CHAIRMAN MEITES: Well, it's a persuasive case. The question is why I'm not getting benefits, and the reason is income related. You don't want to be able to not tell them it's income related because they have too much income.

So is that the rationale why (1) and (2) -- well, I understand the rationale of (2) because (2) is net after nursing home expenses, so that really --

MS. CONDRAY: Right.

CHAIRMAN MEITES: And the rationale for (1) is what John just gave.

MS. CONDRAY: Right. And (2), we wanted to make that a little clearer, that you look at the

remaining income and see what that is because the way the current regulation is written -- this is not a problem that's actually happening, but the way the current regulation is written, it talks about if like the majority or the -- if income is substantially devoted.

Well, if you make $200,000 a year and three-quarters of your income goes to a nursing home, that's substantially devoted, but you still end up with $50,000, which is more -- now, nobody out there is accepting people as clients who are making $50,000 a year. But we wanted to make sure that the language was clear.

CHAIRMAN MEITES: No. I understand it because your "primarily committed" doesn't do enough. But now you --

MS. CONDRAY: Right. Right.

CHAIRMAN MEITES: All right. So I now understand why you've excepted these two particular categories from the -- and we've already talked about why you want to go from 187-1/2 to 200. That sounds like a persuasive reason to me. Simple enough.

MS. CONDRAY: And this was one of the -- there was a suggestion in or a question in one of the letters we received from Sensenbrenner which mischaracterized the proposal.

CHAIRMAN MEITES: Okay. Tell me what the congressman thought the issue was.

MS. CONDRAY: The congressman apparently thought that we were proposing that an applicant -- that the 200 percent would not apply -- where (3) applies to seeking to obtain governmental benefits or seeking to obtain or maintain governmental benefits for persons with disabilities, the question seemed to think that the 200 percent wouldn't apply, which was -- and asked, well, why shouldn't there be income --

CHAIRMAN MEITES: Sure. And this --

MS. CONDRAY: But there is an income limit, yes. I think it was just a misreading of the --

CHAIRMAN MEITES: Okay.

MS. CONDRAY: But I can only surmise. I wasn't in the mind of the person writing the letter. But that was something. And I believe that in our

written submission back, we explained that that particular provision is subject to the 200 percent.

MR. McKAY: And I'm assuming we're going to get to this. But I think it's important that some time we figure out whether or not that -- and I've read the correspondence carefully -- we figure out whether or not that is now understood, and acknowledge that it was a misreading or an understanding.

I don't want to get out of line, Mr. Chairman, but I just want to make sure that we address that at some pt.

CHAIRMAN MEITES: Yes.

MS. CONDRAY: Yes. I would -- whoever -- I would let -- Tom will discuss that at an appropriate -- MR. McKAY: I think that's very important.

MS. CONDRAY: Yes. And I think if you're up to (4), that's the kind of --

CHAIRMAN MEITES: Wait. Hold on one second.

MS. CONDRAY: Okay. I'm sorry.

MS. BeVIER: What are we looking at?

CHAIRMAN MEITES: Well, I'm trying to -- I'm

reading the comments now on page 13. And --

MS. BeVIER: Page 13 or --

CHAIRMAN MEITES: Page 13 of the --

MS. CONDRAY: Of the draft, the preamble.

MS. BeVIER: Oh, right. Right.

CHAIRMAN MEITES: And I'm trying to puzzle out the distinction that the comments make between people seeking to maintain benefits and people seeking to obtain benefits, and why the income -- the 200 percent applies --

MS. BeVIER: -- to one and not the other.

CHAIRMAN MEITES: -- to one and not the other. Right.

MS. CONDRAY: Because someone --

CHAIRMAN MEITES: Walk us through that because I --

MS. CONDRAY: Okay. Because someone who -- as we talked about in (a)(1), someone who's already getting benefits for low income persons, the practicality is that it's unlikely that they already qualified for those benefits if their income wasn't already low.

Someone seeking to get them in the first instance may or may not actually be financially eligible for those benefits. Someone seeking the benefits for the first time may in fact be over income for those benefits.

And so if the grantees going to provide legal assistance want to know that those people are going to be -- whether or not they actually make the threshold for whatever benefit they're seeking, that they're within the 200 limit.

CHAIRMAN MEITES: Yes. But let's take a person who has been. Okay. At some point in time, they qualified for the benefit. But they just -- their benefits have been stopped because there's been a change in their financial situation. And that's what they were told.

And they want to come to a recipient and say, am I entitled to benefits or not, the recipient can't counsel that person if the government is right but can if the government is wrong. And that doesn't make a lot of sense.

Should they be able -- someone who's lost

their benefits, they're really in the same place as people who obtained them in the first place if it's on the basis of a change in their financial situation.

MS. CONDRAY: Well, assuming they haven't already lost them; they're seeking to maintain them, and they may have gotten a notice saying, we're going to cut you off --

CHAIRMAN MEITES: Well, that's right. And the reason is because they -- I don't know, they got some windfall of some kind which would put them over the 200 percent level. And in that situation, aren't they in the same position as a person who didn't have the benefits in the first place?

They want a lawyer to be able to say, this is the notice. This is my financial situation. What's the story? And I would think that they also should be able to receive assistance if you're going to give people who don't have assistance in the first place -- or am I totally wet?

MS. PERLE: I think -- I don't understand. I think we are saying that that person can get assistance.

CHAIRMAN MEITES: No, no, no. The person who has it --

MS. CONDRAY: Tue current regulation doesn't address maintenance. The current -- what the current regulation said, the current regulation includes a version of (3)(a), okay, that if their income is -- instead of it being under 200 percent, it's the current under 187 percent or 150 percent of the LSC level, and they're seeking to obtain.

CHAIRMAN MEITES: Well, I had it backwards. I understand. Okay.

MS. CONDRAY: The current regulation doesn't address maintenance. And what we didn't to have a situation was someone seeking to maintain has to wait until they get cut off.

CHAIRMAN MEITES: I'm with you. Someone who comes in who is over, there's no reason to talk to them at all. Someone who already has it is arguably eligible. So you said someone who already has it could be over the 200 or arguably over. Someone who doesn't have it in the first place, there's no reason to spend any time with them --

MS. CONDRAY: Right.

CHAIRMAN MEITES: -- which is how it's written now. A proposed change. Okay. I had it backwards. Okay. I'm with you.

MR. ASHER: And if they really have the money, the only question is at what stage do they get it.

MS. CONDRAY: Yes.

CHAIRMAN MEITES: Okay. I think we're now approaching (4). Are these all new? Have any of these been in here before?

MS. CONDRAY: No. They're mostly old. I shouldn't say old. They're existing.

MR. ASHER: You can find them now.

CHAIRMAN MEITES: You can find them.

MS. CONDRAY: But you can find them.

MS. PERLE: They've been -- some of them have been modified a little bit --

MS. CONDRAY: Tweaked a little.

MS. PERLE: -- but they're all the -- I think they're the same ones that were there before.

CHAIRMAN MEITES: Current income prospects, taking into account seasonal variations in income. Is

that an existing --

MS. CONDRAY: That's existing.

CHAIRMAN MEITES: And that has caused people problems in the restating of these?

MS. CONDRAY: No.

MS. PERLE: No. I think it's pretty well understood.

CHAIRMAN MEITES: Unreimbursed medical expenses, including medical insurance premiums. What does that mean?

MS. PERLE: If you have medical expenses for which you did not get some sort of insurance reimbursement that you had to pay out of pocket.

CHAIRMAN MEITES: Oh, that they will have to pay?

MS. CONDRAY: That you will have to pay.

CHAIRMAN MEITES: I face that.

MS. CONDRAY: Right. Right.

CHAIRMAN MEITES: I understand the unreimbursed medical expenses. I get those from Blue Cross all the time. But what are medical insurance premiums?

MS. CONDRAY: If you're self-employed and you have to pay for your own medical insurance premiums.

CHAIRMAN MEITES: I don't think medical insurance premiums are included in unreimbursed medical expenses.

MS. CONDRAY: The Corporation has interpreted that --

CHAIRMAN MEITES: Okay. Medical expenses include your insurance premiums.

MS. PERLE: Or you could change that to "and."

MS. CONDRAY: That it's a medical -- it is a medical -- the Corporation has interpreted it, and we wanted to make it clear, the interpretation clear, in the --

CHAIRMAN MEITES: I vote for you to change it to "and."

MS. CONDRAY: To "and"?

CHAIRMAN MEITES: Yes.

MS. CONDRAY: Sure.

MR. ASHER: But it's frequently Medicare, the piece in Medicare.

CHAIRMAN MEITES: But that will be okay?

MR. ASHER: Yes.

CHAIRMAN MEITES: All right. Fixed debts and obligations. I do not believe taxes not yet assessed are fixed debts and obligations. I just wanted to throw that on the table. The comments suggest that that's where I would look to solve my tax problem. We started out by saying that we should exclude taxes from -- you said no, gave us good reasons for that. And you said we would address it later. This is where I understand we address it.

MS. CONDRAY: Right, which is where we're basically going back to the pre-1983 version of the rule.

CHAIRMAN MEITES: Right. The problem I have is I don't -- I'll repeat what I just said. I don't think taxes fits within the definition of fixed --

MS. CONDRAY: Well, if you prefer, we can add another --

MS. BeVIER: But they're fixed withholdings from income.

CHAIRMAN MEITES: Right. But those aren't debts. Withholdings take it --

MS. BeVIER: Before you owe it.

CHAIRMAN MEITES: Right.

MS. BeVIER: Then you get it back.

CHAIRMAN MEITES: Or not. But it --

MS. BeVIER: But it's an obligation.

CHAIRMAN MEITES: Well, it's not fixed in that sense. Fixed debts and obligations, I think, are --

MS. BeVIER: It's a term of art.

CHAIRMAN MEITES: -- money you borrow from a credit union or --

MS. BeVIER: It could be alimony or child support.

CHAIRMAN MEITES: A payday loan shop.

MS. CONDRAY: Mortgage payment. Rent.

CHAIRMAN MEITES: But this is where you would believe that the recipient --

MS. CONDRAY: Well, we suggested putting it back there because that's where it was prior to 1983.

CHAIRMAN MEITES: My problem is I just don't think the way you phrase it is --

MS. CONDRAY: Because we looked at it as an obligation.

MS. BeVIER: You just are wanting some words that will make it clear to a grantee that they can exclude taxes.

MS. PERLE: Payroll taxes.

MS. BeVIER: Right.

MS. CONDRAY: Right. Now, fixed debts and obligations in the current regulation --

MS. PERLE: It doesn't include taxes. It includes past due taxes.

MS. CONDRAY: I know. I'm --

MR. ASHER: See, the irony is if you don't pay it and the IRS --

MS. PERLE: Then you can exclude it.

MR. ASHER: -- you're delinquent, we can exclude it.

MS. CONDRAY: Yes. The current --

MR. ASHER: If you pay it regularly, we can't.

MS. CONDRAY: The current regulation says fixed debts and obligations, including unpaid federal, state, and local taxes from prior years.

MS. BeVIER: That's unpaid from prior years.

MS. CONDRAY: We wanted to go -- but fixed

debts and obligations -- the regulation specifies one thing that's included. but there are other things that are fixed debts and obligations that the regulation doesn't specify in the regulatory text.

Our thinking was that fixed debts and obligations, if you're not going to specify all the things you mean as fixed debts and obligations, have the term "fixed debts and obligations" in the regulation, and then the preamble discusses the range of things that includes but is not necessarily limiting as what you consider a fixed debt and an obligation, which is why what's in the proposal just says "fixed debts and obligations" rather than pulling one out and not another one.

CHAIRMAN MEITES: Here's my problem. I partly understand. In order to determine someone's eligibility, one of the things you look at is the poverty level. And that's expressed in terms of yearly income. Okay?

MS. CONDRAY: Right.

CHAIRMAN MEITES: $30,000 a year. Let's assume that's the poverty line. And you're going to

take 200 times that, double that, for some categories. In another category, you simply aren't going to -- you're going to exclude some things.

Well, say Smith comes in and his gross income for the year is $40,000. Okay? And he comes in in February, and he tells you -- let's make it $36,000. He makes $3,000 a month gross.

MS. CONDRAY: Okay.

CHAIRMAN MEITES: And the poverty level is 30,000. So forget the 125. Just keep it simple. Right now he's not eligible. I could increase everything by a quarter, but I'm not going to do that.

MS. CONDRAY: Right.

CHAIRMAN MEITES: But he says, but in fact my take-home pay is $2,000 a month because I pay roughly one-third in taxes. So I am eligible.

MS. CONDRAY: Right.

CHAIRMAN MEITES: He comes in in February, and you're telling me that -- if I understand this -- that you can deduct $12,000 a year from his income and get $24,000 because you consider, on a yearly basis, his tax obligations will be roughly $12,000?

MS. CONDRAY: A program could do it as a spend-down that way. Right. And he would be eligible.

CHAIRMAN MEITES: I don't think -- it just doesn't occur to me that the amount of tax I will pay, that I've projected to pay for this year, when I come to see you in February is a fixed debt and obligation in February.

MS. CONDRAY: Well, if you're paying it out of your payroll, you don't get any say about whether that shows up in your --

CHAIRMAN MEITES: Well, I understand that I'm going to have to pay it. But it's not fixed till the end of the year because Congress may --

MS. CONDRAY: Well, would you make the same argument, though, about a mortgage?

CHAIRMAN MEITES: A mortgage? Yeah.

MS. CONDRAY: Because you don't have to pay it until the month that it's due.

CHAIRMAN MEITES: Well, but my mortgage is fixed. And if it's an adjustable rate, it is adjusted only a few times during the year. It's really terminology. I am all for deducting -- taking the

taxes into account. But I don't think taxes is --

MS. CONDRAY: Well, we can create another -- a (G) and -- you know, that's really not a problem.

CHAIRMAN MEITES: Yes.

MS. BeVIER: Payroll taxes? Is that what you want?

CHAIRMAN MEITES: Yes.

MR. ASHER: Because state, local, federal, payroll -- I mean, Mattie is right. We don't want a carefully defined fixed debt and obligation. But Mattie thinks that may be -- that includes --

CHAIRMAN MEITES: No. I'm with you.

MS. BeVIER: And the grantees are going to read it to include.

MR. ASHER: But if somebody who reads it wasn't real clear that that's included, then we've got to spell that out.

MS. CONDRAY: Yes. And we can make that clearly --

CHAIRMAN MEITES: Because that's clearly the intent --

MS. CONDRAY: -- we can make that a new (F),

and then current (F), which is the catch-all, would become a (G).

CHAIRMAN MEITES: Well, that would satisfy me because we talked about taxes up front, defining income. So I'd like to --

MR. ASHER: See, but I would put it sooner than that, even. I'd put it as (C) and then move the others down.

CHAIRMAN MEITES: Because if everyone --

MS. CONDRAY: It's six or one/half a dozen of the other.

CHAIRMAN MEITES: Okay. You've solved my problem. All right. Let's keep going through the list.

MS. CONDRAY: Just putting it as (D) means you're going to have to make less changes throughout the rest of it.

MS. BeVIER: With (D), before you get to substance, can I have a spelling correction?

CHAIRMAN MEITES: (D). Yes, you can.

MS. BeVIER: Dependent care.

CHAIRMAN MEITES: Yes.

MS. BeVIER: Oh, yes. And also, I think that there should be a comma.

MS. CONDRAY: Where?

CHAIRMAN MEITES: (D).

MS. CONDRAY: Oh, thank you.

MS. PERLE: Shouldn't there also be a comma after "expenses necessarily for employment"? Shouldn't there be a comma between "employment" and "job training"?

MS. CONDRAY: Oh, yes.

CHAIRMAN MEITES: Now, was (D) -- well, again, let me ask you: Of (A) through (F), are they all in your present regulations?

MS. BeVIER: In some form?

CHAIRMAN MEITES: In some form or other?

MS. CONDRAY: In some form. The expenses -- what's there currently is (D), which will become, I guess, renumbered or something. This is a little more fleshed out than what's currently written, the current language.

Right now, it says -- the current regulation says, "child care, transportation, and other expenses

necessarily for employment."

CHAIRMAN MEITES: That's a little different. That's --

MS. CONDRAY: And we wanted to increase this a little bit: "Expenses necessary for employment, job training, or educational activities in preparation for employment, such as."

CHAIRMAN MEITES: Well, that --

MS. CONDRAY: And part of the reason for expanding that was coming out of some of the welfare-to-work stuff.

CHAIRMAN MEITES: But hang on. Preparation for employment is not employment. So these are expenses only in going to job training. These are not expenses in going to work every day. Is that right?

MS. CONDRAY: They can be both.

MS. BeVIER: No. For employment, comma, job training, comma, or educational -- these are three different --

MS. PERLE: We're missing a comma.

MR. ASHER: We're putting a comma.

MS. PERLE: We're missing a comma.

MS. BeVIER: We're missing a -- yes. We have to put in two commas there. Job training, comma.

CHAIRMAN MEITES: Because I thought -- oh, I see. I thought "employment" modified "job training."

MS. BeVIER: It's "expenses such as dependent child care, transportation, clothing and equipment expenses, necessary for employment." Would that be a way to make it a little clearer about what it is that --

MS. CONDRAY: Probably. Sure.

MS. BeVIER: Okay. Let's move the "such as" up.

MS. CONDRAY: No problem.

CHAIRMAN MEITES: (E), what are -- give me some examples, if you would, of non-medical expenses associated with age or disability.

MS. BeVIER: Equipment.

MR. ASHER: Durable medical equipment -- braces, wheelchairs, are not always considered --

CHAIRMAN MEITES: So "necessary" is the key word.

MS. BeVIER: A home -- if you need a home health care worker.

MR. ASHER: A railing in your bathtub.

CHAIRMAN MEITES: I got you. So you're talking -- it's the non-medical.

MS. CONDRAY: Right.

CHAIRMAN MEITES: So you're distinguishing between --

MS. CONDRAY: Right. And that's currently in here. That's a separate list that's currently in the regulation.

CHAIRMAN MEITES: And (F) is -- is (F) an existing catch-all?

MS. CONDRAY: Yes.

MS. PERLE: Yes.

CHAIRMAN MEITES: What do most of our recipients do since they now call -- well, let's include these. Do they include them in their policies?

MS. PERLE: I would say from my experience, probably three-quarters of them, or maybe a little bit more, do. But there are many that just say 125.

CHAIRMAN MEITES: Your group?

MR. WHITFIELD: We include these.

CHAIRMAN MEITES: And you find it helps you to do what you're supposed to do?

MR. WHITFIELD: Yes.

CHAIRMAN MEITES: Why do you find it useful?

MR. WHITFIELD: Just since that it's fair, that if someone is working, for instance, they have certain expenses -- taxes, employment expenses, day care expenses that someone who's not working with the same amount of money doesn't have. And it's just not fair.

CHAIRMAN MEITES: So what this does is it breaks it down to how much they actually have in their pocket?

MR. WHITFIELD: Yes. It will --

MS. CONDRAY: Although I will say programs are permitted to kind of quantify all of this and do just a spend-down.

CHAIRMAN MEITES: Tell me what that means.

MS. CONDRAY: Fifty dollars a month for transportation, minus $50. Three hundred dollars a month for child care, minus $300. And you just keep

deducting dollar amounts until you hit the line and go over.

CHAIRMAN MEITES: Because that's the amount you have to pay a lawyer with.

MS. CONDRAY: Right.

CHAIRMAN MEITES: When you've paid everything else, to pay a lawyer --

MS. PERLE: But that's not -- they're required to do that, and the Corporation has in fact discouraged people from using that kind of --

CHAIRMAN MEITES: Because?

MS. CONDRAY: Well, it's a -- because it's a flexibility thing. And to the extent that you have other significant factors, some of those may not be particularly easily quantifiable.

And if it's just a spend-down -- I think that the Corporation was concerned that people reading it as just a spend-down may be cutting off people who would otherwise be eligible without really looking at the big picture of their eligibility.

If at the same time the Corporation wants to afford discretion to the programs, that if they really

want to do that because that's easier for them in looking at who their populations are, they have the ability to do that, the same way a grantee might decide it's easier -- whether or not a fairness question, it's just easier.

Look at the number: Yes or no? They don't come across a lot of people with these kind of exceptions. And for the few who do, that's kind of -- we're sorry, but it's a better use of their resources to be able to check a box yes or no.

And we didn't -- you know, the Corporation doesn't want to dictate in a particular situation that level of detail. We don't think that level of detail is necessary as long as the overall picture is being met. Put it that way.

CHAIRMAN MEITES: Well, I think I understand. What this is all about, then, is at the end of the day, after paying everything else that has to be paid, is there enough money left in their pocket to pay a lawyer.

MS. CONDRAY: That's right.

MS. PERLE: That's basically it.

MS. CONDRAY: That's basically it.

CHAIRMAN MEITES: And the notion of all of this is that the items you've identified in (4)(A) through (F) are items that a recipient might determine in order to really get a fair sense if this person has enough money to pay a lawyer.

But in fact, nobody has enough money to pay lawyers. Lawyers cost so much money.

MS. BeVIER: No, but it's relative.

MR. ASHER: But really, what we're deciding is will most of these people be turned away for other reasons, or will they not even get in the door to have their case considered before they're rejected because it's outside priorities, or you don't have the resources to serve them anyhow.

This is a threshold, initial determination. Most people, though, unfortunately -- and I think the vast majority of programs -- believe that that decision ought to be made farther down the road, not right at the -- right here.

And so what you're looking at is: Can these folks afford a lawyer? No. Then you go to the next.

CHAIRMAN MEITES: But actually, affording a lawyer is a misnomer.

MR. ASHER: Yes.

CHAIRMAN MEITES: Because nobody can -- in this can afford a lawyer.

MR. ASHER: Right.

CHAIRMAN MEITES: What this really is, is this a population -- if you've identified a population that the recipient thinks is the population it wants to focus on, and then makes the real decision of which people in this population it can represent.

MR. ASHER: Right. Yes.

CHAIRMAN MEITES: And so let's think about that. This group of people that we've now identified, they're still -- to use the -- they're still the very poor, the ones with no -- or with only government medical. And there's another strata of people who work all the time at low wage jobs.

MR. ASHER: And these are the -- as I understand this, these are not people who are below 125 percent.

CHAIRMAN MEITES: No.

MR. ASHER: This is somebody who walks into a rural office and calls in and says, so-and-so is here. They have a drill, you know, because they're a miner part of the time. That's worth some money. If we exclude what he still owes on that drill, he's below 200 percent. He's about to get thrown out of his house. Can we go ahead and do it? I have the authority to say yes.

CHAIRMAN MEITES: Okay. And tell me why our recipients have kind of evolved -- because I think that's what you're saying -- from the truly poor, people who get benefits, into the working poor.

MS. TARANTOWICZ: The population has changed.

MS. PERLE: The population is changing.

MR. ASHER: Welfare reform and -- in part. And --

MS. CONDRAY: Changes in the economy that's favoring a service economy with low wage service sector jobs rather than better paid industrial jobs.

CHAIRMAN MEITES: So more people are driven into this.

MR. ASHER: Yes.

CHAIRMAN MEITES: It's not that the people on the bottom are coming up.

MS. CONDRAY: No.

MR. ASHER: No. It's coming from both sides. We're moving people who were able to stay indefinitely on public assistance to low wage, frequently temporary and then they're off and they're on; and then also people who have lost manufacturing jobs who never were eligible who are now in the service economy and increasingly are. It's not total, but it's coming from --

CHAIRMAN MEITES: So that we are now essentially subsidizing Wal-Mart and McDonald's? Is that what it's coming down to? That is, they are able to cut their wage base to a point where -- let me finish -- where the people who normally would not be our clientele, we are now being asked to provide part of their essential life services? Because that's what we're doing. That's what we're doing.

MR. ASHER: Yes. But I'm trying to sort of -- CHAIRMAN MEITES: I'm not sure that we should do that.

MR. WHITFIELD: But the spend-down has been in place for -- or these factors have been in place for 22 years.

CHAIRMAN MEITES: But the change is that whereas the people who 20 years ago were working and getting X thousand dollars a year are now working at Wal-Mart and getting two-thirds X, and now they've become our customers.

MS. BeVIER: Or they were on welfare and now they're working for Wal-Mart.

CHAIRMAN MEITES: The ones going up, I can understand.

MS. BeVIER: Right.

CHAIRMAN MEITES: It's the ones being pushed down that I'm talking about.

MS. BeVIER: But what is the issue? I mean, how can we deal with that except by saying to Wal-Mart, you should pay your people --

CHAIRMAN MEITES: No, no. I'm not saying Wal-Mart should -- Wal-Mart is free -- I'm saying that we should tell Congress that if in fact the change in the economy has increased the people who need our

services, that's a substantial change in our mission. It has been redefined, not by anybody, but by the rules have changed.

MR. ASHER: Except the census documents that. What we would do is parse out who is in that group. That would be a little complicated, but that's a phenomenon that is -- and I'd have to think through whether it affects legal services any differently than access to medical care, public medical care --

CHAIRMAN MEITES: I understand all that. But if -- we go to Congress every year, as I understand it, and seek -- and we represent the very poor. But you're telling me we're representing a different group of people now in addition to the very poor.

MR. ASHER: Yes. But --

CHAIRMAN MEITES: And that changes the case that -- if our work has changed, our case has changed to Congress.

MS. PERLE: But I think our case -- I think that the case that the current version makes does change, and I think it does reflect that increases in the working poor.

MR. ASHER: Well, all I've heard at all our meetings is that the number of people who need our services grows and grows. But now you're telling me it doesn't grow because the very poor are growing. Quite the contrary. I'm hearing two things today. One is that because of welfare reform, the very poor are moving up.

MS. BeVIER: Well, the question is, as a proportion of the population, are the people who are 125 or 200 percent of the poverty level, is that a larger proportion of the population? And if it's not --

MR. ASHER: Slight. Somewhat. Somewhat, yes.

CHAIRMAN MEITES: Somewhat. Slightly.

MS. CONDRAY: And depending on from state to state.

MS. BeVIER: State to state, yes.

MS. CONDRAY: I mean, you could talk about the census adjustments.

CHAIRMAN MEITES: But more of them are working now.

MS. CONDRAY: In some states, it's a lot more.

In some states, it's less.

MS. BeVIER: More of them are working now. So that to me is the real question, not whether because -- as the population increases, we should increase funding. Because even if the proportion stays exactly the same, we're going to have --

MR. ASHER: There are more people.

MS. CONDRAY: Right. The composition of the people who fall into that has changed over time, from being primarily people on public assistance --

CHAIRMAN MEITES: See, I knew the public assistance. But I didn't know the other part.

MS. CONDRAY: -- to a lot more of that under 125 percent chunk of the population are people who work and not people who are living solely on government benefits.

MR. WHITFIELD: And the minimum wage can drive that. That can have a significant effect on it.

MS. CONDRAY: As the minimum wage hasn't changed --

MR. WHITFIELD: Yes.

MS. CONDRAY: -- a lot of those jobs drop you

down because the consumer price index goes up.

MR. ASHER: Because the poverty line goes up, yet minimum wage --

MS. CONDRAY: Stays the same.

CHAIRMAN MEITES: I'll have to think about it.

MR. ASHER: It's too complicated.

MS. CONDRAY: That's very philosophical. That's the really big picture.

CHAIRMAN MEITES: We could determine that we want to restrict our recipients to the very poor. We can do that. I could see that as a policy determination of the Legal Services Corporation. We have limited assets, and the working poor have to go fish. We just don't have enough for them and they should go somewhere else.

MS. BeVIER: And they have their HR for people who -- lawyers who are going to take care of them, and --

CHAIRMAN MEITES: Well, I'm not saying that we should do this. But I'm saying that I think that since you put on the table changing our income limits, you've really opened a huge can of worms. And even though

it's easy to say -- and I think it's correct -- that 200 is better than 187.5 for administrative reasons, once you want us to think about what the income levels are, we're not just going to go one way.

MR. ASHER: But this is -- this is the level at which we can exercise some discretion. We are still -- the vast, vast majority of clients are below 125 percent. I mean, don't -- let's not --

MS. CONDRAY: Whether they work or not.

MR. ASHER: -- let's not let -- I think having a tail on that dog is very important. But don't let it wag, I mean, you know --

MS. BeVIER: Yes. And it's also true that the nature of the legal needs is what is going to drive whether they get the service or not.

MR. ASHER: Right. Yes.

MS. BeVIER: And that that's -- you know, they'll fall --

MS. CONDRAY: Right. There's a whole other regulation about priorities.

MS. BeVIER: Exactly. And that's --

MR. ASHER: Absolutely. Resources, and a

number of other --

MS. BeVIER: So this is important, but it's just part of the picture about who gets served.

CHAIRMAN MEITES: If you were going to try to use eligibility --

MS. CONDRAY: It's who gets in the door to be decided whether they're going to be served. I mean, this is a threshold. Are we even going to look further at them to decide whether that we're going to take this person's case or not.

CHAIRMAN MEITES: But let me just take a step back. Given our funding, which is what it is, we can do some triage. We could say that -- as we look at the universe of possible recipients of people who receive legal services from our funds, we can -- the Corporation board can decide that there are certain groups that we have to serve, and there are other groups, if there's money left over, it would be nice to serve.

MS. BeVIER: I think we should -- our next reg that we look at should be the priorities reg. Is there a lot about setting priorities?

MS. CONDRAY: There is a regulation for setting priorities. Sure.

MS. PERLE: There's a regulation of priorities.

CHAIRMAN MEITES: Well, that's where it comes down to. I'm really using the hook of the limits, which are kind of a small hook to get into.

MR. WHITFIELD: If you were to use the eligibility guideline to balance supply and demand, you might have to set it at 20 percent of the poverty level, something ridiculously low.

MS. PERLE: And you wouldn't necessarily be serving the greatest legal needs of the low income population if you did it solely on the basis of you did it solely on the basis of income and whoever is in the door first.

CHAIRMAN MEITES: Let me tell you where I'm coming from because you would think I would be the last person who wants to restrict legal services. I come from a state that has a legislature that for 30 years has refused to raise taxes. We have a governor who suggested it in 1978; he wasn't reelected.

The standard operating technique to try to get the legislature to appropriate the very limited pool of money available is to threaten massive service cuts on public transportation. It's not that you can't raise fares; you just simply would stop only at every second stop.

And I was thinking to myself, if we were to announce that out of desperation for under-funding, we are going to serve only the extremely poor, would that improve our chances of attracting more money from Congress?

MR. ASHER: Yes. And I -- and that has been raised for 20-some years.

CHAIRMAN MEITES: That possibility?

MR. ASHER: And if you will sit in our waiting room, and if you will tell the people who are working seven days a week for minimum wage, trying to get their kids through school -- if you will say, we have made a political calculation that the greater good means you're over income, and not leave it up to me, I will do that.

CHAIRMAN MEITES: But -- he announce no night

and weekend service. He had no trouble doing that. Why can't I say, too bad for you?

MR. ASHER: If it works, we can do it. But it really is too big a risk.

MS. BeVIER: I just don't think it's going to work.

MR. ASHER: Well, people -- the most needy people will get chewed up. I have not -- we say no to thousands of people. I've not devoted my life to run those sorts of political calculations.

We need to serve those people who are working but getting evicted, those people who are working whose kids are in trouble and they need childcare. We should not just represent those people who are on a fixed public assistance income because we think it may drive a different political equation.

Other people can make those judgments. But it's a hot -- a lot of people will wind up with huge, critical legal needs going unmet in that process.

CHAIRMAN MEITES: Well, state it the other way: If in fact the working poor is part of our constituency, then -- and I didn't know that until

today, I've got to tell you; I suppose people told me but it didn't register -- is there a -- you say there's a case to be made for our recipients representing the working poor.

If there is that case, and you can make it to us what you just did, shouldn't we make that case to Congress?

MR. ASHER: I think we have. And I know not only the Corporation, the American Bar Association, NLADA. Now, maybe we can make that case more effectively. What we're trying to get better at is capturing and telling client stories, and getting information that will help drive that case.

But your political diagnosis of how to increase funding is not new. But it is one that has very high personal costs attended to it on a day-to-day basis.

CHAIRMAN MEITES: Well, I'd rather make an affirmative case rather than a case of scarcity.

MR. ASHER: And, you know, we still have people who are on public assistance, and people who are disabled, and people who aren't working. And they need

lawyers, too, particularly when their benefits are being improperly terminated or when you get -- for a variety of reasons, whenever a state changes its public assistance computer system, people get bumped off.

You know, there are a variety of things we do that are important to people who aren't working as well as who are. With scarce resources, all this regulation is saying is that it ought to be intelligible. It ought to be better organized.

And for those people between 125 percent and 200, there ought to be some flexibility that gets articulated and we're able to make those judgments not, in all deference, in Washington by eleven board members, but by local program boards struggling with how to allocate their scarce resources on a program-by-program basis.

CHAIRMAN MEITES: I understand. But part of our responsibility is to establish parties for our limited amount of money.

MR. ASHER: Absolutely.

MS. BeVIER: Yes. I think that's right. And, you know, I think you've persuaded us, certainly, that

we're not -- you don't play chicken with this Congress. I mean, it's been tried and it doesn't work.

CHAIRMAN MEITES: It's not a responsible way to behave, anyway.

MS. BeVIER: Yes. But it's also true that we are -- you know, we can make the very best case we can, and we always will try to. But we're just in a -- you know, we're not the only unmet need in this country, and we have not the only sort of financial crisis going, and we've got sort of -- so you can imagine Congress being very understanding and appreciative and well-informed about what it is we do, and what we don't do but should do, and saying, sorry.

CHAIRMAN MEITES: Yes.

MS. BeVIER: You just -- you know, there's only so much to go around.

CHAIRMAN MEITES: Do we have -- you said we do have a priority reg?

MS. CONDRAY: Yes. Yes. 1620.

CHAIRMAN MEITES: 1620?

MS. CONDRAY: And that -- part 1620 actually comes from the '96 restrictions.

CHAIRMAN MEITES: Let's take a look at 1620.

MS. PERLE: Well, 1620 existed before --

MS. CONDRAY: Well, it existed before. That was an over-broad statement.

CHAIRMAN MEITES: Priorities in --

MS. PERLE: But it was revised in light of the '96 restrictions.

CHAIRMAN MEITES: So it was revised in 1997?

MS. CONDRAY: Right. After the adoption of the regulation --

CHAIRMAN MEITES: Can I just see what it says? I just want to read it. I've never read it.

MS. CONDRAY: -- in 1620.3 establishing priorities, one of the things, (c)(1), suggests, "The following factors shall be among those considered." (c)(1) is, "Suggested priorities promulgated by the Legal Services Corporation."

CHAIRMAN MEITES: Have we promulgated such --

MS. CONDRAY: We promulgated one set.

MS. PERLE: Broad.

MS. CONDRAY: Very broad, back in like '98 -- '97, '98.

CHAIRMAN MEITES: Oh, okay.

MS. CONDRAY: Following the adoption of the current version of the regulation, those have not been updated since then, though.

MS. PERLE: But they're --

MS. CONDRAY: But they're very broad, so --

MS. PERLE: They're very broad. They talk about protection of the home and --

MS. BeVIER: Secure necessities of life.

MS. CONDRAY: They are on our website, the priorities, the current list of priorities, that Federal Register notice that we published.

MS. PERLE: But they're suggestions. They're not required.

MS. CONDRAY: Right.

CHAIRMAN MEITES: Right. Let me make -- well, it's 12:00. Is this a good time to break for lunch? I don't know what --

MS. BeVIER: 12:30 is what the --

CHAIRMAN MEITES: Okay. We'll go on. And second, it would be helpful if you supplied us with this list of priorities.

MS. CONDRAY: The list of priorities? Certainly.

CHAIRMAN MEITES: Yes. I'm not saying we should visit that, but I, for one, was not really up to speed on --

MS. BeVIER: Well, maybe we just need a briefing on that at some pt.

CHAIRMAN MEITES: Yes. It would be nice if somebody told us who our -- okay. Where are we at? We are at --

MS. CONDRAY: Group representation, but --

MS. BeVIER: We don't want to do that yet.

CHAIRMAN MEITES: No. We have representation of groups, which we -- is 6. We have changes in financial eligibility status. That's --

MS. CONDRAY: 1611.7, Manner of Determining Financial Eligibility.

CHAIRMAN MEITES: Okay. Let's go to that one. Wait a second. Let me get to that page.

MS. CONDRAY: The discussion starts on page 21.

MS. BeVIER: Is this one that the IG had an

issue with?

MS. CONDRAY: Well, particularly with respect to groups.

CHAIRMAN MEITES: Well, the groups I'm going to put aside.

MS. CONDRAY: Yes. I don't think --

MS. BeVIER: Yes. I thought that was right.

MS. CONDRAY: -- there was a problem with respect to individuals.

MS. TARANTOWICZ: Sorry.

CHAIRMAN MEITES: We're 1611.7.

MS. CONDRAY: We've just skipped groups for now.

CHAIRMAN MEITES: And the question has been raised whether the IG has raised any issues with regard to the proposal as far as it relates to determining the financial eligibility of individuals. I think --

MS. TARANTOWICZ: No.

MS. CONDRAY: I don't think you did.

MS. TARANTOWICZ: Yes. I don't think so.

CHAIRMAN MEITES: All right. So we'll just focus on this. We'll put groups aside.

Let me ask the two -- John and Jon, the changes proposed in 1611, will they make any substantial difference in the procedures your offices are following?

MR. WHITFIELD: No. A lot of what's changed here is just removing a lot of the things here to other places. And then what remains will not affect the way we do things.

MS. CONDRAY: It will affect the way some people do them. It won't affect the way others do it. But for some people it will make things a lot easier, or at least less confusing so that they don't inadvertently not understand the application of the rule.

CHAIRMAN MEITES: But others have already been doing it, and there's been no complaints from our compliance people?

MS. CONDRAY: I don't know if there's been --

CHAIRMAN MEITES: See, I don't want us to adopt a system that's going to cause more problems.

MS. PERLE: No. And I don't think so.

MS. CONDRAY: No, no. I think this is -- if

anything, this is easier. I think that the current system is confusing to a lot of people, and I think then leads to either if not significant noncompliance, but the OCE then kind of ends up having to do training to kind of clarify what's going on.

And the compliance folks were comfortable that what we're proposing would make it easier for the programs to comply, make it easier for them to do oversight, and be a better use of resources without sacrificing -- without actually, you know, sacrificing quality, without sacrificing the ability of the programs to actually make determinations in connection, you know, that the people that they're serving are indeed financially eligible.

MR. WHITFIELD: I agree wholeheartedly.

CHAIRMAN MEITES: Because we don't want to make a change that, a year from now --

MS. BeVIER: Has made things a lot more complicated.

MS. CONDRAY: No. I think everybody thought that this would be much easier.

MR. ASHER: We think -- the only change is

this is intelligible and logical. In the comments -- there are a number of comments we've received when it was first put out. I don't -- to my knowledge, no program thought this would adversely complicate or change --

MS. CONDRAY: No. Not at all.

MR. ASHER: -- how they're doing things.

CHAIRMAN MEITES: And we didn't receive any -- the congressional correspondence did not raise any questions about that?

MS. PERLE: I'm trying to remember.

MR. ASHER: I don't think so.

MS. CONDRAY: I don't think so. There may have been one question that was just -- I have to say, with all due respect, some of the questions that we received weren't the most well articulated from the committee about what their concerns were.

CHAIRMAN MEITES: But there's nothing that you saw that was directly related to these changes. These changes on their face make a lot of sense, but --

MS. CONDRAY: Right. I think there was a generalized concern expressed in the letter

that -- wanting to know if we were loosening standards. And I don't believe we're loosening standards. I think we're just making the process easier.

CHAIRMAN MEITES: Okay. Well, to some extent we have to take these on faith because we don't what the -- if there is a problem, we'll hear about it and we can revisit this.

MS. PERLE: Right. And you also will have an opportunity to have a comment period.

MS. CONDRAY: Right. Again, here's another example of a deletion of a paperwork requirement. The current regulation requires that eligibility forms and procedures have to be approved by the Corporation.

It's been our experience that requiring that step really doesn't add anything. Clearly, we can get the documents when we're needed -- when they're needed. So we would propose eliminating that particular reporting requirement, or submission requirement. It's not really reporting. It's a submission requirement.

CHAIRMAN MEITES: Okay.

MS. CONDRAY: Let me know where you are.

CHAIRMAN MEITES: I'm actually somewhere else.

MS. CONDRAY: Okay. (c) is similar to what's currently in there. (d) reflects -- it's in addition to the regulation. It reflects current practice, but it's not written down in the regulation. So we wanted -- part of what the point of the rulemaking was to have some of the accepted practice that has grown up over the years where the practice has not been controversial and has served everybody well, to actually have it written into the regulations rather than kind of having unwritten rules floating around out there.

CHAIRMAN MEITES: Okay. And that's all of 1611.7. Well, why don't we have a nationwide form? Why don't we have -- that we promulgate? You know, I'll tell you -- then I'll tell you where I'm coming from.

There was an article in the paper saying that there's a subsidized prescription program available. and whatever government department is responsible for it has promulgated a seven-page, incredibly complicated form that these poor people have to fill out. And they'll never figure it out.

MR. ASHER: If you would -- because --

CHAIRMAN MEITES: So I think, why don't we promulgate a form like that?

(Laughter.)

MR. ASHER: Well, you could if you mandated -- no, if you mandated a single case management system for all programs so that the fields would track data entry, that you also would allow for information for the Department of Justice, HUD, local grants, LSC, non-LSC -- I mean --

CHAIRMAN MEITES: We could do it.

MR. ASHER: You could, but it would -- and you would miss something anyhow. I mean, we change --

MS. CONDRAY: And you'd force boxes on people that don't have any relevance to their programs.

MR. ASHER: Right. We send in a request to change her eligibility form, not because policy changes but because the fields on our case management system change sequence and we want our eligibility to provide for easy data entry. So we change a couple boxes. We have to send the form in to get approval to change the -- I mean, so you could do it. But it would be

much more complicated an undertaking than you might think.

MS. BeVIER: And we would probably have to have, what, 24 board meetings a year?

MS. PERLE: Right. And you've have to have this huge staff to keep that in track.

CHAIRMAN MEITES: But wouldn't it be wonderful?

MS. PERLE: No.

CHAIRMAN MEITES: It's one nation, one system, one form.

(Laughter.)

CHAIRMAN MEITES: Okay. Bad idea. Okay. That takes us to 1611.8.

MS. CONDRAY: Well, (a) is essentially what currently exists, only written a little better.

CHAIRMAN MEITES: Right.

MS. CONDRAY: If I do say so myself. And (b) is -- since (a) only talks about -- really, as I was just saying that, oh, it's much better written -- traditionally, the changes in financial eligibility status section has only talked about (a),

and a change where they are providing service and a client gets a job. A client comes into a whole lot of money.

It has not discussed the circumstance where a client already had a job but didn't disclose it. A client already had a big inheritance but didn't disclose it. And that's learned about afterwards, that the client was never really eligible in the first place.

And we just wanted to cover both situations because I don't think it happens a lot.

MS. PERLE: Well, and it's not always that the client lies. Sometimes the client is just not aware of some circumstance or mischaracterizes it unintentionally.

MS. CONDRAY: Yes. I don't mean to --

MR. ASHER: Or you just don't ask. I mean, the one case I recall, when we had a family law case, we'd frequently get complaints from the adverse party about financial ineligibility. We'd always look into them, and they're virtually never of real substance. But, you know, they're honest complaints, and we look

into them.

I recall a number of years ago we got a complaint from a respondent in a family law case and said, do you know your client owns a bookstore? And I said, no, and I got all the records, and lo and behold, she did. We never -- I mean, it's so out of --

MS. BeVIER: You never asked if she owned a bookstore.

MR. ASHER: You know, it's not in our -- we don't usually have to ask, are you a sole proprietor or own a business? And we now are much more careful about that, and we withdrew and she got -- but she didn't withhold any information either before or even when confronted. We just never sufficiently asked about it.

So that happens, not often, but now and again. But the current regulation technically doesn't address it. Now, we withdrew anyhow, but we wanted to make sure that it not only is new income but newly discovered currently.

CHAIRMAN MEITES: All right. What I -- I think that's the last one other than retainer agreements. Is there anything about the old

regulations which we're jettisoning that we really should think about keeping? I have a --

MS. CONDRAY: I don't think so.

CHAIRMAN MEITES: What I propose to do --

MS. CONDRAY: Yes. We were comfortable with it.

CHAIRMAN MEITES: -- after lunch, I want to read the old regulations again and see if there's anything in the old regulations that are not carried over that we should think about why -- you can tell us why they weren't carried over.

MS. CONDRAY: Okay. Anything that's not carried over or changed should be addressed in the preamble, but you never know. We could have missed something.

CHAIRMAN MEITES: Right. All right. Anything else we should do before lunch?

MS. BeVIER: I think so. But Tom, we have to wait for Tom because he's on the phone.

MR. FUENTES: I'm here.

MS. BeVIER: Oh, not you, Tom. You want to come to lunch with us, or are you just having

breakfast?

CHAIRMAN MEITES: It's now, what, 10:00 out there? 9:00. 9:14. Oh, man, that's too early. I think, Tom, we will recess now for lunch. We'll call you in about an hour or so when we reconvene.

MR. FUENTES: Yes. I have to depart my office at 11:00 our time, so we'll see. Maybe it will work; maybe it won't.

CHAIRMAN MEITES: Well, we'll just try calling you when we get back.

MR. FUENTES: Very good.

CHAIRMAN MEITES: Okay. Thank you, Tom.

All right. We're in recess till after lunch.

(Whereupon, at 12:15 p.m., a luncheon recess was taken.)

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

1:39 p.m.

CHAIRMAN MEITES: Okay. Let's resume.

What I'd like to start with is just a quick look at the existing regulation to see if we missed anything or if there's been any parts of the old regulation that perhaps have been left out or lost. I looked through it, and all the same phrases seem to have appeared with the changes we discussed.

Let me just ask Mattie: Is there anything that you can think of in the old regulation that for one reason or another is not being carried forward in some form?

MS. CONDRAY: Current 1611.7(c)(4). Yes. I think that --

MS. BeVIER: Or (c), the whole thing.

MS. CONDRAY: Yes. And that's because it was kind of overridden by 509(h), section 509(h) of the appropriations act relating to access to records.

CHAIRMAN MEITES: But should we have in our -- essentially our client financial disclosure section a confidentiality provision?

MS. BeVIER: There's something in this new reg about --

MS. PERLE: Well, there was a lot of discussion about it during the reg-neg. And there's something about they have to be informed --

MS. TARANTOWICZ: If I might just -- Laurie Tarantowicz from the OIG. We had an extensive discussion of this in the working group years ago.

And because I'm speaking, I'll start with our position, was that the regulations should at least reference the 509(h) access provision to inform grantees that the eligibility records referenced in 509(h), as available to the Corporation, among others, are -- these records in 1611 are what -- are part of what those eligibility records in 509(h) -- that's not very clear. Let me start again.

509(h) says the Corporation and others get access to documents including eligibility records. So the OIG's position was that 1611 should include some notification that when 509(h) talks about eligibility records, these records that are required to be maintained by 1611 are part of what we're talking

about, what that means.

Not entirely, perhaps, but there was discussion of perhaps putting that off and having another regulation that governed all access to records, not just eligibility. And I don't think, you know --

MS. CONDRAY: I can give you a little more. Laurie is absolutely right, and some of the detail was that we were carrying on these two negotiated rulemakings at the same time, on 1611 --

MS. BeVIER: And one was about access, and the other was --

MS. CONDRAY: No. One was about 1611 and the other was our rule at 1626, citizenship and alien eligibility. Okay.

And when the issue came up, the working group talked about trying to have some provision on the 509(h) put into the regulation. And the working group for this regulation had gotten to a point where the working group was more or less accepting of having a provision in the regulation which would track the statutory language, acknowledging that there are perhaps differences of opinion about exactly what the

statutory language means and what it covers. But everyone was willing to say, the statute is the statute. So even if it's not particularly well written, we can put it in there.

But then at the same time, when we brought the same issue up at 1626 -- because those are also eligibility records -- it was clear that the 1626 working group was not going to be able to reach that same consensus and was not going to be willing to just simply include language that tracked the statute.

And to the extent that that was going to then engender a discussion of the substance of what exactly 509(h) meant, Corporation management took a step back and said, well, this affects a lot of records, not just eligibility records.

And if we adopt a regulation explaining what 509(h) -- what we think 509(h) means in the -- and have that discussion only in the context of eligibility records, that may not really be appropriate.

And so in lieu of kind of going down and forestalling -- having a discussion only in the context of one set of type of records, management proposed just

not having the issue discussed at all. That has no bearing on whether 509(h) applies; the statute applies whether or not it's in the regulation. And the field was comfortable with taking that approach.

So that's the genesis of how that kind of came about, and there was some discussion in the previous committee about at some point having an access to records regulation that would look at access issues generally, you know, all the different types of records to which the Corporation needs access --

CHAIRMAN MEITES: We already have a --

MS. CONDRAY: -- but did not choose to do that.

CHAIRMAN MEITES: We have a 1619, Disclosure of Information, which is pretty bland.

MS. CONDRAY: That's not access -- that's not the Corporation's access to records. That's --

CHAIRMAN MEITES: Recipients.

MS. CONDRAY: -- recipients making certain of their -- certain pieces of information available to the public.

CHAIRMAN MEITES: I understand. But

disclosure of information could be a general -- could be expanded to cover the kind of things you're talking about now.

MS. CONDRAY: Yes. I mean, you could -- if the Corporation was going to do a separate rulemaking on access to records, it could either create a new part or it could kind of coopt 1619. That's not what historically that's been, but yes, that's just -- that's logistics.

MS. BeVIER: So that explains why this is out.

MS. CONDRAY: Right.

CHAIRMAN MEITES: Okay. That makes sense to me. Any other provision that is in the existing records that essentially is not carried over?

MS. CONDRAY: I don't believe so, not anything substantive. No. Everything else is addressed one way or the other with the various changes that are discussed in the --

CHAIRMAN MEITES: Okay. Well, if it's okay, we'll go on to the two we have deferred, which is retainer and group representation. Oddly enough, I think group representation is the -- there are less

issues raised. So maybe we'll start with that one. We'll save the harder for last.

We spent a considerable period of time in discussing group representation issues, and our tentative draft is found in now-proposed 1611.6. And we have received comments from the OIG on this. But we received comments very similar to those before.

But let me just leave it to Laurie. Do you want to re-present or --

MS. TARANTOWICZ: No. It's not necessary. I mean, we discussed it at the September meeting. After that, we provided more detailed information in writing. We don't --

CHAIRMAN MEITES: Yes. I think we know where you're at.

MS. TARANTOWICZ: Sure.

CHAIRMAN MEITES: There's kind of two issues, so let me just paraphrase them. One is that whether this provides enough of a trail to keep track of what's going on, the verification issue. And then there's a concern about the proposed (a)(2), whether that is consistent with both the statute and not just the

wording but the intent of the direction to go.

(a)(2), as we've discussed a lot, is clearly a change in our existing regulation. There's some historical precedent for something like this, but not what we have here.

What we have done -- and this is changed from what our prior board presented, quite a bit, actually. Actually, Mattie, maybe that would be a helpful place to start. If you could summarize what the existing regulation is, what the prior board recommended, and how our (a)(2) differs from what the prior board recommended.

MS. CONDRAY: Sure. In your books, I believe there was actually a chart --

MS. BeVIER: Yes. We have this flow chart.

MS. CONDRAY: -- which I will give all of the credit for this chart to Tom Hulger. But I liked it so much that I cooked it for the retainer agreement chart.

MS. PERLE: Where is it?

MS. CONDRAY: Page 4.

MS. PERLE: Thanks.

MS. CONDRAY: Okay. Prior to 1983, which is

from like '76 or '77 when the first regulation was adopted up through 1983, the rules allowed for the representation of groups primarily composed of financially eligible persons -- and you'll see that's the continuing thread throughout all of this -- and groups whose primary purpose was to further the interests of financially eligible persons.

In 1983, that second group was then the primary purpose group to further the interests of financial eligible persons. Those were taken out of the regulation. And so the only permissible representation of groups were groups comprised primarily of financially eligible individuals.

In 2002, the proposed rule -- actually the staff recommendation at the time was to keep the rule limited to groups primarily composed of financially eligible persons.

The then-committee and board disagreed with that and agreed with the field's proposal, which was -- and they changed the wording a little bit, was groups whose primary function is providing services to or furthering the interests of financially eligible

persons.

That was intended kind of to go back to the pre-1983 state of affairs, but with a slightly tighter, more technically accurate set of phraseology about it, the primary function.

That was what was proposed by the Corporation in 2002. And then the staff proposal that is currently in here is the -- it reflects, reflects exactly, the discussions that your committee has had over the last several months on this.

And that is limited to groups primarily composed of financially eligible individual persons, that same one, and groups whose principal activity is the delivery of services to financially -- to the financially eligible community, and a requirement that the legal assistance provided by the program relates to that activity.

So what is in this proposal is actually a narrowing of what was proposed in 2002 and a narrowing of what was existing prior to 1983. It gets rid of the -- the big thing it gets rid of is "the furthering of the interests of."

Because that was, as you recall, seen as too nebulous and there's too much of an opportunity for an argument of, well, what's really -- who determines what those interests are being furthered, as opposed to the primary activity being a delivery of services.

And then a further narrowing of focusing the LSC-funded legal assistance being on activities related to that delivery of service such that -- you know, I think one of the examples we were using was a church-run food bank that if they had a legal issue related to a storage -- rental of a storage warehouse where they keep the food, that that might be ineligible, and they were otherwise financially eligible -- I'm putting that as a baseline -- that that would be an acceptable activity, but perhaps an employment matter with the choirmaster that had nothing to do with the food bank would not qualify that group to be able to be provided LSC-funded legal assistance.

CHAIRMAN MEITES: Thank you. Ernestine is going to join us. Pat, you'll tell us what she said?

MS. BATIE: I will.

CHAIRMAN MEITES: Okay. That's where we're at

now. We received -- our predecessors had received, and I guess we received as well, some correspondence with the congressional committee regarding the staff proposal, the 2002 staff proposal.

Can you tell me if, at least in your reading of that congressional concerns and our present proposal, have we met -- as you understand the congressional concerns, have we met them?

MS. CONDRAY: Well, I would rather let Tom address that.

CHAIRMAN MEITES: Well, I'm talking in a legal sense. I'm not talking in terms of the politics of it. In your view, what were they concerned about, and what has our response been?

MS. CONDRAY: Well, part of that is I'm not entirely sure exactly. They were concerned about, again, the way it was constructed, and the letter indicated a concern of broadening -- I mean, one concern was of broadening the groups.

But I'm not entirely sure if they were concerned that it would just -- that Congress's original intent was never that these groups be served.

If their concern about these types of groups came from a this is something that's beyond the authority of the Corporation to do in a legal sense, or if it was more a policy based -- we just -- you guys have limited resources, and even if you have the legal authority to do this, we don't think this is really where you should be going. Because those are two very different questions.

CHAIRMAN MEITES: Well, I actually saw it as a third way. And both those may well have been part of the congressional concern. The first is to the authority. I think that we've satisfied ourselves that it's within the authority. And second, whether it's within the mission is, I think, something that, as limited, is within the mission.

I kind of saw a third thing, that this may be a loophole, that we are creating a -- we are allowing potentially a recipient to go back to the kind of activity which at least I think the 1996 Congress felt is activities in more of an advocacy or impact role that they didn't believe our grantees should be doing.

And I want to focus briefly on that. I think

as we have limited it -- and I think we should consider this, that maybe we should have more limitations -- as limited to the way we've now phrased it, I don't think that that should be a concern.

I don't think that a grantee, for example the food kitchen, under this group authorization can be represented by a grantee who's seeking to challenge some practice in the city as to allocation of resources.

I think that in a very specific sense, they can facilitate the delivery of services. But in a general sense, maybe you can -- if you think that this is broader than I do -- I don't think that this is the basis for a systemic attack on a practice that might be affecting their clientele.

Is that coherent? Did I say --

MS. PERLE: See, I think that there oftentimes was a confusion between group representation and class actions. And so somehow, the two were identified in the minds of a lot of people. And really, they're very different.

CHAIRMAN MEITES: No. I'm concerned about

something different. An associate can represent the interests of its members. We'll just take that as a given. So that if a labor union sues for an unfair labor practice, it is bringing an individual action but it is, de facto, a mass action.

And I think that Congress may be concerned that this not be the basis for an entity to essentially bring a mass action because an association can represent the interests of its members and clients.

I think we've written it as a way that is not going to be the case. But if it is the case, I don't think that's our intention at all to allow that. That's not what we're trying to do.

So that if anyone has concerns that this language could be concerned to essentially bring advocacy litigation, I think that we should look at the language and tighten it up. I don't read it that way, but I want to make sure that people are not concerned about that possibility.

MS. BeVIER: You mean public policy advocacy?

CHAIRMAN MEITES: Yes. This advocacy obviously caused us to change, you know, minimal --

MS. BeVIER: But that's restricted by other regulations.

MS. PERLE: Well, right. By the -- it's by 1612, the logging restriction or the administrative advocacy restrictions. So you just -- you can't do those for an individual and you couldn't do those for a group, either. So we have other regulations that deal with the specifics of those restrictions.

CHAIRMAN MEITES: Well, that's the second part of our provision, which says it obviously has to be consistent with the regulations.

MS. CONDRAY: Right. I mean, to the extent that Congress is concerned in the manner that you speak, in the manner that you posit, I don't think -- I think this language will be sufficient to allay those concerns.

MS. PERLE: Yes. I think so. I mean, we're really talking about only those groups that are only providing service to the specific community, not those that are even somehow, some vague way, representing the interests of the community.

CHAIRMAN MEITES: No. We eliminate that.

MS. PERLE: Right. You eliminated that.

MS. BeVIER: I would think that you might want to put something in the --

MS. PERLE: In the preamble?

MS. BeVIER: -- in the preamble that addresses specifically what this regulation does not do by way of opening a big door.

MS. PERLE: I think that's right.

MR. ASHER: Right. I'm searching for a recent example of how this might really have come up. And the most recent one -- I'm trying to think. There was a small group of people involved in nutrition advocacy in Denver made up of somebody on the staff of the Presbyterian Church service organization, Metro Caring, I think it was; somebody on the staff of the city welfare department responsible for food stamp programs; a couple of people like that, a half dozen or so.

All of -- none -- they weren't technically eligible. But this was all volunteer work designed solely to get the word out about eligibility for food stamps, and other -- WIC, Women, Infant, and Children, and other -- all food-related issues.

This group was thinking about applying for an HHS outreach grant to expand food stamps, and maybe Department of Agriculture. And they called me and said, we're thinking about applying for this grant, but it says you have to be incorporated, and we're this loose group. Do you think -- can we talk to you about whether we need to incorporate, and if so, how we might do that?

That -- I mean, we got them pro bono counsel. I think ultimately they did. But that's the issue where that's a group that is designed purely to help poor people, not self-interest. And ultimately, we didn't provide the actual legal services, but we did screen them, you know.

And so that may not be a perfect example, but this is not a way of doing gross public policy work. But people don't know where to turn for legal advice who are purely trying to help our clients, and it's a way of getting them started or give some advice and the like.

MR. WHITFIELD: In our program, we have some local, very small Habitats for Humanity. Don't have

any resources. And just, you know, local ministers and people that -- trying to build houses. And we have some real estate lawyers in town who can't really help us do much other things, but they can do real estate closings.

And so we put them together. We screened the people. We screened Habitat and refer those cases to the real estate attorneys who do the real estate work for Habitat.

We're doing that now with non-LSC funds because we're not allowed to do that now with LSC funds. But it would simplify things if we could just put it in with the rest of things.

MS. BeVIER: I think I'm satisfied with the preamble, so long as the preamble makes very clear --

MS. CONDRAY: And we'll do that. Yes, that's easy.

MS. BeVIER: Because this is a --

CHAIRMAN MEITES: It started when we were in Nebraska and they told us about the people who wanted to work for the farmers and --

MS. BeVIER: Yes. Exactly.

CHAIRMAN MEITES: That's exactly the type of thing. All right. If that is okay with us, why don't we just go with that.

MS. CONDRAY: Okay.

CHAIRMAN MEITES: We've been up and down this hill, and now I think we're set on this.

MS. CONDRAY: And I do think the other concern raised by Congress was the verification.

CHAIRMAN MEITES: Yes. I think we've solved the verification. I think we, at least, are comfortable it should be put out for comments and people have --

MS. BeVIER: You know, I'd like to hear the IG's position on that because I don't --

CHAIRMAN MEITES: On verification?

MS. BeVIER: Yes. Because, you know, I don't remember our talking about it very much with the groups. But I just have --

CHAIRMAN MEITES: Go ahead. Let's do it, then.

MS. TARANTOWICZ: I'm not sure if this is the verification issue. I think we have two sort of

interrelated issues. And that is that although we went through this morning in great detail what kind of income and what kind of assets and individual needs to become eligible, to be qualified as financially eligible, when we get to groups, it's not there.

And it's my understanding that this -- and this is a concern even with regard to both types of groups because as a qualifier, it is a general inability to afford counsel. And we know, that's not the only qualification to receive LSC-funded legal services.

And as to individuals, although a group comprised of -- primarily composed of financially eligible individuals, you think, oh, well, that's not a problem because they have to show their eligibility, well, it's my understanding that that's not exactly what's required.

What's required is somehow that these individuals are deemed to be financially eligible, but they don't have to go through the same financial eligibility determination as they would if they were individual qualifying.

And I do think that the Judiciary Committee, the House Judiciary Committee, shares this concern, at least based on their letters and our conversations with staff over there.

CHAIRMAN MEITES: Well, we attempt to cover that in 1611.6(b). I think that "a recipient shall collect information that reasonably demonstrates that group, corporation, association" and so on "meets the eligibility requirements set forth herein." And is that the part we should focus on now?

MS. TARANTOWICZ: Well, I think that's the second part. So in our view, the sort of combination of the fact the rule lacks the criteria for determining eligibility, and then only requires documentation of eligibility with this general "reasonably demonstrates" standard, to us says you have to reasonably demonstrate compliance with fairly nonexistent criteria, which is a problem.

CHAIRMAN MEITES: I'm with you. So that --

MR. WHITFIELD: Can I speak to that? That's sort of a practical problem. Suppose there's a low income housing project tenants association. It's a

large group, 3-, 400 people. And they're an organization that the president certifies that their organization is comprised entirely of residents at the low income housing project.

To make everybody -- to make the majority, at least, of those people fill out an application form and go through all -- it's just awfully burdensome when you know that they're all low income. They wouldn't be in that group. And that circumstance, it's reasonable to skip that stuff.

MS. CONDRAY: If I can also piggyback on that, one of the things that the group was -- the working group talked about was there's a practical problem that depending on what standards you adopt -- if you adopt a standard, a criteria, that says you have to demonstrate individual eligibility for all -- for the primarily composed, for large enough groups that may in fact create a practical impossibility.

If it's a -- you know, if the group picks up so many number of people while you're in the middle, if another family moves in, how many people do you keep adding? So there was a practical issue, balancing out

that we didn't think that -- didn't really want to back door kill the ability to represent groups that have been able to be represented since 1977 with respect to the financially eligible person groups.

We noted that the current regulation doesn't really address this at all. And what is proposed, what's written down here, is basically a codification of what the practice has been for, you know, coming on 30 years now with respect to --

CHAIRMAN MEITES: (a)(1) has been in effect for 30 years?

MS. CONDRAY: Right.

CHAIRMAN MEITES: And (b) is what you're saying --

MS. CONDRAY: And (b) is essentially the practical standard that's been in effect with (a)(1) since the official adoption of the regulation, and it has not been the Corporation's experience that there's a huge practical issue out there. The compliance people aren't going out and finding large instances of noncompliance that --

MS. BeVIER: That's because they don't have

any standards to judge them by. I mean, I really do think that the IG makes a point here that is -- you know, if you don't have a rule and you find that you don't have a compliance problem, well, it could be because you don't have a rule. You don't have a standard. You don't have anything to noncomply with.

MS. CONDRAY: But I will also say that we haven't been getting a lot -- we also don't get a lot of complaints that you're representing groups that are clearly comprised of non-eligible people. You know, this is not the hot thing that people are saying, wow, they're representing the condo board on that Park Avenue condo. Those people can't possibly be, you know --

CHAIRMAN MEITES: Let's think this through. I understand that you don't want to have verification requirements that make it impossible to do that. On the other hand, Lillian's point is well taken. There must be something more and reasonable that we can -- like I know the IG at some point wanted a percentage test, and so on.

The trouble with a percentage test is your

problem: You have to do everybody to get the percentage. This is just a practical problem. I hope we have a good -- there may or may not be a solution. But I think our sense is that we would like to see something more here, although I'm not --

MS. CONDRAY: You know, and then if you're really focusing on the group, although there -- groups, whether they're primarily composed of eligible individuals, or groups which have as their principal activity. I think you can kind of go either one. Either one of those types of groups, there's --

CHAIRMAN MEITES: Let's focus on (a)(1).

MS. CONDRAY: -- you know, what is the finances of the group? The client is the group in that -- the client is like the tenants association. It's not 300 individuals. The client is the tenants association.

MS. BeVIER: No. But the group has to be primarily composed of individuals who are eligible. That's what the reg requires.

CHAIRMAN MEITES: So what we're looking at is the group -- there are two groups here, in both (a)(1)

and (a)(2). There's the group itself, which is the small Habitat for Humanity, which has no resources. That's easy to verify; just look at their statements. They have no money. But the real group you're talking about is the group being served or the -- if it's a membership organization, the members of the organization.

MS. TARANTOWICZ: Well, I was going to talk about both, but I only got to the first one.

CHAIRMAN MEITES: Well, let's just focus on the members --

MS. BeVIER: Maybe it should --

CHAIRMAN MEITES: Let's go ahead.

MS. TARANTOWICZ: No. That's fine.

CHAIRMAN MEITES: If you want to put the group on the table as well, let's do them both. Go ahead.

MS. TARANTOWICZ: Well, I mean, I don't mind doing them separately. I just -- I do agree that it is the group that is being served. I don't think that -- I'm not sure that the regulation makes that clear, especially when you -- I mean, it is the group interest. So are we saying that if you're serving a

tenants association, there are types of legal problems you can address that you're not addressing a legal problem of one individual; you're addressing a legal problem of --

MS. PERLE: I mean, say a tenants association comes to you and says, we have a lot of people who are being evicted, and we want you to represent our members in their individual evictions.

CHAIRMAN MEITES: That's not a problem.

MS. PERLE: Well, in that situation --

MS. BeVIER: No, because if we're going to represent --

MS. PERLE: You're not representing the group. And then you have to do an individual --

CHAIRMAN MEITES: That's right.

MS. PERLE: Right. But if it's -- they say, but we want you to negotiate with the landlord of this -- you know, of this housing complex to change the rule by which they're doing evictions, then that's a representation of the group.

MS. TARANTOWICZ: I understand that. I just don't think the regulation says that clearly. And I

don't mind if it's in the preamble or what.

I think you're going to save yourselves a lot of criticism if you make that clear because, you know, otherwise people -- because of the little wrinkle there, yes, you're representing the group, but then you get down the individual level because you're requiring the individuals that comprise the group to be eligible. People may get confused about what it is you're talking about.

What you're talking about is a group interest. And therefore, so that they won't see it as a back door attempt to do some sort of mass action, if this is made clear -- but along with that, if we get to the second -- and these types of groups can be represented in either (a)(1) or (2), or (a) or (b) -- and that is, they're not -- it's not composed of individuals. It's a group.

It's a corporation. It's, you know, a legal person, separate and apart from anybody. And then, you know, our view is that, okay, how do you determine eligibility of -- what's the criteria to determine eligibility for that group? I mean, are you looking at

financial statements? Are you looking at assets? Not according to --

CHAIRMAN MEITES: Let's talk about the second point first because in some ways that's easier to solve.

MS. TARANTOWICZ: Okay.

CHAIRMAN MEITES: We have no asset or income test for groups?

MS. CONDRAY: No, other than lacks the means and has no practical means of retaining private counsel.

MS. BeVIER: But there's no standard for determining whether that --

MS. CONDRAY: There's no income standard.

MS. BeVIER: Right. I mean, there's no guidance in here.

MS. PERLE: But that's been the language that's been in the rule for 30 years.

MS. TARANTOWICZ: I just would argue that just because it's been there doesn't mean it's the correct language.

MR. ASHER: My concern is we will create more

compliance issues than we will solve. I'm thinking, first of all, out of all the problems we've had on the Hill, this does not appear -- since '77, this issue is not one, and Tom can correct me if I'm wrong, that surfaced.

But let's assume a tenants group comes to you, 30 --

MS. BeVIER: I'm sorry. When you say "this issue," you mean the financial eligibility of the group?

MR. ASHER: Of predominately low income groups on a -- you know, there are other pieces of group representation, particularly class actions, lobbying. There are things that you do for groups that have, on occasion, become issues over the years.

The fact that we don't have a strict documentation requirement about financial eligibility for the group has never been an issue. Nobody has said, you're representing a condo association. They've said, we don't like what you're doing on behalf of the tenants groups. Nobody has said they're not low income, generally.

CHAIRMAN MEITES: The Chicago Food Depository has a budget of $20 million a year. It devotes all of its energy to serving people who are otherwise eligible.

Could legal assistance funding go to represent the Chicago Food Depository?

MR. ASHER: I'd have to know more about whether they get grants that include money for legal assistance, if they have any -- you know, how that 20 million is earmarked to be expended.

CHAIRMAN MEITES: It's all expended to delivering services to those people who would otherwise be eligible.

MS. CONDRAY: If you're saying -- if they get all of their money from grants, all of which say, you cannot use any of this money for legal assistance --

CHAIRMAN MEITES: No.

MS. BeVIER: They don't say that.

CHAIRMAN MEITES: They don't say anything.

MS. CONDRAY: Then I would say no.

MR. ASHER: Then no. No. If it's unrestricted -- unless they make a case that they

really couldn't pay for legal fees, we wouldn't do it.

CHAIRMAN MEITES: It doesn't say in here -- where does it say that the group --

MR. WHITFIELD: At the end of (a).

MS. CONDRAY: "It provides information showing that it lacks and has no practical means of obtaining funds to retain private counsel."

CHAIRMAN MEITES: Okay.

MR. ASHER: And we wouldn't do it.

MS. TARANTOWICZ: And that applies to both groups.

CHAIRMAN MEITES: Okay. So that's where the limitation --

MR. ASHER: Right. And we would screen that pretty carefully. And more and more, for example, housing development corporations, as part of their grant funds, includes money for counsel. So they don't need it.

MS. TARANTOWICZ: But what if they did? What if they received money, grant money. They earmarked it for other things. They didn't earmark it for counsel. Would you argue they don't have any practical means of

obtaining counsel because they determined that they wanted to spend it elsewhere?

I'm just suggesting that the Corporation is required to establish eligibility guidelines. And what this portion of the reg does is require the grantees to establish eligibility guidelines. And if that's the determination that the committee wishes to make, I think it should be a knowing determination.

So what you're doing is saying, essentially, the way I read it, that we're not going to tell you what it means to have no practical means of obtaining legal counsel. We're going to tell you, you need to decide that. And as I read the LSC Act, the Corporation is required to --

CHAIRMAN MEITES: What about us spelling out what steps that we believe should be included in this reasonable demonstration?

MS. TARANTOWICZ: I think that should be.

MS. CONDRAY: You think we should do that?

CHAIRMAN MEITES: I know how to tell if the Chicago Food Depository can afford it. There's things you look at. A group has financial records. It's a

lot easier than an individual.

MR. ASHER: Well, but let's assume that you have the tenants group in what was Cabrini Green comes to you. And ten tenants come to you. All right? They say, we're the tenants group, and it's made up of -- all tenants are eligible, but ten come to you. All right?

You know they're in public housing. You know they're eligible. And you -- do you want us to do an intake sheet on each one to document --

CHAIRMAN MEITES: No. We're not --

MR. ASHER: Wait. Wait.

CHAIRMAN MEITES: You certainly can do an intake sheet on the group, Cabrini Green Tenants Association, money in the bank.

MR. ASHER: They aren't a group yet. Ten people come to you and say they're not a legal -- they aren't a legal animal yet. They're ten tenants who come to you --

CHAIRMAN MEITES: Without a formal --

MR. ASHER: -- who may be -- they want legal -- what they want is, they say, we have people

who have been evicted, and they get evicted for violating rules. We have no input into how those rules get made.

CHAIRMAN MEITES: I understand. But certainly you can ask them, have you raised any money yet? No. Are you planning to raise money? Well, we'd like to. We're going to have something or other. How much do you think you're going to be able to raise in the first year?

Those are questions that a grantee can ask. They're simple questions. I ask my clients that. How much money do you have? How much money are you going to have?

MR. ASHER: Right. Absolutely. Now, the next week you go to meet with them. And there are -- six people are the same, and there are four new ones. Do you have to -- and you haven't incorporated them yet. Do you have to ask them again, the new tenants who are there --

CHAIRMAN MEITES: Well, there can be difficulties in doing it. But it doesn't seem to me that determining the assets of the group is

particularly onerous. I can buy into the people served are the members. But the actual group, typically they're not going to have any money at all. Your Habitat for Humanity doesn't have a bank account. Doesn't have two cents. And you know that from the minute they come in the door.

So I don't think --

MR. ASHER: But --

CHAIRMAN MEITES: Wait -- I don't think answering Laurie's point is terribly difficult, that you make a reasonable inquiry into the resources of the group. Or, I don't know, you can phrase it any way you want to.

But we could add that to (b), that the group has -- even if it's not formed yet, it has some cohesiveness. And I don't see the difficulty in requiring our recipient to make some kind of an examination of the assets, obligations, and income of that group.

I'm not saying we have to describe in detail because you're right, they're all coming in lots of different flavors. But I think we can at least put

some kind of guidance as to what we would expect.

MS. TARANTOWICZ: In the preamble? Are we talking about the preamble?

MS. BeVIER: No. No.

CHAIRMAN MEITES: It could be put in (b).

MS. BeVIER: I would put it in the regulation. Right now, it really doesn't help to say "the eligible requirements set forth herein" since there really --

MS. CONDRAY: You could do something like -- and this is just off the top of my head --

CHAIRMAN MEITES: Go ahead.

MS. CONDRAY: -- in order to make the determination as eligible for legal services that is required by paragraph (a), a recipient shall collect information that reasonably demonstrates that the group meets the eligibility requirements, looking at the applicant -- the group's resources, income, obligations --

MR. McKAY: Including but not limited to.

MS. CONDRAY: Kind of a clause at the end that talks about the sorts of things we expect people to be looking at.

MS. BeVIER: Well, it's -- yes. I'd certainly like to see what that language looks like and that effort made. And, I mean, I don't think that that makes your -- the grantee's job more onerous. And if it does, maybe it ought to be a little bit more onerous.

MR. WHITFIELD: That's essentially what we would be doing under this --

MS. CONDRAY: Sure. I got -- yes. I got the concept down. I can flesh it out a little bit to make it --

CHAIRMAN MEITES: Now, before we go on, Ernestine, are you there?

MS. WATLINGTON: I'm listening.

CHAIRMAN MEITES: Good. Well, we're talking and you listen. But if you want to talk, we'll listen.

MS. WATLINGTON: I wanted to know where you are. Is it group representation?

CHAIRMAN MEITES: Yes, we are. And Tom Fuentes has gone to lunch and thanks us for a chance to participate, and we appreciate him being on the line as long as he was.

Okay. Let's go to Laurie's first point, which is the figurehead entity has now been identified. You have expressed concern that -- particularly with (a)(1) because I think (a)(2) is a little bit easier -- but both is the actual composition, whether 51 percent or 66 percent, of the people who are either members of the group or being served by the group are otherwise eligible.

The problem we have with that is you said if you have to go to the trouble of doing intake for all thousand tenants, it's not worth the effort. But I don't think that's exactly what you're saying.

MS. TARANTOWICZ: No. I'm not saying -- I'm not recommending that you do intake for, you know, a thousand people. I'm not sure that I'm in a position to solve the problem.

CHAIRMAN MEITES: No. I --

MS. TARANTOWICZ: You know, it's easy to say, you have a problem. Sorry. Go fix it. But --

CHAIRMAN MEITES: Well, my sense is it may be a problem that may solve itself. Most groups have a focus. They are trying to accomplish A, B, or C. And

like your tenants association in public housing, by the nature of the focus, there's every likelihood that the population is going to be eligible.

Now, I don't know if I can put that into words. But that's the reality, is the Chicago Food Kitchen, despite its $20 million, I guarantee you is serving people who are eligible for our -- and so you don't have to do anything. You just know by the nature of their mission.

MS. CONDRAY: Right. They would be a (b) group. (a)(1) really only gets to where the group itself, regardless of what it is they're doing, is a group of financially eligible people.

The group -- I mean, I suppose, you know, you get a little tautological in a philosophical sense of anything a group of financially eligible people do is done to provide -- if it's not providing service in the general population.

But, you know, if a group of four eligible women -- now I'm picking four for -- what they want to do is they want to start a day care center because they would like to create their own business, they're not

necessarily going to be creating a day care center that serves a financially eligible population.

CHAIRMAN MEITES: No. That's okay.

MS. CONDRAY: You know, they're willing -- they would in fact like to create a day care service for people who can afford to pay through the nose for this daycare service, you know.

CHAIRMAN MEITES: Right.

MS. CONDRAY: Because that would be much more profitable to them. So they're not -- they're clearly not in (a)(2). They're not that other group. They're an (a)(1) group. And so then the question is, you know, or even a -- maybe they've already formed their day care center, and now they have an issue with the day care center that they run. You know, they're not yet making -- the individual people are still poor, but they're not having -- they're having, you know, a problem negotiating a lease.

CHAIRMAN MEITES: I just had a horrible thought, which I will share. We're having a real problem in Chicago with these minority grantees that people have a preference for city services. And it

turns out that a lot of the old line contractors simply set up front organizations composed of minorities. But I can see a group being composed of four front people with two other people.

MS. BeVIER: Feeding at the LSC trough?

MS. CONDRAY: Because it's so easy to do.

MS. BARNETT: I don't think that's going to occur.

MS. BeVIER: It's so easy to do.

MS. CONDRAY: But I'm thinking, four women. Last year they incorporated their day care center. They're still not making a lot of money. And now they have a problem with their landlord. And they're going to -- as a group they become eligible because -- I mean, well, I guess they could be eligible. They're not eligible under (a)(2) because they're not providing services.

CHAIRMAN MEITES: No. It would be (a)(1).

MS. CONDRAY: They can only be eligible under (a)(1). But it's still a group. So is it that we're looking at the assets of the group, in which case the reasonable inquiry into the assets of the group, the

stuff that we're putting in (b), would cover them.

But that doesn't get to -- that's one part of the question, although that doesn't get to Laurie's underlying question of how do you determine that those individuals -- you know, for four people, yes, you could -- it's easy enough to do the screening.

MS. BeVIER: But if they incorporate, okay, our day care people --

MS. CONDRAY: Right.

MS. BeVIER: -- they can't get funded under (a)(1). They would be (a)(2), and then they would have to have as their principal activity --

MS. TARANTOWICZ: No, no. They could be (a)(1).

MS. BeVIER: (a)(1) says, "The group, or for a non-membership group, the organizing or operating" -- a corporation isn't a membership group. A corporation is a --

MS. PERLE: No. So it's a non-membership group. So it would be the operating body of the group, the board of directors of the group.

CHAIRMAN MEITES: And they're all poor.

MS. PERLE: And they're all -- yes. All four of them are the board of directors.

MS. BeVIER: Well, okay. And then you have created the loophole.

MS. CONDRAY: But this is what's already existing and hasn't been a problem.

MS. BeVIER: I don't care. It's a loophole.

CHAIRMAN MEITES: But when we add (a)(2), Lillian's point, I think, is we've now created an overlap between (a)(2) and (a)(1).

MS. TARANTOWICZ: No. I think it's been there.

CHAIRMAN MEITES: Well, there was never an (a)(2), so that -- the problem has always been there. But Lillian's point is a slightly different point, that it's possible now for a group to be under either (a)(1) or (a)(2). And we're satisfied with (a)(2) --

MS. WATLINGTON: I was trying to get in. I want to ask a question.

CHAIRMAN MEITES: Ernestine, go ahead. I'm sorry.

MS. WATLINGTON: What I wanted to know is that

in that eligibility, to make them eligible, is there where they all have to be eligible clients, or maybe just a certain percentage?

CHAIRMAN MEITES: We don't have -- the word is "primarily composed." We haven't gotten to whether it's 51 percent or 67 percent. "Primarily" is kind of a slippery word, but it's the word we have now.

MS. CONDRAY: The current practice and opinions of the Corporation have defined "primarily composed" as 51 percent.

CHAIRMAN MEITES: Fifty-one. A majority.

MS. CONDRAY: Well, 51 percent. Not just a majority. There's a difference.

MS. PERLE: Yes. We've have some difference of view over --

MS. CONDRAY: But the prevailing practice is 51 percent.

MR. WHITFIELD: I can't tell you how many times we've had them right at 50.5 percent and we've had to turn them down.

MS. CONDRAY: I don't know why they can't just say "majority."

CHAIRMAN MEITES: Okay. Well, I guess where I come out is this hasn't been a problem in the past, but I think since we're adding (a)(2), I think it's worth taking another look at.

And I guess I'm not so troubled by "primarily composed" because you're not going to have groups that are, you know, three wealthy individuals and four poor people. I don't think the world is going to work that way. But I am troubled at the idea of a group under either one.

But you're saying the group wants to organize a for-profit day care center.

MS. CONDRAY: Right.

CHAIRMAN MEITES: There are four of them, and three out of the four are eligible. And they come to -- three come -- four of them come to your office and say, we want to do this. And I don't see anything wrong in representing them. And you've always been able to represent them under existing regulations?

MS. CONDRAY: Right. Then the question becomes exactly how do you determine that?

CHAIRMAN MEITES: With three out of four.

MS. CONDRAY: Right. Now, four people doing an individualized intake screening is not difficult if you have a tenants association that in fact wants to incorporate and you have -- do you -- you know, is it -- okay.

The ten people, do you have to do an individual screening on the ten people who come to you that day saying, look, we're the people really interested in making this an incorporated association rather than an unincorporated association?

Or do you have to look at, you know, well, how many tenants do you have? Well, we have 450 tenants. Well, then, you've got to bring in, you know, what, 275 or whatever that number -- it's bad math.

MS. TARANTOWICZ: But they may not even want to incorporate. So it may -- you may be stuck with the 440 people, and so you need to --

CHAIRMAN MEITES: Well, we've been able to generate a lot of very juicy hypotheticals. But you tell me this isn't a problem. So even though we can sit here and imagine it's a problem, why isn't it a problem?

MR. ASHER: We've never -- I mean, we have never had the front people, to my knowledge, come to us to try --

CHAIRMAN MEITES: I understand that. But what about the group of tenants in a large low income development where you really don't -- you can't tell externally, unless you had a rent breakout, how many are paying X, Y, Z, and so on?

MR. ASHER: Except you know they all qualified for subsidized housing, which has a means test of some kind. In a public housing project, that may -- depending on the units and the nature, that may be self-defining.

And it depends on what group, whether they want to incorporate or they simply want you to do -- for some things, those ten people, whether incorporated or not, will be your client.

CHAIRMAN MEITES: Right.

MR. ASHER: For other purposes, they're coming to you on behalf of the rest of the tenants, whether they come or not, that you have to look at somewhat differently.

MS. BeVIER: Is it in part a function of the fact that what happens here is you determine -- you make some sort of first guess about financial eligibility, and then the issue is priority of resources?

MR. WHITFIELD: That's right. Exactly.

MS. BeVIER: What's your legal problem?

CHAIRMAN MEITES: Right.

MS. BeVIER: And so you end up sifting.

MR. ASHER: And can we do it? Is there a private lawyer who might be interested down the road? There may be fees. And we aren't looking --

MR. WHITFIELD: We're not trying to represent people that don't look like they're our clients.

MS. TARANTOWICZ: I'm not suggesting that. I'm not suggesting that.

MS. BeVIER: No. I know.

MS. CONDRAY: No. And I want to make sure --

MR. ASHER: But my concern is how often -- I mean, we are -- particularly tenants or other groups, they're very fluid associations, whether they're incorporated and you can say you represent the entity

or not.

How often would we have to check? When OCE comes out, they're entitled to look at our records, and should. But are they going to say, well, here you have intakes for ten people, but two of them are left; the other eight are gone.

Are there other people who are not -- I mean, we will create compliance issues where there isn't a current problem. I think we ought to address problems, not make them in this effort to simplify things.

MS. TARANTOWICZ: Well, I don't disagree that we shouldn't make problems, although I think by adding (b), do we need to continue to check eligibility? You're kind of making it more complicated than it needs to be.

And I just -- I may have a different perspective. I think it's fair to say I do have a different perspective. But I would caution against, you know, sort of regulating by reaction because I think that that's gotten the Corporation in trouble in the past.

And where the Corporation can be -- and this

is, you know, not for me to say; I'm only giving you, if it is a benefit, the benefit of my, you know, experience here -- if you can be proactive, I think it's a good thing.

If you have a problem or if somebody, you know, identifies a potential problem that, you know, you wrestle with and you can't necessarily find a solution, I think that, you know, you can address it in different ways in the preamble.

Or if -- I mean, we're sitting talking about this now, and there may be ideas that we're not going to come up with at the table right now that, you know, sending people back to think about might generate some additional thoughts.

MS. CONDRAY: I have two kind of comments that aren't directly responsive to that, but that I've been thinking of.

MS. TARANTOWICZ: That's fine.

MS. CONDRAY: One is sort of responsive, is there is a value in trying to anticipate a problem and trying to fix something that you perceive might be. There's also a value in if it ain't broke, don't fix

it.

MS. TARANTOWICZ: I understand that.

MS. CONDRAY: And I think that's kind of where we're kind of looking at here.

And the other thing I don't want to have happen is in the rash of hypotheticals, especially with the (a)(1) type groups, to have a situation where -- you could have a situation where a group comes to you with a tenant -- we'll go on using a tenants association.

The tenants association comes to the program wanting assistance with -- oh, all the lighting in the hallways is out all the time, and it's creating a dangerous, unhealthy situation.

A tenants association could come to you saying, I want you to get the landlord to get all the lights on. And individual tenant could come to you. Either one should be valid. I don't think we have an interest in trying to either say the tenants association can't come to you in that instance or saying because there's also an individual case that could be made.

I don't think we want to inadvertently kind of -- you know, a discussion of, well, is the group interest exactly the same as an individual interest? I don't want to get into that problem.

CHAIRMAN MEITES: I think we can solve it. I think that -- how about this for a solution: Under (a)(1), something to the effect that the characteristics of the group are consistent with the financial eligibility of the group?

That's really what we're talking about. A tenants association, by definition, the common characteristic is they live in low income housing. And you wouldn't live in low income housing unless you met the criteria.

So focus somehow on a common characteristic that gives cohesiveness to the group. And if that's consistent with financial eligibility, I think we've gone a long way towards the kind of inquiry you should make.

MS. CONDRAY: Okay. You know, I agree with the if it ain't broke, don't fix it, up to a certain point. And I think part of the difficulty here is that

adding (a)(2), it is adding, okay, and it is a change.

MS. PERLE: Yes, it is.

MS. CONDRAY: And I think to the extent that we anticipate concern and worry, it would be as much about that as it would be about, you know, the eligibility criteria. And so I think we're going to try to address that in the preamble, and I think that would be -- I think that's important to do.

CHAIRMAN MEITES: If this common characteristic works -- why don't you try adding the specific language to (b) we talked about, and in the preamble talk about the common characteristic of the group.

MS. CONDRAY: Now, do you want this just in the preamble or actually some tweaking of the regulatory text to reflect that?

MS. BeVIER: I don't think in (b) we talked about the regulatory text -- I mean, in No. (2) the regulatory text.

CHAIRMAN MEITES: No. In (b) we're going to add --

MS. BeVIER: Oh, in (b)?

CHAIRMAN MEITES: I can see putting in (b) the common character -- the cohesive character or the common characteristic of the (a)(1) group. I don't want to get too burdensome. And if it fits better in the preamble, that's fine.

MS. CONDRAY: Okay.

CHAIRMAN MEITES: But if you could put a qualifier for (a)(1) and a qualifier for (a)(2), both in (b), I think that would be more consistent.

MS. CONDRAY: Okay.

CHAIRMAN MEITES: All right. Does that end our discussion of retainer for at least this go-round?

MS. BeVIER: Of the retainer? You mean --

MS. CONDRAY: If it ends the retainer, that's fine with me.

CHAIRMAN MEITES: All right. We'll now turn our attention to the retainer provision. The place that we might want to start is the present retainer agreement provision, which --

MS. CONDRAY: Is 1611.8.

CHAIRMAN MEITES: -- is short, to the point, and --

MS. BeVIER: 1611.8?

MS. CONDRAY: Is the current rule.

CHAIRMAN MEITES: Remind us again why we shouldn't just keep the present one and why we got into this huge dispute about changing it, keeping in mind that we are not inclined to recommend that we do away with the retainer agreement entirely.

Having said that, why should we go through this whole exercise? Why don't we just keep the existing one, which apparently has worked okay?

MS. CONDRAY: Well, part of the reason --

CHAIRMAN MEITES: If it has worked okay.

MS. TARANTOWICZ: Because there's ambiguity.

CHAIRMAN MEITES: Okay. Go ahead.

MS. CONDRAY: Part of it is the current regulation -- to the extent the current -- I guess it's (b), 1611.8(b). A recipient is not required to execute a written retainer agreement when the only service to be provided is brief advice and consultation. Okay?

That phrase doesn't really exist elsewhere outside of this regulation, and doesn't mesh well with actual practice. The actual practice has been that

retainer agreements are not required when the program is providing advice and counsel, and that's -- if you go back to the definitions that we've looked at earlier, or brief services, which -- and those come out of our case service reporting system, different reporting categories of types of service being provided.

So in practice, the practice does not match what the regulation says. And so that's never a really good situation, where you have the regulation saying one thing that's ambiguous and the practice being understood as something else.

The recommendation here was that the current practice was appropriate, and therefore the regulation should actually reflect that -- not that the reg should be changed just to conform with what's being done, but a decision having been made, a determination that what is being done is in fact appropriate and therefore the regulation should reflect that.

And where you have -- with advice and -- you know, on one end, you could have a retainer agreement every time the program accepts a client, regardless of

the level of service provided. There would be a certain value in that in terms of memorializing the relationship.

But you have a huge administrative burden if the only thing that's being provided, for example, is advice and counsel, that by the time -- if you get a fully executed retainer agreement with someone with whom you spent ten minutes on the phone and have no other conversation with, mailing it back and forth and getting them to execute it and chasing after them, you know --

MS. PERLE: You'd never get it.

MS. CONDRAY: Right. And then brief service, there's a shorter relationship between the client. There's some -- you can -- there's clearly a value. But again, it's that balancing of how much effort is required versus what value the client and the program get from having that memorialized relationship.

And the discussion that had come out of this committee was that in the balance, especially given the fact that there's not a regulatory -- there's not a statutory requirement underlying this, that that's why

extended service cases only are the ones where it's really important and appropriate to have the retainer agreement.

So that's kind of what -- that's one thing that we've done here. Second is just trying to streamline -- to the extent we're keeping the basic requirement, trying to streamline it to be less proscriptive about what has to be in the retainer agreement and less proscriptive in terms of making the retainer agreements be filed with LSC; and then finally addressing private attorneys, which is something that's not addressed -- it's a problem created by the text of the regulation that we're looking to fix.

CHAIRMAN MEITES: Now, the second thing you said is easier. Yes, you've cleaned up (a). And I think we have fundamental problems with the changes you made in (a). And I think we were of the view that retainer agreements are often as much a matter of local custom and local regulation, and is aimed towards the best practices regulation, which we don't do.

I think that the crux of the dispute is the line that we propose to draw between extended services

and everything else. Well, I also think we're not troubled by the private attorney. That's something that had to be covered. I think we felt that as a private attorney, because of their own obligations as a practicing attorney, they will know how to handle that. They don't need us telling them how to do that.

But I think that the issue, and I think this is OIG'S issue, is the line that we've drawn between extended services and everything else. And you've kind of defined extended services twice. First you've defined extended services, and then you define the other two kinds of services.

So I think it's fairly clear where the line now is. Am I right? Is that the OIG's point, the problem with this?

MS. TARANTOWICZ: Well, yes and no. I would say that a retainer agreement, although is not required by statute -- and I just want to make clear that it is not for the OIG to say what policy you should implement.

And so in that section of the memorandum and the information we provided, it was more in terms of

informing your decision, like, you know, letting you know that if you adopt this, you're saying that in the numbers that I ran from the last year's case statistic reporting statistics, you're saying that in 79 percent of the cases, a retainer agreement is not required.

I think it was at the last meeting that when you had a presentation from the folks from OCE, they mentioned -- I think it was them because I wrote it down here, and I could be wrong about when it was -- but they mentioned that the second largest number of complaints that OCE receives is where the grantee was providing some sort of brief service, preparing the client perhaps to proceed pro se, or providing them -- writing a letter, but was not going to provide full service, and that the client, however, was under a misperception of the relationship and thought that they were going to get more service than they had thought. So at --

CHAIRMAN MEITES: That's really a different issue. What that is is not a retainer agreement, but some kind of communication with the client --

MS. TARANTOWICZ: Well, exactly, and if -- I'm

sorry -- but if in the -- I don't know if it's the original -- a prior version of this regulation, and I think it was management's position a few years ago coming out of the -- prior management's position, to clarify -- that in those cases, balancing the administrative burden of executing getting both parties to sign a retainer agreement against the potential benefit, and the contact with the client in brief service cases, that the best course was to send the client a notice fully informing the client that this is the service what we will provide, and this is it. And, you know, basically you're on your own --

CHAIRMAN MEITES: This is the brief service, not the advice and counsel?

MS. TARANTOWICZ: No. Right. Not the advice and counsel. Because doing the balancing in that case, it just doesn't --

CHAIRMAN MEITES: So that you would add maybe to (b) --

MS. TARANTOWICZ: No. Again, I would add, but that's not for --

CHAIRMAN MEITES: A possible response to what

you've said is to add to (b) something about the brief service that's not presently here.

MS. TARANTOWICZ: Which had been called client service notices. And that's just, you know, because -- in recognition of the potential risks and the potential problems weighed against the administrative burdens, and that's -- and the increased number of brief service cases.

CHAIRMAN MEITES: That's the way it could have gone but it didn't?

MS. CONDRAY: Right. That had been proposed to you at some point, and --

MS. BeVIER: It was in there, and the postal charge, you know, just the charge for postage, was brought to our attention. And that was a little scary. It was an enormous amount.

CHAIRMAN MEITES: For tens of thousands of people, we're talking about.

MS. BeVIER: Yes. Exactly.

MS. TARANTOWICZ: That's right.

CHAIRMAN MEITES: Well, you know, but I --

MR. ASHER: This is to remind you that we

weren't going to serve you and that all we did for you -- the potential --

CHAIRMAN MEITES: Well, we had this -- because I remember that after they get that letter from you, or if they don't get that letter from you, they're going to take this stuff to another lawyer. And they're going to tell the other lawyer, well, legal assistance has been representing me.

The first question the lawyer is going to ask: Well, what are they doing for you now? That's the first question I would ask. And if they have this letter in their file, it's self-explanatory.

On the other hand, it's a lot of paper that's moving from here to there. There's a cost in --

MS. BeVIER: There's a cost in paper. There's a cost in postage. There's a cost in time.

MR. McKAY: Well, in the before service, isn't it more likely than not the client is going to be in the office?

MS. CONDRAY: Not necessarily.

MS. TARANTOWICZ: Not necessarily.

MR. WHITFIELD: It could be by telephone.

MS. BeVIER: It could be by telephone.

MR. McKAY: Well, I know it could be. But is it more likely than not the client is going to be --

MS. CONDRAY: And essentially not any more.

MR. McKAY: Less than 50 percent are in the office. Is that right?

MS. CONDRAY: Yes. Essentially now that we've gone with the state planning effort and we have more statewide programs. So there are fewer --

MS. PERLE: Centralized intake.

MS. CONDRAY: Yes. There's more centralized intake and fewer offices. People out in, you know, the hinterlands do a lot of their business with their lawyers over the phone.

MR. McKAY: How often would --

MR. ASHER: A good deal of bill of clears work would be brief service, not just advice.

MR. McKAY: How often -- well, I'll defer that question to later. Let's see.

CHAIRMAN MEITES: Well, this is something that -- it's a tough choice because there's going to be costs and benefits whichever way we go.

MS. PERLE: I mean, it seems -- I'm sorry.

MS. BeVIER: I'm more bothered by this than I hoped to be because -- and one of the things, frankly, that bothers me has to do with the -- maybe this isn't exactly relevant, but I'm worried about the sort of impact of Dobbins and what the court held in Dobbins on our ability to be able to make sure that we have in fact not been serving -- you know, since we're going to mix lawyers and we're going to mix space and we're going to have -- you know, we're going to have -- it's just more -- my understanding is Dobbins permits a lot more sort of joint occupation of space and many more opportunities for clients to get confused.

That's what I'm concerned about, about who's supposed to be representing and for what. And so maybe that's a completely -- a concern that's completely irrelevant to this, but it seems to me that it's a little worrisome.

MR. WHITFIELD: If I can just share what I see on a daily basis in my program. We don't do a retainer for brief service cases because that seems --

CHAIRMAN MEITES: You send them a letter

telling them --

MR. WHITFIELD: -- silly. But we do either -- if we do something by phone, we'll certainly communicate what we've done. And it's clear -- and if we're doing something through the mails, we'll send them something through the mails.

But if the client does not like what's happened to them, we have -- every program has a client grievance procedure where the client can grieve to the program and say, what are you doing or not? And as a practice matter, I don't -- and that's an active thing in our program. I get several grievances a week for various reasons.

And what I don't see is people saying, this is a brief -- raising this issue in any manner. It's just not there.

MS. BeVIER: I see.

CHAIRMAN MEITES: How much of a burden would it be on you if you do a brief service -- that is, you do more than just talk to them on the phone; you actually draft a document or make a third party contact -- you're going to have to get back to the

person and tell them what's happened. Right?

MR. WHITFIELD: Right. But now we can do that informally over the phone, and it's not a compliance issue.

CHAIRMAN MEITES: It's not so much compliance. I'm very much more concerned --

MS. PERLE: It will be.

MS. BeVIER: Right. It would be.

CHAIRMAN MEITES: It would be, but I'm concerning about Lillian's point, that if there is more blending of roles, that the client clearly understand what a recipient is and is not doing for the client.

And this is not for -- this is for the client's sake, so that when they go to the next lawyer, they have something tangible to show that the Legal Services grantee is done and the lawyer -- has done this much and the new lawyer has to pick up where it's at.

But is that a real problem? Are clients actually --

MR. ASHER: I'm not trying to be the least bit flip. But if you can document that more than a handful

of private attorneys will say yes to our clients on round two, I will --

CHAIRMAN MEITES: Oh, no. No.

MR. ASHER: On round two.

CHAIRMAN MEITES: No. They're going to say no. But when the client --

MR. ASHER: And they can -- we get calls like that frequently saying, I don't want to -- what did you do? Now, I'm not going to touch this, but can I help -- it comes up now and again.

But they would have to explain very -- we do send letters confirming the help we're not going to give people. We still get calls now and again from private lawyers saying, can I get you to change your -- I mean, the calls --

CHAIRMAN MEITES: But how big a burden on you is it to now send out --

MR. ASHER: Huge. Now, we do it anyhow. But it is expensive. It's time-consuming. And this would mean if we didn't, it would be a compliance issue.

CHAIRMAN MEITES: Oh, we understand that.

MR. ASHER: Well, that --

MS. BeVIER: So, now, wait a second. You're telling me that you don't do brief service, that you don't --

CHAIRMAN MEITES: They do, and they send out a letter confirming --

MR. ASHER: Yes. We --

MS. BeVIER: You send out letters confirming that that's what you're doing?

MR. ASHER: Yes. But that's because we believe it's the best practice. And we still get calls back about, what did you say? How did you say it? Most frequently, on judgment-proof letters, those are by the far the most -- where we say, you came for a bankruptcy. We don't think -- you know, come back if X, Y, and Z. Counter-intuitive. When you don't have any money, that's really not when you need it.

We send out all sorts of personalized letters, form letters. But we have made a choice that those resources are worth it. We revisit that all the time because it does take time and money and effort. And we're not positive that the benefit the clients get from the written document is sufficiently helpful to

make it worth that time and expense, or whether --

MS. BeVIER: But you're not positive that it isn't, either.

MR. ASHER: No. And that's why we still do it.

CHAIRMAN MEITES: But you say you --

MR. ASHER: But we balance that --

CHAIRMAN MEITES: But you put it in the best practices category.

MR. ASHER: Yes.

CHAIRMAN MEITES: Which might fit some of our grantees and might not figure others.

MR. ASHER: That's right. And we are not -- and if we miss one, if we don't do it, we may not have met our standard. It's not a compliance issue.

CHAIRMAN MEITES: Well, I don't want to dismiss the compliance issues because I know that's a concern. But I'm kind of moving to people have different circumstances. Where you in metropolitan Denver may be able to do it fairly easily, you with your four small offices --

MR. WHITFIELD: Yes.

CHAIRMAN MEITES: -- spread over a largely rural area, you might have more problems doing it. So what might be best practices for you might not be best practices for you. Does that make sense, to just leave it the way it is on this one?

MR. McKAY: Yes.

MS. BeVIER: Just again, I'm wondering if in the preamble we could put something about the -- you know, what was considered and that at one point we were inclined to stick with the client -- or to recommend a client notification letter when we were limiting it to advice and --

CHAIRMAN MEITES: To brief services.

MS. BeVIER: -- to brief services, and but we --

MS. CONDRAY: I believe that the preamble actually does do that.

MS. BeVIER: It says that? Does it?

MS. CONDRAY: Yes. The discussion goes on for quite a long time.

MS. BeVIER: I'm sorry.

CHAIRMAN MEITES: What page is that?

MS. CONDRAY: This particular issue starts on page 34. Not to say that we can't clarify it or beef it up.

CHAIRMAN MEITES: This is 34 at the top, not 34 at the bottom.

MS. CONDRAY: You're right. I'm sorry. Yes. Page 24 at the end, page 34 --

MS. BeVIER: Tell me where it is there?

MS. CONDRAY: "During the public deliberations on this matter in 2004, at operations and regulations committee meetings, LSC considered different approaches to resolving the discrepancy between the regulation as written and the prevailing practice."

CHAIRMAN MEITES: Why don't you put in here that we received additional testimony from two quite different -- well, not necessarily completely different, but two grant recipients who have to some extent a different kind of clientele, and one did it and one didn't. And I think that persuaded us it's really a matter of best practices to be determined by the recipient rather than prescribed by a regulation.

MS. BeVIER: But the reason for not having that communication, I'm sorry, I don't think that reason is in there.

CHAIRMAN MEITES: No.

MS. BeVIER: And I would think that you might want to say that we -- you know, LSC management thought facilitating some sort of written communication would be a good idea, but ultimately decided not to. And I think the reason for deciding not to is important here -- at least, it's important to me why we decided not to.

CHAIRMAN MEITES: Well, cost is a serious factor.

MS. BeVIER: Yes. Cost is a serious factor.

MS. CONDRAY: Yes. "LSC management expressed some concern, however, that to facilitate some sort of written communication between the attorney and client in brief services cases about the nature of their relationship and the clear understanding as to what services are to be rendered is important to achieving the highest quality of legal service and professional standards. Ultimately, LSC determined, on balance,

that the current practice is the most appropriate."

MS. BeVIER: Right.

MS. CONDRAY: So it would be in there.

MS. BeVIER: So the "on balance" is what needs to be filled in.

MS. CONDRAY: Yes.

CHAIRMAN MEITES: Spell out the reasons.

Okay. Are we getting towards the end of the retainer agreement?

MS. CONDRAY: I think that's it.

MS. BeVIER: Well, can we talk about bankruptcy now?

CHAIRMAN MEITES: No. We ought not to discuss bankruptcy.

MR. McKAY: I think we deferred that to later in the afternoon.

MS. CONDRAY: It's not late enough in the afternoon.

(Laughter.)

CHAIRMAN MEITES: All right. Anything else? Let me open the floor for public comment or comment by anyone who's present who'd like to be heard.

MS. CONDRAY: I have a question.

CHAIRMAN MEITES: Please.

MS. CONDRAY: This is logistics for the next meeting.

CHAIRMAN MEITES: Sure.

MS. CONDRAY: To the extent that you are -- with the changes that we have discussed --

CHAIRMAN MEITES: Right.

MS. CONDRAY: -- or otherwise comfortable with what was presented to you, and I'm talking about the redline at the moment, for the next meeting would you like a redline that still compares the proposal to the current regulation, just incorporating your changes? Or would you like to see a redline of what we're -- what was presented to you, showing the changes that you have --

CHAIRMAN MEITES: Both.

MS. CONDRAY: Both?

CHAIRMAN MEITES: One, the current version versus the old one, and one what we changed, what we propose to change today versus what you brought.

MR. ASHER: The blue in the red. The blueline

in the redline.

MR. McKAY: Some of the things we're going to be seeing for the first time. It would be nice if you could get to the committee the redline of the redline as soon as possible so that we can alert you if it does not satisfy the concerns expressed.

MS. CONDRAY: Sure.

MR. McKAY: So that when we present it to the board, it will accurately reflect what our concerns are rather than your best efforts.

CHAIRMAN MEITES: Because our present intention at our Puerto Rico meeting is for our committee to have a short meeting. And, in fact, most of it is going to be consumed with another issue, the class issue.

And we would hope that we can just review the new material, and if we're satisfied, we can propose that it be presented for the full board.

MR. McKAY: I guess what I'm recommending is that we get a chance to take a crack at it before it's submitted in the binder that goes to the board so that in case we miss something --

MS. CONDRAY: Sure.

MR. McKAY: -- we can take a shot at correcting it.

MS. BeVIER: And, you know, also redline the --

MS. CONDRAY: Yes. That was going to be my next question, was --

MS. BeVIER: Yes. Definitely.

MS. CONDRAY: -- a redline of the preamble.

MS. BeVIER: Of the preamble.

MR. McKAY: And in order to simply prove to you that I carefully read the preamble, there are some minor edits which I think are corrections. I won't take the time with the committee; I'll just meet with you separately, Mattie, right after the meeting.

MS. BeVIER: Right. I have a couple of those as well.

CHAIRMAN MEITES: All right. If that concludes our business -- I think it does -- I will accept a motion that we adjourn.

M O T I O N

MR. McKAY: So move.

MS. BeVIER: Second.

CHAIRMAN MEITES: And we are in adjournment. Thank you very much, ladies and gentlemen.

(Whereupon, at 3:02 p.m., the meeting was concluded.)

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