

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS

MEETING OF THE  
OPERATIONS AND REGULATIONS COMMITTEE  
OPEN SESSION

Friday, July 27, 2012

3:06 p.m.

Sheraton Ann Arbor Hotel  
3200 Boardwalk Street  
Ann Arbor, Michigan 48108

COMMITTEE MEMBERS PRESENT:

Charles N.W. Keckler, Chairperson  
Robert J. Grey, Jr.  
Harry J.F. Korrell, III (by telephone)  
Laurie I. Mikva  
John G. Levi, ex officio

OTHER BOARD MEMBERS PRESENT:

Sharon L. Browne  
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

Richard L. Sloane, Special Assistant to the President  
(by telephone)

Rebecca Fertig, Special Assistant to the President

Victor M. Fortuno, Vice President for Legal Affairs,  
General Counsel, and Corporate Secretary

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

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

Jeffrey E. Schanz, Inspector General

Laurie Tarantowicz, Assistant Inspector General and  
Legal Counsel, Office of the Inspector General

Matthew Glover, Associate Counsel, Office of the  
Inspector General

Joel Gallay, Special Counsel to the Inspector General,  
Office of the Inspector General

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

Janet LaBella, Director, Office of Program Performance

Glenn Rawdon, Program Counsel, Office of Program  
Performance

Allan Tanenbaum (non-Director Finance Committee member)

## STAFF AND PUBLIC PRESENT (Continued):

Jennifer Bentley, Manager of Outreach and Development,  
Legal Services of South Central Michigan

Ann Routt, Legal Services of South Central Michigan

Kenneth Penokie, Executive Director, Legal Services of  
Northern Michigan

Len Sanchez, Executive Director, Neighborhood Legal  
Services of Michigan

J. Sekander, Neighborhood Legal Services of Michigan

Lillian Bullard, Neighborhood Legal Services of  
Michigan

Colleen Cotter, Executive Director, Cleveland Legal Aid

Linda Rexer, Michigan State Bar Foundation

The Honorable Richard Teitelman, Chief Justice,  
Missouri Supreme Court

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

Chuck Greenfield, National Legal Aid and Defender  
Association (NLADA)

Terry Brooks, American Bar Association Standing  
Committee on Legal Aid and Indigent Defendants  
(SCLAID)

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

2 (3:06 p.m.)

3 CHAIRMAN KECKLER: We'll go ahead and get the  
4 Committee started since we're running a little late. I  
5 note the presence of a quorum -- Mr. Korrell, Mr. Grey.

6 We'll go ahead and begin the duly noticed meeting of  
7 the Operations and Regulations Committee.

8 Our first item of business is the approval of  
9 today's agenda.

## 10 M O T I O N

11 MR. GREY: Move it.

12 CHAIRMAN KECKLER: Is there a second?

13 MR. KORRELL: Second.

14 CHAIRMAN KECKLER: Thank you. All in favor?

15 (A chorus of ayes.)

16 CHAIRMAN KECKLER: The agenda is approved.

17 The next item of business is the approval of  
18 the minutes of our teleconference, which is our most  
19 recent meeting, of June 18th.

## 20 M O T I O N

21 MR. GREY: Move it.

22 MS. REISKIN: Mr. Chairman, there is an error.

1 I was actually at the meeting, but the minutes have me  
2 making a motion which I wouldn't have done because I'm  
3 not a member of the Committee. So it must have been  
4 another female voice on the phone. My name wasn't on  
5 the list of present, which I was, and then it had me --

6 CHAIRMAN KECKLER: Oh, okay. Where is that?

7 MS. REISKIN: The first motion. It says, "Ms.  
8 Reiskin moved to approve the agenda."

9 CHAIRMAN KECKLER: The first -- "Ms. Reiskin."  
10 Okay. That --

11 MS. REISKIN: And I should be added to the  
12 list of people there, too.

13 CHAIRMAN KECKLER: Yes. We'll please add you  
14 there. And we'll have to amend that motion. Let's  
15 amend the motion. Does the Committee consider that  
16 motion to have been properly approved?

17 MR. GREY: I'll move the motion.

18 CHAIRMAN KECKLER: Move the motion.

19 Ms. Mikva?

20 MS. MIKVA: Well, I had a question about the  
21 minutes, which is where it talks about what we did for  
22 the rulemaking for sanctions. And it says we didn't do

1 anything. Is that right? I'm looking for it.

2 CHAIRMAN KECKLER: Yes. That's correct.

3 MS. MIKVA: But then when I look at  
4 this -- after page 137, where it talks about that  
5 meeting, it says that we did do something.

6 CHAIRMAN KECKLER: No. Okay. I've noted that  
7 on that. We will correct that when the FNPRM comes up.  
8 We'll correct those items.

9 MS. MIKVA: All right. Thank you.

10 CHAIRMAN KECKLER: Thank you.

11 So we are amending the minutes. Having  
12 approved the motion from the prior meeting, I now ask  
13 that, with those amendments, that the minutes of the  
14 Committee's meeting of June 18th be approved.

15 M O T I O N

16 MR. GREY: Move it.

17 MS. MIKVA: Second.

18 CHAIRMAN KECKLER: All in favor?

19 (A chorus of ayes.)

20 CHAIRMAN KECKLER: Thank you.

21 Now the first item of substantive business is  
22 to consider and act on proposed revisions to the

1 Committee's charter, which have been circulated prior  
2 to this time.

3           We had talked about this. This is something  
4 that all committees do, look at the charter on occasion  
5 and suggest changes. I will briefly go over the  
6 changes and the rationale for them. You can see them  
7 on page 112 through 114, the redlined, in effect,  
8 marked-up version of the charter of the Operations and  
9 Regulations Committee with the proposed changes. There  
10 are a couple of tweaks that we might need to add, put  
11 in. But let's just talk about what's on the table  
12 immediately right now.

13           In the Operations section -- this is the first  
14 substantive change; this should be marked -- the  
15 paragraph 3 under Operations would now read, "Shall  
16 annually review and consider the Corporation's  
17 performance in achieving the goals established in the  
18 strategic plan of the Corporation, including  
19 consideration of the measures used to evaluate such  
20 performance."

21           This is intended to strengthen the Committee's  
22 role in going over the strategic plan and the



1 performance. So it puts it on an annual basis. It  
2 puts it in a period. It says we'll review and consider  
3 rather than just monitor, which seems a little weaker.

4 It changes it from "Strategic Directions" to "the  
5 strategic plan," which is what we're now going to call  
6 it, and adds a further clause that we will directly  
7 consider measures used to evaluate such performance.

8 As I mentioned in the earlier committee  
9 meeting this morning, that's responsive. It may not  
10 comply satisfy GAO's recommendation in and of itself.  
11 That's recommendation 10 from their 2010 report. But  
12 at least the way that the Board or this Committee is  
13 responsive, GAO may ask Management to do something else  
14 further, but it puts in a structure to do that.

15 There's also a little tweak in paragraph 4.  
16 When we last discussed the charter, we thought it was a  
17 little vague, our responsibilities of reviewing with  
18 Management in OIG matters. I added a clause, "as  
19 necessary," to indicate that that's something that the  
20 Committee may have to do, but it won't regularly do, as  
21 has been our practice, that we don't regularly review  
22 such matters. If an occasion arose, then we would.

1           Into the Regulations section, the new sentence  
2 at the end says, "The Committee shall also review and  
3 discuss regulatory policies of the  
4 Corporation" -- that's our current  
5 responsibility -- "and shall periodically review Board  
6 protocols and other policy statements directing the  
7 activities of the Corporation." That's something that  
8 we were directed to do by Chairman Levi. It's been a  
9 good idea. We've done some of that area. This  
10 institutionalizes it.

11           And the final substantive change proposed is  
12 under Other Responsibilities, No. 6. This is in  
13 compliance or assurance of compliance with the D.C.  
14 Nonprofit Corporation Act revisions. "Shall not act  
15 nor be deemed to act as an executive committee of the  
16 Board."

17           Are there any other thoughts or suggestions  
18 regarding the charter?

19           MS. MIKVA: They're good changes.

20           CHAIRMAN KECKLER: Good. Since this has come  
21 up, there have been two further tweaks that I want to  
22 submit for your consideration. One is under paragraph

1 3. It was pointed out to me that under paragraph 3,  
2 when it says, "The Committee shall meet at least four  
3 times per calendar year but may meet more frequently at  
4 the call of the Chairman," that could refer to the  
5 Chairman of the Board or the Chair of the Committee.

6 "The Chairman" is sort of a defined term at  
7 the top under paragraph 2. But I think the intent of  
8 this is the Chair of the Committee. So I would tweak  
9 it as, "at the call of its Chair," instead of "the  
10 Chairman." Okay? So that's the first tweak.

11 And the second tweak is, there's a comment  
12 came in from the Inspector General about paragraph 4  
13 under Operations, where I say, "Shall, as necessary,  
14 review with Management and the OIG."

15 I believe it's implied as a matter of  
16 statutory limitations on our actions. But the  
17 suggestion has been to put in a clause -- and this is  
18 the clause that I thought might work -- "Shall, as  
19 necessary," -- keep the comma -- "and consistent with  
20 the independence of the OIG, review with Management,"  
21 et cetera.

22 So that's the -- I don't think that

1 substantively changes our authority. But "Shall, as  
2 necessary, and consistent with the independence of the  
3 OIG, review with Management and the OIG matters  
4 pertaining to the manner in which Management and the  
5 OIG are carrying out their responsibilities.

6 So I think that these will be helpful changes.

7 MR. GREY: Mr. Chairman?

8 CHAIRMAN KECKLER: Yes?

9 MR. GREY: If we go back to the front page  
10 again, you made a -- I don't know whether you did it  
11 intentionally or not, but you said, "Frequently at the  
12 call." "Frequently" in 1 of part 3, "Frequently at the  
13 call of its Chair." And I'm wondering if we ought to  
14 just make Chair the operative word and not Chairman  
15 throughout the document.

16 CHAIRMAN KECKLER: Well, let's see if there's  
17 another place. The Chair is used in paragraph 2. The  
18 Chairman of the Board has a role in appointing the  
19 Committee. So the Chairman -- I just want to  
20 distinguish the Chairman from the Chair, although  
21 certainly if the Chairman asked me to call this  
22 Committee, I would be happy to do it.

1           But the Chair -- let's see. Is there another  
2 place in that?

3           MR. GREY: No, no. My only point is Chair of  
4 the Board or the Chair of the Committee. The word  
5 "Chair" is probably the right word today to use as  
6 opposed to the word "Chairman."

7           CHAIRMAN KECKLER: Oh, yes. Well, okay.

8           MR. KORRELL: This is Harry. I'm afraid if we  
9 do that, we're going to wind up going through all of  
10 the various committee charters and updating everything  
11 I think we use "Chairman" fairly frequently throughout  
12 our various other documents.

13          CHAIRMAN KECKLER: And we could correct it.

14          MR. GREY: Well, we could do it as we go  
15 along, too, Harry. The idea is that at some point, we  
16 ought to get it right.

17          CHAIRMAN KECKLER: That's fine. Let's go  
18 ahead and accept that. The Chair of the -- the change  
19 is, then -- further changes that you're suggesting  
20 apply to paragraph 2, I think. So they would be, "The  
21 Chair of the Board ("Chair") shall appoint at least  
22 three directors other than the Chair to serve on the

1 Committee. The Chair, who shall serve as an ex officio  
2 voting member of the Committee and count towards a  
3 quorum, shall appoint the Chair of the Committee from  
4 among these directors."

5 MR. GREY: Yes.

6 CHAIRMAN KECKLER: And then it's still clear  
7 because in paragraph 3 I said, "Its Chair."

8 MR. GREY: You did, yes. It was inconsistent.  
9 There we got it.

10 CHAIRMAN KECKLER: So I think it's now -- so  
11 with that change, unless there's objections -- yes?

12 FATHER PIUS: I mean, I understand the need to  
13 go to Chair. But the LSC Act uses the word Chairman.  
14 And I understand that there are sensitivities about  
15 using that. But there is a certain consistency in  
16 maintaining with the LSC Act, which in fact uses the  
17 word Chairman.

18 That's just my consideration, is that we  
19 should just simply mirror. When we're talking about  
20 officials of the Corporation, to avoid any conclusion,  
21 we should use the words of the statute. And the  
22 statute uses the word "Chairman of the LSC Board."

1           CHAIRMAN KECKLER: Well, I'll tell you what.

2     Maybe --

3           MR. GREY: I'm okay with it.

4           CHAIRMAN KECKLER: You're okay with that?

5     Okay. So we won't change paragraph 2?

6           MR. GREY: No. But "the Chairman" refers to  
7     the Chairman of the Board.

8           CHAIRMAN KECKLER: Right.

9           MR. GREY: It doesn't refer to the Chair of  
10    the Committee. So we could get halfway there.

11          CHAIRMAN KECKLER: Right. I think we do -- by  
12    not modifying paragraph 2 -- so we stet paragraph 2.  
13    Just leave that. And then the Chair of the Committee  
14    is the Chair.

15          MR. GREY: Right.

16          CHAIRMAN KECKLER: Okay? And the Chairman of  
17    the Board remains the Chairman due to the legislation.

18          Okay. So if there's no further comments, what  
19    we would do is we would recommend to the  
20    Board -- because ultimately it's the Board that can do  
21    this --

22          MR. GREY: Yes. That's true.

1           CHAIRMAN KECKLER:  -- and if at the Board  
2     wants to make a policy statement for this afternoon and  
3     alter that, we'll do that.  And after all, the Chairman  
4     of the Board would change his own title, if he wants.

5           (Laughter.)

6           CHAIRMAN KECKLER:  Okay.  So with that, that  
7     would be a recommendation to adopt the charter with the  
8     amendments listed, as well as the accepted amendments  
9     that we were made aware of today.

10          Is there a motion to do that?

11                           M O T I O N

12          MR. GREY:  Move it.

13          MS. MIKVA:  Second.

14          CHAIRMAN KECKLER:  All in favor?

15          (A chorus of ayes.)

16          CHAIRMAN KECKLER:  Okay.  The recommendation  
17     will be forwarded to the Board for these changes.

18           The next item of substantive business is to  
19     consider and act on possible revisions to the  
20     Corporation's Continuity of Operations Plan, the COOP.

21     And this came up during our February teleconference.

22     It's within the jurisdiction of the Committee, and it's



1 something that the Corporation has been working on.

2 And there's a couple of elements of it that  
3 have been substantially revised to incorporate a role  
4 for the Board in continuity of operations, and kind of  
5 more of an overview of how the Corporation as a whole  
6 intends to respond to various levels of emergencies.

7 I have been working with Mr. Sloane on this.  
8 Mr. Sloane, are you on the phone?

9 MR. SLOANE: I am.

10 CHAIRMAN KECKLER: Oh, you are? Very good.  
11 Is there any comment that you'd like to offer for the  
12 Committee regarding the Continuity of Operations Plan  
13 and what you would like the Committee to do?

14 MR. SLOANE: Only that as you outlined, there  
15 are a number of recommendations at the outset of the  
16 document that provide an overview as to how the  
17 Corporation is viewing the role of continuity of  
18 operations and the (inaudible), as you mentioned, which  
19 could involve calling an emergency (inaudible) by the  
20 Board in the event that the (inaudible).

21 I also note that we included a confidential  
22 copy of the entire COOP. And the only reason that we

1 made it a confidential document is that it contains  
2 contact information, personal cell phones and personal  
3 email addresses, for all Corporation employees.

4 We're in the process of updating that  
5 information. It was last updated about a year and a  
6 half ago. So we're collecting updated information and  
7 we will revise the COOP accordingly.

8 And then the next would be to actually test  
9 the COOP, which is consistent with GAO recommendations,  
10 and to my knowledge is something that we haven't done  
11 yet.

12 CHAIRMAN KECKLER: Right. Thank you. So  
13 would this Committee then recommend to the Board  
14 approval of the COOP? Is that the intent?

15 MR. SLOANE: Yes. That's exactly right.

16 CHAIRMAN KECKLER: Okay. So with that  
17 introduction, I will open it up for questions and  
18 discussion on the COOP.

19 Yes? Go ahead.

20 MS. REISKIN: I just have a question, really,  
21 for Jim or Richard. If there were an emergency, I'm  
22 sure everyone on the Board would be happy to do

1 whatever needed. But is it a burden for staff to have  
2 to call us and deal with us when you might need to  
3 just -- I mean, we want to be helpful. I was just  
4 wondering. It seemed like you kind of had to deal with  
5 the Board first. And is that a burden?

6 PRESIDENT SANDMAN: I think we could handle it  
7 under the circumstances. That's not something that  
8 multiple people would be involved in. I think we could  
9 find a way to do that efficiently under whatever  
10 circumstances might arise.

11 MS. REISKIN: There's nothing in here in your  
12 sense that would prohibit you from acting if for some  
13 reason you couldn't get us all together or something,  
14 is there, in your opinion? I don't want us to be a  
15 burden to you guys dealing with stuff. We should be  
16 there to help.

17 PRESIDENT SANDMAN: I'm quite comfortable with  
18 the plan. I don't see anything in here as imposing any  
19 undue burden.

20 CHAIRMAN KECKLER: Right. Let me explain one  
21 factor, just to recall from the February meeting and  
22 our previous discussions of this, is that the D.C.

1 Nonprofit Corporation Act -- this is an element of the  
2 board role in there -- has new emergency provisions.

3 And LSC, as a D.C. nonprofit corporation,  
4 actually the question was, should we make use of this  
5 potential flexibility that the new corporation act  
6 allows us? This follows on from that.

7 I have a quick question you may not be able to  
8 answer. But perhaps you will. And I thought of it  
9 during the Finance Committee earlier. LSC has a  
10 contingency fund. Remind us, if it's relevant, what  
11 you need to activate the contingency fund. Do we need  
12 Board approval to release the contingency fund? Go  
13 ahead and just identify yourself and answer, Vic.

14 MR. FORTUNO: For the record, it's Victor  
15 Fortuno, General Counsel.

16 I think if you're talking about the emergency  
17 and other special grants funds --

18 CHAIRMAN KECKLER: Yes. Emergency and other  
19 grants.

20 MR. FORTUNO: -- that's actually basic field  
21 money. So it's available for emergencies in the field.

22 It's not available, absent transfer authority provided

1 by Congress, to use that money for MGO activities.

2 PRESIDENT SANDMAN: I think Charles is asking  
3 about a different line in the budget, and that's the  
4 contingency portion of the MGO budget.

5 MR. FORTUNO: Oh, depending on the amount, if  
6 it's \$75,000 or under, the President has authority,  
7 which will be clarified later by resolution. But the  
8 President has the authority to go ahead and move that  
9 money without Board action.

10 Beyond that currently, it would call for Board  
11 action. But you could provide for that contingency,  
12 that is, under emergency circumstances being able to go  
13 beyond the usual \$75,000 authority cap.

14 CHAIRMAN KECKLER: That's something to think  
15 about for the future. What about the emergency basic  
16 field money? What's the release authority for that?

17 MR. FORTUNO: Because that's in the basic  
18 field line, I don't think it's available for movement  
19 to the MGO line without some express authority by  
20 Congress.

21 CHAIRMAN KECKLER: But if we needed to, as  
22 responsive to -- if there was an emergency, not just at

1 the headquarters, but a general emergency such that we  
2 would want to be responsive as an organization to  
3 people's needs in an emergency --

4 MR. FORTUNO: I think the President already  
5 has the authority to go ahead and distribute that  
6 money.

7 CHAIRMAN KECKLER: Good. Or acting President,  
8 or whoever would have that.

9 MR. FORTUNO: Yes.

10 CHAIRMAN KECKLER: Okay. Thank you. That's  
11 good.

12 All right. So are there other questions?  
13 Although that points out -- that discussion points out  
14 a little bit of response to what you're asking about,  
15 Julie, which is why the Board might need to meet in a  
16 serious emergency would be, for instance, to authorize  
17 a larger than \$75,000 payment from the contingency  
18 fund -- that would be an example -- or to initiate  
19 something like some kind of transfer authority or  
20 things like that, as well as confirming acting  
21 appointments, things of that nature, officers. These  
22 are things that the Board could be useful, especially

1 in a serious emergency.

2 So are there further thoughts? People have  
3 had a chance to look at it. I want to draw your  
4 attention at least briefly to the Board protocol, which  
5 should be listed here on page 133. So this is one that  
6 affects directly the Board and has to do with the  
7 activation of the Continuity of Operations Plan.

8 Yes?

9 MS. REISKIN: Should we put on here that we  
10 could waive the recording and transcription, that we  
11 would have the authority to do that or that it could be  
12 deemed waived? Because it would be very unlikely in a  
13 true emergency that we'd be able to get all this  
14 reporting stuff set up.

15 CHAIRMAN KECKLER: Well, right. So we have --

16 MS. REISKIN: Or can we do that already?

17 CHAIRMAN KECKLER: Technically it's closed,  
18 and public notice of the meeting is waived. Is there  
19 anything else we need to put in there as far as a  
20 waiver?

21 MR. FORTUNO: I think we would need to be  
22 mindful of the Sunshine Act, which requires that a

1    verbatim recording or transcript of the proceedings be  
2    made.

3                   CHAIRMAN KECKLER:   Right.

4                   MR. FORTUNO:    So I'm not sure if we have right  
5    now the discretion to dispense with that when I think  
6    is fairly clearly called for by the statute.

7                   CHAIRMAN KECKLER:   Yes.   So that  
8    meeting -- and I think I'm personally comfortable with  
9    the idea that although the meeting is held in an  
10   emergency so we don't announce it ahead of time, and  
11   it's closed because the phones may not even work, for  
12   that matter, to do it, nevertheless somebody's going to  
13   keep track of what we did and what we said as a  
14   transcript, and it'll be there.

15                   MS. REISKIN:   Right.   So someone might be  
16   recording it remotely if there's no electricity.

17                   CHAIRMAN KECKLER:   Yes.   Well, we'll come up  
18   with a recorder, or we'll write it down, you know?  And  
19   if it gets to that, verbatim, we'll record what's said.

20    We don't need to get our quill pens; I mean, we don't  
21   have to go back to that.

22                   (Laughter.)



1           CHAIRMAN KECKLER: We'll keep track of it.  
2     And I could record it on my iPhone, you know, if  
3     necessary.

4           So that's the ideas, that an emergency meeting  
5     will be held. There's also a provision for having an  
6     acting Board chair in the absence of the Chair or the  
7     Vice Chair. That order of succession, if it ever were  
8     to occur is open to debate. There are different ways  
9     to do it. This is one way that I think would identify  
10    that person as they assemble the program.

11           So unless there are questions, I think the  
12    next step would be to move towards a recommendation to  
13    the Board to approve the COOP.

14           Yes?

15           FATHER PIUS: For the stuff on -- because it  
16    affects authority, the issues of emergency running of  
17    the Board, is it required that that be in our bylaws of  
18    the Corporation?

19           CHAIRMAN KECKLER: Yes. That's a very good  
20    question, Father Pius. These things -- if this is  
21    approved, there would be a subsequent action which  
22    would be required to create conforming amendments to

1 the bylaws. Okay?

2 So in actuality, this protocol can't quite be  
3 put into effect, as said. It's a plan to put it into  
4 effect. It's part of the Continuity of Operations  
5 Plan. This is what the plan is.

6 But in order to implement this plan, we would  
7 have to make amendments, conforming amendments, to the  
8 bylaws about quorums and things like that because the  
9 quorums are -- two people does not a quorum make in the  
10 bylaws at the current time, although it's fine for a  
11 D.C. nonprofit corporation.

12 Questions?

13 (No response.)

14 CHAIRMAN KECKLER: Is there a move to  
15 recommend approval of the COOP?

16 M O T I O N

17 MS. MIKVA: So moved.

18 CHAIRMAN KECKLER: Second?

19 MR. GREY: Second.

20 CHAIRMAN KECKLER: All in favor?

21 (A chorus of ayes.)

22 CHAIRMAN KECKLER: The motion carries and we

1 will recommend adoption of this COOP to the Board, who  
2 may have comments on it.

3           With that, we can then move to our next item  
4 of substantive business, which is to consider and act  
5 on rulemaking on grant termination procedures,  
6 enforcement mechanisms, and suspension procedures.  
7 Before I forget, Laurie, why don't you go ahead and  
8 comment on the thing that you noticed, which I also  
9 noticed on the FNPRM. And then I have another comment  
10 before we hear our briefing.

11           MS. MIKVA: Well, the first thing is I don't  
12 know what date it was, but I'm quite sure it wasn't  
13 July 27th that we did this. But I don't believe we  
14 took a vote.

15           CHAIRMAN KECKLER: Well, it's June -- it's  
16 referring -- the Operations and Regulations Committee  
17 is referenced on June 18th. So back there, it just  
18 should be -- it says July 18th.

19           MR. FREEDMAN: On page 2.

20           CHAIRMAN KECKLER: Page 2.

21           MR. FREEDMAN: This is Mark Freedman. On page  
22 2, where the last paragraph starts, "On July 18th,"

1 that should read, "On June 18th." And then on page 3,  
2 which is page 140, there's what should have been noted,  
3 and I apologize, as a placeholder paragraph, the one  
4 that starts, "On July 27th." That's really the  
5 placeholder paragraph of what this Committee does and  
6 then what the Board does.

7 So there I've taken the language from the  
8 proposed rule and simply updated it. But that will be  
9 changed to reflect whatever actually happens --

10 MR. KORRELL: Can whoever is speaking move a  
11 little bit closer to the microphone? It's cutting out.

12 THANK YOU.

13 MR. FREEDMAN: I was saying that the  
14 corrections here on page 2, or page 139, the last  
15 paragraph that starts, "On July 18th," should read, "On  
16 June 18th." And on page 140, or page 3, the paragraph  
17 in the middle that starts, "On July 27th," is really a  
18 placeholder paragraph for whatever action is taken at  
19 this date or a later date that would result in public.

20 CHAIRMAN KECKLER: Right. And, now, the other  
21 item that I wanted to note on that actually refers to  
22 that paragraph, which is that in the placeholder

1 paragraph, it refers to something that the Board would  
2 also do.

3           There was some ambiguity regarding what this  
4 Committee has been asked to do on this. This is a  
5 further notice of proposed rulemaking that extends the  
6 notice and comment, and for this rule, putting forward  
7 certain changes in response to the last round of  
8 comments.

9           It is likely that the Committee could act  
10 under the rulemaking options protocol, under the  
11 rulemaking protocol, to issue this on its own  
12 authority. But much discussion, which I will spare  
13 everybody unless you have questions, has identified an  
14 ambiguity in that based on past inconsistent practice  
15 of the Board and Committee with regard to this, number  
16 one; and secondly, our recent protocol on  
17 promulgations, because it effectively is a promulgation  
18 sent out to the Federal Register.

19           So, as a consequence of that, although the  
20 rulemaking protocol seems to suggest that the Committee  
21 should do this extended comment period, management has  
22 requested that for in this instance, at least, that the

1 Board act on the issuance of the further notice.

2 In the future, the Board members and Committee  
3 members can think about whether they would prefer the  
4 Committees, you know, just report on this and actually  
5 act on their own to extend notice/comment period, or  
6 issue further notices, or what have you.

7 But in this instance, we would be considering  
8 and acting on a recommendation to issue the further  
9 notice, bracketing whether that's exactly the policy  
10 and protocol that should be carried forward  
11 indefinitely. So that's what we'd be voting on today,  
12 would be a recommendation to the Board.

13 So with that, I will turn it back to you, Mr.  
14 Freedman, to discuss what we are trying to do with this  
15 further notice of proposed rulemaking and what we're  
16 not trying to do yet.

17 MR. FREEDMAN: Thank you, Mr. Chairman. This  
18 Mark Freedman from the Office of Legal Affairs. Also  
19 here at the table is Matt Glover from the Office of the  
20 Inspector General. Also, if needed for responding to  
21 any of your questions, we have Janet LaBella here, who  
22 is the director of the Office of Program Performance.

1 And on the phone I believe we have Laura Rath, who is  
2 the acting director of the Office of Compliance and  
3 Enforcement.

4 I'm going to give a ten-minute overview, maybe  
5 less if I'm quick. Matt has a few comments, and then  
6 of course we'll take questions, suggestions,  
7 instructions.

8 You have before you a further notice of  
9 proposed rulemaking, an FNPRM. This is a modification  
10 of the proposed rule that was published in January, and  
11 it covers primarily the lesser sanctions option and the  
12 immediate special grants condition option. That does  
13 not change the proposal regarding extending the  
14 suspension period.

15 There are some substantive changes. There's a  
16 lot of technical reworking without substantive changes.

17 And there are some tweaks and nips and tucks here and  
18 there.

19 In June, the Committee discussed the proposed  
20 rule that had been published in January and the  
21 comments that we had received. The process really  
22 began as far as back as 2001. In 2001, LSC had a

1 rulemaking task force which had a report in 2002  
2 recommending, amongst other things, these very  
3 enforcement mechanisms. That was a recommendation of  
4 Management and the IG.

5           That board was beginning its transition, and  
6 so it did not take it up at that time. It was more  
7 fully considered by the board in 2008, and at that  
8 point the board tabled the matter but kept it open.  
9 Functionally, the board reopened it, or shall I say  
10 brought it back to the table, last year.

11           This Committee, almost exactly a year ago,  
12 started having briefings and discussions about it. A  
13 proposed rule was drafted and published in January. We  
14 had comments. And now we're here with this.

15           There have been two primary threads, both in  
16 the discussions and in the comments. One is the  
17 question of the need for the rule, and the second is  
18 the structure of the rule itself. And those do get a  
19 bit intertwined because I know in the past, in  
20 discussing whether or not we should have a rule on  
21 this, one of the questions is, well, what would that  
22 rule look like? And it has, I think, been very helpful



1 to be able to have something very concrete in front of  
2 you while you are considering if this is something that  
3 fits into the enforcement scheme.

4           The Office of the Inspector General generally  
5 supported the notice of proposed rulemaking, with some  
6 additions. SCLAID, on behalf of the ABA, neither  
7 supported nor opposed it, but did express a strong  
8 opinion that if it were adopted, there should be  
9 changes to the standards and procedures to beef them  
10 up.

11           The New York State Bar Association and NLADA  
12 and a number of recipients and coalitions of recipients  
13 all commented that they opposed the rulemaking. But  
14 they also joined in SCLAID's recommendation that if it  
15 was adopted, there should be changes and improvements  
16 in the standards and procedures.

17           We focused, on these revisions, on the rule  
18 itself. And part of that is because of timing. We  
19 wanted to make sure that we had an opportunity to get  
20 all these revisions out there for public comment so  
21 that then the Committee could have the benefit of the  
22 public comment as part of considering the overall

1 picture.

2 I will note that that was not meant to lose  
3 any emphasis on the serious questions that have been  
4 asked regarding the need for the rule. Rather, we just  
5 wanted to make sure that we really had something  
6 concrete in front of you and comments on it in terms of  
7 what the rule would and how it would address some of the  
8 concerns.

9 There are six major things that happen in this  
10 rule, or in this proposed revision to the rule. The  
11 first is, as I mentioned, there's no change to the  
12 proposal to make suspensions available from 30 days to  
13 90 days. The IG had recommended making them indefinite  
14 until there's correction, and there have been some  
15 concerns about extending them at all. But there's no  
16 proposed change here.

17 For immediate special grant conditions, we've  
18 rewritten that to make it more specific because we  
19 really were contemplating a very particular instance,  
20 and that is where we have found noncompliance. The  
21 Office of Compliance and Enforcement has been out  
22 there. They have a report. They have details. And

1 they have a final finding of noncompliance, and there  
2 are recommended corrective actions.

3           What we want to do with immediate special  
4 grant conditions is be able to take those recommended  
5 corrective actions and immediately add it to their  
6 grant as a grant condition. Generally, special grant  
7 conditions that we would do at renewal or at a new  
8 grant might include items in addition to corrective  
9 actions. There might be prospective stuff.

10           And so this both makes it more clear what  
11 we're planning on doing, and it also makes it clear  
12 that that is something that will be the result of a  
13 process that's already in place, that we've been doing  
14 for years if not decades.

15           The third item is the appeal of lesser  
16 reductions. In the proposed rule, there was only an  
17 informal review, and that was based on the procedures  
18 in the suspension rule. In the revised rule, we've  
19 added an appeal to the President using the procedures  
20 set out in 1630 for appeals of disallowed costs.

21           I want to note here that there's a requirement  
22 that the President, if he or she hears the appeal, was

1 not involved in the prior decisions. This is different  
2 than for terminations of 5 percent to 100 percent. In  
3 that case, the President, who makes the final decision  
4 on appeal, may have been involved in all sorts of  
5 stages.

6           The President will have the benefit of a  
7 report from an impartial hearing officer. But that  
8 report is not a binding report on the President. So it  
9 isn't quite that we have one appeals process for above  
10 5 percent and then a lesser appeal process for below 5  
11 percent. They're different. They have certain  
12 qualitative differences.

13           The fourth item is that we've somewhat  
14 reworked the rule structurally to make it clear that  
15 it's one process, really, for terminations, debarments,  
16 lesser reductions with two slightly different appeals.

17       We did that to avoid any confusion about what the  
18 standards were, whether there were different standards  
19 for lesser reductions versus the standards for  
20 terminations of 5 to 100 percent.

21           There aren't any substantive changes as part  
22 of that reworking, although we have explicitly asked

1 for comments on that to see if perhaps we missed  
2 something.

3           The fifth item is that we've added some more  
4 structure and some definitions to the rule. This is  
5 where the regulatory geeks get out our red pens and  
6 start finding things we think are going to look better  
7 and work better. Hopefully they will.

8           And then the last item is a number of updates  
9 to 1618. This is the first revision to 1618 since  
10 1976, when the original rule was published. It, I  
11 think, was overlooked when there were updates and  
12 changes to 1606 and 1623, with the result that it,  
13 frankly, is outdated. And the updates are meant to  
14 conform it to the other rules and to actual practice.

15           Those are the major highlights. You'll see in  
16 the FNPRM there are specific questions that we're  
17 asking for comments on. The intention is not to reopen  
18 the entire topic for comment, because we have comments  
19 on a lot of items, including the need, but rather to  
20 specifically ask for comments on the matters that have  
21 been changed or are new in this version of the proposed  
22 rule.

1           CHAIRMAN KECKLER: So let me pause you right  
2 there, Mark. So the question, then, is we are  
3 responding immediately to certain comments by saying,  
4 we agree, basically. We agree that there's different  
5 procedures. Strengthen the procedures in, say,  
6 reductions. And here's our proposed response for  
7 another round of comment.

8           Now, these other comments regarding the need  
9 issues I think explain a little bit how we're going to  
10 respond to those comments and when and why.

11           MR. FREEDMAN: When we publish the final rule,  
12 we will have in the preamble to the final rule more of  
13 a discussion of the comments, the items that were  
14 raised in the comments, and how the Corporation  
15 responds to those comments. There isn't a lot of that  
16 in here, in part because we wanted to focus here on  
17 what are we doing because we're generating more  
18 comments on that.

19           Additionally, at the discretion of the Chair,  
20 we can provide for discussion some additional  
21 information and materials on the question of examples,  
22 scenarios, how this comes up. It's something that we

1 didn't focus on so much for this meeting, although we  
2 do have some that we have in mind, in part because we  
3 wanted to work on the technical parts.

4           We've had a number of discussions internally  
5 to try to figure out the best way to provide that  
6 information because of course we're very sensitive to  
7 not airing the dirty laundry of current or past  
8 grantees where situations have been addressed. They've  
9 been resolved.

10           We don't want to be painting an inaccurate  
11 picture, but also being able to provide concrete  
12 information or hypotheticals that are based on real  
13 experiences for enabling you to understand what is it  
14 that has driven Management and the IG over the course  
15 of at least the last decade to really feel that there  
16 is a need for this tool. It's a tool that may not be  
17 used often, but when it comes up, this is potentially  
18 the tool that really fits the scenario.

19           CHAIRMAN KECKLER: Right. I think the issue  
20 is that everybody wants to be able to evaluate this.  
21 This is sort of a criteria that's been set out there  
22 that we need evidence for action, rationale for action.

1 And so it's going to be -- this rationale will be  
2 formally delivered to the world in the final rule and  
3 formally delivered to the Board in the draft final  
4 rule. Is that correct? The preamble will be part of  
5 the draft final rule that will be submitted for  
6 approval to the Board.

7 MR. FREEDMAN: Yes.

8 CHAIRMAN KECKLER: But the question, I think,  
9 is that what you're saying is, since you've been  
10 working on this -- although it's not all listed out  
11 here, the examples and the rationale -- is whether it  
12 might be helpful to provide the Board an answer on  
13 this, a memorandum, a briefing, that we probably  
14 wouldn't want to do today; we have limited time, and  
15 it's not directly related to the further notice.

16 But at least my thinking is that the Committee  
17 might want to see these examples and hypotheticals and  
18 rationales before they're incorporated into the draft  
19 final rule. So some time before that, we might want to  
20 see it.

21 MR. KORRELL: This is Harry. Is anybody else  
22 hearing music?



1           CHAIRMAN KECKLER: I hear very distant music.

2           Somebody may need to mute their phone because --

3           MS. REISKIN: No. Someone forgot --

4           CHAIRMAN KECKLER: Oh, it's on hold. Yes. So  
5 we're getting a little Muzak. That's not helpful.

6           But anyway, the idea would be that the way the  
7 process works and the rulemaking protocol, as I  
8 understand it, is that we would see the response to  
9 these comments about need and rationale in the draft  
10 final rule, normally.

11           The question is, I personally would like to  
12 see them before the draft final rule and think about  
13 that part of it and how convincing it is and what the  
14 argument is, and talk about the argument and rationale  
15 as a separate topic.

16           MR. KORRELL: This is Harry. I apologize for  
17 doing this. But between the bad pickup on the  
18 microphone and the music, it's awfully hard to hear  
19 what's going on.

20           CHAIRMAN KECKLER: Okay. We're just talking  
21 about the fact that the FNPRM doesn't really talk about  
22 the -- it's not designed to, nor does it, respond to

1 these comments about the rationale for the rule.

2           So I'm thinking that at least for the Board,  
3 Management's response to that, we'd like to see that as  
4 a separate -- have a document prepared and a briefing  
5 prepared on that point prior to the draft final rule.

6           MR. FREEDMAN: And that is Management's  
7 intention. And I suppose I should make clear that we  
8 don't envision that the first time you see and really  
9 discuss. Those thoughts would be when you saw the  
10 draft language for the final rule with those responses.

11          Rather, that we would be providing those materials  
12 while you are considering the matter.

13           And this is continuing the theme of providing  
14 this kind of information throughout this process, going  
15 back to the memo -- I think it was last year at this  
16 time -- regarding what we've done, what kinds of  
17 situations have come up in the past.

18           So I want to clarify that while the place that  
19 formally we need to publicly respond and make that  
20 statement is really in the preamble to the final rule,  
21 it isn't that that's where we intend to first present  
22 that stuff.

1           We don't plan for there to be any surprises  
2 there, and of course that's information that really  
3 will inform your decision as to whether or not we get  
4 to the point of having a draft final rule for you to  
5 consider.

6           CHAIRMAN KECKLER: Okay. Are there -- yes,  
7 Laurie?

8           MS. MIKVA: I'm really confused what we're  
9 being asked to do today and what the difference -- when  
10 does a draft final rule become a final published rule?

11           CHAIRMAN KECKLER: Well, what we're being  
12 asked to do -- and correct me if I'm wrong -- is we're  
13 being asked to extend comments, to get more comments on  
14 the notice of proposed rulemaking because now, in  
15 response to the first set of comments, we've agreed  
16 with some changes and seen some other things and  
17 modified what we're proposing, so we want to get some  
18 more comments on it. So today we're just asking for  
19 more comments.

20           When approving the rule, it's going to be that  
21 under the protocol, a draft of the final rule -- after  
22 the comments come in and they're processed, the second

1 round of comments that we might authorize today, those  
2 comments will be processed. The draft final rule will  
3 be presented to the Committee for its consideration and  
4 possible recommendation, and then to the Board for  
5 approval.

6           So if the Committee -- well, ultimately the  
7 Board. If the Board approves what ends up drafted as a  
8 consequence of both of these rounds of comments, then  
9 it's published. Then we're on a reg. We have a reg.  
10 Until then, we're getting public input.

11           MR. FREEDMAN: That's correct, Mr. Chairman.  
12 And if I may add, the Committee would still need to  
13 instruct staff to go ahead and draft a final rule for  
14 you to look at and evaluate. And this merely has us at  
15 a second stage of putting something proposed out there  
16 for comment.

17           So the final signal, which would begin with  
18 you instructing us to go ahead and draft the final  
19 rule, is waiting for the right moment on your agenda.  
20 The earliest moment for that could potentially be when  
21 we meet again in two months because if we do a 30-day  
22 comment period -- I realize I overlooked this.

1           The draft here talks about a 60-day comment  
2 period, but it occurred to us that a 30-day comment  
3 period might be better here because if we publish this  
4 right away, if we're able to get it out next week, then  
5 there's enough time for a 30-day comment period for us  
6 to fairly quickly summarize some of those comments and  
7 have something in the Board book, which will be due in  
8 about six or seven weeks, so that you can have the  
9 benefits of the comments and Management's thoughts  
10 about the comments at the October meeting.

11           CHAIRMAN KECKLER: All right. Yes, Julie?

12           MS. REISKIN: I may have been not reading it  
13 properly. But when I was going through this, I was  
14 just a little bit confused on the -- for, I appreciate  
15 you putting in the informal -- clarifying that there  
16 must be an informal attempt to resolve first, and doing  
17 more on the due process.

18           But I was still a little confused about the  
19 timing. And I just -- again, maybe it was just me, but  
20 it might be others, too, of what -- you know, you'd  
21 have to resolve it first, try informally to resolve it  
22 first, and then start the appeal process, the recipient

1 would.

2           And it seemed like there was maybe some -- the  
3 timing seemed to not match. And that often happens  
4 with informal processes. You have like five days, but  
5 it doesn't really say when the clock starts. So if you  
6 could just -- again, maybe it was just me. But --

7           MR. FREEDMAN: Thank you. I think it's an  
8 excellent question. It's one of the things that we've  
9 tried to track, and also in a lot of the technical  
10 changes to the rule tried to make more clear -- for  
11 example, defining if days are business days or calendar  
12 days.

13           And I think that one of the things that I want  
14 to do is come up with a little calendar for how the  
15 rule works.

16           MS. MIKVA: That would be great.

17           MR. FREEDMAN: I'm confident that the rule is  
18 consistent with the calendaring that was in the  
19 existing rule, that is in the existing rule, for  
20 terminations, and similarly, for suspensions and for  
21 disallowed costs.

22           That said, is there a possibility that there's

1 some gaps in those calendars? I never would rule that  
2 out. But I do feel confident about that, and I also  
3 feel confident in the scrutiny that some of our  
4 commenters will give to it, that if we've gapped some  
5 time, I'm hoping it'll be brought to our attention if  
6 we've missed it. But I'm hoping we haven't missed it.

7 CHAIRMAN KECKLER: Mr. Grey?

8 MR. GREY: You know, one of the things that we  
9 might want to consider as we -- this has obviously been  
10 something that's been evolving, and the comments have  
11 been very helpful from the outside to not only get  
12 clarification, but sort of understand the impact as  
13 well.

14 But let's take a shot at this, if the  
15 Committee thinks it might be helpful, and that is to do  
16 a schematic of this. Because when you look at  
17 processes, how it starts and then the different lines  
18 it can take, identifying the time frame or even the due  
19 process method applied to it at a certain point and  
20 then splintering off or moving forward gives context to  
21 the words.

22 And both visually substantively, I think it

1 helps us fit this together and may help the discussion  
2 as we proceed. Because I think we're at that point  
3 now. I think when we first started, that would have  
4 been a little hard to do. But I think we're at that  
5 point where that might be a helpful tool in  
6 understanding how this is actually going to work.

7 CHAIRMAN KECKLER: Yes. I think that would be  
8 helpful, and both for the Committee and, of course, all  
9 the Committee, any briefing that the Committee were to  
10 have the Board could join.

11 It would have a schematic like that. And I  
12 think that just from a plain language perspective,  
13 that's an appropriate thing to incorporate into the  
14 preamble to any final rule to help explain what the  
15 rule is supposed to do, show this and this and this,  
16 you know, and to have that.

17 I don't know if the Federal Register can  
18 publish any kind of graphics. I think it can, though.

19 I think they can. And so a little graphic wouldn't do  
20 anybody any harm at all.

21 MR. FREEDMAN: We'd be pleased to do that. As  
22 a regulatory attorney and the son of an engineer, I



1 love schematics and flow charts. I'm pleased to say we  
2 have a law clerk this summer who, similarly, is all  
3 over those. So I think we can certainly provide, at  
4 least for the edification of the Committee, timeline  
5 flow chart schematics, something that will give you a  
6 nice picture of it.

7           And the Federal Register has become  
8 increasingly creative about plain language rules and  
9 making things clear. So I don't know exactly what we  
10 can do. I can easily look into what's the best way of  
11 getting something either in the Federal Register or, if  
12 not there, something that would be available on our  
13 website that would have an almost permanent existence.

14           CHAIRMAN KECKLER: Very good. Well, we're  
15 running again against our time constraints. But I do  
16 want to allow Mr. Glover from the OIG to make some  
17 comments, please.

18           MR. GLOVER: For the record, I'm Matthew  
19 Glover, associate counsel for the Office of the  
20 Inspector General.

21           I don't really have a lot of comments to add.  
22 We would like to reiterate our general support of this

1 rulemaking. We think that the revised or further  
2 notice of proposed rulemaking represents an improvement  
3 in terms of readability and the logic of presentation.

4 And also, we think that the idea of tweaking 1618  
5 makes a lot of sense right now, and that those changes  
6 are warranted in light of our recently past practice.

7 CHAIRMAN KECKLER: Thank you.

8 Yes, Laurie?

9 MS. MIKVA: I wonder if we should give the  
10 public an opportunity to comment at this point as well.

11 CHAIRMAN KECKLER: That's a fine suggestion,  
12 Laurie. If the public would have comments on the  
13 further notice of proposed rulemaking, please. We do  
14 ask that you be succinct.

15 MR. GREENFIELD: Thank you, Charles. This is  
16 Chuck Greenfield, chief counsel for civil programs for  
17 NLADA. I'll make a a few brief comments while I know  
18 the Committee is considering these additional sanction  
19 provisions.

20 Two things. One is, I think the redrafting  
21 and condensing increases readability of this  
22 regulation, and it's much easier to follow. It flows

1 easier. And there is some additional -- minimal, I  
2 would say -- but some additional due process added so  
3 that from the standpoint of readability and some  
4 additional due process, it's true that that is the  
5 case.

6 But it still, we think and a number of  
7 programs think, is a bad proposal. Instead of a  
8 further notice of proposed rulemaking, FNPRM, I propose  
9 that we do a withdrawal of proposed rulemaking. And I  
10 say that not flippantly. I say it because programs are  
11 very concerned about it.

12 This is highly controversial. We know that  
13 over a third of the programs that have commented on  
14 this objected to this proposal, and that the decision  
15 by this Board to continue to go down this path or down  
16 these train tracks is bothersome to a number of folks  
17 in the field.

18 For example, on page 7 of the further NPRM,  
19 the statement made -- on question 2, it says, "No  
20 further comments are sought regarding the underlying  
21 decision to adopt a lesser reductions option or use the  
22 existing section, Criteria for Lesser Reductions, which

1 is unchanged from the NPRM."

2           So no further comment is sought regarding the  
3 underlying decision to adopt a lesser -- well, there's  
4 been no underlying decision to adopt, has there? I  
5 thought, in fact, this Committee had made clear in San  
6 Diego that there was no underlying decision to adopt.

7           And so there's a proposal. There's a proposal  
8 to have additional sanctions. But there's certainly  
9 no -- at least, that's my understanding, unless there's  
10 been some other decision made.

11           CHAIRMAN KECKLER: We're considering the  
12 decision. The decision has not been made.

13           MR. GREENFIELD: Right. And so that I --

14           CHAIRMAN KECKLER: It's on the question.

15           MR. GREENFIELD: And so what this says to  
16 those reading it is, in fact, the decision has been  
17 made, which has been one of the concerns all along,  
18 that maybe perhaps a decision has been made.

19           But the changes that are proposed, in essence,  
20 with some differences -- and it allows for easier  
21 readability, which I think you have done a good job  
22 with -- really put us back in the position where this

1 board was in 2008. And we know that the prior board  
2 rejected this proposal, and in substance, it's very  
3 similar to that proposal.

4           And so the programs continue to have -- NLADA  
5 and the programs that we've talked to -- continue to  
6 have serious problems with the lack of a demonstrated  
7 need for this particular proposal or series of  
8 proposals; the possible adverse effect on clients; the  
9 inadequate due process -- if you look, there's no  
10 proposal in the further notice of proposed rulemaking  
11 to do anything about the 1623 suspensions, which we  
12 know from 30 to 90 days, we know they can be  
13 substantial financial sanctions of suspensions,  
14 suspension provision.

15           And there's no right to appeal there. You  
16 have an informal conference, and that's it. And  
17 there's no proposal to even go to Jim Sandman on it, or  
18 the LSC President on that. And there's a lack of clear  
19 standards.

20           Again, there's provisions that can be  
21 considered when opposing additional sanctions or  
22 suspensions. But it's not clear how you weigh each of

1 the factors.

2           One of the concerns that we've heard expressed  
3 by a number of the programs and program directors that  
4 have been around a while, I think, is summed up by my  
5 eighth grade history teacher, who said -- he kept  
6 saying to us, and I can remember it now, "The roots to  
7 the present are deep in the past," and that if we don't  
8 recall what has happened in the past, we are, in fact,  
9 going to live through a repeat of that.

10           And we know what has happened in the past,  
11 which is there have been attempts by previous board of  
12 directors and previous presidents -- not the current  
13 Board and not the current President -- to de-fund  
14 organizations for political reasons that went for  
15 consideration by administrative law judges as part of  
16 the procedure in place, the due process in place. ALJ  
17 hearings overturned the Administration's attempt to  
18 de-fund for political reasons, for controversial  
19 reasons.

20           What we're trying to do is to make sure that  
21 we don't go down the path which allows for that problem  
22 to reappear. That has happened in the past, and it's

1 in people's minds. So they remember that, and they  
2 want to make sure that that doesn't appear again.

3 So in sum, I won't take much more time. But  
4 we continue to have serious, serious problems with  
5 this. It's controversial. We think that the changes  
6 that are made, while they do add some level of due  
7 process, are simply still inadequate, and a number of  
8 variances, there is still no demonstrated need, and  
9 that we would urge the Board to not pursue this.

10 There are many other regulatory agenda items  
11 that this Committee could embark on, I think, that  
12 would benefit the field and the Corporation to a  
13 greater degree than to continue down this path.

14 CHAIRMAN KECKLER: Thank you.

15 MS. MIKVA: Could I verify what I would like  
16 to hear, is what your feeling is about putting this out  
17 for further comment at this point.

18 MR. GREENFIELD: We have no objection to  
19 putting it out for further comment. It's very limited.

20 If you look at the six questions, they're very  
21 limited. And some of the questions are, this isn't  
22 intended to make any change; let us know if you think

1 there's a change.

2 I mean, I think it's helpful to get feedback.

3 It's always helpful to get feedback from the field, so  
4 I would never say it's not a good idea to get feedback  
5 from the field. I'm concerned that it gets narrower  
6 and narrower and narrower, and they continue to go  
7 down. And then it essentially assumes that, as it said  
8 in here, that the decision has already been made to  
9 adopt.

10 So that would be my major concern.

11 CHAIRMAN KECKLER: Go ahead.

12 MR. BROOKS: For the record, I'm Terry  
13 Brooks --

14 MR. LEVI: I know who you are, but I also know  
15 what time it is. So I hope everybody has their eye on  
16 the clock. That's all I want to say.

17 (Laughter.)

18 MR. BROOKS: We're talking about justice here.

19 (Laughter.)

20 MR. LEVI: We are doing that all day and  
21 yesterday. There's no shortage of that.

22 MR. BROOKS: I'm Terry Brooks. I'm the



1 counsel to the ABA's Standing Committee on Legal Aid  
2 and Indigent Defendants. And I want to commend Mr.  
3 Freedman and his colleagues for their work on this. It  
4 is much clearer. It flows much better. And I think  
5 that your work is outstanding in that regard.

6 I also want to thank this Committee and the  
7 Board for the very deliberative process that they are  
8 taking toward this rule, and the multiple times you've  
9 taken it up. I know it may strain your patience, but I  
10 think it's important. And I'm glad that you're giving  
11 it the time and care that is required.

12 I just wanted to raise two points, really.  
13 And one of them sort of flows from the statement on  
14 page 4 of the FNPRM that says that, "LSC is proposing  
15 to amend its regulations to adopt standards and  
16 procedures for limited reductions in funding."

17 I would submit that there are no standards  
18 here. There are procedures, but there is no indication  
19 of when this rule is to be triggered, and when a 1  
20 percent reduction, a 2 percent, 5 percent, 10 percent,  
21 is called for. There are no standards.

22 And I think the one ha's most troubling is in

1 the definition of what is a substantial violation.  
2 There is no threshold articulated for that, and it  
3 would be very helpful if the rule could include that a  
4 violation must be knowing and willful, and not a  
5 recipient acting based on a reasonable interpretation  
6 of state or federal law.

7           This rule should not be used to punish a  
8 recipient when it is acting in good faith and there's a  
9 genuine dispute. I understand that Management believes  
10 it needs additional flexibility to deal with  
11 recalcitrant recipients, and it's your prerogative to  
12 do that. But the rule shouldn't be used to punish a  
13 recipient that's engaged in an honest dispute.

14           I would submit that you can give management  
15 the additional flexibility it requests and still  
16 improve this rule in ways that go a little beyond the  
17 rule you started with. Your legacy will be -- can  
18 be -- to leave a better rule behind, a rule that is  
19 improved both in terms of flexibility and in terms of  
20 balance and fairness. Those things are not mutually  
21 exclusive.

22           The only other point I want to make echoes

1 what Mr. Greenfield said about suspensions. I don't  
2 know if you have at your disposal information as to  
3 what a 90-day suspension might mean. It seems that  
4 many of the programs -- not many, but some of the  
5 programs -- are heavily reliant on LSC funding.

6           Look at Alabama, for example. What will  
7 happen to a program that essentially loses its almost  
8 sole revenue source for three months? Can it continue  
9 in operation? What kind of program will be left at the  
10 end of three months of not making payroll?

11           So before you move forward without any appeal  
12 process for that kind of length of suspension, I would  
13 suggest that you do a little examination of what kind  
14 of impact that might have on a recipient and whether it  
15 is, in effect, a termination.

16           Thank you again for your time and for hearing  
17 me out. I hope I haven't run over my allotted two  
18 minutes. And I look forward to working with you in the  
19 future.

20           CHAIRMAN KECKLER: Thank you for the comments.

21           And those are part of the input into the rulemaking,  
22 all of those things.

1           But I think that since a number of questions  
2 were raised, I think I will give Management a chance to  
3 respond to some of the issues that were raised in the  
4 public comment. Jim?

5           PRESIDENT SANDMAN: if the question is the  
6 merits of the initial proposal here, I would like to  
7 speak to the merits. I favor this rule as proposed.  
8 The Inspector General and I agree on the desirability  
9 of this rule.

10           The way I see it, we currently have a  
11 significant gap in the enforcement remedies that are  
12 available to LSC. The gap lies in the area between  
13 30-day suspensions and questioned cost proceedings on  
14 the one hand, and what the regulations currently call  
15 termination, a funding reduction of 5 percent or more,  
16 on the other.

17           A 30-day suspension is just that, a 30-day  
18 delay in the payment of funding to a grantee. At the  
19 end of the 30-day period, the suspended funds are paid  
20 to the grantee and normal payments resume. A  
21 questioned cost proceeding aims to recover from a  
22 grantee LSC funds previously spent in violation of LSC

1 requirements.

2           A 30-day suspension and the questioned cost  
3 proceedings have serious limitations, in my view.  
4 There is no necessary correlation between the amount  
5 spent in violation of LSC requirements and the  
6 seriousness and consequences of that violation.

7           I have seen that in the questioned cost  
8 proceedings that have come to me in my 18 months as  
9 President, that you can spend a relatively little  
10 amount of money in violation of LSC requirements doing  
11 something that has the potential to cause great harm.

12           I appreciate very much the focus of the  
13 comments that have been made on the risks to client  
14 service with a suspension of more than 30 days and a  
15 reduction in funding of less than 5 percent. But  
16 there's another risk, a greater risk, a risk to the  
17 entire LSC program and to the clients of every grantee  
18 if LSC does not have sufficient options for taking  
19 enforcement action commensurate with the magnitude of  
20 the violation.

21           The risk is that Congress will act, and reduce  
22 LSC's funding. Congress expects LSC to have and to use

1 and to take the necessary action to conduct appropriate  
2 oversight of LSC funds, and I don't currently believe  
3 that we have all of the tools we should have to  
4 discharge that responsibility.

5           So I see this proposal as filling in a gap, as  
6 increasing the tools that management should have to be  
7 able to do effective oversight. I think that the  
8 procedural protections, the question of standards.  
9 That's something that I think that is perfectly  
10 appropriate to raise and that no decisions have yet  
11 been made on.

12           But as far as the underlying rationale here,  
13 my experience and my time as chief executive officer of  
14 the Corporation is that we need to have and should have  
15 the additional tools reflected in this proposal.

16           CHAIRMAN KECKLER: Thank you.

17           Well, given the time, we've been asked to do  
18 it. If there are no more immediate questions from the  
19 Committee or the Board, I believe the next step would  
20 be to recommend the further notice of proposed  
21 rulemaking to the Board to receive comments on the  
22 revised proposed rule.

1           Is there a motion to submit such a  
2 recommendation to the Board?

3                           M O T I O N

4           MS. MIKVA: Can I move to do that with the  
5 amendment -- I'm sorry. I can't even find the place  
6 where Mr. Greenfield was talking about. But it seemed  
7 to me it could be --

8           MR. FREEDMAN: The amendment that would  
9 address the ambiguity that Mr. Greenfield mentioned  
10 would be on page 7, question 2. The second line is,  
11 "No further comments are sought regarding the  
12 underlying decision." It will be more clear if we make  
13 that "regarding the question of the underlying  
14 decision."

15           MS. MIKVA: Thank you.

16           MR. FREEDMAN: I think that would be the  
17 necessary addition.

18           CHAIRMAN KECKLER: So with that, Harry, you  
19 moved the question. Is that an acceptable amendment to  
20 you?

21           MR. KORRELL: Yes.

22           CHAIRMAN KECKLER: Okay. With that, is there

1 a second?

2 (No response.)

3 CHAIRMAN KECKLER: I will make it a second.

4 With that, is such a recommendation approved? Ayes?

5 Aye.

6 (No response.)

7 CHAIRMAN KECKLER: Harry, did you vote?

8 MR. KORRELL: Harry says aye.

9 CHAIRMAN KECKLER: Harry says aye.

10 Opposed?

11 MS. MIKVA: I would abstain.

12 CHAIRMAN KECKLER: Abstain? Okay. The motion

13 carries. There's a quorum. There's two votes in

14 favor. And we will submit that recommendation to the

15 Board.

16 MR. FREEDMAN: Mr. Chairman, one just quick

17 clarifying question. We had mentioned that the

18 proposal has changed from 60 days to 30 days for the

19 comment period. Can I presume that it's being moved to

20 the Board with a 30-day comment period?

21 CHAIRMAN KECKLER: Is that acceptable to you,

22 Harry, to go 30 days?



1           MR. KORRELL:  Thirty days instead of what?

2   I'm sorry.

3           CHAIRMAN KECKLER:  Thirty days instead of 60  
4   days, just for the comments and the changes.

5           MR. KORRELL:  Yes.  That's fine.

6           CHAIRMAN KECKLER:  I don't know why I look up  
7   when -- it's like Harry's in the ceiling.

8           (Laughter.)

9           MR. LEVI:  Harry, you're coming into the room  
10  through the ceiling, and so we're all looking up.

11          CHAIRMAN KECKLER:  It's acceptable to me also.  
12  So yes, 30 days.

13          MR. LEVI:  It's probably a better position  
14  than you normally occupy.

15          (Laughter.)

16          CHAIRMAN KECKLER:  All right.  So with that --

17          MR. KORRELL:  John, I wish you had more  
18  confidence in me.

19          (Laughter.)

20          CHAIRMAN KECKLER:  Is there further public  
21  comment on the action to the Committee today?

22          (No response.)

1           CHAIRMAN KECKLER:  If not, is there any other  
2 business to bring before the Committee?

3           (No response.)

4           CHAIRMAN KECKLER:  Seeing none, I will now  
5 consider a motion to adjourn.

6                           M O T I O N

7           MR. LEVI:  So moved.

8           MS. MIKVA:  Second.

9           CHAIRMAN KECKLER:  All in favor?

10           (A chorus of ayes.)

11           CHAIRMAN KECKLER:  The Committee stands  
12 adjourned.

13           (Whereupon, at 4:20 p.m., the Operations and  
14 Regulations Committee was adjourned.)

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