

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS

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MEETING OF THE  
OPERATIONS AND REGULATIONS COMMITTEE  
OPEN SESSION

Saturday, January 30, 2010

9:01 a.m.

Legal Services Corporation  
3333 K Street, N.W.  
3rd Floor Conference Center  
Washington, D.C. 20007

COMMITTEE MEMBERS PRESENT:

- Thomas R. Meites, Chairman
- Jonann C. Chiles
- Bernice Phillips-Jackson
- Frank B. Strickland, ex officio

OTHER BOARD MEMBERS PRESENT:

- Thomas A. Fuentes
- Herbert S. Garten
- Michael D. McKay
- Laurie Mikva
- Sarah M. Singleton (by telephone)

1 STAFF AND PUBLIC PRESENT:  
2 Victor M. Fortuno, Interim President and General  
Counsel  
3  
4 Katherine Ward, Executive Assistant, Office of Legal  
Affairs  
5 Mattie Cohan, Senior Assistant General Counsel, Office  
of Legal Affairs  
6  
7 Linda Mullenbach, Senior Assistant General Counsel,  
Office of Legal Affairs  
8 David L. Richardson, Treasurer and Comptroller  
9 Karen J. Sarjeant, Vice President for Programs and  
Compliance  
10  
11 Jeffrey E. Schanz, Inspector General  
12  
13 Joel Gallay, Special Counsel to the Inspector General,  
Office of the Inspector General  
14 Laurie Tarantowicz, Assistant Inspector General and  
Legal Counsel, Office of the Inspector General  
15  
16 Thomas Coogan, Assistant Inspector General for  
Inspections, Office of the Inspector General  
17 Daniel Sheahan, Program Evaluation Analyst, Office of  
the Inspector General  
18  
19 David de la Tour, Program Counsel III, Office of  
Compliance and Enforcement  
20 Stephanie Edelstein, Program Counsel III, Office of  
Program Performance  
21  
22 Charles Greenfield, Program Counsel III, Office of  
Program Performance

1 STAFF AND PUBLIC PRESENT (Continued):

2 Evora A. Thomas, Program Counsel III, Office of Program  
Performance

3

Timothy Watson, Program Counsel III, Office of Program  
Performance

4

5 John Constance, Director, Government Relations and  
Public Affairs Office

6

Sean Driscoll, Special Assistant, Government Relations  
and Public Affairs Office

7

8 Stephen Barr, Media Relations Director, Government  
Relations and Public Affairs Office

9

Alice C. Dickerson, Director, Office of Human Resources

10

John C. Meyer, Director, Office of Information  
Management

11

12 Sharon L. Browne, Board Nominee

13 Charles N.W. Keckler, Board Nominee

14 Julie A. Reiskin, Board Nominee

15 Gloria Valencia-Weber, Board Nominee

16 Julie Strandlie, Standing Committee on Legal Aid &  
Indigent Defendants (SCLAID), American Bar  
Association

17

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

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Linda Perle, Center for Law & Social Policy (CLASP)

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

2 (9:01 a.m.)

3 CHAIRMAN MEITES: I'll call to order the  
4 meeting of the operations and regulations committee.  
5 We have a number of interesting issues to discuss  
6 today.

7 First, a motion to approve the agenda.

## 8 M O T I O N

9 MS. CHILES: So moved.

10 MS. PHILLIPS-JACKSON: Second.

11 CHAIRMAN MEITES: And it is approved.

12 And a motion to approve the minutes of our  
13 open session of October 30, 2009.

## 14 M O T I O N

15 MS. CHILES: Move to approve the minutes.

16 MS. PHILLIPS-JACKSON: Second.

17 CHAIRMAN MEITES: And it is approved.

18 The first substantive item is No. 3, consider  
19 and act on potential initiation of rulemaking to amend  
20 45 CFR Part 1642 (and related technical amendments of  
21 Part 1609 and 1610) to repeal the prohibition on  
22 claiming and collecting and retention of attorneys'

1 fees.

2 As you'll recall, at a special board meeting  
3 in December, the board adopted an interim rule with  
4 regard to our attorneys' fees prohibition. And we  
5 indicated that this committee would consider initiating  
6 a formal rulemaking with regard to the attorneys' fees  
7 prohibition at our January board meeting. And we are  
8 now undertaking that consideration.

9 All right. If you would introduce yourself,  
10 Ms. Speaker.

11 MS. COHAN: Yes. I'm Mattie Cohan, senior  
12 assistant general counsel with the Office of Legal  
13 Affairs here at LSC.

14 CHAIRMAN MEITES: At my request, Ms. Cohan has  
15 prepared for us an options paper. And I would ask her  
16 to walk us through it.

17 MS. COHAN: Sure. Excuse me. My vocal cords  
18 haven't quite woken up this morning, so I'm a little  
19 bit behind.

20 As you know, in 1996 -- how much of the  
21 background do you want me to go through, or do you want  
22 me to just skip right ahead to the options?

1           CHAIRMAN MEITES:  Lots.

2           MS. COHAN:  You want the background?

3           CHAIRMAN MEITES:  Yes.

4           MS. COHAN:  Okay.  Prior to 1996, LSC grant  
5 recipients were permitted to claim and collect  
6 attorneys' fees.  There's always -- since the inception  
7 of the Act, there has been a prohibition on a grantee's  
8 or a restriction on a grantee's taking fee-generating  
9 cases.  And I bring this up because there's a  
10 distinction between the issue of taking a  
11 fee-generating case, a case likely to generate fees,  
12 particularly tort cases, and the act of claiming,  
13 collecting, and retaining attorneys' fees in cases that  
14 grantees are permitted to accept.

15           So there's always been the restriction on  
16 fee-generating cases, but for any case that the grantee  
17 could accept, they were permitted to claim and collect  
18 attorneys' fees.

19           As part of the package of the '96 year  
20 appropriations restrictions, there was a prohibition on  
21 claiming, collecting, or retaining attorneys' fees  
22 awarded pursuant to federal or state law.  And that's



1     been in place -- the Corporation implemented that in  
2     Part 1642 of its regulations.  Each subsequent year,  
3     Congress has reimposed that restriction until this  
4     year.  In the fiscal year 2010 appropriation, Congress  
5     left out the attorneys' fees restriction, did not  
6     reimpose it.

7             I want to take -- I'm going to be a technical  
8     lawyer here for a second.  We talk about lifting the  
9     restriction.  And in a colloquial sense, certainly they  
10    have done that.  In a technical legal sense, what  
11    Congress did was fail to reimpose it.  And I just -- it  
12    makes me feel better to have made that distinction.

13            So Congress failed to reimpose that  
14    restriction.  So there's currently no statutory  
15    restriction that our grantees are required to follow  
16    that we are required to enforce.

17            We still have a regulation, and although  
18    certainly, I think, from a political standpoint, one  
19    can take away the message that Congress fully expects  
20    the Corporation to lift its regulations, and I think  
21    the Corporation chooses not to do so at its own  
22    political peril, as a legal matter, the regulation

1 remains in force until such time as the Corporation  
2 chooses to lift it.

3 CHAIRMAN MEITES: Let me stop you there and  
4 ask you if you can articulate the rationale for the  
5 restriction in the first place.

6 MS. COHAN: The rationale that was found in  
7 the legislative history for the restriction, you go  
8 back -- in addition to the legislative history of the  
9 Appropriations Act, in '95 there was a movement to  
10 actually have an LSC Reauthorization Act.

11 And a lot of the restrictions that found  
12 themselves in the appropriations bill had been in that  
13 '95 reauthorization bill, which never passed. And so  
14 there's some discussion of the issue with respect to  
15 the reauthorization bill as well.

16 There were essentially kind of two rationales  
17 that you find articulated in the legislative history,  
18 and they tend to go to -- there's there, we're  
19 paying -- you know, Congress is essentially paying  
20 these lawyers anyway. By giving these grants, we're  
21 paying the lawyers anyway. The lawyers shouldn't get  
22 paid a second time.

1           And that it was -- oh, I guess that was the  
2   gravamen of the -- there was some sort of inherent  
3   unfairness both to defendants, who would then be paying  
4   for something that the Congress had already paid for,  
5   but also for the notion that Congress had already paid  
6   for it so nobody else should be paying. Even if it  
7   wasn't unfair to the defendant, it's already paid for.

8           So that was kind of the -- that was the  
9   rationales that were articulated at the time.

10           CHAIRMAN MEITES: Okay.

11           MS. COHAN: When the Corporation adopted the  
12   regulation, if you read through the regulatory history,  
13   I think the regulatory history displays a -- there was  
14   no sense that the board particularly endorsed the  
15   rationales that were articulated legislatively.

16           Certainly the preamble to the interim and the  
17   final rule do not themselves re-articulate that as part  
18   of the board's rationale. I think what comes across  
19   when you read that is that the board was faithfully  
20   discharging the will of Congress, not -- because it was  
21   the will of Congress, not because it was -- that there  
22   was a great policy agreement.

1           CHAIRMAN MEITES: Let me run forward to last  
2           October. What was the rationale for removing the  
3           restriction?

4           MS. COHAN: The rationale for removing the  
5           restrictions was -- there's several of them.

6           There's one that the restriction on attorneys'  
7           fees places a formidable obstacle in the face of  
8           grantees from a negotiating and settlement position,  
9           that, you know, the ability to obtain attorneys' fees  
10          is a significant tool in the arsenal of lawyers in this  
11          country because of the setup of how legal fees work in  
12          this country.

13          And so to deny a grantee the ability to kind  
14          of threaten attorneys' fees, it takes away an important  
15          negotiating tool to get the other side to settle, to  
16          come to agreement, and a restriction that is not on, in  
17          fact, that other side.

18          The other side is permitted -- has no similar  
19          restriction on seeking attorneys' fees, so there's a  
20          distinct unleveling of the playing field, which hurts  
21          clients. It's not -- you know, that unleveling of the  
22          playing hurts the client and the client's case,

1 ultimately.

2 Another rationale, of course, is that right  
3 now we are in very, very, very difficult times  
4 economically. And precluding the grantees from a  
5 source of income that was otherwise legally available  
6 to them seemed imprudent. I will say that. I guess  
7 I'll put it that way.

8 Those are the two rationales most clearly  
9 articulated in the legislative history. There's also  
10 an argument to be made that to the extent that Congress  
11 has seen fit -- Congress or the states, federal or  
12 state -- to have fee-shifting statutes, the  
13 fee-shifting statutes are often there as a way of  
14 stating, you know, the courts' and the states'  
15 displeasure with certainly the behavior.

16 And so to prohibit the grantee from being able  
17 to take advantage of those fee-shifting statutes, we  
18 are essentially back-door thwarting the will of those  
19 fee-shifting statutes.

20 CHAIRMAN MEITES: All right. Go on. I'm  
21 sorry to interrupt you.

22 MS. COHAN: Oh, no. Any time you want.

1           So with that background, that brings us  
2 to -- there are a couple of -- you know, a number of  
3 options, as set forth in the options paper.

4           The first option, of course, is to do nothing.  
5 Now, the committee and the board could choose to do  
6 nothing and leave the statute -- the regulation in  
7 place from the procedural reason that there will be a  
8 new board and it should be their choice to do that.

9           As articulated in the paper, the advantage of  
10 doing that is that it doesn't effectuate the will of  
11 Congress particularly well to do that, nor do we  
12 really, with all due respect to the congressional  
13 process of confirming nominees, have any idea when  
14 that's going to actually happen.

15           So leaving that issue aside, the committee  
16 could recommend and the board could decide that of the  
17 various policy rationales, it favors the rationale in  
18 '96 rather than the rationales of today. You know,  
19 that's a policy choice of the committee and of the  
20 board. It's not what management recommends. I  
21 personally don't think -- I certainly don't think it's  
22 what Congress expects, and I think there are a lot of

1       disadvantages to that option.

2                 However, in the rest of my remarks, I don't  
3       want to preclude and presume what the committee is  
4       going to do, which is why I kind of talk about it this  
5       way, because this is an option for the committee.

6                 The other options go to -- the real -- you  
7       know, assuming the repeat of the basic prohibition on  
8       claiming and collecting attorneys' fees, there are a  
9       couple of both procedural options and one really major  
10      policy choice.

11                You know, if I'm working off the assumption  
12      that the restriction will be lifted, the main policy  
13      choice that comes with that is whether it becomes  
14      applicable only for work done as of either the date the  
15      regulation changes or the date that the statute  
16      changed, or whether we're going to allow the claiming,  
17      collecting, and retention of attorneys' fees relative  
18      to work done whenever it was done.

19                And the key here that I kind of want to stress  
20      that I think I put in the options paper a few times is  
21      to remember that the underlying work -- even the  
22      underlying work that was done during the period during

1 which attorneys' fees were prohibited, the work was  
2 fully permissible. We're not talking about  
3 impermissible work. We're talking about fully  
4 permissible work. The restriction was only on the  
5 action of the claiming and collection of attorneys'  
6 fees relative to that work.

7           So the committee could, as I said, could adopt  
8 a rule that allows the claiming and collection of  
9 attorneys' fees essentially for new work only. And  
10 there are a couple of nuances in there that if you want  
11 me to speak in more detail to, I'm happy to do that.

12           You know, that has -- the advantage of that is  
13 that, you know, it's fully prospective-looking. The  
14 disadvantage of it is that to the extent Congress was  
15 anticipating leveling the playing field, if there are  
16 people who are currently in legislation or have current  
17 action that they've undertaken for which they could  
18 still make a claim for attorneys' fees, they're not  
19 getting the benefit of the statutory change if it's,  
20 you know, new work and new cases only.

21           It is my understanding from talking to our  
22 folks in GRPA, and if someone's here and they want to



1 fill in what I've said, or disabuse me of a notion if I  
2 got it wrong, my understanding is that nobody on the  
3 Hill particularly -- nobody would have a particular  
4 heartache if we just applied it -- you know, anything  
5 that you can claim for you can get, that the assumption  
6 was not that it will be applied prospectively only.

7 So I think that's the nub of the biggest  
8 policy choice on the assumption that you're going to  
9 move to strike the attorneys' fees regulation. The  
10 other advantage --

11 CHAIRMAN MEITES: Mattie?

12 MS. COHAN: Certainly.

13 CHAIRMAN MEITES: Frank?

14 MR. STRICKLAND: With regard to fee-generating  
15 cases, what you're describing sounds like seeking  
16 attorneys' fees in a -- let's say in a punitive sense,  
17 part of negotiating tactics. But did the legislation  
18 have any effect on fee-generating cases, or is that  
19 still in effect?

20 MS. COHAN: No. The fee-generating case  
21 statutory limitation is still in effect. The  
22 regulation is still in effect. So the restriction on

1 grantees' ability to take fee-generating cases is not  
2 affected at all by any of this action.

3 I'll also point out -- I think this is a good  
4 place to point out -- that lifting of the attorneys'  
5 fees restriction regulatorily and statutorily is  
6 certainly no guarantee that anybody is going to get  
7 attorneys' fees. You know, it just takes away an  
8 impediment.

9 The decision in any particular case about  
10 getting attorneys' fees is going to be up to the judge  
11 in that case. So to the extent that the '96 rationale  
12 was, well, that perhaps there was an unfairness to the  
13 defendant if a grantee claimed -- was still going in  
14 legislation that had been going on for a number of  
15 years, and at this point filed a claim for attorneys'  
16 fees that stretched back several years, if the judge  
17 found there was some sort of inherent unfairness  
18 because of the change in the law, the judge would not  
19 award attorneys' fees.

20 So it's not a guarantor that anybody will get  
21 them. It's just removing an impediment that we are no  
22 longer legally required to impose.

1           CHAIRMAN MEITES: Now, you mention there's  
2 also --

3           MS. PHILLIPS-JACKSON: I have a question.

4           CHAIRMAN MEITES: Tom, could you move a  
5 microphone?

6           MS. PHILLIPS-JACKSON: Thank you. I just want  
7 to make sure I'm clear. Would this be considered  
8 double-dipping on an expense of the client?

9           MS. COHAN: No, no. This has nothing to do  
10 with -- the client doesn't pay fees.

11          MS. PHILLIPS-JACKSON: Okay.

12          MS. COHAN: The clients aren't paying fees to  
13 the attorneys, to the programs.

14          MS. PHILLIPS-JACKSON: When you said that they  
15 would be paid twice --

16          MS. COHAN: Well, essentially paid once by the  
17 government, because of the grant, and then paid again  
18 by the other party. These are attorneys' fees that  
19 they can collect from the adverse party.

20          MS. PHILLIPS-JACKSON: Okay. Okay.

21          MR. FUENTES: Let me build a little bit on  
22 Bernice's question, then. The attorney is paid by the

1 grantee to perform the service.

2 MS. COHAN: Correct.

3 MR. FUENTES: The fee collected, then, would  
4 go to the grantee?

5 MS. COHAN: In most jurisdictions. I mean,  
6 there are some jurisdictions in which the fee is  
7 actually the property of the client, is my  
8 understanding. But in the jurisdictions where the fee  
9 is the property of the attorney, yes. Like any other  
10 legal case, the fee would go to the attorney.

11 CHAIRMAN MEITES: Tom, I can help you with  
12 that.

13 MS. COHAN: Since I'm not a litigator --

14 CHAIRMAN MEITES: Technically, the fee does  
15 belong to the client. But if I can be blunt, the  
16 client doesn't get it. It goes to the lawyer because  
17 it's the compensation that the client would have paid  
18 to the lawyer if he had been able to pay.

19 MR. FUENTES: Well, then --

20 CHAIRMAN MEITES: So it goes to the grantee.  
21 It does not go to the client of the grantee.

22 MR. FUENTES: Well, I guess, then, Bernice and

1 I speak the same English where double-dipping sounds  
2 appropriate.

3 CHAIRMAN MEITES: If you look at our grantee,  
4 if you put the client aside --

5 MR. FUENTES: Yes.

6 CHAIRMAN MEITES: -- the grantee is being  
7 funded in part by the United States, and this is  
8 another source of revenue. And the question is  
9 whether, given the funding structure of our grantees,  
10 whether it's appropriate that the losing party, the  
11 other side in legislation, contributes to that funding.

12 That's the reality of it. It's another source  
13 of funding for the grantees. And apparently, in 1995,  
14 a reason for the prohibition, it was felt that grantees  
15 should not look to losing litigants as a source of  
16 funding, which is what this would reverse.

17 MR. FUENTES: But then that fee collected in  
18 settlement would go back into the pot, you might say,  
19 of the grantee's resources.

20 CHAIRMAN MEITES: Absolutely.

21 MR. FUENTES: To pay another attorney, not to  
22 pay twice the attorney involved in that case?

1 MS. COHAN: The attorneys work on salary.  
2 They're not taking -- they're not getting contingent  
3 fees.

4 MR. FUENTES: That's what I want clarity  
5 about.

6 MS. COHAN: So the particular attorney that  
7 does the work isn't getting paid twice. It's that the  
8 grantee has additional resources available to it  
9 through which it can serve additional clients. It can  
10 take on additional work.

11 MR. FUENTES: That's important.

12 CHAIRMAN MEITES: Good. Thank you. Pick up  
13 and continue there, Mattie.

14 MS. COHAN: Sorry. You know, being a lawyer,  
15 I just assume that everybody knows how these things  
16 work, and I apologize.

17 CHAIRMAN MEITES: You mentioned that there  
18 was -- besides the policy choice, there's some  
19 procedural choices as well?

20 MS. COHAN: Correct.

21 CHAIRMAN MEITES: Why don't you go through  
22 those.

1           MS. COHAN: Sure. This is the how you want to  
2 accomplish -- again, assuming that you would be moving  
3 to amend the attorneys' fees rule.

4           You could simply repeat 1642, the attorneys'  
5 fees regulation. Now, it's clean, it's simple, but  
6 there are provisions within 1642 that are actually  
7 pretty useful that don't have to do with the  
8 prohibition themselves. There are a couple of parts of  
9 1642, and I think you guys have -- I distributed those;  
10 hopefully you have them.

11          CHAIRMAN MEITES: We have 1609 and 1610.

12          MS. COHAN: Right. I gave you also a copy of  
13 1642.

14          CHAIRMAN MEITES: Yes. We have them all.  
15 Okay. We're looking at 1642. Where should we look?

16          MS. COHAN: Correct. 1642.4.

17          CHAIRMAN MEITES: Hang on.

18          MS. COHAN: Sorry. 1642.5 and 1642.6 in  
19 particularly. 1642.5 has to do with accounting for and  
20 use of attorneys' fees, and 1642.6 makes it -- talks  
21 about accepting reimbursement from a client. It makes  
22 a distinction between taking a fee from a client and

1 accepting reimbursement of costs from a client.

2           These two provisions used to be in Part 1609,  
3 which is the fee-generating cases rule. When the  
4 Corporation adopted 1642, it took those two provisions  
5 from 1609 and administratively placed them here in  
6 1642. So if you got rid of 1642 with no other action,  
7 these other provisions, which are actually very useful,  
8 would go away.

9           Now, what the committee and the board can do,  
10 of course, is repeal 1642 but basically put these  
11 provisions back in 1609, put them back whence they  
12 came. And you have a copy of 1609. So that would be a  
13 very -- procedurally a very targeted rulemaking, to  
14 simply reinsert those provisions at the end of -- you  
15 know, within 1609. If we needed to renumber anything,  
16 obviously, we would.

17           CHAIRMAN MEITES: You also gave us 1610.

18           MS. COHAN: Yes. There is a reference in  
19 1610, 1610.2, the definitions section. There is  
20 basically a list of the prohibitions. And to the  
21 extent that the statutory prohibition is no longer  
22 there, and if you change 1642, that prohibition would



1 no longer be there, it would just be a conforming  
2 amendment to that list of 1610 and renumbering it to  
3 remove the obsolete reference.

4 There's also a reference in 1609 to Part 1642  
5 that would need to be similarly technically changed to  
6 get rid of the obsolete reference.

7 CHAIRMAN MEITES: Okay. Now, besides the  
8 various textual amendments, in your options paper you  
9 also outline several approaches that we might consider  
10 taking towards effecting these changes.

11 MS. COHAN: Correct.

12 CHAIRMAN MEITES: Why don't we run through  
13 those.

14 MS. COHAN: Sure. If the committee -- there  
15 are basically three options I laid out here from a  
16 rulemaking process perspective. The first would be if  
17 the committee was really -- and the board was of a mind  
18 to contemplate changes more, but really did not know  
19 which direction they wanted to go in, you could issue  
20 an advanced notice of proposed rulemaking instead of  
21 rulemaking.

22 And the advanced notice of proposed rulemaking

1 typically doesn't even have proposed text. It just is  
2 like -- it's kind of a think piece, a question that  
3 puts it out there and tries to get more information.

4 Quite honestly, in this case, to the extent  
5 that the questions in front of the committee and the  
6 board, I think, are pretty straightforward, I'm not  
7 sure that taking the time and the effort of an ANPRM  
8 would really be worth it. But that's, you know, your  
9 choice.

10 There's also doing kind of what I call a  
11 regular rulemaking. Issue a notice of proposed  
12 rulemaking. Get comments. Issue a final rule. That's  
13 certainly a perfectly reasonable option. Within that,  
14 there's also the options related to holding a workshop  
15 and we're having a reg/neg. Clearly, on this sort of  
16 issue, I don't think a negotiated rulemaking is worth  
17 the time and the effort and the investment.

18 Also, with respect to a regulatory workshop,  
19 my gut feeling is that the time it would take to hold  
20 the workshop, that there's not enough factual confusion  
21 to be adduced, you know, to be cleared up in a  
22 workshop. But those are options. But a notice and

1 comment could be done. Written notice, written  
2 comment, final rule. That would take, you know, a  
3 certain amount of time.

4 The last option, which is the option that  
5 management is recommending, is issuing an interim final  
6 rule. Typically, under our rulemaking statute, we're  
7 supposed to go through a notice and comment period.  
8 And the interim final rule with request for comments  
9 does contemplate comments.

10 I think we have the legal authority to go  
11 ahead and do an interim final rule in this case because  
12 we are not -- the action would be not to impose any  
13 additional requirements on the grantee. In fact, it  
14 would be removing a requirement on the grantee, and  
15 removing a requirement that Congress had removed.

16 So I think the legal authority to do that on  
17 kind of -- where the interim final rule would be in  
18 place 30 days from the date of publication, we would  
19 follow that 30 days from the date of publication  
20 requirement but kind of get the rule in place while we  
21 were also getting comments.

22 So I think that's the fastest way to avail the

1 grantees of the change possible to them.

2 CHAIRMAN MEITES: Now, the interim final rule  
3 would go in effect 30 days after we approve it?

4 MS. COHAN: It would be 30 days from the date  
5 of publication in the Federal Register.

6 CHAIRMAN MEITES: All right.

7 MS. COHAN: So presumably, you know, add  
8 another week to that.

9 CHAIRMAN MEITES: Okay. So those are the  
10 options. And I think we're ready to begin discussion.  
11 And I will avail myself of the privilege of speaking  
12 first.

13 I do not like an interim final rule. I think  
14 that this is a matter that there may be broad public  
15 comment on. I myself have gone several ways on this,  
16 and I think the way to proceed, since we do have an  
17 interim rule in effect already --

18 MS. COHAN: Well, what you have is an  
19 enforcement policy.

20 CHAIRMAN MEITES: Right, an enforcement  
21 policy, which effectively, as I understand it, is  
22 working well enough that there's no -- I don't see a

1 pressing need to take a step that this board has not  
2 taken, an interim rule awaiting public comment and  
3 publication.

4           Would you state, so it's clear what you and I  
5 are talking about, what the action was of the board in  
6 December with regard to this matter?

7           MS. COHAN: Correct. The board in December  
8 adopted for the Corporation an enforcement policy,  
9 exercising the Corporation's enforcement discretion to  
10 not -- that the Corporation would not begin any sort  
11 of -- take any enforcement action against a grantee who  
12 claimed or collected or retained attorneys' fees as of  
13 the date that the appropriations law went into effect,  
14 which was December 16th, with the proviso that if  
15 ultimately -- that the Corporation would not be taking  
16 that at the moment, with the proviso that if the  
17 Corporation ultimately chose to retain the restriction,  
18 unless the grantee had done that action of claiming or  
19 collecting attorneys' fees because it was under some  
20 deadline under which it would forever forego its  
21 possibility of getting those fees prior to the date  
22 that the Corporation figured out what it was going to

1 do, basically those would be grandfathered in and there  
2 would be no enforcement action taken.

3 A grantee who was not so restricted, however,  
4 would claim or collect attorneys' fees essentially at  
5 their own peril that at some point, if the regulation  
6 stayed in effect, they would have committed a violation  
7 of the reg for which they could be -- you know,  
8 enforcement action could be taken.

9 CHAIRMAN MEITES: Okay. And as far as you've  
10 heard, that is working satisfactorily?

11 MS. COHAN: I have not heard anything to the  
12 contrary. I don't know if there's folks from Karen's  
13 shop who want to speak to that, but --

14 CHAIRMAN MEITES: Well, we usually have a  
15 discussion in the committee before public comment. But  
16 I think in this case it might be better if we have  
17 public comment first and hear what other points of view  
18 are.

19 MS. PHILLIPS-JACKSON: I'm just not clear on  
20 collecting fees, how it would hurt the grantees or the  
21 client.

22 MS. COHAN: I don't believe collecting fees

1 from the adverse party would hurt either the grantee or  
2 the client. I think that Congress's action was  
3 intended, in fact, to facilitate and to help both  
4 grantees and clients.

5 I believe that's why Congress lifted the  
6 restriction, was because it was Congress's feeling now,  
7 unlike in '96, that the important value of the ability  
8 of a grantee to take advantage of fee-shifting statutes  
9 and the ability to get fees in cases where it could  
10 would redound to the benefit of both grantees and  
11 clients. I believe that's why Congress changed the  
12 statute.

13 MS. PHILLIPS-JACKSON: So why is  
14 management -- are you against it or for it?

15 MS. COHAN: No, no. Management is  
16 recommending that the Corporation get rid of its  
17 regulation prohibiting the claiming and collection of  
18 attorneys' fees. Management is recommending that the  
19 Corporation harmonize its regulation with the statute.

20 CHAIRMAN MEITES: All right. Public comment?

21 MS. PERLE: This is Linda Perle from --

22 CHAIRMAN MEITES: One moment. Herb?

1           MR. GARTEN: Yes. Mattie, if I heard you  
2 correctly, you said something to the effect that the  
3 playing field would be leveled because the adverse  
4 party could collect attorneys' fees.

5           MS. COHAN: Sure. There's no prohibition  
6 on -- if a grantee is -- in legislation, say a grantee  
7 is representing a client in an eviction case, and  
8 they're in court against the landlord.

9           Currently, the grantee may not take any action  
10 to claim or collect attorneys' fees from the landlord  
11 should the grantee -- should the client prevail. There  
12 is no similar prohibition on the landlord's attorneys  
13 claiming or collecting attorneys' fees should the  
14 landlord prevail.

15          MR. GARTEN: But that is not common. That  
16 wouldn't happen very often, would it?

17          MS. COHAN: I don't know. There are a lot of  
18 leases out there that --

19          MS. MIKVA: Punitive fees are granted all the  
20 time against --

21          MR. GARTEN: They are?

22          MS. MIKVA: Not all the time. But they are,



1 yes. Not in -- not losers' fees, but for --

2 MS. COHAN: And there are a lot of typical  
3 leases where the lease requires the tenant to pay  
4 attorneys' fees.

5 MR. GARTEN: I know that. But as a practical  
6 matter, does it happen very often?

7 MS. COHAN: I don't have that information.

8 MR. GARTEN: I guess it varies from  
9 jurisdiction to jurisdiction.

10 Okay. My second question was: What about the  
11 fees that are incurred prior to the legislation? Is  
12 there any clarification on whether the organization  
13 could collect the attorneys' fees that were incurred,  
14 time expended, prior to this?

15 MS. COHAN: That was the big policy question  
16 that I was talking about, whether the claiming and  
17 collection would apply to all work done for which the  
18 claiming and collection could happen or just for new  
19 work.

20 It is my understanding -- certainly, the  
21 legislation is silent. The legislation is not -- the  
22 change of the legislation does not require a particular

1 outcome. It is my understanding that the folks in  
2 Congress, on the whole, to the extent that they  
3 understood it, understood it to be able to be applied  
4 for any work that a grantee may have done because the  
5 work itself was permissible.

6 So, for example -- I'll give you an  
7 example -- a grantee has had a case that they started  
8 in November. So they've been doing work from November  
9 through December 16th when the legislation changed, and  
10 they are continuing to do it now.

11 Management's recommendation is -- with which I  
12 personally agree -- that the grantee, when the grantee  
13 files its claim for attorneys' fees in that case,  
14 should be able to claim for all of the work done in  
15 that case, going prior to December 16th and post  
16 December 16th.

17 The Corporation could, by regulation, only  
18 apply it to work done after December 16th or after the  
19 date of the amended regulation. The Corporation is  
20 not -- management's not recommending that, and some of  
21 the advantages and disadvantages presented creates kind  
22 of -- from an enforcement standpoint, it's not as clean

1 as just letting them claim and collect attorneys' fees  
2 because then we've got to figure out, well, what date  
3 did you do which work on? You know, it's just -- it's  
4 a little more complicated for no particular discernible  
5 benefit.

6 MR. GARTEN: So you're not going to  
7 distinguish post or --

8 MS. COHAN: No. That's management's  
9 recommendation, that the committee recommend to the  
10 board that there not be a distinguishing between when  
11 the work was done as long as -- if you can claim -- if  
12 the grantee can claim it, then they should be able to  
13 claim it since the prohibition was always on the action  
14 of claiming the attorneys' fees, not on any of the  
15 underlying work.

16 MR. GARTEN: Thank you for clarifying those  
17 two points for me.

18 MS. COHAN: Sure.

19 CHAIRMAN MEITES: Okay. Thank you.

20 Ms. Perle?

21 MS. PERLE: The question that you raised a  
22 little while ago was whether the policy that the

1 Corporation is following now, at the moment, with  
2 regard to the suspension of enforcement is working.

3 I think that it has caused quite a bit of  
4 confusion in the field. It's not clear, for example,  
5 whether they can claim for work prior to December 16th.  
6 I think that's quite unclear.

7 It's not clear exactly what kinds of standards  
8 are going to be applied as to whether or not you  
9 actually have to file now or whether you need to wait.  
10 You know, how much -- how difficult is it going to be  
11 for the program to file at a later time if it doesn't  
12 file now, either because of work they've done prior or  
13 for new cases.

14 And I think that people are waiting -- in the  
15 field are waiting for this board to take some action,  
16 and that that's really causing a lot of consternation.  
17 And folks are uncomfortable. They're fearful about  
18 filing in a case where they think that maybe at a later  
19 time it would be harder, but there's not a  
20 terrible -- you know, there's not a hard and fast  
21 deadline. They're not sure as to whether they should  
22 do it or not.

1           And I think that the more quickly this board  
2 acts in a definitive way, the better it will be for the  
3 field.

4           CHAIRMAN MEITES: Excuse me. Frank?

5           MR. STRICKLAND: Wouldn't it be the case  
6 that -- either Mattie or Linda can answer this  
7 question, or somebody else on the committee or the  
8 board.

9           Assume a grantee is representing a client, and  
10 now there's a possibility of being able to add a claim  
11 for attorneys' fees. If the grantee, in representing  
12 the client, wants to achieve a strategic advantage  
13 because you can now file for attorneys' fees, it would  
14 seem to me that the appropriate time to do that would  
15 be immediately. In other words, amend the pleadings to  
16 add a claim for attorneys' fees, and therefore inject  
17 the leverage factor into the representation of the  
18 client.

19           MS. COHAN: Yes. That's correct.

20           MS. PERLE: I think That's right. But I think  
21 under our current policy, it's not clear whether it's  
22 okay to do that.

1           MR. STRICKLAND: Now, you were talking a  
2 moment ago about waiting until -- it sounded like you  
3 were talking about waiting until the end of the case to  
4 add a claim for attorneys' fees.

5           MS. PERLE: No, no. I was talking about  
6 waiting until the board had spoken clearly and it was a  
7 regulation.

8           MR. STRICKLAND: I'm sorry. I misunderstood.  
9 I understood you to say -- perhaps you were adding the  
10 claim at the very end of the case.

11          MS. COHAN: No. I think part of the -- and  
12 Correct me if I'm wrong -- that part of the concern out  
13 there in the grantees is that to the extent that the  
14 current enforcement policy is -- there's a certain  
15 element of rolling the dice and taking your chances,  
16 you know.

17                 If in your situation your grantee tomorrow  
18 goes and files a claim, well, they didn't have to file  
19 it tomorrow. But it was in their best strategic  
20 interest, leaving aside LSC, to do that, so they went  
21 ahead and did that.

22                 If it turns out that the board retains the

1 regulation, well, then, the grantee will have committed  
2 a violation. And the grantee has to kind of -- is in  
3 this position of going, you know, how much do I think  
4 this is going to ultimately not turn out to be a  
5 violation, so it's going to ultimately turn out to have  
6 been okay that I did this; versus, well, I'm going to  
7 go ahead and do it because I don't know that it will  
8 eventually be a violation, and then have it turn out to  
9 be one.

10 MS. PERLE: And similarly -- I agree with  
11 Mattie. I've agreed, by the way, with everything that  
12 Mattie has said since she sat down. But similarly, in  
13 a situation where you have a case that's pending, that  
14 was pending on December 16th -- maybe it was pending  
15 for a week or two weeks, or two months, or three  
16 years -- and the program went ahead and filed -- you  
17 know, amended its complaint or made some motion for  
18 attorneys' fees for work done prior to December 16th.

19 You know, I think programs have been very  
20 hesitant to do that because they really don't know.  
21 And at the last discussion, that issue was sort of out  
22 there like, you know, a 600-pound gorilla.

1           CHAIRMAN MEITES: Well, I think Frank put his  
2 finger on it. And I hadn't thought about it in those  
3 terms. As I understand what we did in December,  
4 that -- and in fact, I think this has been the case all  
5 along -- there has never been a prohibition about  
6 adding a request for attorneys' fees to a pleading.  
7 What the prohibition is is actually going to a court  
8 and asking the prohibition be enforced.

9           MS. PERLE: Excuse me. That's incorrect.

10          MS. CHILES: No. That's incorrect.

11          CHAIRMAN MEITES: So until now, to put it in  
12 the "Wherefore" besides judgment entered against  
13 defendant in favor of plaintiffs for the full extent of  
14 his injury, that the prohibition is --

15          MS. COHAN: Yes. If you make the claim in  
16 your pleading, you have violated the regulation and the  
17 statute.

18          MS. PERLE: And in fact, most times when  
19 the --

20          CHAIRMAN MEITES: So you read the prohibition  
21 as not simply prohibiting petitioning for an award of  
22 fees, which is the way I read it, but also putting in



1 your pleading a request for fees with the understanding  
2 that until and unless Congress repeals the prohibition,  
3 you're not going to seek to recover on that claim?

4 MS. COHAN: That's correct.

5 MS. PERLE: That's the way the Corporation has  
6 always interpreted this regulation.

7 MS. COHAN: Always.

8 CHAIRMAN MEITES: All right. Well, I'll --

9 MS. PERLE: Right from the very first get-go.

10 CHAIRMAN MEITES: I wouldn't have, but I'll  
11 accept it that you have. So that's where we're  
12 starting from.

13 MS. SINGLETON: Mr. Chairman?

14 CHAIRMAN MEITES: Yes, Sarah?

15 MS. SINGLETON: Isn't that one of the  
16 allegations against CRLA, that they put it into a  
17 pleading?

18 CHAIRMAN MEITES: Sarah, we're having trouble  
19 hearing you. Wait one second and they're going to turn  
20 down the feedback. And if you'd repeat what you just  
21 said.

22 MS. SINGLETON: I asked a point of

1 information. Isn't one of the allegations -- I'm  
2 getting a lot of echo. I don't know if you are.

3 CHAIRMAN MEITES: We can hear you okay.

4 MS. SINGLETON: Okay. Isn't one of the  
5 allegations against CRLA that they put a request for  
6 attorneys' fees into a pleading?

7 CHAIRMAN MEITES: The answer to that is?

8 MS. COHAN: I believe it is.

9 MS. PERLE: Yes. Yes.

10 CHAIRMAN MEITES: Okay. So if I'm wrong,  
11 let's move on.

12 MS. COHAN: Yes. The regulation does state  
13 that right out. "1642.2(d). To claim attorneys' fees  
14 means to include a request for attorneys' fees in any  
15 pleading."

16 CHAIRMAN MEITES: All right. So what you're  
17 saying is as of now, that the position we adopted in  
18 December is -- allows the assertion of a claim for  
19 attorneys' fees if it is required to be timely. But  
20 other than that, it is not permitted. So that --

21 MS. COHAN: Well --

22 CHAIRMAN MEITES: Wait. Let me -- so that if

1 I was defending a landlord/tenant case in which the  
2 Illinois law says I can seek attorneys' fees, and I  
3 have filed an answer and counterclaim, under the policy  
4 enunciated in December, I still cannot put in my  
5 counterclaim a request for fees.

6 MS. COHAN: Yes. With the --

7 CHAIRMAN MEITES: Unless, under state law, if  
8 I don't put it in now, I'll be barred from raising it  
9 at a later time.

10 MS. COHAN: Correct. What the enforcement  
11 policy said was that I'm going to grandfather out those  
12 people who are in that. If I don't make this claim  
13 now, I'm never going to get to make it.

14 CHAIRMAN MEITES: Right.

15 MS. COHAN: I think it was clear that the  
16 intention that was expressed was basically those  
17 people -- regardless of what the board ultimately  
18 does --

19 CHAIRMAN MEITES: Right.

20 MS. COHAN: -- the Corporation is going to  
21 hold those people harmless. For everybody else, you  
22 claim at your peril. You can do it, and if it turns

1 out that the board eventually gets rid of the  
2 regulation, you know, then although what you -- to the  
3 extent you in fact included the claim in your petition,  
4 that act itself was a technical violation of the  
5 regulation.

6 CHAIRMAN MEITES: Yes. But I don't see why  
7 any litigant at this point who does not have to,  
8 because of time restrictions, assert a claim would not  
9 do it. And if and when we repeal the regulations,  
10 they'll move to amend their counterclaim or whatever  
11 and add the claim. And they tell the judge, I would  
12 have done it sooner but there was a prohibition.

13 MS. PERLE: What about the situations where  
14 they're trying to negotiate a settlement in a case now?

15 CHAIRMAN MEITES: Well, that's the way it  
16 goes. You know, changes in law are changes in law.  
17 And you -- you know, I negotiate all the time in the  
18 hope that the law will get better. Unfortunately,  
19 given the side I'm on, it rarely does. But there's  
20 always an expectation that a court will issue an  
21 opinion during the negotiations that'll help you.

22 You can always tell the other side anything

1     like that.  But the fact is that any -- it seems to me  
2     that any opponent of a grantee now is in as state of as  
3     great uncertainty as the grantee.  They don't know if  
4     we're going to make it retroactive or not, and so  
5     they're taking as much of a gamble as the grantee.

6             So the negotiating side, the confusion is  
7     equal on both sides.  But I'm not that moved by the  
8     argument that there's confusion in our grantees if for  
9     no other reason there's equal confusion on the other  
10    side.

11            If you could go on and address the issue that  
12    bothers me the most, which is whether it should apply  
13    to all time -- we'll get to Laurie in a second -- all  
14    time in the pending case or just the going forward.  
15    But first, Laurie, you had a -- Laurie?

16            MS. MIKVA:  Do you want to finish?  No, I have  
17    a question I've been trying to get in.

18            CHAIRMAN MEITES:  No, no, no.  You go ahead.  
19    You go ahead.

20            MS. MIKVA:  I'm just -- and maybe this is  
21    directed to -- maybe to you.  What is there some  
22    controversy out there about?  Is there some people out

1       there somewhere?  What's the position that the  
2       regulation at some point shouldn't be repealed?

3               MS. PERLE:  I don't know who you're talking  
4       about in terms of "out there."  I mean, there's  
5       certainly nothing -- no one in the legal services  
6       provider community --

7               MR. GARTEN:  Correct.

8               MS. PERLE:  -- feels that way.  And I think  
9       that there's pretty much unanimity with regard to the  
10      issue that Tom raised as well, that it should apply to  
11      any and all work that has been done in a case.

12              If the court permits you to plead and seek for  
13      attorneys' fees, then you should be able to do it in  
14      any case that you're in or wherever it's appropriate.

15              MS. MIKVA:  Well, I understand grantees.  But  
16      bar associations?

17              MS. PERLE:  We haven't heard -- we certainly  
18      haven't heard anything.  Is there anybody here from the  
19      ABA?  I can't speak for the ABA, but I have had -- you  
20      know, I have had some conversations with the person on  
21      SCLAID who's working on it.  And certainly, in his  
22      personal view -- and again, I don't know that he -- you

1 know, they have a lot of process, as do we. So I don't  
2 know whether they're actually -- they've reached a  
3 conclusion. But he certainly was of the same view,  
4 that the rule should be eliminated and it shouldn't  
5 apply to any work that programs have done.

6 CHAIRMAN MEITES: Well, to fill that gap, can  
7 we ask you to ask the ABA to submit their position in  
8 writing, or SCLAID's position in writing?

9 MS. PERLE: I don't know if Julie has been  
10 working on that issue.

11 CHAIRMAN MEITES: Well, if she's here, I can  
12 ask her to ask her group to submit something in writing  
13 to us within, say, five -- by next Friday, with the --

14 MS. STRANGLIE: I'd be happy to do that. I  
15 can tell you that we were actively working --

16 CHAIRMAN MEITES: Right. But we would like  
17 to -- as is customary, we'd like to hear from your  
18 organization directly. So if you could just send a  
19 letter to the management, and they'll distribute it to  
20 us. Thank you.

21 MS. PERLE: I mean, we haven't heard from  
22 anyone else. I mean, as I said, we have had some

1 discussions with the ABA, but we certainly haven't  
2 heard -- we haven't heard anybody from anyone that  
3 suggests that there's opposition to the LSC board  
4 lifting these restrictions, but doing it with regard to  
5 all of the work that programs have done in these cases.

6 MS. COHAN: And as I mentioned, I'm  
7 not -- aside from the obvious, I think Congress  
8 expected the Corporation to lift the restriction  
9 because if the Corporation doesn't, then the grantees  
10 aren't going to get the benefit of their action.

11 But I'm also -- I don't believe that the folks  
12 in Congress have any strong feeling that it should  
13 only -- getting to the question of whether it applies  
14 to new work only or to new and prior work -- I don't  
15 want to say "applies only" --

16 CHAIRMAN MEITES: They left that up to us.  
17 That's the kind of --

18 MS. COHAN: Right. And I don't have any  
19 reason to believe that if we applied it to prior work,  
20 that anybody on the Hill would raise a stink with us  
21 about it.

22 CHAIRMAN MEITES: Either way.



1 MS. COHAN: Well, I think we might get more of  
2 a stink if we applied it only to new work. That might  
3 get a stink.

4 MS. PERLE: Yes. You know, I want to make it  
5 clear, and I think Mattie did make it clear, but just  
6 to kind of reiterate. You know, this restriction was  
7 not in any way part of the underlying LSC Act. The LSC  
8 Act was totally silent on the issue of attorneys' fees.  
9 I think the expectation when the LSC Act was passed was  
10 that LSC programs would get or would seek attorneys'  
11 fees in cases where they were provided for by statute.

12 This was an appropriations rider. It went  
13 with the money, you know. It was a rider on a  
14 particular appropriation, and it was reimposed year  
15 after year. But it was an overlay on the LSC Act.

16 And then Congress eliminated that overlay.  
17 And when it was eliminated, it went back to what the  
18 LSC Act says, which is that there's no restriction on  
19 attorneys' fees. And again, it was a restriction on  
20 the action of claiming, collecting, and retaining the  
21 fees, not any kind of restriction on earning the fees,  
22 which is governed by the state or federal statutory

1 provision that provides for attorneys' fees, and which  
2 wasn't changed at all by the rider.

3 And, you know, in fact, in many cases  
4 where -- cases that programs might now be able to get  
5 fees, they were working with private attorneys as  
6 co-counsel. And those private attorneys were permitted  
7 to get fees. So there's already, you know, the  
8 structure in the particular case and the expectation  
9 that fees will be awarded.

10 CHAIRMAN MEITES: Now, just make sure I  
11 understood. Under our private attorney involvement  
12 program, our private attorneys can seek fees?

13 MS. PERLE: If they're doing the work pro  
14 bono. If they're not getting compensated by the  
15 program, and that's true in most cases.

16 CHAIRMAN MEITES: So that let's say that Herb  
17 takes a landlord/tenant case in Baltimore.

18 MS. PERLE: Yes.

19 CHAIRMAN MEITES: And he counterclaims under  
20 the Maryland whatever statute, and he gets awarded a  
21 thousand dollars in fees because his client wins.

22 MS. PERLE: Yes.

1           CHAIRMAN MEITES: He then turns that thousand  
2 dollars over to the --

3           MS. PERLE: No. No, no. I'm sorry. I didn't  
4 mean to suggest that.

5           CHAIRMAN MEITES: He gets to keep the thousand  
6 dollars?

7           MS. PERLE: The rule now -- and Mattie can  
8 explain this better, perhaps; do you want to --

9           MS. COHAN: Sure. With respect to private  
10 attorneys, and this -- if the grantee wants to count  
11 the dollar value of time spent with co-counsel towards  
12 its spending requirement under 1614, and if what it  
13 does is refer that case to the private attorney and pay  
14 that private attorney --

15           CHAIRMAN MEITES: Oh, pays them?

16           MS. COHAN: -- then that private attorney may  
17 not claim or collect attorneys' fees.

18           CHAIRMAN MEITES: Right. Let's say Herb does  
19 it pro bono.

20           MS. COHAN: If he does it totally pro bono,  
21 the private attorney may claim and collect attorneys'  
22 fees. And that's specifically written into the

1 regulation.

2 CHAIRMAN MEITES: So right now, the ability to  
3 collect fees in representing a client of a grantee  
4 turns on whether the actual attorney is an employee of  
5 the grantee or is a PAI attorney?

6 MS. PERLE: Or is a compensated PAI attorney.

7 MS. COHAN: Is a compensated PAI attorney.

8 MS. PERLE: If they're not compensated --

9 CHAIRMAN MEITES: I understand. But if I were  
10 the landlord and I happen to know that the tenant is  
11 impecunious and will end up at our grantee, I have no  
12 assurance I'm not going to have to pay fees.

13 MS. COHAN: If the case is referred out to a  
14 private attorney, certainly that's true.

15 CHAIRMAN MEITES: And of course, I have no  
16 idea who's going to represent the client.

17 MS. COHAN: Yes. That's right.

18 CHAIRMAN MEITES: So I am taking a risk that  
19 in fact there may be a fee awarded against me when I  
20 bring that case.

21 MS. PERLE: Right. But --

22 MS. COHAN: Certainly. To the extent that the

1 landlord does not know whether the --

2 CHAIRMAN MEITES: So that --

3 MS. COHAN: -- client is going to be able to  
4 obtain private counsel or not.

5 CHAIRMAN MEITES: Right. So that when I file  
6 a suit and I figure how much I'm going to have to pay  
7 my attorney to evict Herb's client, or the tenant, I  
8 should, if I'm an economic, rational person, take into  
9 account the risk that under Maryland's fee-shifting  
10 statute, if I lose, I may have to pay the other side's  
11 fee even if the other side gets a lawyer from our  
12 grantee at Baltimore.

13 MS. COHAN: Well, if they get a lawyer through  
14 a referral of the grantee in Baltimore.

15 CHAIRMAN MEITES: No, no. But --

16 MS. COHAN: Because they're not being  
17 represented by -- the grantee is not the one --

18 CHAIRMAN MEITES: Right.

19 MS. COHAN: The grantee's lawyers are not  
20 representing that person in court.

21 CHAIRMAN MEITES: But I don't know -- a simple  
22 matter. The tenant says, look. If you sue me, I'll go

1 down the street to legal aid. I'll get an attorney  
2 who's five times smarter than the stumblebum you have.  
3 And the landlord says, go for it.

4 MS. COHAN: Right.

5 CHAIRMAN MEITES: When the landlord says, go  
6 for it, even if he believes the tenant will go down the  
7 street to legal aid to get his lawyer, he has no  
8 assurance that he will not have to pay the tenant's  
9 fee?

10 MS. COHAN: That's true.

11 CHAIRMAN MEITES: That is true?

12 MS. PERLE: That's true.

13 MS. COHAN: That's true.

14 CHAIRMAN MEITES: All right. Ms. Perle --

15 MS. PERLE: No. I just wanted to say that the  
16 other situation, which is the one that I kind of  
17 started with, were situations where programs now are  
18 representing clients, but they're co-counseling with  
19 private attorneys.

20 And under the rules now, those private  
21 attorneys are permitted to seek fees for the work that  
22 they do, not for the work that the program does.

1           CHAIRMAN MEITES: Right. We've had instances  
2 of that in enforcement actions.

3           All right. Ms. Perle, if you're finished, are  
4 there any other public comments?

5           (No response.)

6           CHAIRMAN MEITES: Okay.

7           MR. STRICKLAND: One more question, just for  
8 clarification.

9           Now, Linda, when you were describing the way  
10 the attorneys' fees restriction came in in the first  
11 place, is in 1996 with an appropriations rider which  
12 has been continued to date --

13          MS. PERLE: Until December 16th. Right.

14          MR. STRICKLAND: Correct. All right. And so  
15 on the 16th, the way that, as I understood, the action  
16 took place was the language in the appropriations rider  
17 was lifted --

18          MS. PERLE: Correct.

19          MR. STRICKLAND: -- in its entirety relative  
20 to attorneys' fees.

21          MS. PERLE: Right. Correct.

22          MR. STRICKLAND: There was not an amendment to

1 the statute. It was just a lifting of the --

2 MS. PERLE: Correct.

3 MR. STRICKLAND: Okay. It seems to me, under  
4 those circumstances, that we're back to square one, and  
5 we should not publish any kind of rule that perpetuates  
6 uncertainty. So that's my view.

7 CHAIRMAN MEITES: Well, I think that's a good  
8 place to start. Let's do the procedural side first  
9 because I think that in some ways is simpler.

10 As I mentioned, I don't like the interim  
11 rulemaking because --

12 MS. MIKVA: Could you elaborate? I don't  
13 understand what your opposition to that is, Tom.

14 MS. PERLE: Can I just make one point apropos  
15 of that?

16 CHAIRMAN MEITES: Sure.

17 MS. PERLE: In 1996 and early 1997, the  
18 Corporation used a series of interim rules with  
19 requests for comment to implement the will of Congress.

20 CHAIRMAN MEITES: Oh, I'm not saying we can't  
21 do it. Yes. My concern is --

22 MS. PERLE: Which I think is compatible to --



1           CHAIRMAN MEITES: In answer to Laurie's  
2 question, my concern is the prohibition on attorneys'  
3 fees, both when adopted and since then, has been a  
4 controversial issue. There are arguments on both  
5 sides, and some of us think the arguments are better or  
6 worse.

7           But I think it's important that we achieve two  
8 things with whatever we do. One is to make sure that  
9 everyone knows what the rule is -- as you heard, there  
10 was some concern about what our interim rule  
11 means -- and two, that anyone who wants a chance to  
12 comment has some time to think about what we propose to  
13 do and to comment on it.

14           I think the interim rule approach undermines  
15 both goals. First of all, if it's an interim rule and  
16 then either us or our successor board doesn't adopt it,  
17 then our grantees are really up the creek without a  
18 paddle.

19           Here they've added claims to their complaints,  
20 they have fee petitions pending, and all of a sudden we  
21 pull the rug out from under them. I'm all for some  
22 uncertainty in negotiation. But I think that that is

1       unfair both to our grantees and also to the other side.

2               But even more important, I think that any  
3       interim rule, given the way I now understand our agency  
4       works and indeed Washington works, is highly likely to  
5       be seen by the public as the rule we're going to adopt.  
6       And I think that's right.

7               I think we are entitled to -- I think people  
8       expect us to promulgate a proposed rule, but I think  
9       they also expect us to give the public -- and there's  
10      lots of parts of the public who aren't in this  
11      room -- a chance to have a fair shot at influencing our  
12      outcome.

13              And if we, you know, tip our hand to what  
14      we're "going to do" by adopting an interim rule, I  
15      think we're sending a signal that you're wasting your  
16      42 cent stamp in mailing in your comment.

17              MS. PERLE: Can I just -- in 1996 and '97,  
18      there were a series of interim rules adopted. And as I  
19      recall, particularly around 1610, there were many  
20      changes made in the final rule as a result of comments.  
21      I mean, there were -- the rules -- some of them looked  
22      very similar to the interim rules, the final rules.

1           But I would -- I don't remember, and Vic may  
2           have a recollection of this better, but I don't think  
3           there was a single rule that, when it was finalized was  
4           exactly the same as the interim rule. And that was a  
5           result of comments that were made. That's number one.

6           Number two, with regard to the pulling the rug  
7           out, if the restriction is on making the claim, which I  
8           think our discussion earlier clarified that it is, and  
9           programs now were to make a claim or put it in their  
10          pleadings, the case is not over so they haven't  
11          actually made a petition.

12          If the rule were to change as a result of  
13          changes between the interim rule and the final rule,  
14          then before they actually seek the specific fees and  
15          the rule changes in the interim, then they don't go  
16          ahead or they do it differently.

17          MR. LEVI: Mr. Chairman --

18          CHAIRMAN MEITES: Wait a minute. Slow down,  
19          please. Everyone stop. Bernice first, and then --

20          MS. PHILLIPS-JACKSON: Does the rule today say  
21          that the grantees can make the claim?

22          MS. PERLE: No.

1 MS. COHAN: No. The rule prohibits the  
2 grantee from making a claim.

3 CHAIRMAN MEITES: It says the opposite,  
4 Bernice. You cannot make a claim.

5 MS. PHILLIPS-JACKSON: Then they cannot make  
6 the claim.

7 CHAIRMAN MEITES: Okay. Another public  
8 comment? Introduce yourself.

9 MR. LEVI: Yes. My name is John Levi. I'm a  
10 board nominee.

11 My understanding is that the congressional  
12 action was taken in December. I had expected this  
13 committee and this board to act to lift the restriction  
14 appropriately at this meeting. It sounds like it  
15 isn't.

16 I believe it's your responsibility to take  
17 care of that as soon as possible and not be waiting  
18 until some further board meeting. Whether it is by  
19 some -- if you're not prepared to do it today, then I  
20 think you need to be prepared to do it very quickly.

21 The will of Congress has been stated. The  
22 community understands it. And I'm frankly somewhat

1 concerned that the committee may not understand it.

2 CHAIRMAN MEITES: Tell me, if I could ask you,  
3 what -- I'll ask it this way. Assuming I'm right that  
4 there are diverse points of view on --

5 MR. LEVI: I don't think there are.

6 CHAIRMAN MEITES: Wait, wait. Let me finish  
7 my question.

8 MS. MIKVA: That's a big assumption, Tom.

9 CHAIRMAN MEITES: Well, it may not be. But  
10 assume that's right, and that for the last 11 -- 10,  
11 11 -- 13 years, our grantees have been living with this  
12 restriction, what's the great cost in the following  
13 course of -- let me finish -- the following course of  
14 conduct: Directing the staff to issue a notice of  
15 proposed rulemaking today, and 30 days after, when the  
16 comment period expires, which is 30 days, holding a  
17 special board meeting and then acting on our proposed  
18 rulemaking?

19 MR. LEVI: That would be okay.

20 CHAIRMAN MEITES: We don't have to wait till  
21 April to do it.

22 MR. LEVI: That's what I want to make sure of.

1 I just want to make sure that this isn't -- I'm sorry.

2 CHAIRMAN MEITES: No. John, you finish first.

3 MR. LEVI: That would be fine with me. I just  
4 wanted to make sure that the public and others didn't  
5 have the sense that this was going to have a long -- I  
6 think that would be offensive to Congress.

7 CHAIRMAN MEITES: Okay. Frank, then Herb.

8 MR. STRICKLAND: What I was going to say  
9 is -- this is somewhat speculative, but the opposing  
10 view on this would be, it seems to me, let's say from a  
11 landlord saying, oh, I don't like this idea that now  
12 there's this attorneys' fees leverage factor back in  
13 the equation.

14 But that's essentially the same thing as  
15 saying, I don't like the fact that the Congress lifted  
16 the restriction. There's not much room for -- you can  
17 make negative comments, but I don't think it's going to  
18 work. In other words, if the landlord community comes  
19 in and says, we don't like this, they need to address  
20 that to the Congress.

21 CHAIRMAN MEITES: Yes. Well, let me clarify.

22 I think the area of comment will be whether it's

1 prospective only or not. That's the one issue, at  
2 least to me, is -- you know, I can think of arguments  
3 both sides. Now, whether the board will be assisted by  
4 comments on that or whether we can figure out the  
5 arguments ourselves is another question.

6 MS. CHILES: After hearing everyone's comments  
7 and the discussion, I just wanted to say this is where  
8 my thinking is right now.

9 I at this point would be in favor of  
10 initiating a rulemaking, and request the development of  
11 an NPRM. I don't think -- I'm not persuaded that we  
12 need to convene a regulatory workshop. I'm not  
13 convinced that we need to convene a negotiated  
14 rulemaking or engage in a negotiated rulemaking.

15 I am convinced that the elimination of the  
16 restriction should apply to new and old work, with old  
17 work being defined as work that was in progress as of  
18 December 16th when the elimination went into effect.

19 I think that we should engage in a limited  
20 rulemaking for Part 1609 and 1610. I agree that it  
21 would be clearer to repeal 1642. And I'm wondering if  
22 it might also be helpful to clarify our enforcement

1 direction, or whatever that document was called, so  
2 that the grantees have some more guidance about the  
3 thinking or the direction that LSC might take.

4 That's the state of my thinking right now.

5 CHAIRMAN MEITES: Okay. Let me -- and I'll  
6 ask Bernice -- let me talk about prospective  
7 retroactive because I think that that's an issue really  
8 that's going to be far more important than the timing  
9 of whether we act now or whether we act in 30 days.

10 I start at a different place. The American  
11 rule is everybody pays their own legal fees. That's  
12 the default under our system. And to the extent there  
13 is fee awards, it's because Congress for federal law or  
14 the states for state law have decided that there's to  
15 be an exception to the rule.

16 And the cases we're talking about therefore  
17 evidence a decision by the appropriate legislative body  
18 to add the award of fees as part of what is involved in  
19 the case. And that applies to everybody. Everyone who  
20 brings a case like that or defends a case like that,  
21 every party is entitled to seek those fees under the  
22 circumstances of the statute.



1           Now, in 1995, Legal Services Corporation paid  
2           virtually -- not all, but virtually all of the funding  
3           of our grantees. Not all of them, but for most of them  
4           it was most of the dollars. And at that time the  
5           argument was made, and persuaded Congress, that there  
6           was some kind of unfairness in an activity that was  
7           already subsidized by the United States receiving  
8           additional funding from parties who happened to  
9           litigate against the grantee.

10           Well, that's no longer the situation we know.  
11           Our grantees are lucky to get half their money from us.  
12           So without rearguing whether it was a good rule in 1995  
13           or not -- because that's not going to do any good for  
14           any of us -- it is clearly an inappropriate rule today  
15           just because the world has changed.

16           And I'm not so impressed by the strategic  
17           arguments that level playing field and so on. What I'm  
18           impressed by is why should the people we represent be  
19           treated any differently than anybody else? Because  
20           this is a fight against our grantees. It's not -- but  
21           they represent people, clients. And our grantees'  
22           clients are not able to avail themselves of the same

1 statutory rights as anybody else who litigates them,  
2 and to my mind, that's not right.

3           So the first instance, I see no argument  
4 why -- I can't imagine why we shouldn't conform our  
5 regulations to what Congress has done. The prospective  
6 issue is a little different. But I think I'm persuaded  
7 that -- because what I said before, litigation is a  
8 stew of uncertainty.

9           The law can change any minute. If you're  
10 suing under a statute, they can change the statute. If  
11 you're relying on a precedent, the Court of Appeals can  
12 change it. And by the nature of this restriction,  
13 which was year to year, if the rational economic man,  
14 the landlord who's going to sue Herb's client, who  
15 really thought this through -- and that's the way  
16 you're supposed to look at things from a law and  
17 economics point of view -- would have weighed the  
18 possibility that certainly with a Democratic Congress  
19 and a Democratic President that there's a good chance  
20 that the restriction would be raised.

21           So I don't see the reliance interest in  
22 someone bringing an action against a prospective client

1 can be given that much weight. If in a regular  
2 legislation, you know, a real, ordinary litigation, the  
3 kind of stuff our office does, there have been times  
4 when the law has been changed in the middle of the  
5 case.

6 There's an unfortunate Supreme Court decision  
7 which says that in order to qualify for attorneys' fees  
8 in ERISA, you had to have done A, B, and C. Well,  
9 until the Supreme Court said you had to do A, B, and C,  
10 no one knew you had to do A, B, and C. And our office  
11 hadn't done A, B, and C, and we saw our fee claim  
12 evaporate.

13 You know, after the tears had subsided, we  
14 said, that's the way it goes. And I guess that's where  
15 I end up here, too, that it's a year-to-year  
16 restriction. There was always a chance it would be  
17 repealed, that the repeal would do no more than put our  
18 clients, our grantees' clients, back in the position  
19 everybody else in the world is in.

20 So there's no reliance interest. There's no  
21 expectation interest. And forgetting about the  
22 funding, nothing to do with funding at all but just on

1 our grantees' clients being treated like everybody  
2 else, I would have to come out that it be retroactive.  
3 But that's where I'm at.

4 MS. PHILLIPS-JACKSON: That's where I am with  
5 this.

6 CHAIRMAN MEITES: Bernice?

7 MS. PHILLIPS-JACKSON: That's where I am. I  
8 am in favor of making the claim retroactive, and also  
9 lifting the restriction.

10 CHAIRMAN MEITES: All right. Questions?  
11 Comments?

12 MR. GARTEN: I think we should act promptly  
13 and expeditiously. And if we proceed in notices and  
14 delays, Mattie, what are the time consequences?  
15 Certainly in 30 days.

16 CHAIRMAN MEITES: Yes. Walk us through. If  
17 the board today decides to initiate a rulemaking, give  
18 us what steps and how long it would take before we can  
19 take final action.

20 MS. COHAN: All right. Well, certainly to the  
21 extent -- you know, I think it would be fairly quick  
22 for me to draft the necessary rulemaking documents.

1 I'm pretty sure I could do that within the week. I  
2 don't think I could have that done by tomorrow, by  
3 Monday morning, you know.

4 So one question I would have to ask the  
5 committee and then the board is: Typically, under the  
6 rulemaking protocol, the expectation is that the board  
7 itself approves the actual draft notice of proposed  
8 rulemaking before it's published.

9 CHAIRMAN MEITES: Two questions. Can we do  
10 that by mail or by e-mail? Do we have to have a formal  
11 meeting to do that?

12 MS. COHAN: Yes, you could do it by notational  
13 vote, or you could do it by a telecon.

14 MR. GARTEN: Or we could do it today.

15 CHAIRMAN MEITES: She doesn't have --

16 MS. COHAN: But you don't have the draft  
17 today. Or you could delegate to staff the authority to  
18 go ahead with the draft -- with a notice of proposed  
19 rulemaking that you had not seen the actual draft of.

20 CHAIRMAN MEITES: But you have walked us  
21 through, haven't you?

22 MS. COHAN: I have walked you through a lot of

1 what would be in it, yes.

2 CHAIRMAN MEITES: Okay. Well, here's what  
3 I'm -- if we take that --

4 MR. GARTEN: Well, let her finish.

5 MS. MIKVA: Can we hear the rest of the time  
6 frame. Sorry.

7 CHAIRMAN MEITES: Just hold one thought. You  
8 know, at lunchtime you could just X this out and pass  
9 it around without -- so you could accept comments from  
10 us, if need be. Right? You just take the pages and do  
11 a handwritten draft and show it around so I make sure  
12 you're doing what you said you were going to do.

13 MS. COHAN: I mean, just the policy choices  
14 that you are making in here?

15 CHAIRMAN MEITES: Right.

16 MS. COHAN: Yes. That much I can easily  
17 produce at lunchtime.

18 MR. GARTEN: This is a matter of a record, the  
19 written record, that we --

20 CHAIRMAN MEITES: No, no, no. We're going  
21 to -- we delegate to the staff to do this, we are out  
22 of the process. But I am not quite willing to go

1 entirely out of the process.

2 Okay. So say we do that. What happens next?

3 MS. COHAN: Okay. If we have a draft -- if we  
4 have a notice of proposed rulemaking to the Federal  
5 Register early next week, perhaps it's published either  
6 late next week or early the following week, so early  
7 February. Thirty-day comment period, so we're talking  
8 early March.

9 Then staff would have to take the comments and  
10 draft a final rule. You know, if all the comments we  
11 get are, yes, this is what you should be doing,  
12 drafting the final rule will be a piece of cake.

13 CHAIRMAN MEITES: Right. Right.

14 MS. COHAN: If a lot of people come out of the  
15 woodwork and address opposing points of view, it will  
16 take longer to address those comments and draft the  
17 final rule. So, you know, I would think that would be  
18 a fairly speedy process but, you know, I don't know  
19 what the comments are going to be.

20 And then the board would have to meet to  
21 approve the draft final rule and publish that, and that  
22 final rule would become effective 30 days from the date

1 of its publication. So we're talking 60 days plus  
2 some.

3 CHAIRMAN MEITES: Now, tell me how the interim  
4 rule procedure would work.

5 MS. COHAN: The interim rule would become  
6 effective 30 days after the date of publication. So  
7 if, for example, instead of directing us to draft a  
8 notice of proposed rulemaking you would instruct us to  
9 draft a final -- an interim final rule, it would take  
10 the same drafting time and publication.

11 That rule would become effective at this point  
12 early March. There would still be the comment period,  
13 and there would be a chance for changes to be made. A  
14 final rule would still follow the interim final rule,  
15 but the grantees would have the certainty of at least  
16 that period of time, during which the interim final  
17 rule was in effect, of knowing that that was the rule  
18 they could follow and rely upon.

19 Even if the final rule had some changes to it,  
20 at least what they had -- as long as they were in  
21 conformance with the interim final rule during that  
22 period, they would know that they were in conformance



1 with the rule.

2 CHAIRMAN MEITES: Herb?

3 MR. GARTEN: What about making the rule  
4 retroactive, as is done in a lot of tax legislation?

5 MS. COHAN: Well, see, the thing here is the  
6 rule itself is not going to be retroactive because the  
7 rule --

8 MR. GARTEN: But you could --

9 MS. COHAN: -- because the thing is, the  
10 claiming and collecting of -- the rule is on the  
11 claiming and collecting of attorneys' fees. So if  
12 somebody has filed -- if somebody hasn't filed a claim  
13 in March, they can't go back in time to February to  
14 file it.

15 Which is why I tried to studiously stay away  
16 from the word "retroactive" in here because there's a  
17 real distinction to be made between the underlying  
18 work -- allowing grantees to claim for prior work is  
19 not the same as making the act of claiming and  
20 collecting retroactive.

21 MR. GARTEN: I'm not referring to that. I'm  
22 referring to the -- whatever we're doing be effective

1 as of today.

2 MS. COHAN: Well, to the extent that the  
3 statute requires or the LSC Act requires there be  
4 30 days before new rules go into effect, that's our  
5 statutory requirement. There has to be 30 days before  
6 the rule goes into effect.

7 However, what the Corporation can do, and this  
8 is part of management's recommendation, is the  
9 Corporation can adopt an enforcement policy, and in the  
10 exercise of its enforcement discretion can issue the  
11 new guidance that Jonann was talking about with respect  
12 to its enforcement policy, saying that even though the  
13 rule won't change until the rule Congress, as a matter  
14 of enforcement discretion, we're not going -- the  
15 Corporation won't take any adverse action against  
16 someone who conforms their behavior to what the rule  
17 will be as of December 16th.

18 It gets you to the same place. It's just a  
19 more technically accurate way of doing it.

20 CHAIRMAN MEITES: Yes. Herb, there's two  
21 parts to it, and I agree that we shouldn't use the word  
22 retroactive. Yes, we're talking about work done last

1 year or the year before. But that work is already done  
2 and they've already kept the records. The only  
3 prohibition is whether they can claim for that.

4 So any action we take to renew the restriction  
5 will "apply to prior work." But Mattie's point is a  
6 little bit different, that even under the interim fee  
7 approach, we're talking mid-March because we have  
8 30 days for this interim to be published.

9 And what she's just suggested is in order to  
10 fill the six-week gap between now and mid-March, that  
11 the guidance that we adopt in December be expanded,  
12 presumably.

13 MS. COHAN: Correct. That's exactly what  
14 we're recommending.

15 CHAIRMAN MEITES: All right.

16 MS. PERLE: Expanded and clarified a little  
17 bit. I think, you know, that kind of to the extent  
18 that there can be some statement that removes the "at  
19 your own peril" language that we heard at the last  
20 board meeting --

21 CHAIRMAN MEITES: Well, if we direct staff to  
22 come up with appropriate language, we don't have to

1 pas --

2 MS. PERLE: No. I think that's right.

3 CHAIRMAN MEITES: All right. More discussion?

4 More comment? Are we ready to act? Let's wait till

5 Bernice comes back. Let's take a one-minute break till

6 Bernice comes back.

7 (A brief recess was taken.)

8 CHAIRMAN MEITES: Okay. Ladies and gentlemen,

9 we are back in session.

10 M O T I O N

11 CHAIRMAN MEITES: I would like to propose a

12 motion to my committee, that we recommend to the board

13 the following:

14 That a notice of rulemaking be prepared; that

15 the notice of rulemaking propose that the amendments

16 that Mattie and I walked through in our Rule 1642,

17 1610, and 1609; that the rulemaking makes clear that it

18 applies to all pending cases involving any of our

19 grantees; and that, in addition, that an interim rule

20 be prepared for the board's adoption; and that the

21 staff review our December action and clarify it as need

22 be to conform to the interim rule.

1 MS. COHAN: May I ask a clarifying question?

2 CHAIRMAN MEITES: Sure.

3 MS. COHAN: When you say "pending work," do  
4 you essentially mean any work for which a grantee now  
5 has a procedural way to go into the court and ask for  
6 the fees?

7 CHAIRMAN MEITES: That's correct.

8 MS. COHAN: Any work that for which they can  
9 ask for fees, they can get fees?

10 CHAIRMAN MEITES: That is correct.

11 MS. COHAN: Thank you.

12 CHAIRMAN MEITES: All right. Is there a  
13 second?

14 MS. CHILES: Second.

15 CHAIRMAN MEITES: Shall we have a vote?  
16 Discussion? All in favor?

17 (A chorus of ayes.)

18 CHAIRMAN MEITES: All right. Let's move  
19 immediately to the next item, which is -- hang  
20 on -- audit committees. Mattie, are you prepared to  
21 present on this?

22 MS. COHAN: Indeed I am.

1           CHAIRMAN MEITES: Go ahead.

2           MS. COHAN: All right. The current regulation  
3 that LSC has on grantee governing bodies, 45 CFR Part  
4 1607, mostly covers composition requirements. A lot of  
5 those requirements are statutorily based, related to  
6 the percentage of attorneys on the boards and how they  
7 have to be appointed.

8           But the -- and there is a provision within  
9 1607 that talks about the duties of boards, although  
10 it's very general in nature. And this committee has  
11 been interested for some time in whether or not to  
12 amend 1607 to require grantees' governing bodies to  
13 have audit committees.

14           There was a presentation made at the last  
15 board meeting. In your materials, we re-provided the  
16 report that went along with that presentation. The  
17 accounting guide, the current accounting guide,  
18 requires grantees to be engaging in various financial  
19 oversight functions, many of which would be the sorts  
20 of things that audit committees do.

21           But the current accounting guide and the  
22 proposed -- the accounting guide is currently in a

1 process of amendment. The proposed changes to the  
2 accounting guide continue those requirements regarding  
3 doing financial oversight, but neither the current nor  
4 the prospective changes to the accounting guide would  
5 require grantee governing bodies to have audit  
6 committees.

7 The research that was done by the task force  
8 demonstrated that a majority of grantee governing  
9 bodies actually have audit committees, and those that  
10 don't have audit committees maybe are doing those  
11 functions either within the body as a whole or through  
12 a finance committee or through some other committee  
13 setup.

14 So I could go further into that research. But  
15 since you'd had that presentation, and given the snow,  
16 I think I'll skip ahead if that's okay with you, to  
17 options.

18 CHAIRMAN MEITES: That's fine.

19 MS. COHAN: Okay. The first option would be  
20 to take no action by regulation, to determine that  
21 after all of the information that you've received, that  
22 grantees are reasonably well doing the functions that

1 an audit committee would do, and that requiring an  
2 audit committee by regulation is not necessary, but  
3 rather encourage the use of audit committees as a best  
4 practice.

5           You know, there are things that the  
6 Corporation can do short of regulatory requirement to  
7 encourage grantees to follow a best practice, to  
8 provide additional training, you know, things like  
9 that; that the Corporation does not have to just sit  
10 back on its heels and throw its hands up, but that the  
11 Corporation can do things short of rulemaking to  
12 require this.

13           You know, as noted in here, I think the  
14 advantage of doing it this way is that there are -- for  
15 those grantees who are already doing these, doing the  
16 proper oversight activities, whether it's through an  
17 audit committee or some other structure on their board,  
18 requiring them to have an audit committee in and of  
19 itself doesn't really add -- there's no value added,  
20 necessarily value added to that. They're already doing  
21 the functions. They don't need an audit committee.

22           For those grantees who do not have audit



1 committees, for some of them the requirement to have a  
2 separate standing audit committee could be  
3 administratively burdensome. Particularly some  
4 grantees have very small bodies, and so a committee is  
5 essentially either a committee of the whole anyway or  
6 it's a committee of two people out of five.

7           So there are reasons not to take any action by  
8 regulation, and you'll note that that's the management  
9 recommendation here, is not to require audit  
10 committees.

11           Alternately, notwithstanding the management  
12 recommendation, the committee could also initiate a  
13 rulemaking to require -- contemplating requiring audit  
14 committees. You know, certainly, as noted in here, I  
15 just talked about some of the disadvantages of doing a  
16 regulation or the advantages of not doing a regulation.

17           One of the advantages of initiating a  
18 regulatory process and ultimately adopting a regulation  
19 could be that it's a signal of how important the  
20 Corporation considers this action. But again, that's  
21 balanced off against what you're really getting by  
22 requiring it in a practical sense rather than just a

1 paper sense.

2 If the committee is inclined to initiate a  
3 rulemaking because they're not ready to dismiss this  
4 issue, there are a couple of options within that. One,  
5 the ANPRM process, which is something that I discussed  
6 a little bit with 1642, and quite frankly might be  
7 better suited if the committee is inclined to move on  
8 this.

9 This might be an approach where an ANPRM would  
10 be useful to ask -- because the ROP has a number of  
11 questions embedded in it about if you were going to do  
12 a rulemaking and require audit committees, would there  
13 be a waiver process for very small grantees? What if  
14 they have a finance committee, if they can show that  
15 they're doing those functions?

16 You know, there are any number of those sorts  
17 of questions that could be asked in a formal notice of  
18 proposed -- you know, a formal advanced notice of  
19 proposed rulemaking to engender additional comment  
20 before the committee or the board even commits itself  
21 as much as an NPRM. You know, so that's one option.

22 Another variant of that option is to do a

1 notice of proposed rulemaking, to provide direction to  
2 staff to develop a notice of proposed rulemaking  
3 requiring audit committees and whatever other policy  
4 direction, whether it's waivers or whatnot; take that  
5 up, issue it, have a public comment period, and then do  
6 a draft final rule.

7           There's really not a -- to the extent that  
8 this would be adding a requirement, I don't think you  
9 have the justification for going the interim final rule  
10 basis. There's no statutory direction on this.

11           CHAIRMAN MEITES: No. Understood.

12           MS. COHAN: And there's no -- again, because  
13 there's not a particular time constraint the same way  
14 that there is with the 1642, you know, if you directed  
15 staff to develop a notice of proposed rulemaking,  
16 certainly the committee could meet prior to the next  
17 meeting to take it up, or the committee could just wait  
18 until its next meeting to take it up because we don't  
19 have any sort of particular statutory deadline or  
20 something forcing us one way or the other.

21           So that's a quick summary of the options. But  
22 I'm happy to answer questions.

1           CHAIRMAN MEITES: Well, since we did review  
2 this at the last session, I think we're pretty much up  
3 to speed on it.

4           Before we start discussing, is there any  
5 public comment on this?

6           MS. PERLE: I'd just like to say that I think  
7 from the field's perspective, adding one other  
8 regulatory requirement in this area is not the  
9 preferred option. I think that as Mattie indicated,  
10 you know, that program boards are very different one  
11 from another, and they range in size from -- I think  
12 the smallest was five to 55 or something.

13           And it makes a -- it may make a huge  
14 difference in terms of the way that programs -- that  
15 program boards are structured as to whether it makes  
16 sense for a particular board to have a separate audit  
17 committee.

18           I think that all of the programs -- or I can't  
19 say all of the programs. I think that the vast  
20 majority of the programs are aware of their  
21 responsibilities to do fiscal oversight, and have  
22 established either a committee or a joint committee, or

1 the board as a committee of the whole performs this  
2 function.

3 And if a particular program is not performing  
4 the function, then I don't think that it necessarily  
5 means that the way to solve the problem is to solve an  
6 audit committee, although for that particular program  
7 it may. And LSC does substantial oversight. It can  
8 make sure that the program is doing the function, and  
9 make suggestions for how -- if it's not adequately  
10 doing the function, how it would be done appropriately  
11 in that program.

12 But it can do it taking account of the  
13 particular way that the program board is structured.  
14 And so I don't think there is a need for a rule, and I  
15 think the field -- in my view, the field would oppose  
16 that.

17 CHAIRMAN MEITES: Herb?

18 MR. GARTEN: Yes. I completely concur in  
19 that. And this best practices approach that management  
20 is suggesting I think is the route we should take.

21 MS. CHILES: I am persuaded that the formality  
22 of an audit committee is not necessarily the right way

1 to go. I did not realize there was such diversity in  
2 the way the grantee boards were arranged.

3 But I do feel very strongly about the value of  
4 the functions performed by an audit committee. When  
5 the GAO first came to us and said that we needed or  
6 should consider creating an audit committee, I thought  
7 it wasn't necessary. Silly me. I was wrong. I think  
8 the creation of an audit committee has added a lot of  
9 value to this organization.

10 So if those audit committee functions are  
11 required or, I don't know, incorporated into the audit  
12 manual as best practices, with some great emphasis from  
13 this board and this Corporation so the grantees know  
14 that we're quite serious that these functions need to  
15 be performed, then I'd be fine with that.

16 What is the status of these proposed changes  
17 to the audit manual?

18 MS. COHAN: The changes to the audit  
19 committee --

20 MS. CHILES: Or, excuse me, accounting manual.

21 MS. COHAN: The accounting manual. Sorry.  
22 The changes to the accounting manual are -- in fact,

1       there's a notice that's going to be published in the  
2       Federal Register at the very beginning of next week  
3       publicly noticing that the accounting manual is under  
4       reservation.

5               There was some discussion of it. There was a  
6       whole session on it at the NLADA conference. The  
7       proposed changes up and redlined -- are already up on  
8       the website, and I think a lot of our grantees are  
9       already aware that this process has been going on.

10              But the Federal Register notice will kind of  
11       make sure that if there's anybody who didn't know that  
12       this is going on, there'll be -- I believe it's a  
13       45-day comment period, after which the changes will be  
14       finalized.

15              MS. CHILES: Okay. Thank you.

16              CHAIRMAN MEITES: Bernice, you okay with just  
17       letting this die?

18              MS. PHILLIPS-JACKSON: Yes.

19              CHAIRMAN MEITES: Tom?

20              MR. FUENTES: Thank you. Mr. Chairman, I have  
21       some concerns about just letting it die. I think that  
22       we have indeed seen a great value to the LSC by the

1 creation and functioning of an audit committee, and  
2 that is great credit to our colleague Herb and his  
3 leadership in that regard.

4 This came to us in an evolutionary kind of way  
5 from the GAO's comments to us. I think we need to take  
6 that very seriously. We say that it might be a burden  
7 to some of these organizations. But we're talking  
8 about hundreds of thousands, if not millions, of  
9 dollars, and that's serious stuff.

10 I would like to hear before this is set  
11 aside -- and I realize I am not a member of your  
12 committee --

13 CHAIRMAN MEITES: Sure.

14 MR. FUENTES: -- just offering comment as a  
15 board member -- that we hear the input of the Office of  
16 the Inspector General to get their recommendation  
17 beyond that of management. I would also like to have  
18 the input of our auditors as to what they think about  
19 it.

20 I have served on boards, both for-profit and  
21 nonprofit, from multi-billion-dollar-a-year  
22 corporations to small community corporations, and the



1 existence of audit committees separate and apart from  
2 the finance committee and even from the work of the  
3 independent auditors is a very real and important tool  
4 in the proper governance of an organization.

5           So I don't think that this is something that  
6 should be dismissed because it's inconvenient or  
7 because the task might be objected to out of hand. I  
8 think that it's something that needs a very thorough  
9 consideration. I don't think that's been given yet.  
10 Thank you.

11           MS. CHILES: Mattie, I have a question.

12           MS. COHAN: Sure.

13           MS. CHILES: And I don't know if I'm working  
14 off of a current draft of the proposed revision to the  
15 accounting manual or not. I don't know if it's changed  
16 since this draft.

17           But what I have here says, under the category  
18 of Responsibilities of the Financial Oversight  
19 Committee or Committees, "Each recipient's governing  
20 body has a fiduciary responsibility to the program and  
21 must establish a financial oversight committee or  
22 committees."

1           Is that still in play or not?

2           MS. COHAN: We're calling up the expert on  
3 this because I am not.

4           MS. CHILES: So I guess what I'm asking is  
5 does this sentence anticipate that the finance  
6 committee will be engaging in these typical audit  
7 committee functions?

8           MR. GREENFIELD: Chuck Greenfield from Office  
9 of Program Performance. This is the proposed language  
10 changes for the accounting guide. That makes it a  
11 requirement that the audit functions be completed and  
12 carried out by one of the committees, financial  
13 oversight committees.

14           It could be finance, it could be a separate  
15 audit, or it could be something else.

16           MS. CHILES: Okay. So substantively, these  
17 typical sort of audit committee functions are required.  
18 Right?

19           MR. GREENFIELD: Yes.

20           MS. CHILES: Okay. But the form of having an  
21 actual separate audit committee is not required?

22           MR. GREENFIELD: Correct.

1 MS. CHILES: I just want to make sure that the  
2 functions are performed because I think those functions  
3 are important.

4 MR. GREENFIELD: And that's what this change  
5 does, actually. It makes the functions required. The  
6 current accounting guide does not require the extent of  
7 the audit committee functions.

8 MS. CHILES: Okay. Thank you.

9 CHAIRMAN MEITES: Bernice?

10 MS. PHILLIPS-JACKSON: But the audit -- the  
11 finance committee could not do the auditing functions.  
12 That would be like the fox watching the chicken coop,  
13 wouldn't it?

14 MR. GREENFIELD: Sarbanes-Oxley said that that  
15 was inappropriate for for-profit corporations that are  
16 covered by Sarbanes-Oxley. It didn't say it was  
17 inappropriate for nonprofit corporations.

18 MS. PHILLIPS-JACKSON: But wouldn't it still  
19 be that?

20 MR. GREENFIELD: It's considered a best  
21 practice in the nonprofit community for that to occur,  
22 to have a separate audit committee, but not required.

1 MS. COHAN: And if I may point out, especially  
2 since this discussion came largely out of the  
3 Corporation's experience with the GAO recommendations,  
4 the GAO recommended that LSC have an audit committee,  
5 but it didn't say that LSC had to have a separate audit  
6 committee.

7 The GAO recommendation basically was, yes, we  
8 think a separate audit committee is the best practice,  
9 but at the very least, its finance committee should as  
10 part of its charter specifically have the audit  
11 committee functions, that the key for the GAO's  
12 recommendation was making sure that the Corporation  
13 specifically took note of and carried out particular  
14 functions, whether that was done under the auspices of  
15 the existing finance committee or a separate finance  
16 committee.

17 And I think that's the parallel approach being  
18 taken in the revisions to the accounting manual, that  
19 those particular functions have to be carried out;  
20 whether they're carried out by a particular grantee's  
21 finance committee, a separate audit committee, or some  
22 other committee, the key is not the title of the

1 committee but the functions of the committee.

2 CHAIRMAN MEITES: Let me make a suggestion. I  
3 think Tom has raised a good point, that the IG is one  
4 of the entities that actually has some contact with the  
5 level of financial scrutiny in the field.

6 I was persuaded that given the diversity of  
7 our board situations, there's real, practical issues  
8 with a one-size-fits-all rule. On the other hand, if  
9 the IG were to say he thinks this is a real problem,  
10 then I would have to think seriously about whether it's  
11 worth the cost.

12 So maybe it would make sense to kick this over  
13 to the next meeting, and ask the IG to comment? All  
14 right. We'll do that.

15 MS. MIKVA: He's here. The IG's coming up  
16 right now.

17 CHAIRMAN MEITES: If the IG's ready to comment  
18 now, I wouldn't mind hearing it now.

19 MR. FUENTES: Mr. Chairman, I would just like  
20 to add to that that by non-action, if it is an  
21 indication that this board concurs with the idea that a  
22 finance committee ought have audit committee

1 responsibilities, I would not like to leave that on the  
2 record.

3 We have seen that and made a definitive  
4 decision in the conduct of the business of this  
5 corporation that that is not acceptable. We have taken  
6 guidance from Sarbanes-Oxley. We have taken guidance  
7 from best practices. And I don't think that -- well,  
8 perhaps I should say it in the positive. What's sauce  
9 for the goose is sauce for the gander.

10 And I don't think that we ought to do one  
11 thing here and then say to the world out there, no, you  
12 can go ahead and get by with it.

13 CHAIRMAN MEITES: Mr. Inspector General?

14 MR. SCHANZ: This is Jeff Schanz, the IG.  
15 This is music to my ears. Governance and  
16 accountability, as you know, is huge when you're  
17 dealing with the federal FISC. I agree wholeheartedly  
18 with Jonann that this is a function-based test, not a  
19 mandated test from Washington.

20 The functions are so important, and I think  
21 this current board recognizes that. Under the tutelage  
22 of Mr. Garten and the finance committee, they have

1 separate roles and separate functions. And they have  
2 some overlap, but I think the charters indicate the  
3 distinctive nature of what each committee does.

4 Now, saying that and having come from a Denver  
5 office many years ago, there is the perception that  
6 Washington is cramming down certain standards to  
7 agencies, small grantees, components, whatever agency  
8 you're in and whatever the lowest sub-unit is, that we  
9 started calling them unfunded mandates.

10 And I use the term "crammed down"  
11 appropriately, I believe, because that's what is  
12 perceived, is what's good for Washington is not always  
13 what's good for Rapid City, South Dakota, because the  
14 standards are different. The clientele is different.  
15 The lack or drain of resources on a small program is  
16 different.

17 Now, until Mattie spoke, I didn't know that  
18 there were boards as small as five. Now, for that, you  
19 would have a conflict of interest if you were trying to  
20 assign committee responsibilities to finance, audit,  
21 governance, operations, et cetera. And then you would  
22 have to build in conflict checks.

1           So you have to consider the ROI, the return on  
2 investment, for doing this if you're doing it as a  
3 one-size-fits-all. I much prefer what Jonann talked  
4 about, and we've seen this through now a third GAO  
5 report, is the functionality of the process.

6           It's a good idea. One size doesn't fit all.  
7 And I'll throw in a joke here. Within the IG  
8 community, the joke is if you've met one IG, you've  
9 met one IG. Everybody's different, and I feel that  
10 same way with 136 programs.

11           So I would caution the board, before deciding  
12 what works for everybody and perhaps have some  
13 opportunity to have the grantees demonstrate their  
14 ability to fully manage funds -- and when we go out,  
15 and we do a fairly heavy scrutiny of certain of the  
16 grantees, and there are very many instances where yes,  
17 an audit committee would have been beneficial. But at  
18 what cost?

19           And if we can get the executive  
20 directors -- and this is something you've heard from us  
21 before, the tone at the top -- if you can get that tone  
22 established of fiscal responsibility, accountability,



1 and transparency at the top of the grantee, and then it  
2 cascades down to all levels of the program, then you've  
3 achieved what an audit committee would achieve.

4 CHAIRMAN MEITES: Thank you. I think  
5 that -- where are you all? Where I'm at is I think  
6 Tom's remarks are well-taken. But I think in light of  
7 our expert, the IG, on this, that at least we should  
8 give a chance for the amended accounting guide to see  
9 if it achieves the goal. And if it doesn't, I expect  
10 the IG will let us know.

11 MR. SCHANZ: We will test that on our field  
12 visits.

13 CHAIRMAN MEITES: Is that okay?

14 MS. CHILES: Yes. I like the idea of the IG  
15 specifically testing this, the changes on their visits.  
16 That's a good check.

17 CHAIRMAN MEITES: All right, then. I don't  
18 think we need to vote. It's just our own committee's  
19 action, so we will just take no further action at this  
20 time.

21 Okay. Next item is again Mattie. It is the  
22 Sunshine Act. I'm sorry.

1 MS. VALENCIA-WEBER: Gloria Valencia-Weber.  
2 I'm a board nominee. And I'm heartened to hear the  
3 comments of the IG and Jonann's view of the  
4 functionality. I concur that it's important as a  
5 substantive duty of every grantee, and we don't want to  
6 let any grantee escape regardless of size.

7 But as someone who comes from those big wide  
8 open spaces where you have rural grantees and rural  
9 offices with those small boards of five, and remember  
10 that you're calling on finite numbers of attorneys as  
11 well as client representatives, I would hold those  
12 grantees accountable. But I would not impose on them  
13 what is crafted in a D.C. framework because it doesn't  
14 match what life on the ground is in those places.

15 And I've not encountered in those rural areas  
16 any grantee who really was asking to be exempted from  
17 what we all share as a common set of goals, that is,  
18 the best use of whatever money we have to provide  
19 access to justice to poor people, and that  
20 irresponsible use and governance over money is not the  
21 way to do it.

22 I mean, in really small grantee boards, you're

1 going to hear from the client representatives. The  
2 people, whether they're farmers or people in town who  
3 are facing foreclosures or other things, they're very  
4 concerned that there be maximum services for the  
5 dollars, for the people greatly need our services.  
6 Thank you.

7 CHAIRMAN MEITES: Thank you. Okay. That's  
8 fine. We are in agreement on that? Let's move to the  
9 next item, which is the Sunshine Act, No. 5. And  
10 Mattie, we are quite familiar with this. I don't think  
11 we need any background. Tell us, if we decide to go  
12 ahead with exempting our review of the President and  
13 the IG from the Sunshine Act provisions, what do we do?

14 MS. COHAN: Okay. Well, I think there are two  
15 kind of issues here. I mean, you have the draft notice  
16 of proposed rulemaking that would effectuate the change  
17 on paper.

18 CHAIRMAN MEITES: Right.

19 MS. COHAN: I think there's kind of one legal  
20 issue and one practical issue. The legal issue is  
21 whether the governance and performance review committee  
22 is a subdivision empowered to act for the board. And,

1 you know, if it isn't, then this NPRM, you can move  
2 forward with it. If it is, then you can't.

3 CHAIRMAN MEITES: Right.

4 MS. COHAN: There'd be no point. This is a  
5 legal point that I think it's murky. It's unclear. I  
6 think on the whole, the Office of Legal Affairs comes  
7 down on the side of the argument that says the  
8 governance and performance review committee is not a  
9 subdivision of the board enabled to act for it, whereas  
10 I believe the position of the counsel of the Office of  
11 the Inspector General comes down on the other side.

12 We both acknowledge that it's a close call,  
13 that it's not -- there's not a single obvious answer,  
14 and the legal judgment of our two offices happen to  
15 differ on this particular point.

16 So there's that, and I'm not sure what else I  
17 can tell you about that. I think you understand that.

18 CHAIRMAN MEITES: Right.

19 MS. COHAN: But that's where that is.

20 Then there's a practical issue that even if  
21 the governance and performance review committee is not  
22 a subdivision empowered to act for the board, and

1       therefore can meet -- the regulation can be changed and  
2       it can meet outside the purview of the Sunshine Act,  
3       there's a practical question about how much of the work  
4       of the committee would need to be rehashed at the board  
5       level for there to be sufficient public openness of the  
6       discussion of the committee's actions for the board to  
7       take action.

8                   And that's kind of a practical matter that,  
9       you know, I'm not -- again I'm sorry that I don't  
10      have -- you know, I don't have a definitive response on  
11      this. But I think, you know, there's a practical issue  
12      that even if you do what you want to do, can you  
13      actually accomplish what you want to accomplish?

14                   CHAIRMAN MEITES: Well, I --

15                   MS. COHAN: I'm not sure what the answer to  
16      that is. But I'm not -- I can't tell you that legally  
17      you can't try.

18                   CHAIRMAN MEITES: Yes. I actually see the two  
19      questions as intertwined. As I understand from the  
20      IG's comments at a prior meeting and your comments at a  
21      prior meeting, that to the extent the board gives a,  
22      I'll say, de novo or fresh review of the situation,

1 then the performance review committee is just a  
2 committee.

3 To the extent our committee or that committee  
4 makes a report and the board says, fine, we adopt it,  
5 then it's clearly acting "for the board." And if the  
6 board doesn't do an independent review, then as I  
7 understand it, then our attempt to exclude the  
8 performance review committee appraisal is going to  
9 fail. But to the extent that the board does an  
10 independent review, then the committee is not part of  
11 the board.

12 And the way I see it is we should try it to  
13 see if in fact, given the way the committee works and  
14 the board works, there really is a separation. And the  
15 only way to try that is to adopt this regulation.

16 If it doesn't work, if it turns out that the  
17 board is not either willing or able to conduct an  
18 independent review, then we shouldn't have the  
19 committee as excluded from the Sunshine Act. But it  
20 really comes down to a question that our committee  
21 can't answer: Is the board willing and able to  
22 undertake the burden of an independent review? If it's

1 not, we shouldn't change the rule. If it is, then we  
2 should change it.

3 MS. COHAN: And if the board as a whole is  
4 willing to undertake the independent review, does it  
5 feel -- I mean, it's also going to have to acknowledge  
6 that it's going to have to do that in an open session.

7 CHAIRMAN MEITES: Absolutely.

8 Tom?

9 MR. FUENTES: Mr. Chairman, in addition to all  
10 of that, and I think that you're carefully and  
11 appropriately trying to pull this apart because I know  
12 there are some strong feelings around this table about  
13 this topic, but you speak of the committee and you  
14 speak of the board.

15 And I think that we need to plug into that the  
16 de facto reality that on this particular committee,  
17 when it gathers, the board gathers. Everybody likes to  
18 come to these meetings because everybody feels strongly  
19 about the review of the President and the Inspector  
20 General.

21 So, you know, even to say or to use the  
22 language of a committee versus the board is a little

1 bit of a charade, or could be a little bit of a  
2 charade, because when the committee meets on those  
3 topics, it's the board sitting around the table.

4 CHAIRMAN MEITES: And I think that that was  
5 mentioned in Mattie's report. But that can be solved.  
6 The board can make a determination that when the  
7 performance review committee is considering this issue,  
8 the board has decided other board members automatically  
9 will not attend.

10 MR. FUENTES: Whoa. Whoa.

11 CHAIRMAN MEITES: No? Let me continue that.  
12 In fact, one of the comments raised in the  
13 self-appraisal which John presented yesterday was that  
14 there's a lot of duplication, that the new board might  
15 consider a different format where the board members  
16 don't attend each other's committees on a regular  
17 basis.

18 Now, we are not going to reconsider that  
19 policy ourselves. That's not -- we have adopted this  
20 policy. We've lived under it. We've done well with  
21 it. Our successors can decide to do differently, and I  
22 think the point that Tom raised is absolutely right.



1 If everyone goes to the committee meeting and then you  
2 just repeat what you said at the board, it's not going  
3 to wash. And that's what I meant by the board has to  
4 be willing and able to take on an independent review.

5 So you're right. It only works if it works.  
6 If the board's not willing to do it -- not our board,  
7 the successor board -- then it's not going to happen.

8 MS. COHAN: And as a legal matter, even if  
9 it's a committee meeting, if you have a quorum of the  
10 board show up, it has become a meeting under the  
11 Sunshine Act.

12 CHAIRMAN MEITES: That's where Tom's --

13 MS. COHAN: Right. It's not just a -- and  
14 that's -- in and of itself, regardless of what might be  
15 re-said at the full board, it's just that act, having  
16 the quorum there, turns it -- to conduct business turns  
17 it into a meeting.

18 CHAIRMAN MEITES: What do you all think?

19 MS. CHILES: Unless there is a pressing need  
20 for this board to take up and resolve this issue, I  
21 would be inclined to leave this thorny issue for our  
22 colleagues who are going to follow in our footsteps.

1           CHAIRMAN MEITES: Hear, hear. Why didn't I  
2 think of that?

3           (Laughter.)

4           CHAIRMAN MEITES: Yes. Because what we've  
5 raised here is questions going to how the board is  
6 going to be functioning. And it's not our board that  
7 is going to have to live with the next -- I  
8 hope -- with the next round of evaluations. So let's  
9 move on.

10           Next is role in collective bargaining. And  
11 that is Vic, who is not here.

12           And so we'll skip No. 6 temporarily. And  
13 No. 7. John?

14           (Pause)

15           CHAIRMAN MEITES: All right. John, you were  
16 going to report on the status of GAO reviews at our  
17 request.

18           MR. CONSTANCE: Yes. Thank you. Thank you,  
19 Mr. Chairman. I will really be brief. Just for the  
20 record, I'm John Constance, director of government  
21 relations and public affairs, and the liaison with GAO  
22 for the Corporation.

1           LSC, as you know, has been the subject of two  
2 GAO reports, one entitled, "Legal Services Corporation:  
3 Governance and Accountability Practices Need to Be  
4 Modernized and Strengthened," and one entitled, "Legal  
5 Services Corporation: Improved Internal Controls  
6 Needed in Grants Management and Oversight."

7           GAO is currently at LSC following up on the  
8 implementation of recommendations from those two  
9 reports. And they're also working on a June 2, 2009  
10 request from Congress on the following: functions and  
11 processes of the Office of Program Performance and the  
12 Office of Compliance and Enforcement; performance  
13 measures and management's monitoring of efficiency and  
14 effectiveness of these offices; staffing trends and  
15 workforce planning of those offices; and analysis of  
16 the offices' budgets and expenditures.

17           CHAIRMAN MEITES: Excuse me, John. Was that a  
18 request -- the June request was from Congress or from  
19 the GAO?

20           MR. CONSTANCE: That was the -- it is a GAO  
21 engagement, and this latest report was requested by one  
22 member only of Congress, and that was Senator Grassley.

1           CHAIRMAN MEITES:  And just because I'm a bit  
2    confused, what's the relationship between Senator  
3    Grassley's request and the GAO?  Did he ask them to ask  
4    us?

5           MR. CONSTANCE:  Yes.  Basically, the  
6    structure -- some years ago the structure was a  
7    committee chairman was required to -- it was only a  
8    committee chairman that could task GAO.  In a more  
9    modern -- in a modern interpretation, any one single  
10   manager of Congress can in fact ask GAO to look into  
11   the activities of a program.

12          CHAIRMAN MEITES:  And that's what you're  
13   describing now?

14          MR. CONSTANCE:  That's correct.  That's  
15   correct.

16          First of all, let me go over the existing  
17   reports, the two existing reports.  As you will recall,  
18   the Corporation and the board accepted all 17  
19   recommendations in the two reports.  All 17 of those  
20   recommendations have been judged by GAO as at least  
21   partially implemented, and nine have been judged to be  
22   fully implemented.

1           For the remaining eight recommendations,  
2 management has recently submitted documentation of full  
3 implementation for three of those, and GAO is reviewing  
4 that documentation at the present time.

5           CHAIRMAN MEITES: And the other five?

6           MR. CONSTANCE: I would commend -- let me just  
7 finish this section --

8           CHAIRMAN MEITES: Please. I'm sorry.

9           MR. CONSTANCE: -- and I'll go through  
10 actually the recommendations themselves.

11          CHAIRMAN MEITES: That's fine.

12          MR. CONSTANCE: At the October oversight  
13 hearing before the House, Susan Ragland of GAO  
14 testified and indicated that from her perspective,  
15 progress was good, I think, from her vantage point, and  
16 encouraged obviously the Corporation and the board to  
17 work toward the completion of all recommendations. Let  
18 me give you a rundown on the ones that are -- that  
19 remain outstanding.

20                 Of the recommendations made to the board of  
21 directors in the governance report, in the first  
22 report, the three recommendations that we have recently

1 provided documentation on and are waiting for GAO to  
2 come back and clear us in terms of saying that these  
3 are implemented was, first of all, establish and  
4 implement a comprehensive orientation program for the  
5 new board; second of all, developing a plan for  
6 providing a regular training program for board members;  
7 and third, establishing either a compensation committee  
8 or establishing that function within an existing  
9 committee.

10           Going from there backwards, as you know, the  
11 board passed a resolution in August giving the  
12 compensation review responsibility to the governance  
13 committee. That documentation has now been provided to  
14 GAO, and they are examining that.

15           As to developing a training program, I  
16 reported yesterday to the governance committee that,  
17 you know, we have the beginnings of that. But given  
18 the fact that our internal or your self-assessment have  
19 indicated not a burning need for training for the  
20 existing board, we haven't implemented anything. And  
21 therefore, we're still in a process of that.

22           We will go ahead and put together at your

1 direction yesterday, or the recommendation yesterday,  
2 an outline of what a logical training plan would be for  
3 the new board upcoming, and being implemented in April.

4 And as to the implementation of a  
5 comprehensive orientation program, we feel that we have  
6 done that. We've provided all that documentation to  
7 GAO, and that is now being reviewed.

8 Other matters that are in process: Implement  
9 an approach for selecting grantees for internal control  
10 and compliance reviews that is founded on risk-based  
11 criteria, using information and results from oversight  
12 and audit activities, and consistently applying that.

13 Our procedures have been changed in terms of  
14 putting a risk management basis for selecting grantees  
15 for visits each year. It is our understanding, or my  
16 understanding, that that is in fact implemented. That  
17 is implemented now in a meeting environment.

18 GAO has still indicated to our vice president  
19 as well as to me that they want to see more  
20 documentation of that process. So we are talking to  
21 them right now to get a little bit more handle on what  
22 that documentation needs to look like in order to

1 satisfy that particular requirement.

2 Second of all, the implementing procedures to  
3 improve the effectiveness of LSC fiscal compliance  
4 reviews had a portion of that recommendation that said  
5 as follows, that we should also be providing guidance  
6 for performing follow-up on responses from grantee  
7 interviews.

8 This was as a result of their observation on,  
9 I believe, only one or two visits. However, it is  
10 still there as an open requirement. We have talked to  
11 them about providing guidance in our written procedures  
12 having to do with follow-up on interviews. That seemed  
13 to satisfy them. That's a documentation piece that we  
14 just need to provide.

15 And thirdly, develop and implement policies  
16 that clearly delineate organizational roles and  
17 responsibilities for grantee oversight and monitoring,  
18 including grantee internal controls and compliance.

19 As you will recall, this board, or the board,  
20 established an ad hoc committee that had an extensive  
21 array of meetings and provided a written outline of  
22 roles and responsibilities regarding compliance and



1 oversight. GAO is still indicating that they find that  
2 deficient in the area of internal controls, and so we  
3 are still talking with them about how that delineation  
4 needs to be corrected or improved.

5 CHAIRMAN MEITES: Is that internal controls of  
6 LSC or the grantees?

7 MR. CONSTANCE: Internal controls of LSC.

8 CHAIRMAN MEITES: Thank you. Okay.

9 MR. CONSTANCE: I believe that is the rundown.  
10 The other two that we are listing in progress, one has  
11 to do with the self-assessment of committees of the  
12 board. We have drafted, and I have not moved it  
13 forward for anyone to take a look at, but we have  
14 drafted an outline of how the board would basically  
15 assess the activities of each of their -- each of the  
16 committees of the board to do a self-assessment like  
17 we're doing for individuals and the full board. We  
18 would do that on a committee basis. That is yet to be  
19 completed.

20 And the other one has to do with developing  
21 procedures to periodically evaluate key management  
22 processes, including, at a minimum, processes for risk

1 assessment, mitigation, internal control, and financial  
2 reporting.

3 GAO feels that that is a responsibility, as we  
4 have discussed before, of an audit committee. How we  
5 would do that, how we would do that going forward, is  
6 still to be discussed and determined. But that is a  
7 recommendation that they had made from the very  
8 beginning to the board, and indicated that that would  
9 be part of that audit function, would be those internal  
10 activities, and a periodic review of those.

11 I think the way that is done in similar board  
12 circumstances is typically through consultants and not,  
13 you know, the board itself. But, you know, that is one  
14 outstanding item to be concluded.

15 So that's where we are with respect to the  
16 previous two reports. On the current review that is  
17 underway, GAO has informed us that they have a target  
18 of mid-May for the report release, and will hopefully  
19 have a draft to us by late March. They have offered  
20 briefings to management and to the board associated  
21 with that draft, and we'd certainly recommend,  
22 obviously, that we follow up on that.

1           We are 99 percent complete in fulfilling the  
2 document request that has been provided to us by GAO in  
3 terms of the current review. And we have provided  
4 6,751 pages of documentation to them based on their  
5 requests. So that's what they're examining in addition  
6 to the extensive interviews that they've held with  
7 staff.

8           So that's all I have, Mr. Chairman.

9           CHAIRMAN MEITES: Thank you.

10          Questions? Herb? Please.

11          MR. GARTEN: Just a suggestion. I think that  
12 your comments with regard to extending the role of the  
13 audit committee, that that information should be  
14 supplied to the new chair and also whoever the new  
15 chair is of the audit committee.

16          And this is an example of -- and the  
17 likelihood is, as you mentioned, that outside  
18 consultants will have to be retained by the audit  
19 committee in order to perform those functions. And  
20 this is an example of what might have been imposed upon  
21 our grantees if we just adopted a broad requirement  
22 such as is being requested of our organization by GAO.

1           CHAIRMAN MEITES: All right. Thank you.

2           Yes, Bernice?

3           MS. PHILLIPS-JACKSON: Are we done giving GAO  
4 all the documents?

5           MR. CONSTANCE: Yes. I mean, I think there's  
6 one or two -- Vic, correct me -- I think there's maybe  
7 one or two minor things outstanding. But I think, you  
8 know, in our meetings that we've had the last week or  
9 so with them, I think they are -- you know, they're  
10 satisfied that they have the material.

11           They've asked us to certify that we've  
12 provided all the material in all those categories.  
13 We've done so. And they are literally writing now. I  
14 mean, I think they've had some final meetings, but I  
15 think they're in the writing stage of their work.

16           MR. FORTUNO: That's correct. I think it's an  
17 accurate representation as to where we are right now.

18           MS. CHILES: It's unfortunate that we've lost  
19 so many of the new board members, or nominees, rather,  
20 due to the weather and the time and what have you  
21 because this is a very important -- I think a very  
22 important agenda item.

1           So I'm thinking perhaps another briefing from  
2           the GAO would be helpful even prior to issuance of the  
3           March draft. And I don't know if it's possible to have  
4           a briefing for the nominees.

5           MR. CONSTANCE: I don't believe so.

6           MS. CHILES: It wouldn't work? Okay.

7           MR. CONSTANCE: I'm sorry.

8           MS. CHILES: Disregard. Disregard. That's  
9           not appropriate.

10          MR. CONSTANCE: I'll let our interim President  
11          respond to that. But in terms of GAO briefing anyone  
12          outside the Corporation before --

13          MS. CHILES: Okay. Let me pull that back.  
14          That was dumb. I now recognize that was a stupid  
15          suggestion.

16          I would like, as a board member, current board  
17          member, to have the opportunity to have another  
18          briefing from the GAO. And then, as far as the  
19          nominees go, it would probably be a real good idea for  
20          them to read those GAO reports if they haven't done so  
21          already.

22          MR. CONSTANCE: On the Thursday morning -- or

1 Thursday all-day orientation that we did for the  
2 nominees, there was a GAO section that I provided to  
3 them where we did in fact go over the existing reports.  
4 I gave them kind of an outline of this. We didn't go  
5 into the actual recommendations of where we are, but we  
6 did give them a briefing on GAO in that report.

7 MS. CHILES: Okay. Could you send to them a  
8 transcript of your report today so they know where we  
9 stand on complying?

10 MR. CONSTANCE: Sure. Absolutely.

11 CHAIRMAN MEITES: Do you think it makes sense  
12 for another meeting with the GAO representatives before  
13 the March draft comes out, or wait till the March draft  
14 comes out?

15 MR. CONSTANCE: Can I get back to you on that?  
16 I mean, I'd like to --

17 CHAIRMAN MEITES: Well, why don't you --

18 MR. CONSTANCE: I'd like to think about that.  
19 We have -- in the case of one of the two reports that  
20 came out, the second report, we did -- let me ask  
21 Charles. Was our meeting with them before we saw the  
22 draft or right after we saw the draft?

1 MR. JEFFRESS: Right after we saw the draft.

2 MR. CONSTANCE: All right. Again, the  
3 challenge of having a meeting before you see the draft  
4 is, you know, it's pretty difficult for them to give us  
5 any indication of where they are. And part of the  
6 problem is their clearance process within GAO that they  
7 go through in terms of recommendations in/out, you  
8 know, and their documentation.

9 So I think after the draft comes out would be  
10 the appropriate time to have --

11 CHAIRMAN MEITES: Well, let me do this. Why  
12 don't you and Charles talk about it. And if you two  
13 could give Jonann a call next week so you all -- the  
14 three of you can talk about it and let us know where  
15 you all come out.

16 MR. CONSTANCE: That would be fine.

17 CHAIRMAN MEITES: Is that okay?

18 MR. CONSTANCE: That would be fine.

19 CHAIRMAN MEITES: Okay. That --

20 MR. GARTEN: May I just comment?

21 CHAIRMAN MEITES: Please, Herb.

22 MR. GARTEN: My recollection of the briefing

1 was more favorable than -- although yours seemed to be  
2 positive, was more favorable than you indicated. And  
3 for the record, my recollection is that we were told  
4 that they didn't expect our comments or action taken  
5 immediately or even -- and he talked in terms of a  
6 four-year period, and that we were favorably, at this  
7 point, about halfway through the process as they saw  
8 it.

9 Would you -- do you agree with that comment?

10 MR. CONSTANCE: Yes. Susan Ragland, I think,  
11 characterized the progress as good, and did indicate  
12 that there was a typical time period of actually four  
13 years for average GAO recommendations to be fully  
14 implemented by organizations.

15 I would say that, and again, that is what she  
16 put on the record. There's a different issue, though,  
17 on the table for us, I think, and that is that, you  
18 know, the appropriators, our oversight committees,  
19 there's an expectation that we're going to move on  
20 this, and move with some real dispatch.

21 So yes, what she said, I think, is very  
22 positive as to our progress up to this point. As I



1 told the nominees, having been a GAO officer at the  
2 National Archives for a number of years and having some  
3 experience with this, I think the way that this current  
4 board has taken hold of the GAO recommendations and the  
5 constructive way that they have proceeded with them  
6 is -- you know, is a model of how it should be done.  
7 And I think GAO certainly recognizes that.

8 But as long as they're out there, as long as  
9 those recommendations are incomplete, it's yet another  
10 issue that we have to deal with with Congress. And I  
11 think continuing to lean forward on this is really the  
12 way to go. But point well taken, though, Herb.

13 CHAIRMAN MEITES: Good. Is there any public  
14 comment on the GAO report?

15 (No response.)

16 CHAIRMAN MEITES: If not, thank you very much.

17 MR. CONSTANCE: Thank you.

18 CHAIRMAN MEITES: Our next -- our last  
19 substantive item is No. 6, consider and act on LSC  
20 board of directors' role in collective bargaining.  
21 This is new, and we look forward to being enlightened.

22 MR. FORTUNO: Good morning. Still good

1 morning, Mr. Chairman, members of the committee,  
2 members of the board attending this meeting. I think  
3 you've been briefed on union matters generally. I  
4 think that one of the questions that arise at one point  
5 was what the board would designate as its role in  
6 connection with union matters.

7 I know we were asked to survey entities that  
8 are similarly situated to us to see what they do, and I  
9 think that survey, or the results of the survey, were  
10 distributed. I think we only heard from three others  
11 who promised to get back to us, but despite repeated  
12 calls, we've only heard -- I'm sorry, four, Federal  
13 Deposit Insurance Corporation, Corporation for National  
14 Community Service, National Endowment for the  
15 Humanities, and the Smithsonian.

16 And the trend, there does seem to be a trend  
17 there. But obviously, the decision as to just how  
18 involved or uninvolved you are is entirely up to you.  
19 The trend seems to be that boards don't generally get  
20 directly involved in union matters, that while there is  
21 a signoff and there is a policy setting, that normally  
22 that's something that the board entrusts to management.

1           However, the degrees of reporting and keeping  
2           the board currently apprised will vary some, and also  
3           whether there is a board liaison or some committee to  
4           be more currently informed and essentially serve as the  
5           eyes and ears of the board on the more significant  
6           union issues.

7           So this agenda item was really just to allow  
8           for open and free discussion among you all to see if  
9           you have a consensus as to what you would like to  
10          recommend to the board that the board consider as the  
11          appropriate role of the board in connection with union  
12          matters.

13           CHAIRMAN MEITES: Let me you a couple  
14          questions.

15           MR. FORTUNO: Yes.

16           CHAIRMAN MEITES: Is there an individual who  
17          has been designated as having -- on the staff who has  
18          been designated as having principal responsibility for  
19          collective bargaining issues?

20           MR. FORTUNO: Staff? No. So far, not  
21          collective bargaining. What's happened so far is we  
22          received a letter from the union some time back asking

1 to recognize a unit. Management decided on a position  
2 that was taken. That has played out.

3 We more recently received another letter from  
4 the union asking us to recognize a new -- them as the  
5 bargaining agent for a new collective bargaining unit.

6 CHAIRMAN MEITES: What about on the other  
7 side? Who on your staff -- is there anyone on your  
8 staff who has been designated as principally  
9 responsible for dealing with collectively bargained  
10 issues?

11 MR. FORTUNO: I've been dealing with it  
12 myself, with the assistance of the director of the  
13 Office of Human Resources and an attorney, a very  
14 senior attorney, in the Office of Legal Affairs. And  
15 we have outside counsel that's been working with us on  
16 this.

17 So in terms of principal responsibility so  
18 far, of late that's how it's worked.

19 CHAIRMAN MEITES: And second, if you had to  
20 identify a committee that you would choose to have as  
21 the board's liaison on a collective bargaining  
22 agreement, would it be finance? Audit? Governance?

1 Ops and regs? Which one would you pick?

2 MR. FORTUNO: Sorry to say this, but I would  
3 say ops and regs because of the operations component.

4 MR. McKAY: Move that the nominations be  
5 closed.

6 (Laughter.)

7 CHAIRMAN MEITES: I really have very little to  
8 say about this because we have had no experience. But  
9 I know Tom has had some experience in his work in  
10 California.

11 If you could shed any light about what you  
12 have experienced and what seems to work in the places  
13 you're at?

14 MR. FUENTES: Thank you very much,  
15 Mr. Chairman. First, perhaps, for benefit of the  
16 board, I should give that background. For over -- and  
17 thank you also, Tom, for the special request to me that  
18 I do speak to this, although I'm not a member of your  
19 committee.

20 For almost 12 years now, I have served as an  
21 elected trustee of the South Orange County Community  
22 College District, a community of some one million

1 constituents, with some 35,000 students and something  
2 in excess of 2,000 government employees on our staff.

3 We deal with three unions, a faculty union, a  
4 classified employee union, and a police union. So  
5 those are all separate unions, separate contracts,  
6 separate negotiating periods, et cetera. So I bring  
7 that experience to my comments.

8 The definition of the direction that President  
9 Fortuno has taken and led with so far, I would say, is  
10 quite ideal to the experience that I have had. I think  
11 the board, or the board through this committee or  
12 another committee, giving the responsibility to a team,  
13 with the first responsibility of the President of the  
14 Corporation with human resources and senior inside  
15 counsel, shored up in a very substantial and positive  
16 way by outside labor counsel, would be the formula that  
17 I would certainly recommend.

18 So I think we find ourselves very fortunate to  
19 have had Vic's guidance on this, and moving in the  
20 right direction. I think that we have learned from our  
21 experience how we got here. And I think we're all  
22 sensitive to that, how we got here.

1           I wish that the board's communication on a  
2   personal and compassionate and open fashion with all of  
3   our employees were such that they were not compelled to  
4   have unions. That's my own perspective. That's my own  
5   personal opinion of this.

6           However, we are at that point in time, and  
7   because we are, I think that our responsibility as  
8   board members is to limit to a very professional forum  
9   the communications with the union, being brought to us  
10  most likely in closed session by the team that should  
11  be in place to deal with it.

12           Another personal comment is that this weekend,  
13  yesterday and today, I have had three members of the  
14  staff, who I have not met before, come up to me and  
15  introduce themselves to me most kindly. And they told  
16  me that they hadn't until this weekend felt comfortable  
17  to do that, to address and speak to the board.

18           I feel terrible about that. And I feel that  
19  if that was the environment that brought us to this day  
20  and this situation, that's terribly unfortunate. I  
21  think that all of us, as board members, should be  
22  welcoming and let the word go out that we have the

1 concern and interest of all of our employees as  
2 individuals at heart; but when it comes to matters of  
3 specific contract negotiation, that it must be done  
4 through a protocol that I've outlined.

5 CHAIRMAN MEITES: I just have a specific  
6 question because I really don't have a clue.

7 Let's say that our negotiators are insisting  
8 that people wear red shoes on Friday. Okay? And  
9 that's a sticking point in negotiations.

10 MR. FUENTES: We've already resolved that  
11 particular issue.

12 (Laughter.)

13 CHAIRMAN MEITES: Okay. But assume you  
14 hadn't. And our negotiators report either to ops and  
15 regs or the board in closed session that they feel  
16 strongly. And we think it's ridiculous.

17 At that point do we get involved? Or do we  
18 let our negotiators negotiate?

19 MR. FUENTES: No. I would think that whatever  
20 the negotiating team takes to the table is at the  
21 direction of the board. They're not their independent  
22 agents. They're carrying to the negotiating table the



1 purpose and intent of what the board has outlined.

2 CHAIRMAN MEITES: So it's the same thing. Not  
3 micromanage, but stay on top of what's happening. And  
4 when decisions have to be made, make the decisions.

5 MR. FUENTES: Right. And we express our trust  
6 in our President and his new team.

7 CHAIRMAN MEITES: Okay. Questions or --

8 (No response.)

9 CHAIRMAN MEITES: Good. Thank you very much,  
10 Vic. And we'll learn by doing.

11 MR. FORTUNO: Thank you.

12 CHAIRMAN MEITES: All right. Any new  
13 business?

14 (No response.)

15 CHAIRMAN MEITES: Any more public comment?

16 (No response.)

17 CHAIRMAN MEITES: And if there's none and  
18 none, I will accept a motion to adjourn. Oh, we do.  
19 I'm sorry. Moving too fast again. But we still have  
20 17 minutes, so take your time.

21 MS. THOMAS: Being mindful of the snowflakes  
22 outside. Thank you, Mr. Chairman, and to the members

1 of this committee as well as other members of the board  
2 and to the nominees who are remaining.

3 My name is Evora Thomas, and I'm one of the  
4 attorneys in the Office of Program Performance here at  
5 LSC. You may recall that I've appeared before  
6 committees of the board previously, particularly the  
7 provisions committee, to report on the progress of LSC  
8 initiatives such as the leadership mentoring pilot  
9 project.

10 I've also been recognized by LSC for my past  
11 work, including that I was the first recipient of  
12 President Helaine Barnett's Above and Beyond award.  
13 And last year I received the Thurgood Marshall award,  
14 which is actually presented by the LSC employees.  
15 Presently I chair the staff working group that is  
16 responsible for work on board governance issues, such  
17 as what has been discussed before this committee today.

18 Before coming to LSC, I served as the  
19 executive director of the Peninsula Legal Aid Center in  
20 Hampton, Virginia for approximately ten years. And  
21 I've also worked as a staff attorney with two other of  
22 our LSC grantees. In addition to that, my public

1 service has included being a municipal attorney and the  
2 presiding municipal court judge in East Orange, New  
3 Jersey.

4 With that being said, I really didn't come  
5 here to talk about myself. I've been asked by my  
6 coworkers to speak to you on behalf of Local 135 of the  
7 International Federation of Professional and Technical  
8 Engineers, which is an affiliate of the AFL-CIO, and  
9 the unit to which we have been affiliated.

10 I'm joined today by some of the other members  
11 of the new bargaining unit, including Stephanie  
12 Edelstein, Tim Watson, Chuck Greenfield, and David  
13 de la Tour. It's our desire to introduce ourselves to  
14 you and assure you that our goals are mutual.

15 The membership is comprised of individuals  
16 that have devoted their professional careers to public  
17 service, and most overwhelmingly to delivery of legal  
18 services and to the cause of equal access to justice.  
19 We bring a vast array of skills, talents, and expertise  
20 to LSC, including a variety of experiences in legal and  
21 financial professions in the government and in  
22 organizational management.

1           As such, we consider ourselves your partners  
2           in achieving the goals and objectives of LSC's  
3           strategic planning. IFPTE has been guided by a set of  
4           talking points that address our motivations, and we  
5           would be most happy to share those talking points with  
6           you at a later point if you would like to see them.

7           IFPTE thanks the current board for your  
8           continued service and your sincere efforts on behalf of  
9           the mission of LSC. We look forward to working with  
10          you on any issues that come up during your continued  
11          service. And we also wish the nominees well in their  
12          appointment processes and to working together in the  
13          future.

14          I thank you for your attention, and  
15          Mr. Fuentes, to your comments in particular.

16          CHAIRMAN MEITES: Thank you very much for your  
17          remarks.

18          Any other comments?

19          (No response.)

20          CHAIRMAN MEITES: If not, I will accept a  
21          motion to adjourn at 11:47.

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MS. PHILLIPS-JACKSON: So moved.

MS. CHILES: Second.

CHAIRMAN MEITES: We are in adjournment.

Thank you.

(Whereupon, at 11:48 a.m., the operations and  
regulations committee was adjourned.)

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