MEETING OF THE
OPERATIONS AND REGULATIONS COMMITTEE
OPEN SESSION

Sunday, April 12, 2015
2:33 p.m.

Legal Services Corporation
3333 K Street, N.W.
Third Floor
F. William McCalpin Conference Center
Washington, D.C. 20007

COMMITTEE MEMBERS PRESENT:
Charles N.W. Keckler, Chairperson
Harry J.F. Korrell, III
Laurie I. Mikva
John G. Levi, ex officio

OTHER BOARD MEMBERS PRESENT:
Victor B. Maddox
Martha L. Minow
Father Pius Pietrzyk, O.P.
Julie A. Reiskin
Gloria Valencia-Weber
STAFF AND PUBLIC PRESENT:

James J. Sandman, President

Lynn Jennings, Vice President for Grants Management

Rebecca Fertig Cohen, Special Assistant to the President

Patrick Malloy, Grants Management/Legislative Fellow, Executive Office

Wendy Rhein, Chief Development Officer

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

Mark Freedman, Senior Assistant General Counsel, Office of Legal Affairs

Stefanie Davis, Assistant General Counsel, Office of Legal Affairs

Sarah Anderson, Graduate Law Fellow, Office of Legal Affairs

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

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

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

Wendy Long, Executive Assistant, Office of Government Relations and Public Affairs

Jeffrey E. Schanz, Inspector General

Laurie Tarantowicz, Assistant Inspector General and Legal Counsel, Office of the Inspector General
STAFF AND PUBLIC PRESENT (Cont'd):

John Seeba, Assistant Inspector General for Audit, Office of the Inspector General


Daniel O'Rourke, Assistant Inspector General for Investigations, Office of the Inspector General

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

Megan Lacchini, Deputy Director, Office of Compliance and Enforcement

Janet LaBella, Director, Office of Program Performance

Bristow Hardin, Program Analyst, Office of Program Performance

Traci Higgins, Director, Office of Human Resources

Eric Jones, Network Engineer, Office of Information Technology

Atein Riggins, Office of Information Technology

Herbert S. Garten, Non-Director Member, Institutional Advancement Committee

Frank B. Strickland, Non-Director Member, Institutional Advancement Committee

Robin C. Murphy, National Legal Aid and Defender Association (NLADA)

Dominique Martin, Law99.com

John C. Meyer, Retired, LSC
## CONTENTS

<table>
<thead>
<tr>
<th>OPEN SESSION</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Approval of agenda</td>
<td>6</td>
</tr>
<tr>
<td>2. Approval of minutes of the Committee's Open Session meeting on January 22, 2015</td>
<td>6</td>
</tr>
<tr>
<td>3. Consider and act on Notice of Proposed Rulemaking for 45 CFR Part 1610.7 -- Transfers of LSC Funds and 45 CFR Part 1627 -- Subgrants and Membership Fees or Dues</td>
<td>7</td>
</tr>
<tr>
<td>Ron Flagg, General Counsel</td>
<td></td>
</tr>
<tr>
<td>Stefanie Davis, Assistant General Counsel</td>
<td></td>
</tr>
<tr>
<td>Mark Freedman, Senior Assistant General Counsel</td>
<td></td>
</tr>
<tr>
<td>Ron Flagg, General Counsel</td>
<td></td>
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<tr>
<td>Stefanie Davis, Assistant General Counsel</td>
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<td>Ron Flagg, General Counsel</td>
<td></td>
</tr>
<tr>
<td>Stefanie Davis, Assistant General Counsel</td>
<td></td>
</tr>
<tr>
<td>Laurie Tarantowicz, Assistant Inspector General and Legal Counsel</td>
<td></td>
</tr>
<tr>
<td>Sarah Anderson, Law Fellow with Office of Legal Affairs</td>
<td></td>
</tr>
<tr>
<td>Public comment</td>
<td></td>
</tr>
</tbody>
</table>
CONTENTS

OPEN SESSION (Cont'd) PAGE

   Ron Flagg, General Counsel
   Stefanie Davis, assistant General Counsel

7. Annual report on enforcement mechanisms 68
   Jim Sandman, LSC President
   Mark Freedman, Senior Assistant General Counsel

8. Update on comments on population data for grants to serve agricultural and migrant farmworkers 83
   Ron Flagg, General Counsel
   Bristow Hardin, Program Analyst

9. Update on performance management and human capital management 91
   Jim Sandman, LSC President
   Traci Higgins, Director of Human Resources

10. Other public comment 110

11. Consider and act on other business 110

12. Consider and act adjournment of meeting 110

Motions: 6, 6, 31, 41, 66, 110
(2:33 p.m.)

CHAIRMAN KECKLER: I'm going to call to order at this time, noting the presence of a quorum, the announced meeting of the Operations and Regulations Committee. And we'll begin, beginning a little later, and I'll begin with asking for an approval of today's agenda.

MOTION

MS. MIKVA: So moved.

MR. KORRELL: Second.

CHAIRMAN KECKLER: All in favor?

(A chorus of ayes.)

CHAIRMAN KECKLER: The motion is approved.

I'd also ask for approval of the minutes of our last quarterly meeting from January 22nd. Is there a motion to approve?

MOTION

MS. MIKVA: So moved.

CHAIRMAN KECKLER: Is there a second?

MR. KORRELL: Second.

CHAIRMAN KECKLER: All in favor?
1 (A chorus of ayes.)

2 CHAIRMAN KECKLER: All right. The minutes are thereby approved.

3 And we can turn to our first item of substantive business, which is to consider and act on a notice of proposed rulemaking for transfers of LSC funds and subgrants, sometimes called our subgrant rule. And so we're planning on putting out for comment a revision of that rule.

4 And I will turn that over to the Office of Legal Affairs.

5 MR. FLAGG: Thank you. This was, as all of our efforts are, a team effort. And Stefanie Davis and Mark Freedman were the heart of the team, and Stefanie will speak for us.

6 MS. DAVIS: Good afternoon. So we are, as Charles noted, here to talk about -- and you'll see there's a little addition to the header -- to a notice of proposed rulemaking on Parts 1610, 1627, and 1630. And I'll get to why that is toward the end.

7 So as you probably recall, this is an item that has long lain dormant. This rulemaking was
approved in 2012, before I even started at LSC. And it kind of got overtaken by events, but now we've come back to it. And among the highest priority issues on the rulemaking was to clarify which transactions the subgrant rule applies to.

This rulemaking was prompted by differing interpretations from the IG and Management, and so rulemaking was approved to clarify which of those interpretations we wanted the rule to have.

So you will notice through the rule that we propose adopting Management's interpretation, which is that subgrants apply to awards to third parties from our recipients to carry out the programmatic work of their Legal Services grant. So we are clarifying that this about doing Legal Services work.

The issue came up because the Office of Inspector General did an audit of the TIG program and found that some recipients had been making awards for more technical things, such as software development or purchase of hardware.

And because the TIG awards are technology awards, they believed that those were subgrants because
purchasing hardware or doing technical work was the purpose of the grant. And that was difference, was does a subgrant cover all of these types of grants or does it only cover one type of grant?

And so what we propose, through a couple of changes to the rule, is making clear that the term "subgrant" applies only to recipient awards to third parties to carry out programmatic legal assistance work.

That doesn't mean that the TIG awards and TIG subcontracts aren't being accounted for. There are now special contracting rules in the TIG program, and we imagine that we will also be looking at contracting rules again when we take up -- in fact, we will be looking at those again when we take up the revisions to Part 1630 and the PAM.

So the first major change that we've made to reflect Management's interpretation is visible on the preamble discussion on page 26 of your Board book and in the rule text on page 41, and that is to use and define the term "programmatic" to mean activities or functions carried out to provide legal assistance as
defined in Section 1002 of the LSC Act. We did that again to make it clear that we are tying these to the legal assistance activities of our recipients.

You'll also see that reflected in the preamble discussion on page 2 and 28 of your Board book and the rule text on pages 42 and 43 where we discuss the definition of subgrant and the characteristics of subgrants.

We decided that part of what the issue was, in looking at the types of agreements we were talking about, that some of the activities that are covered by TIG awards, some of the subrecipient subgrants, some of the third party awards, were very technical things that more resembled contracts and procurements or goods or services than actual carrying out of services. And so we looked to the Federal Government's construct of how grants work and how contracts work, and that was essentially the line that we took.

We have substantially adopted the definition of subgrant from the Uniform Grants guidance and made a few tweaks to make it particular to LSC. But that is seen in the definition of subgrant, which is an award
of LSC funds provided by a recipient to a subrecipient for the subrecipient -- that's a lot of words in saying subrecipient -- to carry out part of the recipient's programmatic activities.

And you can also see that reflected in the characteristics of the subgrant that they're all really tied to. Is the subrecipient carrying out activities that essentially supplements or supplants the recipient's work in that area? So is the subrecipient doing something for which they have to determine whether or not a client is eligible?

Is what they are doing measured in relation to the performance standards that the grantee itself has to live up to? Does the subrecipient have responsibility for making program decisions about which cases to take or who to refer people to? Are they responsible for complying with our statutes and regulations?

And are they using the funds to carry out a purpose specified in our statutes and regs rather than procuring goods or services for the recipient's benefit? So that's where you really see that we've
made this change to reflect Management's interpretation of where the subgrant rule applies.

You'll see in the definition of subgrant that we have not changed the $25,000 limit. The reason we are talking about this, Northwest Justice Project raised a comment during the PAI rulemaking suggesting that we change the $25,000 threshold for PAI subgrants because that was the threshold that we set in 1983 when we passed the PAI rule. And inflation, of course, has raised the prices of everything. They recommended a threshold of $60,000.

As we were discussing what we thought we should do here, we realized that we were talking about trying to balance reasonable contracts amount for grantees to be seeking approval for with our interest in ensuring accountability for the funds. And so we wanted to be able to say that we had thought about what number best harmonized those needs because we're a little bit concerned that if we raise the threshold too high, we will lose our ability to oversee or to approve PAI subgrants.

CHAIRMAN KECKLER: Stefanie, let me pause you
for a second --

MS. DAVIS: Yes. That would be --

CHAIRMAN KECKLER: -- and ask on that point.

But isn't it the case that these contracts -- so

normally, under the PAI rule, if we're contracting out,

so Judicare or some kind of situation like that, any

kind of expenditure like that, the receiving attorney

providing the services, there's a requirement for them

to account for their -- they have to record their time

and the use of the funds. Right? Under the PAI rule?

MS. DAVIS: Correct. So it's not that there

is no accounting for those funds prior to the

threshold. It's just the question of whether or not

the recipient has to seek prior approval of that

agreement. So there is still accountability, but maybe

not the same level of accountability as you would get

if you were seeking a subgrant.

Does that answer your question?

CHAIRMAN KECKLER: Yes. The other question I

had about that is, do we have a sense of -- partly this

is driven by the regulation itself. Do we have a sense

of how many of these types of contracts there are out
there or that maybe would be induced? I'm not putting
you on the spot, but that's something that we might
want to accumulate and think about, how many of these
things there are.

MS. DAVIS: Right. Lora Rath is telling me
somewhere between four and five. So it's a fairly
small number that we're talking about.

FATHER PIUS: Between four and five ever year?

MS. DAVIS: Sorry. Every year.

So we basically propose not changing the
threshold at this point, but seeking specific comment
from the field on, one, whether we should change it;
two, if so, what it should be changed to; and three,
what the justification for the change that's proposed
is.

Yes?

PROFESSOR VALENCIA-WEBER: On those four or
five, have you just had discretionary decisions made
about how you would treat the amount that the grantee
is requesting permission for?

MS. DAVIS: I'm not sure I --

PROFESSOR VALENCIA-WEBER: You have four or
five a year --

    MS. DAVIS: Right.

PROFESSOR VALENcia-WEBER: -- that have 25,000 or more?

    MS. DAVIS: Right.

PROFESSOR VALENcia-WEBER: And of those, you're making discretionary decisions on what makes sense in the situation and what those funds are?

    MS. DAVIS: I think Lora would be in a better position to answer that. But I think the answer is we look at whether it's a reasonable use of the funds and approve the subgrant if it is. Or if it's not --

    MS. RATH: Hi. It's Lora. Yes. Stefanie is exactly right. It's presented to us as a contract. We look to make sure that it has all the basic tenets that every other subgrant needs to have, and we look at whether it seems reasonable. So we use the same criteria that we do for other subgrants.

CHAIRMAN KECKLER: Right. But the essence of it, one of the important points, is that under this rule under various interpretations, if it's a subgrant, then the receiving attorneys would be under a variety
of restrictions.

MS. RATH: There's an exception for the restrictions when it's to a private attorney or a Judicare program, that they are subject to the restrictions just for that money that is being transferred to them so that they can do other work.

CHAIRMAN KECKLER: So that still would be the case even if we raised the threshold?

MS. RATH: Yes. Right. That's the intention.

MS. DAVIS: Right. And that exception is only for PAI subgrants. That doesn't apply to any others.

CHAIRMAN KECKLER: All right.

Julie?

MS. REISKIN: If you choose to raise the threshold, would it make sense to look at putting something in the rule, if it's based on inflation, that just says, this is how it happens, so that every time there's inflation you don't have to change the number?

I don't really have a feeling one way or another about that or about changing it. But I've seen that, and I've seen other rulemaking things go towards that to avoid having to go through a whole rulemaking
process for something like that. But there may be
reasons not to. I just wanted to bring it up as a
question.

MS. DAVIS: We can certainly think about that. I think we had not quite decided where essentially we
would go when we were looking at that. But indexing
it, or indexing it if it raises above a certain amount,
I think is something we could certainly consider.

CHAIRMAN KECKLER: All right. So do we have
any further things on the subgrant rule?

MS. DAVIS: There are a few other things. They're not nearly as major. We've made some revisions
to the section discussing subgrant approval to make the
subgrant approval process a bit simpler and combined
more with the basic field grant and special grant
application processes. Those didn't exist when this
rule was passed, and so we've just tried to modernize
things.

We have revised the timekeeping requirements.
So we've proposed moving the transfer rule into Part
1627 because they were basically the same thing, and it
seemed kind of odd to have these requirements in
different places. So rather than harmonizing them, we just brought them together.

We're proposing to have the timekeeping requirement be 1635, Compliant Timekeeping, because we don't see why subrecipients should not be maintaining a high standard of timekeeping. And we also thought that having three different levels of timekeeping for three different kinds of programs made no sense.

CHAIRMAN KECKLER: Yes. I think that's a good idea. Let me pause to endorse that. But there's another question I had, and maybe this is irrelevant, but maybe it comes up as well, is that if you're going to do that, shouldn't they record their time in, I don't know, electronically accessible form? I'm just concerned about updating that idea so that they record their time in a way that the grantees can use and that we can review relatively easily.

MS. DAVIS: So you're talking about putting a recordation requirement on in addition to --

CHAIRMAN KECKLER: It's a thought.

MS. DAVIS: They are required to provide us with the same access to their records that we have to
recipient records under the subgrant rule. So we can still see them even if they're not in the same form, but that is something we can consider doing.

Let's see. Right. We're moving the transfer rule. We've also proposed, just for ease of reference, there were some provisions -- this provision, Part 1627, used to be about subgrants and fees because we were focusing so much on the subgrant rule and trying to make it cohesive and coherent.

We decided to propose transferring the fees contributions and payments to tax-sheltered annuities out of Part 1627 and into Part 1630, which has to do with our cost standards. That's where we look at everything else regarding the use of our funds.

CHAIRMAN KECKLER: But there have been no substantive changes to these items?

MS. DAVIS: Not at this point. I think we would look at those when we are doing the 1630 and PAM rulemaking, if we're going to make any changes. But for ease at this point, we're just preparing to use, as I'm told by the Federal Register, the rarely used transfer option to transfer them out of Part 1627.
The one last thing that I wanted to touch on was that we had mentioned in one of our earlier presentations on the rulemaking agenda that we were considering adding exchanges of goods and services rather than simply funds as a way to conduct subgrant arrangements. We ultimately decided not to do that because we thought that subgrants truly should be paid for with cash because it's easier to track that way. But we imagine we will be looking at goods and services and transactions involving the exchange of goods and services when we do the 1630 and PAM rulemakings.

CHAIRMAN KECKLER: Are there questions from the Board or Committee? Julie?

MS. REISKIN: I may not be understanding something. But you talk about the orderly termination of subgrants on the bottom of page 35 of the Board book, and it says that the terminate if you're no longer an LSC recipient. And then there's some other reasons.

But I don't see anything about if the subgrantee is not performing properly. I assume that
there's a way -- am I just not understanding this? I assume that they can terminate?

MS. DAVIS: Right. So the language that you're talking about here is really about what happens when the grantee itself ceases to function as an LSC recipient --

MS. REISKIN: Oh, okay.

MS. DAVIS: -- rather than the subgrantee itself failing to perform correctly. We don't actually have a provision in regulation that tells the grantees what they have to do, but I certainly hope they would terminate a recipient.

MS. REISKIN: But they're not prohibited from --

MS. DAVIS: They are not, no.

CHAIRMAN KECKLER: As a little bit of a followup to that, one point that Jim mentioned, Stefanie, is this business of having the subgrants be one year long except for special grants; there's an exception in there.

So I wondered a little bit. I'm more interested in the exception than -- the one year makes
more intuitive sense to me, that we have that and keep some control over it, and they have some control over it.

So could you talk briefly, at least, about why we don't extend this one-year policy generally to subgrants, and that we have this exception built into the regulation, as proposed?

MS. DAVIS: Sure. So as we were discussing this rule, we had a really great committee that had team members from the Office of Compliance and Enforcement and the Office of Program Performance, including Glenn Rawdon, who basically runs the TIG program, and Mytrang Nguyen, who's program counsel for the Pro Bono Innovation Fund, as members.

And one of the things that they said is that in the special grant programs, because they tend to be fairly discrete programs where you have a particular project for a certain period of time, often subrecipients would want a guarantee of a somewhat longer award period than one year.

So in order to make it possible and still attractive for our recipients who did need those kinds
of awards and who did need to make those kinds of arrangements to get the partners that they wanted to carry out their special grants, we wanted to have that option available to them.

MR. FLAGG: I would also point out that in the general field program, the grants, while they're up to three years, are reviewed every year. So it makes sense in that context to review subgrants in the same time period.

Where you have these Pro Bono Innovation Fund grants and TIG grants, sometimes they run 18 months, and it would be sort of odd to give an 18-month grant but say we're going to look at the subgrant 12 months in. So that was another piece of the rationale.

CHAIRMAN KECKLER: Yes. I think I understand it. It's something to think about, anyway, to keep in mind just because it says in there, well, one of the rationales that's in the preamble talks about the idea in special grants that those are reviewed regularly. We have progress reports, in a way, but of course we do that in certain ways through the basic field.

But if you have a one-year rule, then there's
teeth to that. You can say, okay, as the grantee reviews the performance of the subgrantee they can say, well, we'll renew you or we won't renew you. And so I don't know.

You might actually be -- I can see your point, Stefanie, about how you're giving an option and giving strength to the grantee by allowing them to guarantee longer. At the same time, I think they might adapt to a one-year rule and it might give them a little -- it's giving them actually a little power, in a way.

MR. FREEDMAN: If I may, I think the key difference that's relevant to your point is that in the special grants programs, the money is only released as they reach their milestones. So if they fail to reach a particular milestone, the prime grantee will not get their next check, and hence the subgrantee as well will not get their check.

In the basic field program, they're issued their checks regularly. So in the basic field program, we are maintaining a more proactive approach to the subgrants of saying, they are only going to be for a year, and you can resubmit when you're resubmitting
your renewal or thereabouts, so that we make sure that
we're looking at everything.

Whereas in the special grants programs, if there's a problem, and it's a problem significant
enough that they're not able to meet their milestones, then they're likely to not get their next check. And our experience, if I can characterize it generally, has been that that's awfully motivating.

CHAIRMAN KECKLER: That's a good point.

Are there any other questions on this notice?

Yes, Father Pius?

FATHER PIUS: We wouldn't expect, given the new status, that many of the special grants would be subject to the subgrant rule any more. Certainly not the TIG grants any more. Or am I misreading this?

MR. FREEDMAN: They still are. The emphasis --

FATHER PIUS: I'm just trying to think of a scenario in which a TIG grant would follow under the new -- I thought that was part of the point, that they wouldn't fall necessarily under the same rule because they're not programmatic any more.
MR. FREEDMAN: Where there isn't a programmatic aspect to the subgrant -- so, for example, some of our TIGs involve, let's say, development of systems to provide legal information, including developing some of that legal information, developing the forms, identifying the client needs, kind of an overall project where the big picture of the TIG project has programmatic aspects.

And one of the things we have in a number of situations right now is where we give it to one of our grantees, existing grantees, and they're giving some of the money to another LSC grantee. And they are all doing some of the programmatic work, the conceptual and the real legal services-related work.

Now, there may also be a part of it that is hiring software developers, contractors, where it clearly will not be a subgrant. It'll be procurement.

One of the areas where this gets particularly fuzzy is in developing pro se forms and materials -- for example, the access to justice road map. On one end there is the real legal work. You've got to understand it. You've got to understand the
clients. You've got to understand the client needs.

And that's programmatic. On the other end, there's the
real software development work.

And in between, we often have software
developers who themselves are former legal aid
attorneys, or even current legal aid attorneys, because
they have the vocabulary to really be able to make it
work. And that's where some of our tougher calls come
in of when does it cross the line to trigger the
subgrant requirements?

And I think the same is true in, let's say,
the Pro Bono Innovation Fund -- actually, moreso.
There's more programmatic-type examples there. The
disaster grants. So depending on the nature of the
grant, there may be subgrants. There may be
procurement contracts. And there may even be hard
calls. This will make a lot of that easier and more
manageable.

CHAIRMAN KECKLER: I think some of the
examples that you have in there are helpful. But I
think that that's another thing that, as we move
towards the extent of the rule, that we could talk some
more about, is to use this as an opportunity to clarify that as much as possible.

Because I think from all of our experiences over time, we know that technology-aided delivery of legal services is just going to become the model. And so when we're talking about technological things where service is provided, whether it's provided through the web or with a robot assistant or whatever you want to call it, it's still going to be our -- that's our program.

But that's something that we can work out. But I think the examples were helpful, but they can be extended and we can keep working along those.

MS. DAVIS: Right. And as you say, that's an area where we can issue guidance if we need to. I think the structure that we've set up in the rule has given enough flexibility, or at least enough guideposts, to look at what we're talking about in terms of programmatic services to hopefully be able to make those calls when we need to.

CHAIRMAN KECKLER: Martha?

DEAN MINOW: I'm glad you said that because I
do agree with you, and I think change is coming faster than we can imagine. So keeping a channel to have updated examples I think is important.

I also wonder, in a similar spirit, is there a way to have a very simple description here of the process for grant, subgrant, not subgrant but -- which requirements apply, a chart or something that's just very clear? Because it's not the easiest, most user-friendly kind of activity.

Especially as we start to have new players in this space who are not lawyers who are providing technology or artificial intelligence or other kinds of -- I think it would be very helpful.

MS. DAVIS: I certainly think that's something that we can put out, either as part of the preamble, as part of the guidance to carrying out the rule. But I think that's a great suggestion.

CHAIRMAN KECKLER: Father Pius?

FATHER PIUS: Yes. I just wanted to thank the Office of Legal Counsel for just the work that they've put into this, although I will admit I'm still of the view that this is based on a misinterpretation of the
law from the OIG.

I don't think that this is necessary. I think that it would be much better, because of the issues that we've just been talking about, to have a more flexible approach which would not require a very long, complicated rule.

I understand some of the cleanup that goes along with this that's very good. I'm not going to oppose the rule, but I'm still not entirely convinced. I understand the work and I appreciate the work, but I simply disagree with the OIG's analysis. I don't think it has a basis in the law, and I am still not entirely convinced that this is the way we should be going.

CHAIRMAN KECKLER: Well, if there's anything further, I think the Committee can be prepared to act on this notice of proposed rulemaking. And we're open for comment on this, to put it out there. Hopefully we'll get some good comments on that. There has to be a motion to --

DEAN MINOW: Recommend it.

CHAIRMAN KECKLER: A motion to recommend the notice of proposed rulemaking to the Board for
DEAN MINOW: Right.

MOTION

MR. KORRELL: So move.

MS. MIKVA: Second.

CHAIRMAN KECKLER: All in favor?

(A chorus of ayes.)

CHAIRMAN KECKLER: Opposed?

(No response.)

CHAIRMAN KECKLER: The motion carries, and this notice of proposed rulemaking will be recommended to the Board at the Board meeting.

We can now move to our next item, which is a notice of proposed rulemaking accompanying a rulemaking options paper for 45 CFR Part 1628, which we talked about at the last Board meeting and brought up, which are recipient fund balances.

I'm going to turn that over to Mr. Flagg.

MR. FLAAGG: When you're going well, you should keep the same player going. So Stefanie is back up to the plate.

MS. DAVIS: I would just like to point out
that I did in fact run ten miles this morning. So thank you.

(Laughter.)

MS. DAVIS: Yes. So we have Part 1628, Recipient Fund Balances, which we are presenting a notice of proposed rulemaking and rulemaking options paper. This is largely the good work of one of our graduate law fellows, Peter Karalis, who could not be with us today. He's Greek Orthodox and today is Orthodox Easter, so he is celebrating with his family. So I'm standing in for him.

So the brief history behind this rule: The current rule, as it's drafted, restricts LSC's authority to grant waivers of fund balances exceeding 25 percent of a recipient's annual LSC support to three very specific circumstances.

And over time, recipients have had very compelling reasons that are not among those three circumstances that have caused them to have LSC fund balances exceeding 25 percent. They have been things like large attorney's fees awards, or the infusion of a use-or-lose disaster relief grant from another non-LSC
source.

CHAIRMAN KECKLER: Stefanie, I'm sorry to interrupt you.

MS. DAVIS: Yes?

CHAIRMAN KECKLER: So do we have a sense that there's somebody, a recipient or grantee, who may be under this burden this year? Yes?

MR. FLAGG: It's happened. It's come up at least twice this year. And in one instance, which was particularly compelling to us, there was an attorney's fee award received by the program as a party, I believe. Right? I mean, as attorney's fees.

And they received the award late in the year, and because of this regulation, as it exists, we're faced with the alternative of trying to spend down their carryover to get under 25 percent and to do it quickly, which is never a great idea, or face the prospect of losing the money through no fault of their own.

And so that was just one example of a situation where the regulation encouraged the possibility of imprudent spending. So I think when
these circumstances have come up in the past, and they've come up a couple times in the last year, the Board members we've talked to have all been of the view that this is a situation that should be addressed; that there obviously could be circumstances that are not encompassed within the three examples that are currently, really through historical accident, in the reg; and that it makes much more sense to use those three types of circumstances as examples and not the finite universe of events that would trigger relief.

CHAIRMAN KECKLER: And also, we talk in the rule, in the preamble and the paper, about these being extraordinary. Right? That's a semi-statistical sort of claim. I'm curious how often we know that this might occur.

You're speculating because people did this spend-down or whatever, but a sense of how often we think in the future these situations might happen if you loosen the rule.

MS. DAVIS: The Office of Compliance and Enforcement was kind enough to provide us with the information on waiver requests that they've received
for the years 2009 to 2014. And based on all waivers -- so waivers including those over 10 percent because that's the point at which you have to start requesting a waiver -- during that time, they received 93 requests for waivers.

Four of those were waiver requests for fund balances above 25 percent. So one of those was the situation that Ron was describing. Another one was the Hurricane Sandy disaster relief use-or-lose award. One was where two grantees merged and ended up having a combined fund balance of more than 25 percent. And I don't know the details on the fourth one.

But they truly are things that don't happen regularly. They're not expected. They're not anticipated. And we are not proposing to change the standard at all. We are leaving it at "extraordinary and compelling," and think that that is what we will continue to measure any requests for waivers above 25 percent of the fund balance against. So I don't think it would increase much, if at all.

CHAIRMAN KECKLER: So about one per year, maybe? There's four over the five --
MS. DAVIS: Right. Right.
CHAIRMAN KECKLER: So about one. Maybe a little less.
MS. DAVIS: Right.
CHAIRMAN KECKLER: So continue. We're behind schedule, so we're condensing.
MS. DAVIS: Sure. so there are two basic points that we wanted to raise here. One is, of course, that we propose eliminating the limitation to those three circumstances, having them stand as examples rather than the three circumstances.
And we have also put into the regulation the language that's currently in the preamble regarding requesting advance or expected approval of a request to maintain a fund balance above 25 percent earlier in the year than the requests are currently made.
Right now, fund balance waiver requests are submitted after the recipient submits its audited financial statement, so well after the end of their fiscal year. So we proposed allowing recipients who expect that they're going to be in this situation where they have above 25 percent of a fund balance to seek
approval ahead of time, and then just to confirm how much they are in fact carrying over once they actually get their audited financial statements.

We had discussed at the last Board meeting giving the Board notice before any of these waivers were awarded. We opted not to include that proposal. Julie is shaking her head, so that was a good call. So we opted not to do that, so you will not see that in the rule. And those are the big points on Part 1628.

CHAIRMAN KECKLER: Are there questions from the Committee or the Board regarding this notice we're going to put out for comment?

I have one question, and I raised it last time. It seems to be -- I may be a little persnickety about it, and the statistics that you brought up are helpful -- but I still have this concern that either in the rule or somewhere, that we shouldn't have something where it recurs.

To me, the idea of an extraordinary or compelling standard is something that is good for this year, but you can't say, well, we got a bunch of disaster money at the end of 2013. Here it is. That's
a good explanation for 2013, but it's not a good explanation for 2015, that you haven't been able to effectively spend down the influx of funds that's more than 12 months old.

So I think there's also an argument about that at the 10 percent level, too. But I don't know how often that problem might happen, and maybe I'm just anticipating a problem that's unlikely.

MS. DAVIS: Right. And in response to that, I would say that there is a provision in existing that says that a recipient, as part of their waiver request, must provide a plan for how they're going to spend the excess during the course of that year. So it is anticipated, in fact, that the recipient will not be carrying funds over.

CHAIRMAN KECKLER: I guess you'll tell them that and then they'll know that. It might be wise to say somewhere that it's not going to work two years in a row.

MR. FLAGG: Look. We don't want to get ourselves in the same bind we're already in today. If somebody got an extraordinary award of millions of
dollars, we don't want to say, under no circumstances could you possibly carry any of that over for two years.

And so we take your point. It's covered in the reg. Probably never, but we are best not to say never because then we could end up in the same soup we are today.

So I think they can come to us pursuant to this provision and say, we've got these millions and millions of dollars of unexpected funding, and here's how we propose to spend it down over the next year or two years. And if they do that, we're in a position to say, no, you need to spend it down faster than that.

But I think to put a blanket prohibition, that's basically saying to Management, we don't trust you guys -- and I know that's not your intent -- we don't trust you to hold these folks to responsible limitations. But clearly, the intent is absent numbers that would make it impossible that it gets spent down in the next year.

CHAIRMAN KECKLER: No. That's not my intention at all. My intention, as always in
regulation, is fair warning. Fair warning -- even if you got something extraordinary, it's generally designed to be corrected. But I take your point. It's something for thought and comment as we move forward.

Harry?

MR. KORRELL: If there is a significant carryover, or I suppose in the unlikely event of a multi-year carryover, is that something that's considered in the grant consideration? If somebody's gotten millions of dollars from a fee award, do we consider that as part of --

MR. FLAGG: No. I believe the grants are based on a formula. And if the formula says, you have X number of people in poverty, you get so much in your grant. So the way to deal with the carryover is not by limiting the grant but by restricting -- to deal with the carryover as such.

CHAIRMAN KECKLER: Are there any other questions regarding this notice?

[No response.]

CHAIRMAN KECKLER: If not, I think we can entertain a motion to recommend this notice. Is there
such a motion?

MOTION

MS. MIKVA: So move.

MR. KORRELL: Second.

CHAIRMAN KECKLER: All in favor?

(A chorus of ayes.)

CHAIRMAN KECKLER: Opposed?

(No response.)

CHAIRMAN KECKLER: The motion is approved, and this notice of proposed rulemaking will be recommended to the Board at the next Board meeting.

We can now turn to the next item of substantive business, which is to act on a Final Rule for 45 CFR Part 1640, which is the application of federal law to LSC recipients. And I will turn it again back to Mr. Flagg.

MR. FLAGG: Thank you. Again, another team effort, this time speaking for our team Sarah Anderson, who I'd like to introduce to the Committee and the Board. Sarah is one of our graduate fellows. She's been with us almost a year and has done substantial work in the 1640 notice of proposed rulemaking and now
the Final Rule.

MS. ANDERSON: Good afternoon. The NPRM for this rule was published on February 3rd, and it went out for a 30-day comment period. At the close of comments, we got two comments, one from NLADA, and Colorado Legal Services. They were generally very supportive of our proposed changes.

The two specific comments were, first, both were concerned about a stakeholder's ability to comment on any proposed modifications before the list was changed because we were moving the list from the reg, where it sits now, to a website.

The regulation does not require us to post notice and comment, an opportunity to comment, before we submit these modifications to the Board for approval. But we remain committed to providing recipients with notice of any proposed modifications before a Board meeting, and they will be given an opportunity to comment before those modifications are presented to the Board for a vote.

The second comment was specifically from NLADA, and they were concerned that the proposed
regulation did not clearly state that the list of laws would be an exhaustive list, although it was stated in the NPRM. So we do intend to make this an exhaustive list.

So what we are doing is changing the wording within the proposed rule. So 1620.2(a) (sic) will say, "LSC will maintain an exhaustive list of applicable laws relating to the proper use of federal funds on its website."

CHAIRMAN KECKLER: Pardon me. Where is that in our Board book?

FATHER PIUS: Page 77.

MS. ANDERSON: Comment 2 is on page 77.

CHAIRMAN KECKLER: Is that 1620.2 or 1640.2?

MS. ANDERSON: Oh, that's a typo in there. I'm sorry. 1640.2.

CHAIRMAN KECKLER: Yes.

MR. FLAGG: And we'll amend that.

CHAIRMAN KECKLER: Right. Thank you. Very good. And on page 78, we see that change has been made to the Final Rule, to have an exhaustive list.

Julie?
MS. REISKIN: I'm not totally sure I understand the response to the first comment about the giving notice to comment. The list is a list of every federal law that affects LSC. Right?

MR. FLAGG: No. The list is a list of federal laws that basically are related to fraud and that sort of thing that is directly applicable to our grantees. And we have an exhaustive list. It's going to be published on our website. And every time it's changed or every time we propose to change it, we will provide a notice to our grantees.

As a practical matter, the change would have to be approved by the Board, not with a rulemaking like this, but we would at the Ops and Regs Committee say, there's been a new federal law that has been passed that prohibits fraud in the use of federal funds. This is exactly the kind of law we believe that Congress intended to be applicable to our grantees, and we propose that it be added to our relatively short list of statutes falling in that category.

We're subject to the Sunshine Act, so any time
we make a proposal like that, the public will be aware of it. The public will get notice of it. And they can, in the context of a meeting like this, say, gee. We don't think that's a good idea.

My belief is 99 times out of 100, nobody will say anything about those sorts of circumstances. In the hundredth case, where there's a federal law that is perhaps not as clearly related to fraud, somebody could raise that with the Committee and the Committee could say, okay. You've raised a point. We're willing to create a formal comment period.

But the point is not to have this sort of elaborate notice and comment proceeding for the other 99 cases in which there's really no controversy about it.

MS. REISKIN: But it sounds like there will be a notice. And really, the debate would be at the Congress level. Right? If Congress passes a rule, the question or the argument might be, does this apply or not? Right?

MR. FLAGG: Well, typically the federal laws are with respect to use of federal money. They're not
going to have LSC in mind or LSC grantees.

MS. REISKIN: Right.

MR. FLAGG: And the only question is whether or not we should include that law that Congress has passed on this relatively short list. And if the law is -- what's the magic language?

MS. DAVIS: Related to the proper use of federal funds?

MR. FLAGG: No, no. And federal laws which address issues of waste, fraud, and abuse of federal funds, again I think in 99 cases out of 100, a law is going to clearly fall in that category or not.

If it's a close case and we say, let's include it on the list, somebody can come to this Committee meeting and say, we don't agree with that, and you would have the option of hearing that comment at the time it's raised or taking a step back and say, okay. Let's put this out for public comment.

But what you won't have to do is, in the other 99 cases where there's no controversy about that, go through an elaborate notice of proposed rulemaking to deal with it.
MS. REISKIN: It sounds like the concern is addressed.

MR. FLAGG: We believe it is addressed. To the extent the concern is, we won't get notice, we won't have an opportunity to comment, we've addressed that concern. There will be notice and there will be an opportunity to comment.

CHAIRMAN KECKLER: And so, Ron, and again, I don't want this to be taken the wrong way, but what if you want to remove a law from the list? How will that process occur?

MS. DAVIS: It's the same process. I would imagine it would be the same process. We don't envision revising the list unless Congress takes action to either pass a statute regarding fraud, waste, and abuse that applies to us, or repeal a statute, or amend an existing statute in such a way that it no longer would apply to the use of our funds.

And the rule states that if we propose to make any change to the list, we would provide notice to you and present it to you before that change gets made.

MR. KORRELL: The rule says "modified," not
"added."

CHAIRMAN KECKLER: All right.

DEAN MINOW: Yes. It's covered.

CHAIRMAN KECKLER: Martha?

DEAN MINOW: I take it that there are two possible reasons for the comment. One is concern about whether people know that there has been an addition or a subtraction of a law that's relevant. The second is whether people want to object.

Since it's Congress making the decision, I guess it's only in these instances where there's some ambiguity because the language isn't clearly using these magic words -- I guess I would think that the notice issue is more important than the opportunity to comment, for that reason.

MR. FLAGG: And what is contemplated is -- let's say it's a routine case, which I think most of these cases will be. There's a new law in Congress that has to do with waste, fraud, and abuse in the use of federal funds. And we tell the Committee, there's a new law in Congress that has been enacted and signed by the President. It should be added to the list.
We will provide public notice. And in addition, we would tell all of our grantees. We would send them a notice, as we do any time we send out a public notice, say, take a look at our website at this link, that this law has been added.

CHAIRMAN KECKLER: Ron, another element of this that I had a question about -- and it actually relates to the document that we're going to be looking at, or briefly, about summarizing enforcement mechanisms that we'll look at later -- so there's a provision in this rule, violation of the agreement, that is, that LSC determines that there's been a violation of federal law applicable to waste, fraud, and abuse.

How is that related to the enforcement mechanisms? Does that qualify as a substantial violation? How do we categorize this rule in relationship to that other document, the process of finding a violation can lead to termination and so on?

MS. DAVIS: I'll also ask for Mark's input on how and whether it relates to the enforcement mechanisms. But because this is so specific about what
laws are being violated, and the sanction is essentially termination of the grant when we find that a recipient has violated one of these laws -- it's what Congress tells us happens if one of these laws is violated, that the grant award becomes null and void -- so I'm not sure that there is much overlap when Congress is telling us that the grant is terminated. But I'd also appreciate Mark's input on this.

MR. FREEDMAN: Thank you. Stefanie's correct that where there's a violation that is determined to be a violation by the grantee, in the sense of it's not just some employee did something, but the grantee is culpable in it, then the way we read the congressional statute, which says that the funding will be terminated, we will terminate the funding. There will be summary proceedings for termination. So in that case, the other enforcement mechanisms are moot.

What is more likely to happen is --

MS. MIKVA: So that would not be the normal termination?

MR. FREEDMAN: Precisely.

MS. MIKVA: It would be a special summary?
MR. FREEDMAN: Precisely. Do not pass Go. Do not get your hearing before a hearing examiner. And that has never happened, and hopefully never will.

What does happen is there's an individual, a chief financial officer -- we all can think of examples over the last few years -- where they have violated one of these laws and a whole bunch of other laws. That issue is something that might be relevant in another enforcement proceeding.

For example, if we felt that the management and board of a grantee was so lax as to allow their CFO over a long period of time to yada yada yada, that might be a reason that we would consider a limited reduction of funding.

Or if we see that this has happened and there's another person being prosecuted, we might think about a suspension of funds, or 20 percent of the funds, until they give us sufficient assurances that they are stopping whatever is going on. So I think that's where this would play into the other enforcement mechanisms.

CHAIRMAN KECKLER: I'm not going to get into
it. I think of one sense where this might have been applied, at which the entire organization might have been conceived of as in violation of this. So hopefully, knock on wood, it won't happen.

But I think not so much the rule itself, but if you're thinking about this enforcement mechanisms memo as comprehensive, I wondered whether in some future iteration of it or in this one you might want to include this.

Because I view this as an enforcement mechanism. It's an enforcement mechanism given to us by Congress for these laws and for our stewardship of federal funds, and it's a powerful one that's held over. So that's a thought.

Are there other comments or questions from the Committee or the Board on this rule?

(No response.)

CHAIRMAN KECKLER: In that case, I will open it up for public comment on this rule, which is scheduled as part of the agenda. If there's any public comment before we consider a recommendation on this Final Rule.
Please state your name and introduce yourself for the record.

MS. MURPHY: Yes. Thank you. I'm Robin Murphy from National Legal Aid and Defender Association, chief counsel for civil programs. Good afternoon. Thank you for the opportunity to comment on this regulation.

We greatly appreciate LSC adopting one of our suggestions, which was to make the list exhaustive, and also appreciate the serious consideration that LSC gives to our comments and the comments of the other recipients.

I would note, and LSC did indicate in their comments, that they are committed to providing -- and I'm talking about the notice and prior opportunity to comment provision being left out of this particular list. While it may seem picky, it could possibly be important.

As the Board has noted, the sanctions are extremely serious, summary revocation, possible summary revocation of funding. And also, it is part of the grant conditions, and grantees, in order to get their
grant, have to agree to abide by this list. So they really don't have a choice in the matter if they want to obtain their grant.

We appreciate and we're confident that the current LSC administration, even in a preamble commitment, would definitely honor this commitment. This Board and LSC, at the helm of Jim Sandman as president, has demonstrated repeatedly their willingness to engage in an open process, to be fair in terms of regulatory modifications, particularly, I would note, when we did the PAI modifications.

However, this Board and this administration will not necessarily always be here, and this regulatory revision will be, and that is our concern. We are not in the least concerned with the commitment that LSC programs will get notice.

But in the future, there may be administrations and there may be boards that would not necessarily either be concerned with this, remember this, or want to provide this notice. And I think the Sunshine Act is a little -- it might be something chief counsel, as long as there's a position there at NLADA,
would be cognizant of. But I'm not sure a busy LSC program is going to be particularly able to keep up on the Sunshine Act laws.

So for that reason, we request that the notice and 30-day comment period be put back in the rule if there's a modification before change would be given to the Board. We would of course prefer that it be in the Federal Register.

However, this could be considered as a different way, where there's simply notice; just as the list is being put on LSC's website, that the notice will go out to the recipients. We're not necessarily asking for public comment because this is really something that would be of concern to the recipients primarily or to interested persons like NLADA. But instead of doing public, you could do a notice to the recipients.

And I know that there's regular communication of rules and whatnot with the recipients. So I don't think it would be that onerous to put a requirement in the regulation that would be followed for an alternative notice if you don't see fit to do the
Federal Register procedure.

So that's our only concern. Otherwise, we think it's a very positive development, are not concerned with, as I said, this administration.

And just in the other regulatory developments, we do look forward to commenting, and see the vast majority of those regulatory revisions that will probably be coming out, since voted by this Committee, as positive also. So thank you very much.

MS. MIKVA: I just have a question. The 30-day notice, is there something comparable? Has this be done before, or this would be unique to this provision? The 30-day, I'm just wondering if it's been done in other contexts, something similar to that.

MS. MURPHY: Well, the 30 days is generally what's followed by the APA, and that's generally what has been done by the Board and by LSC for some time. So that's why I suggest 30 days. It is also a time -- it gives people a chance to know what's going on, confer with each other, and make a comment.

MS. MIKVA: Right. I'm just wondering whether this lesser step you're suggesting has been done in any
other context.

MS. MURPHY: Not that I'm aware of.

MS. DAVIS: No. I'm not aware that it's been done, either. That's not to say that it couldn't be done appropriately, but I'm not aware that we have used it.

CHAIRMAN KECKLER: Currently the notice provision is in 1640.2(a). And it says, "The list may be modified with the approval of the Corporation's Board of Directors." Now, it's implicit in there that that will be at a public meeting, but we could --

MR. FLAGG: No. That rule doesn't say that, but the Sunshine Act does not permit this Committee or the Board to act absent a public meeting. The Sunshine Act also requires that we give I believe it's a week's notice of any public meeting with an agenda.

So there clearly would always be an opportunity for the public to know about it in advance and to appear before the Committee in that rare circumstance where there's a law dealing with fraud, waste, or abuse that somebody has a quibble as to whether it really does have to do with fraud, waste,
and abuse.

The other thing I would say is the regulation explicitly requires that after the fact, LSC will provide recipients with notice when the list is modified. If somebody thought, that doesn't make any sense; the new statute that they've added has nothing to do with fraud, waste, and abuse, they could petition LSC to change the rule back or change the list back.

So there will be, both before the action and after the action, opportunities for people to comment. CHAIRMAN KECKLER: Right. How burdensome, from a management standpoint, would it be to say -- it says, "LSC will provide recipients with notice when the list is modified." Is there a way to rephrase that, saying prior to the list being modified, or would that be burdensome from a Management standpoint?

MR. FLAGG: No. I think we'd be willing to modify it to say, "LSC will provide recipients with 14 days' notice prior to the list being modified by the Board," something along those lines.

MR. KORRELL: Mr. Chairman?

CHAIRMAN KECKLER: Yes.
MR. KORRELL: I'm going to counsel against doing that. I just think having different deadlines is a bad idea. Some are 30 days, some are a week, some 14 days. As counsel has pointed out, we have the Sunshine Act. The Sunshine Act requires advance notice.

The merit of this rule, in my view, is that it's now flexible. And if it's rare that it's going to happen, that there's going to be a law that gets passed that adds to the list, it's going to be exceedingly rare that there's a question about it. And if we do get it wrong, it's easy to fix it.

Because it's not in the Federal Register, because it does not require advance notice of the comment, if we somehow screw it up, it's just easy to fix. And I think it's exceedingly unlikely that we're going to add something to a list and that the field isn't going to know about it before. And if somehow that happens, it's impossible they're not going to know it afterwards.

I would counsel against adding another deadline that we are likely to -- it increases the likelihood that somebody makes a mistake and we have a
problem on our hands. So I would counsel against making that change.

CHAIRMAN KECKLER: Thank you, Harry.

Martha?

DEAN MINOW: I think that's sensible advice. I do think that there's just a background question about it. Is this organization playing "gotcha" with grantees? And I don't think we are, and I think we just want to make it clear: This is not some way to do an end run around the usual length of time for procedures.

And also, should Congress enact a law that is in this unclear area of whether or not it applies, I assume it'll get some attention. If it doesn't get some attention, there's a way to correct its application.

So I do wonder if there's a context in which, either in our own records or other way, we could say, this is not intended to be a way to play "gotcha" with grantees.

MR. FLAGG: I think the answer to that is it's never been invoked, ever.
(Laughter.)

DEAN MINOW: I understand that. I understand that. So it shouldn't be a problem to say that. It shouldn't be a problem to say, this is not a way -- because I take Laurie's concern to be something in that direction.

CHAIRMAN KECKLER: Julie?

MS. REISKIN: Could we just say "prior" without days, without 30 days or 14 days or whatever? Could we just say "prior"?

MR. FLAGG: No.

MS. REISKIN: No? All right.

MS. MURPHY: If I could just make one point.

CHAIRMAN KECKLER: Go ahead and add.

MS. MURPHY: I would just point out that if the Board votes, the opportunity to correct this is going to be probably not until the next Board meeting, which would be approximately four months, if that's the schedule that they're meeting on; as opposed to giving prior notice, where if there's a problem, it can be discussed really expeditiously.

And I know the chance of their being
disagreement. I've looked at what has been listed here. No, we don't have a problem with that. But yes, it can be corrected with a lot more trouble, I think, and a lot more burden than having notice go out to people in advance and have an opportunity for them to take a quick look. We don't have a problem. We're not commenting.

MR. FLAGG: Again, just to be clear here, there will be public notice. There will be public notice that the Board of Directors and this Committee will be meeting, and on its agenda is a proposal to add a particular law to this list.

It will be published in the Federal Register, that notice that I just described. It will be published in advance of the meeting. And at that point, if people aren't reading the Federal Register, there's not much we can do.

But that does give the public and recipients the opportunity prior to action being taken, as has happened in the last year on more than one occasion, when the NLADA has come to a meeting like this and said, you know, I know this is late in the day, but
there's been a proposal here, and you may not have thought of XYZ.

And every time that's happened, the Board has said, we hear you, and has modified time schedules to take that into account. So the question, really, to my mind, to Harry's point, is: Is it better to handle the one rare instance like that in the way I just described, or to require, every time a new law is added to this list, to go through an elaborate public notice with written comments?

And it just strikes me that what is in this proposal both gives public notice, gives an opportunity to be heard, and does it without overburdening the system.

CHAIRMAN KECKLER: Go ahead.

MS. MURPHY: I just want to emphasize, our concern is not with this Board or this administration. Our concern is, because of the commitments that have been demonstrated to the carry-through.

So we're not concerned, and we would have no concerns at this point. We are concerned with what happens in the future and who's to come in the future
and whether they would be willing to honor the same commitments that this Board and this Management have done. Thank you.

CHAIRMAN KECKLER: No. I understand, and thank you for your comments.

MR. LEVI: But even a succeeding Board has to abide by the notice and comment regulations.

CHAIRMAN KECKLER: Right. The question really is if there's anything that be said that's helpful, there will be some provision in there. Some things in there are implicit that it'll be on the agenda.

In theory, we can think of ways that it just could come up and not be on the agenda. We would never do that, but that's --

MR. FLAGG: You could add, in 1640.2, "The list may be modified with the approval of the Corporation's Board of Directors at a public meeting," because the public meeting triggers all of the protections of the Sunshine Act, including public notice and right to appear at the meeting and bring public comment to the Board at that meeting.

CHAIRMAN KECKLER: I think that might be wise.
MR. LEVI: I think so.

CHAIRMAN KECKLER: Just in the sense of having that assurance. In theory, we can do things like have notational votes. We'd very rarely use it, and certainly not for anything like this. But in this case, that would allow somebody to be there, and they would know, and they would see it, and they could make comments on it.

FATHER PIUS: We should formally agree to that.

CHAIRMAN KECKLER: Yes. I agree with you, Father Pius. Right. We're just discussing it.

MR. LEVI: Is that made as a proposal? I think it is.

CHAIRMAN KECKLER: Yes. I think it is made as a proposal. Is there further discussion on it? Harry?

MR. KORRELL: At the appropriate time, I'm just happy to make the motion with that modification.

MR. LEVI: I think this is an appropriate time.

CHAIRMAN KECKLER: I think it is an appropriate time.
MOTION

MR. KORRELL: I make the motion, with the addition of "at a public meeting," as just indicated.

MR. LEVI: I'll second. Am I allowed to?

CHAIRMAN KECKLER: Absolutely. All in favor?

(A chorus of ayes.)

CHAIRMAN KECKLER: Opposed?

(No response.)

CHAIRMAN KECKLER: The motion is approved.

FATHER PIUS: And this will be recommended to the Board?

CHAIRMAN KECKLER: And this will be recommended to the Board for publication as a Final Rule of the Corporation. Thank you for everyone, and for public comments.

So we now move to a report on program letters governing governing bodies.

MR. FLAGG: This is really more of a notice to the Board, and particularly since one of our Board members, Julie, gave us the impetus to address these issues.

Julie raised a number of issues related to the
governing bodies of our funding recipients, and that led to additional consultations and two program letters, which were issued recently to deal with two different topics -- one, the fiduciary duties that recipient board members have, and two, who qualifies as eligible client members under our regulations.

And we thank Julie for raising those issues. And again, Sarah worked on these, principally, along with Stefanie. And if anybody has questions, I'm happy to answer them.

CHAIRMAN KECKLER: Julie? Thanks for making this suggestion. And please ask your question.

MS. REISKIN: I don't have a question. I just want to say thank you very much for addressing it, and I think this will be very well-received by the client community. Jim and I will be able to report about this at NLADA when we do our annual meeting with the client community, and I think that's awesome. Thank you.

CHAIRMAN KECKLER: Thank you. And I particularly appreciated this. And I don't know if other Board members have thoughts on the attachment to Program Letter 15-2, which is Sample Guidance.
I thought this is very interesting, to have a one-page sheet there. And I wonder how that will work from the recipients' standpoint, whether they'll use that, whether that'll be useful to them. I hope it will be.

But I thought that was very nice, to summarize all of that, whole courses in law school and so forth, on one page made relatively simple and straightforward for somebody who's volunteering to serve on one of our recipient's boards. I thought that was very nice.

MS. DAVIS: We are actually very dedicated here in the Office of Legal Affairs to simplifying and making our stuff as easy to understand as possible.

CHAIRMAN KECKLER: If there are no further questions or comments on that item, we can move to a report on enforcement mechanisms.

MR. LEVI: I just want to say I think the letter on fiduciary duties of members -- I can't tell you how many times this comes up on not-for-profit boards. It's not an LSC issue.

CHAIRMAN KECKLER: Right. I think that maybe other people outside LSC might find it useful in the
nonprofit world.

MR. LEVI: They should be tuning in. They would benefit.

CHAIRMAN KECKLER: Yes. I've never seen something that's a one-page guide for a nonprofit board member.

MR. LEVI: It's great.

CHAIRMAN KECKLER: Yes.

MR. LEVI: It should go viral.

(Laughter.)

MR. FLAGG: Well, again thank you to Sarah Anderson, who was largely the author of that list.

MR. KORRELL: You've got to figure out how to sell it now.

CHAIRMAN KECKLER: So now we move to item 7, our annual report on enforcement mechanisms. Mark Freedman.

MR. FREEDMAN: Mark Freedman, Senior Assistant General Counsel from the Office of Legal Affairs.

As you'll recall, we annually provide a report on the use of enforcement mechanisms, as per Resolution 2013-4 that Father Pius introduced.
FATHER PIUS: You're welcome.

(Laughter.)

MR. FREEDMAN: In short, we haven't used any.

CHAIRMAN KECKLER: That's a lot of pages for having used any.

MR. FREEDMAN: Nonetheless, notwithstanding what Stefanie's noted about us trying to make things simple and concise, we've taken I don't know how many number of words in these regulations and put them into I don't know how many numbers of words as guidance.

To get to the main point, the resolution asks, what have you done? What would you improve? Et cetera. And we haven't done anything, but we still think that these are very useful, and that we are very glad that we have them.

And as a matter of fact, it has come up in meetings, the question of, well, is this a scenario in which we want to think about a limited reduction of funding? And while we have not initiated any such thing, it is still relevant. It is still useful. It is still, I think, very useful and good that we've added this.
So as to this extensive document to explain them, one of the things that the Board noted and we noted through the process is that we have these enforcement mechanisms spread out through the regs. They have similar but not identical procedures. I think we've harmonized the definitions so that they now at least have the same definitions. And the Federal Register is probably not formatted in the most user-friendly fashion.

Hence we sat down and we said, let's create a document that's a little more user-friendly that's a good nutshell guide so that our own staff -- quite frankly, in the course of developing this, I have used this guidance. Someone has said, well, what can we do here? And I've pulled out my draft of this and said, oh, well, here's what we do.

The idea is that our staff, our grantees, NLADA, anyone, can pull this out and get a sense of, all right. What are these? How do they work? If I'm looking at option A, how is that going to work? What can I expect? And then, if I'm really curious, because I'm thinking that I'm about to get one of these
notices, where do I go in the reg to find out what the
reg actually says?

We've largely paraphrased the regs in here,
mostly for clarity. In many cases we've taken the
exact language of the regs and we've broken it down
into bullets and used outline formatting and visual
spacing so that they're easy to understand.

But we've included the links to the reg
language itself so that then it's easy to go from this
document to what's the core language, since I know if
we ever use one of these, our grantees are very
thorough lawyers, and they will go through every word
and every comma with as much detail as Jim went through
every word and every comma as we were revising the
rules.

So that finishes my presentation. But I'm
happy to take any questions on this. And I also should
note that, as I think I've mentioned, we had OPP, OLA,
OCE, and the IG all involved in developing this to make
sure that we had a good sense of the perspectives.

We did not include 1640; 1640, we don't have
real developed procedures there. I think that there's
certainly no harm in adding it. Quite frankly, it wasn't something that was under active consideration. But I have a note to think about that.

CHAIRMAN KECKLER: Thank you, Mark. And thanks for your work on this document. I mentioned earlier that one of the ideas of regulation is fair warning. And I think this is part of that as well as it will be useful.

MR. LEVI: We could get a little artwork and blow it up and make it into a nice big poster. I'm just kidding, but --

DEAN MINOW: And an app.

(Laughter.)

CHAIRMAN KECKLER: An app. Are there other comments from the Committee or the Board or questions regarding this guidance? So this will be a guidance document published, ultimately, on the website?

MR. FREEDMAN: It is. We have distributed it. We've emailed a link to it to all the grantees with an announcement from Jim Sandman that we have it; the basic reasons for it, so that they don't get worried that, oh, they're sending us this guide because the
next letter --

(Laughter.)

MR. FREEDMAN: It is on our website. Actually, it will be in a few different locations or linked to in a few different locations. It's available currently on the program letters page, so if one goes to the program letters page, there's the explanatory program letter and the guide.

As we are revamping our website to make it a much more user-friendly experience, it will also be one of the documents that's available when one goes to see, what's all the guidance about what do I do and how do I do it and what do I do if I mess it up? I expect it would prominently be linked to there as well.

CHAIRMAN KECKLER: Yes. And one of the questions I had, or thoughts, as you're redesigning the website, and I thought about this from the application of federal law issue, is there's going to be this exhaustive, authoritative list. And we did this a little bit with some of the other rules about services to aliens and so on.

Are we going to have easy ways and permanent
links where people can look to our guidance? Because we have the regulations, but we're using guidance now a little bit more. And I think that's fine. But if we're going to do that, then it's easy to find our regs that are in the CFR. It's not always as easy, I think, to find guidance as it's assembled.

MR. FREEDMAN: We have our best people working on it.

(Laughter.)

MR. FREEDMAN: And your point is one that has come up many times in our meetings about how we're designing the website. Our goal is to make the website as the portal -- as the information portal that it primarily is, for example, for our grantees -- user-friendly and easy to navigate.

In addition to that, we're through this process trying to come up with more guidance -- for example, the frequently asked questions that we posted already involving the revisions to the PAI rule, which has already generated more questions. And there's going to be more of that.

We're really trying to make that a much better
process. Interestingly, you mentioned that on our website, it's very easy to find the regs, but the guidance documents are kind of buried in our grants.lsc.gov. And one of the things we're doing is planning to incorporate all that so there aren't multiple websites.

Interestingly, when we're researching what an agency does, I frequently find the opposite. I will find agency guidance that's describing, we do this. We do that. Here's what applies. Here's what doesn't. And then I want to go see, well, what's the reg and what's the exact language? And it's not there. I end up spending -- well, or I ask one of our law fellows to spend -- a fair amount of time figuring out this language that's in this guidance document, what reg is it? What's the actual regulatory or statutory language?

So we have a little bit of the inverse of that, in part because we don't have a lot of guidance. But I think we are moving towards a world in which we will not only have more guidance, but we'll also have that well-integrated in with our regs, as per the
enforcement mechanisms.

If I had a little more thoroughness on it, we would have hyperlinked for every single regulatory site and back-hyperlinked from the regs. But we're not quite there.

CHAIRMAN KECKLER: Yes. I think over time the issue, particularly with something like the application of federal law where the regulation itself is referencing guidance -- but I think, as a general matter, where we're doing that, we're relying partly on incorporating guidance by reference and things like that.

Having a hyperlink back between wherever people find our regulation -- and they find that regulation and it says, there's an exhaustive list -- well, there should be a link to that list. Right? When your best people are done, part of their job should be something along those lines and have that cross-linked.

Laurie?

MS. MIKVA: I just had a question. Limited grant conditions are not considered an enforcement
mechanism, I take it?

MR. FREEDMAN: Special grant conditions are -- one of the things, for example, that we mention, 1618, which is the front door for the enforcement regs, mentions special grant conditions as one of the things that we do.

And the special grant conditions don't have a particular process. We think of them more as an extension of compliance visits, programmatic concerns, because in the special grant conditions we're not taking out money.

And I suppose that it would be more precise to say that this guide is, when we're going to stop giving you or take away money, here's what to expect. And we don't have more explicit procedures there. Special grant conditions are much more discretionary, so rather than appeals or anything, grantees could say, well, can we talk about this? And we may have back and forth.

CHAIRMAN KECKLER: Are there further questions or comments about the enforcement mechanism? Gloria?

PROFESSOR VALENCIA-WEBER: I want to compliment the legal staff for putting, first, the
descriptive document, but especially the table on 102, and I hope that's on the website, because not only is it important for those of us that read law, but we have the whole question of our grantees' board of directors.

And this chart, which first connects the critical kinds of violations, but also goes to the procedure, I think could be understood and then be part of meaningful discussion of a board that has more than lawyers on it.

And I think that's one of the problems when we talk to grantees and how their boards are trained and educated. Sometimes the materials are too much in legalese for the non-lawyers. And to the extent we can do this, I would recommend -- and early, Martha mentioned, for instance, when we were talking about grants, subgrants, all of that -- a similar kind of illustrated chart or some kind of mechanism like that would be very helpful. And thank you very much for what you provided here.

MR. FREEDMAN: You're welcome. So this table is included in the document that's available. The enforcement mechanism program letter includes both the
appendices. That table actually was the result of the Board's inquiries. It originally appeared in the Federal Register notice of the Final Rule.

Unfortunately, the way the Federal Register does things, no matter how well we format those tables, they're not going to come out in nearly as useful a fashion in the document that the Federal Register produces. Hence, among other things, a reason for having this is so that we could have it in a simple one page, laid out, looking very easily readable.

Similarly, with regards to 1627 and the subgrants, one of the things that we've done is by using the language from the federal grants guidance, in addition to us potentially producing some guidelines, some tables, some checklists, whatever's appropriate, it'll also be easier for our grantees to look at those types of materials that have been produced by other agencies.

Now, we won't be bound by those. But the general ideas of what does this language mean in a grants context will be more familiar and a little more universal.
CHAIRMAN KECKLER: Thank you.

PRESIDENT SANDMAN: Charles?

CHAIRMAN KECKLER: Yes, Jim?

PRESIDENT SANDMAN: Resolution 2013-4 requires that Management report annually to the Board on five items regarding enforcement. And just so the record is clear, I want to report on those five items.

FATHER PIUS: Why are you looking at me, Jim?

PRESIDENT SANDMAN: I'm speaking to you, Father Pius.

(Laughter.)

PRESIDENT SANDMAN: The resolution requires that we provide an accounting annually of all suspension, debarment, termination, or reduction of funding proceedings initiated under the regulations in the past year. As Mark indicated, we didn't use any of those mechanisms in the last year.

The resolution requires that we provide a description of the effect of any such proceedings on the provision of legal services to the poor. Because we didn't use them, there was no effect.

The resolution requires that we report on any
due process concerns raised by grantees in the course of those proceedings. There were none.

The resolution requires that we provide Management's opinion as to the ongoing need for an effectiveness of the enhanced enforcement procedures provided for in the rules changes that were adopted two years ago. Even though we have not used them in the past two years, we continue to believe that they're important. I think they have a deterrent effect. And the fact that we haven't used them to date does not mean that we might not need to use them in the future.

The resolution requires that we provide Management's suggestions, if any, of proposed changes to the enforcement regulations. We don't have any changes to propose. And to provide any guidance issued in the prior year, that is the program letter that Mark has just described.

MR. MADDOX: Jim, what resolution was that, again?

PRESIDENT SANDMAN: That was Resolution 2013-4.

CHAIRMAN KECKLER: Julie?
MS. REISKIN: I did have a thought when I was reading this over. It says that if you're going to start this, you notify the board chair and the executive director. And given some of the OIG reports we've had, I'm wondering if it should be the entire board. I'm not saying -- just something to think about because if a board chair and a director were in cahoots, just a thought.

CHAIRMAN KECKLER: Other comments or questions?

(No response.)

CHAIRMAN KECKLER: If there are not, then I think we can thank you for your report, Jim, and we can now move to item 8, which is an update that we're receiving on our revisions to the grants for agricultural and migrant farmworkers. And I see Mr. Hardin is coming to the table.

FATHER PIUS: Is there a document on that in the Board book?

CHAIRMAN KECKLER: I don't believe there is a document in the Board book.

MR. FLAGG: No, there is not. This is really
just a brief oral update.

CHAIRMAN KECKLER: A brief oral update.

MR. FLAGG: The Board at the January meeting approved publication of a notice of proposal for updating and rationalizing the data used as the basis for granting what have been referred to as migrant grants.

That notice was issued shortly after the Board meeting. The Board and the Committee will recall that the methodology and the data underlying the proposal were fairly complicated, and we have had a number of questions about the methodology and the data.

The methodology and the data were provided to LSC by the Department of Labor, an expert panel that the Department of Labor convened for that purpose. And as these questions have arisen, they've been referred to the Department of Labor.

We shortly before the original deadline for comments on this proposal received a request from the NLADA, on its own behalf and really as representative of a number of recipients, both migrant programs and field programs, that had an interest in this issue,
requesting more time so that they could better understand the methodology and the database issues that are connected with it.

We thought that was a reasonable request and the request was granted. So the due date for comments is now a week from tomorrow. And our expectation and hope is that at the next meeting of this Committee and Board, we will have had an opportunity to consider all of the public comments and any staff analyses of those public comments, and have a proposal to the Board on how to go forward.

CHAIRMAN KECKLER: Ron, how many comments have we received so far on this item?

MR. FLAGG: Again, the deadline has -- comments are not yet due. I think we received two or three very short, one-paragraph or one-sentence comments. And then we received at least one more substantive set of comments from one of our recipients, and I think that's all. So my assumption is we'll around the end of the day on April 20th be getting more.

CHAIRMAN KECKLER: Thank you.
Are there further questions or comments about that? So if we get this analysis through, what's our schedule for the grant, for the revisions to be put forward?

MR. FLAGG: Well, again, the final proposal would be before the Board in July. We're right now in the grants cycle. Applications for 2016 funding have been invited. We haven't hit the due date yet for those applications; I believe those are due in June -- yes, June 1.

One of the issues that is in the notice is how to implement use of the new data. What is in the notice is a proposal to use the updated data on a 50 percent basis vis-a-vis the 2016 grants, and 100 percent for 2017.

We've asked for public comment. In fact, the one substantive public comment we've already received addressed that proposal. I suspect we will get other public comments on that issue. I expect that our staff will have views on that issue. And we'll present them to Management, and based on those comments and the staff analysis, we'll have a proposal to make to this
Committee and the Board in July.

CHAIRMAN KECKLER: So I guess the point is that depending on how you implement it, though, the revised data would affect the size and distribution of the next set of grants, the 2016 grants, when they're awarded. Is that the current schedule and plan?

MR. FLAGG: That is what is embedded in the current proposal. Whether we will continue that in the final proposal I suspect will be a function of what we hear from the field. We have two conflicting goals.

On one hand, we have new data, which I think, as reflected in the notice, are superior to the existing data which are being used as the basis for migrant grants. In a perfect world, we would use the new data, assuming we've decided that those data indeed are better -- when I say "we," I mean the Board -- we would use those data as soon as we could.

On the other hand, in a perfect world, you'd want everybody to know what those data meant before the grant applications were in. You can't do both of those things. And as it stands today, applications for grants are always made without certainty as to what the
funding will be because we don't know what the
congressional funding will be. There could be cuts.
There could be additions.

Now, in fairness, the proposal, the current
proposal that is up for public comment, would quite
substantially affect some of those amounts. So these
are complicated issues, and as I said, we expect to get
public comments on that issue in the next week.

And we expect our staff to have views on how
best to implement use of the new data that both uses
the new data as quickly as we reasonably can but takes
into account the effects on funding issues that we've
just described. And we'll have to give you a proposal
on that in advance of the July meeting.

MR. LEVI: But those programs know, don't
they, where --

MR. FLAGG: Yes. Yes.

MR. LEVI: We're not doing this in secret.

MR. FLAGG: No. No, that's right.

MR. LEVI: If you want, I guess if some
program was going to be affected by more than 5 percent
were we to act while this is -- you could give them a
special little email saying --

MR. FLAGG: No. Clearly, all --

MR. LEVI: I assume they're paying attention.

MR. FLAGG: Yes. All of the programs that are directly affected -- and this is both the migrant programs as well as the corresponding field programs, that is, the field programs in the states where the migrant programs' numbers are affected.

So if the migrant grant in a state is going up, that money is coming out of field programs; and conversely, if money in a state devoted to the migrant program is going down, then field funding in that state is correspondingly going up because the funding for the state remains the same.

So to your point, John, yes. Everybody is well aware of this, and that's why this has generated such high interest.

CHAIRMAN KECKLER: Martha?

DEAN MINOW: It's such a complicated problem, and of course it all gets more complicated because the more time that passes, the less reliable the data themselves are. But even given that, I think we all
want to use the best data that's available.

The proposed implementation, and I know it's in anticipation of a change that we haven't adopted yet because we're waiting for the comments that haven't come in yet, but let's assume that the implementation proceeds as you've indicated.

That would be a strict requirement that everyone goes with 50 percent? Not allow some people to go with 50 percent and other people to go to 100 percent?

MR. FLAGG: No. We would be doing it the exact same way as the census implementation was done.

DEAN MINOW: Yes. Right.

MR. FLAGG: So 50 percent of the change would come in in year one, and then the change would be 100 percent implemented in year two. So if there was a big change, half of that big change would occur in the first year and half in the second year. If there was a very small change, half of that small change would occur in year one and half in the second year.

DEAN MINOW: Thank you.

CHAIRMAN KECKLER: Are there further comments
on this?

(No response.)

CHAIRMAN KECKLER: We'll look forward to hearing more about this and receiving the comments on Management's proposal.

The final substantive item is an update on performance management and human capital management from President Sandman and Traci Higgins.

PRESIDENT SANDMAN: Thank you, Charles. This report is being made pursuant to our risk management protocol. And I'll ask my colleague Traci Higgins, our Director of Human Resources, to make the report.

MS. HIGGINS: That's me. Good afternoon.

DEAN MINOW: Hi.

MS. HIGGINS: How are you? I will update you on our progress in implementing our performance management process and our human capital plan, and we'll start with a review of our performance management process since it's still new to us. It's even more new to you folks.

The cornerstone of our performance management process is the LSC strategic plan, which as you know is
not self-implementing. It is put into effect in large part through the office performance plans that each of our offices are required to draft.

And those also detail how that office is going to carry out its core work, whether it be visiting grantees or reviewing contracts, rulemaking, or in the case of my group, how we're going to go about recruiting and hiring people here.

And tied to those office performance plans are our employee performance plans, which detail the work that the employee needs to perform against the office performance plan and the strategic plan. Now, the employee performance plans also include a training and professional development plan that I'll talk about a little later.

So the key to our performance management process is effective communication, ongoing communication, two-way communication between the manager and the staff. We are working on encouraging that, working out our muscles, our voices, in finding our voices in this regard because it allows us to continue to assess our progress, identify issues, deal
with them in a timely manner, which is what we want to do. And I think we have met with some success in doing so.

An example or a way that we formalize that communication is through our employee check-ins, which is an interim written feedback that is provided at the six-month mark. And it is again just another opportunity to keep that dialogue going, to talk about new opportunities, challenges, progress against the employee performance plan, and our eight core competencies.

The final leg of our performance management process takes place in the fall, and it includes several components: the employee self-assessment, which, as the name suggests, is a opportunity for self-reflection and soul-searching, in some instances; colleague feedback, which would allow individuals other than the employee's manager to offer insights and reflections about that individual's work ethic and work habits and camaraderie and the like.

There is also an employee manager assessment on leadership qualities, which allows staff to assess
their manager against our five leadership qualities; and then finally, the manager assessment of employee, which is the manager's assessment of the employee against the employee's performance plan and against our eight core competencies.

In 2014, we implemented all of these components with the exception of colleague feedback and the manager assessment of employee. We got a late start, so we really didn't have time to pull it off. But we are committed to implementing the full process in 2015.

When I mentioned the employee performance plan, I mentioned the training and professional development plans. These are a key component of our performance management process, and they inform our human capital work.

One of the things that I noted in the report is that staff will begin taking Microsoft assessments that will allow us to gauge their skills in Word and Excel for everyone, and then possibly other applications for particular individuals. But the idea is we want to be able to provide targeted support.
If you leave it to someone to assess their Word skills or their Excel skills, I think we all think we're a little more expert than we are. So this will allow us and Jessie Posilkin to really focus and group individuals accordingly so that we provide them the support that they really need.

An additional component is that HR is taking the lead in supporting the implementation of these plans. So we are responsible for researching courses and webinars and tools that will allow the employee to maximize the plan. And we'll also be responsible for monitoring their compliance and issuing reminders and making sure that we meet our goals in that regard.

Additionally, I continue to meet twice monthly with each of our office directors. And that provides us an opportunity to speak in a timely manner about any employee concerns and allows us to talk about how we're going to go about meeting those needs and addressing those concerns. And it also allows an opportunity to talk about monitoring the implementation of the performance management process.

Now I'd like to talk about our efforts with
respect to recruitment and hiring.

So far, in 2015, we have conducted five searches for eight hires, four of which are new positions.

MS. REISKIN: Calendar year?

MS. HIGGINS: Yes. Exactly. So we have hired two of the three fiscal compliance analysts that we have slated. We have a prospect for a third, but we want to wait until the end of the month to see if we receive additional interest.

We have hired a program counsel for the Pro Bono Innovation Fund. That individual actually was already an LSC employee, so that created a vacancy, and added to a departing employee. So we had two vacancies for program counsel in the Office of Program Performance. We have filled one of those, and this next week we should begin scheduling our finalist interviews to fill the other opening.

We also have hired an associate general counsel, and we are continuing our search for a general ledger accountant in OFAS. And that is a new position.

And this week we're going to begin searches
for a development associate, OPP grants coordinator, which will bring to seven the number of searches that will be either underway or completed at this point in 2015 for ten hires.

One of the things that is going to help us tremendously with recruitment and hiring is the rollout of the applicant tracking system, which will be part of our Paycom system, which is our HR and payroll system. It's a web-based system that will allow us to really get more detailed information from our applicants.

Currently, applicants apply by sending us an email to which they attach their cover letter and their resume, and that's it. So we can actually ask them questions. We can ask them what are called knockout questions so that if they answer the wrong way, we don't have to spend our time with that application. It's going to save us a lot of time.

And also, to the extent that HR is providing a preliminary review of applicants, that will go away and hiring managers will be able to see applicants in realtime. As soon as they apply and if they meet our requirements, they'll be accessible to the hiring
manager.

It will allow us to create pipelines so that we can really be more efficient. It'll allow us to track where folks are coming from. Where did they see our posting? Which will allow us to, as necessary, make any adjustments to our sites. At this point, Idealist and the LSC website are our number one and two sources for our applicants.

And I think that's it, unless you have questions. Martha?

DEAN MINOW: It's grant to see all these developments on every front.

I wonder, in the searching, do you ever find a need to use search firms? Do you use LinkedIn? Do you Google people when they apply? I see your face. I've been told that this is now a standard practice in many professional fields.

MS. HIGGINS: We haven't been Googling individuals. I'll consult with OLA for guidance in that regard because the thought has occurred to me. But a little apprehensive about that. And LinkedIn, we have used LinkedIn, but it hasn't really been a useful
tool for us, especially with the cost associated. It's not a good return.

MR. KORRELL: I don't want to supplant advice of counsel in-house at LSC, but I think it is pretty common, when you're recruiting and hiring for people at this level, at the lawyer level, at the senior manager level, to do some basic internet research, including Google. And some might argue that we'd be remiss if we didn't.

Obviously there are limits on what you can do with certain information, and if it's a process that is shepherded along by office legal counsel or by the Human Resources Department as opposed to, say, by individual managers -- but one suspects that happens anyway -- but I think it's a good idea, and I think most companies are doing it. And those who don't usually wish they had.

MS. HIGGINS: Well, knock wood, we've been lucky so far. So we'll enhance our chances moving forward, and we'll look interest doing that.

CHAIRMAN KECKLER: John? And then Laurie.

MR. LEVI: No. I was just going to follow on
with that and say that not only do other not-for-profit boards that I'm on and for-profit institutions that I'm aware of do this as a matter of common practice, but unfortunately, you'd be amazed at what they may learn.

So it's actually very helpful.

PROFESSOR VALENCIA-WEBER: And the career counseling that's going on at colleges and universities, especially for the professional graduates, business graduates, is very frank about telling them that all of these internet sites are going to be searched. So what's on there? You need to be careful.

And the career counseling starts early in the students' career, tries to warn them in the beginning not to put the pictures of the drunken fraternity party on there.

CHAIRMAN KECKLER: Father Pius?

FATHER PIUS: Just two quick questions. I'm very glad we're moving forward with this evaluation process, and I think it's a good idea regardless of where it came from. But if I understand correctly, part of this did not just come out of the blue for us,
but this was a requirement from the GAO report. This was something that the GAO insisted on that we do, and this is part of our implementation of a request from GAO. Yes?

MS. HIGGINS: Correct.

DEAN MINOW: Can I just say yes?

(Laughter.)

FATHER PIUS: I just want to make that clear, that we're doing this in part because I think it's good business, but we're also doing it because we're trying to be responsive to the GAO.

The second question I have is to Management. Does this just apply to in-house LSC? Does this apply to the OIG as well? Does the OIG have a separate evaluative process? And how are those two related?

MS. HIGGINS: The OIG is not following our current performance management process, our revised form. They continue to utilize the previous iteration of the performance management process.

CHAIRMAN KECKLER: I recognize the Inspector General as coming up to answer your question more fully, Father Pius.
MR. SCHANZ: Well, I actually don't have to because Traci just answered.

(Laughter.)

MR. SCHANZ: So thank you. But I did want to mention that we have a comparability study out for bid. We have four bidders to try to see how we match within the IG community within the OIG.

CHAIRMAN KECKLER: Great.

MR. SCHANZ: David, do you have anything else?

MR. D. MADDOX: Yes. I just wanted to add that the Management system is a brand new, developing system, and we decided that we'd let Management prototype it and see how it went, and then consider adoption at a later point in time.

MS. HIGGINS: Yes. I'll just add that they have been inquiring and have asked many questions. So they are fully aware of where we are and some of our challenges. So Dave has actively pursued additional information about our process.

CHAIRMAN KECKLER: Thank you.

Jim?

PRESIDENT SANDMAN: Traci, could you say...
something about our experience in using USAJOBS, the
government website for posting job openings, and
whether that's yielded anything for us?

    MS. HIGGINS: Yes. We began using USAJOBS in
August of last year. And we use it the most with
respect to Office of the Inspector General postings.
We have used it for our fiscal compliance analyst
positions as well, and it has yielded candidates.

    Our numbers are up because of USAJOBS. I
can't necessarily speak to quality, but numbers are
certainly up. And I think the Office of the Inspector
General has had maybe more success with those postings
than we have, in part because all of their positions go
up on USAJOBS.

    CHAIRMAN KECKLER: Julie?

    MS. REISKIN: Yes. A comment and two
questions.

    I'm thrilled to see this because I think it's
unfair to employees not to have this. I think it's
awful to work and not know what your expectations are
and not to get feedback, and it's easy to let that
slide if there isn't a process just because of
busyness. So I'm very happy to see that, we should have done it whether or not someone told us we had to.

I have two questions. One is, does this happen at the same time for everyone, or is it based on the employee's year? So if everyone does it in October, what happens if someone just started in July? I'm just curious.

And then also, do you have in terms of recruitment -- I think it's called Schedule A. It has to do with federal government jobs and a way to hire people with disabilities. Are you guys set up with that, or is that not relevant to you because you're not a federal --

MS. HIGGINS: Right. To answer your question, no, it is not relevant to us because we are not a federal employer.

With respect to the rollout of the performance management process, everyone is reviewed at the same time. When we get new hires, we incorporate them into the process as soon as it makes good sense to do so, allowing them a little time to get their feet wet and acclimated to us before we put them through their
paces, so to speak.

CHAIRMAN KECKLER: Are there further comments about this?

(No response.)

CHAIRMAN KECKLER: I had one quick thought -- and good, Jim came back in the room -- which is that one of the things that we're thinking about all the time increasingly is the strategic plan and the next strategic plan and how we're going to proceed with that.

One item that was discussed during the last period of strategic planning is the issue -- but I don't think we necessarily had the infrastructure for it -- of things like annual metrics as part of the annual plan.

And I feel like, particularly with the development of office performance standards and targets, we're moving into a realm in which that's something that might be feasible or might be worth thinking about as even rolling out before we develop the new strategic plan in a piloting, reporting model to us. I certainly would be interested in some sort of
summary statistics about how each office is doing when Management is ready to provide that kind of information.

One reason is just general oversight. But the other is to think about those as the prototype, as the beginning for the kinds of annual metrics that we might begin to develop and ask for in a subsequent strategic planning process. So thank you for helping develop that infrastructure for it.

MS. HIGGINS: Sure. Thank you.

CHAIRMAN KECKLER: So with that, we can now move to -- is there any other public comment on the issues that we discussed today? Any public comment should come up and be recognized. State your name for the record, please.

MR. LEVI: We have very few minutes here.

CHAIRMAN KECKLER: Right. So it's a very short time. So please make comments brief.

MR. MEYER: Hello. I'm John Meyer. I'm the former Director of the Office of Information Management. I worked at LSC for 30 years. I have comments on LSC's human capital and employee relations.
Contrary to what has been said, LSC policies are losing human capital and creating a disastrous climate of employee relations. It is not just the contentiousness of the labor union situation, but an overall policy of wanting to get rid of many long-time employees without good reason or fair process.

Furthermore, these actions are not only ill-advised, but they also form a discriminatory pattern. Since September, out of 100 employees in LSC, excluding OIG, four have been let go, all of whom have three things in common.

All four of these victims of LSC Management are black. All four had 25 to 30 years of service. And all four were 55 years of age or more. They are Ruby Short, fired in September; and Lulu Waldy, Ron Jordan, and Jean Edwards, let go in an illegal RIF on February 9, 2015. I have sent details of the wrongfulness of these actions to all LSC employees and several Board members, so I will not repeat the sorry story here.

Now, when I retired from LSC, I did not plan to be vocal on LSC affairs. But LSC Management has
completely lost its moral compass in its treatment of its employees. The four actions I have just discussed are only some of the arbitrary and unfair actions LSC Management has taken towards its employees.

LSC Management has embraced the worst elements of private sector capitalism, considering employees as interchangeable robots, easily replaceable and disposable. But of course, as we all know, unlike in the private sector, you're definitely not going to get rich working for LSC no matter how good a job you do or whatever you contribute.

So now they want employees to take all the private sector risks with none of the rewards. And in my years in LSC Management, the recent ones, I've heard again and again in discussions of employees that no one is irreplaceable, by which they mean they feel free to dispose of anyone, irrespective of past contributions, time of service, or anything else.

CHAIRMAN KECKLER: John, could you wrap it up?

And then we'll have --

MR. MEYER: I have just a couple more paragraphs.
You may consider this approach to Management to be acceptable or even good. But even so, it has resulted in serious conflict at LSC. It is undermining any chance of accomplishing the LSC mission.

Indeed, the erosion of morale at LSC is so palpable that it is also leaking into the grantee world. Therefore, it is imperative to make major changes and seek peace through compromise and accommodation before the damage becomes disastrous.

You probably know that LSC Management is currently the subject of nine unfair labor practice complaints before the NLRB stemming from the actions I've discussed and others undertaken in the same spirit.

If LSC Management is to be in any position to weather the difficulties coming in the next few years, it must undo the specific actions it has taken against individual employees and adopt a completely new approach, where everyone in the LSC community is in it together. LSC cannot afford to use such a large proportion of its resources on internal conflicts.

If this change in direction does not occur,
the problems and conflicts to date will only be a
foretaste of the disasters coming in the not too
distant future.

MR. FLAGG: Can I make two comments in
response?

One, we categorically deny any unlawful,
illegal, or improper employee actions.

Two, LSC does not comment on personnel actions
out of compliance with law and out of deference to our
employees' confidentiality.

CHAIRMAN KECKLER: All right. Is there any
further public comment from the room?

(No response.)

CHAIRMAN KECKLER: Seeing none, we'll now turn
to item 11, consider and act on other business.

(No response.)

CHAIRMAN KECKLER: If there is no other
business before the Board, I will consider a motion to
adjourn the meeting.

MOTION

MR. KORRELL: So moved.

MS. MIKVA: Second.
CHAIRMAN KECKLER: All in favor?

(A chorus of ayes.)

CHAIRMAN KECKLER: The meeting is adjourned.

(Whereupon, at 4:39 p.m., the Committee was adjourned.)

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