Monday, April 18, 2016
9:03 a.m.

Legal Services Corporation
3333 K Street, N.W., 3rd Floor
F. William McC Calpin 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
Ronald S. Flagg, Vice President for Legal Affairs, General Counsel, and Corporate Secretary
Lynn Jennings, Vice President for Grants Management
Rebecca Fertig Cohen, Chief of Staff
Mayealie Adams, Special Assistant to the President for the Board
Wendy Rhein, Chief Development Officer
David L. Richardson, Comptroller and Treasurer, Office of Financial and Administrative Services
Carol A. Bergman, Director, Office of Government Relations and Public Affairs
Lora M. Rath, Director, Office of Compliance and Enforcement
Janet LaBella, Director, Office of Program Performance
Althea Hayward, Deputy Director, Office of Program Performance
Carlos Manjarrez, Director, Office of Data Governance and Analysis
Traci Higgins, Director, Office of Human Resources
Stefanie Davis, Assistant General Counsel, Office of Legal Affairs
Mark Freedman, Senior Assistant General Counsel, Office of Legal Affairs
Jeffrey E. Schanz, Inspector General
Laurie Tarantowicz, Assistant Inspector General and Legal Counsel
John Seeba, Assistant Inspector General for Audit
Daniel O'Rourke, Assistant Inspector General for Investigations
David Maddox, Assistant Inspector General for Management and Evaluation
Katherine Ward, Executive Assistant, Office of Legal Affairs
STAFF AND PUBLIC PRESENT (Continued):

Helen Guyton, Assistant General Counsel, Office of Legal Affairs
Dianne Rouse, Research Coordinator, Office of Legal Affairs
Davis Jenkins, Graduate Fellow, Office of Legal Affairs
Jean Fischman, Graduate Fellow, Office of Legal Affairs
Magali Khalkho, Director of Management Operations, Office of the Inspector General
Roxanne Caruso, Director of Audit Operations, Office of the Inspector General
David de la Tour, Program Counsel, Office of Compliance and Enforcement
Daniel Temme, Office of Compliance and Enforcement
Reginald J. Haley, Program Analyst, Office of Program Performance
James Scruggs, Program Counsel, Office of Program Performance
Ronké Hughes, Program Counsel, Office of Program Performance
Bristow Hardin, Office of Data Governance and Analysis
Antwanette Nivens, Office of Data Governance and Analysis
Herbert S. Garten, Non-Director Member, Institutional Advancement Committee
Frank B. Strickland, Non-Director Member, Institutional Advancement Committee
Thomas Smegal, Non-Director Member, Institutional Advancement Committee
Allan J. Tanenbaum, Non-Director Member, Finance Committee
Don Saunders, National Legal Aid and Defenders Association (NLADA)
Robin C. Murphy, NLADA
David Miller, NLADA
## OPEN SESSION

<table>
<thead>
<tr>
<th>1. Approval of agenda</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Approval of minutes of the Committee's meeting on January 28, 2016</td>
<td>6</td>
</tr>
<tr>
<td>3. Consider and act on 2016-2017 Rulemaking Agenda</td>
<td>7</td>
</tr>
</tbody>
</table>

Ron Flagg, General Counsel
Stefanie Davis, Assistant General Counsel
Mark Freedman, Senior Associate General Counsel

| 4. Update on rulemaking workshops for 45 CFR Part 1630 - Cost Standards and the Property Acquisition and Management Manual | 41 |

Ron Flagg, General Counsel
Stefanie Davis, Assistant General Counsel

| 5. Consider and act on Further Notice of Proposed Rulemaking for 45 CFR Part 1610.7 - Transfer of LSC Funds, and 45 CFR Part 1627 - Subgrants and Membership Fees or Dues | 46 |

Ron Flagg, General Counsel
Stefanie Davis, Assistant General Counsel
Mark Freedman, Senior Associate General Counsel
CONTENTS

OPEN SESSION (Continued)

6. Update on performance management and human capital management 68
   Traci Higgins, Director of Human Resources

7. Report on data validation and enhancement process 77
   Carlos Manjarrez, Director of the Office of Data Governance and Analysis

8. Public comment 98

9. Consider and act on other business 99

10. Consider and act on motion to adjourn meeting 99

Motions: Pages 6, 6, 39, 65, 95
CHAIRMAN KECKLER: Noting the presence of a quorum, I'm going to call to order the duly noticed meeting of the Operations and Regulations Committee. And as the first item of business, I will seek approval of the agenda that you'll find before you on page 47 of the board book.

MOTION

MS. MIKVA: So moved.

DEAN MINOW: Second.

CHAIRMAN KECKLER: All in favor?

(A chorus of ayes.)

CHAIRMAN KECKLER: Okay. The agenda is approved. And the next item of business is the approval of the minutes of the committee's January meeting, which you will also find in your board book on page 49.

MOTION

MS. MIKVA: So moved.

MR. LEVI: Second.

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

CHAIRMAN KECKLER: Okay. With those out of the way, I will turn to our first item of substantive business, which is the committee and indeed the corporation's rulemaking agenda, which is -- this is, I believe, our second year, of doing a rulemaking agenda.

MR. FLAGG: Right.

CHAIRMAN KECKLER: And so this looks forward to what rules we, as a committee, and then the board will be working on over the course of the next year. And it's something that is revisable over time and in reaction to events, but provides a plan both for us, a work plan, and for the public to understand where we're going and what we're doing.

So with that preface, I will turn it over to Mr. Flagg.

MR. FLAGG: Thank you, Mr. Chairman. I commend the committee. I think this annual rulemaking agenda is a terrific step, and if you look at the lasting legacies of this board, one of them, in terms of creating this marker and set of plans both for the corporation and for the committee and the board and for
the public and our stakeholders, I think, is an excellent development and puts us really at the forefront of rulemaking across the government and those organizations that are sort of like but not quite part of the government.

I'd like to start out by just briefly introducing, within OLA, the group that works on rulemaking. Stefanie and Mark you know. Our law fellows for this year are Jean Davis and Davis Jenkins, who are behind us. They have and continue to work on all of the rules about which we'll be talking, as well as this rulemaking agenda.

In preparing the agenda, management has looked at all of our regulations that are currently on the books. We've consulted with the chair, the IG, and with all of our colleagues within -- all of the offices within LSC to try to identify those areas of our regulations which are most in need of further review or change.

And as you can see from the memo that is at page 54 through 63 and then there's an addendum that I think each of you should have received that would
follow the memo, we've identified about a dozen
different areas in which we think additional work
should be done.

And in order to provide some organization to
consideration of those areas, we've put them into three
tiers. And what I'd like to do now is just briefly
summarize what each of those tiers are and which of the
groups of rules fall within each tier, and provide a
brief explanation as to what each of those rules are
and why the management proposes to group them in the
tiers that you see.

MR. MADDOX: Ron, where's the memo in the
electronic online? Do you know what document that is?
I have a memo from Charles.

MR. FLAGG: It should be the first -- it
should follow the minutes of January 28, 2016 and the
agenda for the committee.

MR. FREEDMAN: It should be page number 54 in
the lower right corner.

DEAN MINOW: That's the hard copy.

MR. FREEDMAN: Right. Online.

PROFESSOR VALENCIA-WEBER: It's after all the
MR. MADDOX: Okay.

MR. FLAGG: So tier 1 is pretty straightforward. This committee met a year ago and approved an agenda that included four rulemakings. And those are the four that are in tier 1. It's not just because the committee approved them a year ago, but because, on further reflection, we still believe these are the four that should go first. Two of them, the update of Part 1610 and 1627, and the update of 45 CFR Part 1630 and the Property Acquisition and Management Manual, hereafter referred to as the PAMM, are ongoing. And in fact, the next two agenda items today will cover those two.

Those are two very important rulemakings. They're both complicated in the sense that there are a lot of issues involved in both, significant issues; one's involving a lot of judgment.

These are not areas in which Congress has said, thou shall, and clearly provided detailed guidance. So this is areas in which the committee and the board need to make policy judgments. And those two
proceedings are ongoing and occupying a lot of both the committee's time as well as staff's time.

There are two other rulemakings which are on this agenda, carried over from last year. One involves the bonding of recipients, which is covered in Part 1629; briefly, the IG has recommended, and management concurs, that the requirement of bonding should be expanded to cover all employees, not just certain categories of employees, and that the minimum bond coverage, which is currently set at $50,000, should be considered for an increase.

There's one amendment to our memo. In our memo on page 57, we say that we anticipate providing the committee with a justification memorandum in 2017. In fact, we anticipate having that to you either in July or October.

CHAIRMAN KECKLER: Wonderful.

MR. FLAGG: And then the fourth rulemaking in this first tier would be with respect to the fee-generating case regulation at 1609.2(a). The definition of fee-generating case, what a fee-generating case is, is a bit more complicated than
that three-word term might suggest, and we frequently get questions about it. And to clarify the term and hopefully reduce the number of questions in the field, we propose to hold a rulemaking.

And again, I would make the same modification with respect to this rule as with regard to the bonding rule. That is, we anticipate getting a justification memorandum to the committee this year, not in 2017.

Now, the second tier is a set of four different potential areas of rulemaking, which we also view as important, but they just need to stand in line. And these would be the next in line, in our view.

Two of the four are areas in which we believe further information-gathering would be the appropriate first step, and two others are ones in which at least management has a pretty good sense as to where we think we might go. And let me talk a little bit more about each of those. And these are not listed in order of priority. These we would put on sort of the same level.

On page 57 and 58, there's a discussion of Part 1607. This is the part that deals with governing
bodies, the governing bodies of our grantees. I know
this board has spent a fair bit of time focusing on
governing bodies.

Much of what is required in our regulations
with regard to the composition of recipient boards is a
function of statutes which we cannot change easily.
But there are some aspects of our regulations, which
are discretionary, and I'll just quickly mention two.

The statute provides that one-third of client
boards should be composed of eligible client members.
And it speaks of eligible clients who may, underscoring
the word "may," also be representative of associations
or organizations of eligible clients. And our
regulation provides that the mechanism for getting
these eligible clients onto client boards is by
appointment by associations or organizations.

And there are at least two issues that have
been raised by people in the field. One is that some
of the groups charged with appointing client-eligible
members are themselves led by individuals who are not
client-eligible. And second, there's a concern that
there are client-eligible members who may not belong to
the club. And for both those reasons, that's an issue
we would like to think about.

And in addition, there's a provision in our
regulations that interprets the requirement that, at
the time of appointment to each term of office, the
eligible client member be eligible so that if a client
board member is, for example, appointed twice, once in
year 1 and the next time in year 4, depending on
whatever the length of the term is, at both points in
time the eligible client member must in fact be
eligible.

There's concern again expressed from the field
that at times, people have -- their income has
increased sufficiently that they're no longer
client-eligible, and that that causes organizations to
lose potentially valuable client members because the
way our regulations are set up and the statute is set
up, most of the members of our client boards have to be
lawyers. A third have to be client-eligible. That
doesn't leave a lot of room for people who are neither
lawyers nor client-eligible. So that's the challenge.

In any event, as to this set of issues in Part
1607, we would propose to engage in information-gathering and then get back to the committee with suggestions as to a path forward from there. Likewise, that is the path we would respect to Part 1609.

The chairman I'd like to thank for making a recommendation, and the memo that Charles provided to us is included in the board materials. It was in addition to the board materials, so you may -- I think it's both available in the board book electronically, but I know hard copies were added to your board books.

But the suggestion is from Charles that we consider revising Part 1609 -- this is the fee-generating case provision -- to permit a relatively small fee for clients above the federal poverty level. And management certainly has not developed a position on that other than we think that's something that should be considered.

The board actually considered this issue back about 20 years ago and never came to a conclusion. The Office of Legal Affairs, again about 20 years ago, opined that charging eligible clients more than a
nominal fee would contravene the purpose of the Act, but I would hasten to add the Act actually does not say anything about this issue. It's the legislative history that the OLA opinions were alluding to.

I think at least our current view is given the volume of demand for legal services and the scarcity of resources, no proposal ought to be off the table automatically, and this is something that ought to be considered. And again, our thought is that this is something that we should do some information-gathering on.

Charles, did you want to --

CHAIRMAN KECKLER: Yes. Just a before couple of notes on that. So you have received the memo, and I won't dilate on that, on my views. I will say that as part of the rulemaking agenda process, part of the idea is that committee and board members, as well as other members of the public, can use the opportunity to make suggestions of this kind. And so I was trying to lead by example by putting in my suggestions.

I will ask the question that occurred to me after reading the memo, though, that since we do have a
1609 -- it's the same sort of discussion that we had with the PAI rule. Do you do something specific with the rule, or do you have a broader rulemaking? So what's the thought?

Since we're going to be looking into the definition of fee-generating case in 1609, should we also do some consideration of this type of stuff at the same time?

MR. FLAGG: Yes. We thought about that as well. It's a natural thought. The volume of questions we get on this fairly narrow issue of what a fee-generating case is is sufficient that we would like to clarify that.

I think the proposal of permitting our grantees to charge for certain services to people who are somewhat above the poverty line would be a significant step. My guess is it will require a fair amount of communication with our stakeholders, and we'd rather put them on separate tracks so that clearing up this one relatively smaller point doesn't get delayed.

CHAIRMAN KECKLER: Okay. Thank you.

MR. FLAGG: The two other tier 2 proposals are
ones, again, where management does have fully formed thought as to what direction we should take. There are certain definitions in Part 1600 that we propose be modified. Those are described in detail at pages 59 to 61 of the board book.

They involve the definition of "staff attorney," the definition of "LSC funds," which is important because now for the first time we have funds in substantial volume other than from Congress, and revising the definition of "legal assistance."

And then the fourth tier 2 proposal we have is the IG has recommended, and again management concurs, that we should have Touhy regulations. Touhy regulations are a term of art that relate to procedures by which litigants in civil cases not involving LSC may request documents or testimony from LSC. And most of the larger government agencies have such regulations.

We think we should have them. The reason this is tier 2 and not tier 1 is, fortunately, we seldom get subpoenas. And so it's just not quite as pressing an issue as some of these others. But we do think it's something that would be pretty straightforward, and
that we should do.

CHAIRMAN KECKLER: Let me pause. By the way, I was a Touhy official, so I'm fully supportive of those, yes.

MR. FLAGG: If I'd only known, I would have an even greater respect than I already do.

CHAIRMAN KECKLER: But if you do, in anticipation of this, I did look and see, for instance, that not just large organizations such as HHS, but also some of the more parallel entities to LSC, such as the Corporation for National Community Service, have some Touhy regulations. Not prejudging the matter, they look okay at first glance. So it is something that I think that we could do and should do.

MR. FLAGG: I agree. And then tier 3, there are three sets of potential regulations. Let me talk about each of them. Again, these are things that we think ought to be done. But in a world of limited time and resources, you need to somehow prioritize things.

So Part 1603 is an old chestnut at this point. It's a basically unused provision that we've talked about in the past. Our recommendation and the
recommendation of the IG is that it be rescinded. And
the only reason it's in tier 3 is again, it's not
pressing. Nobody seems to have been bothered by its
presence for the last decade or two. And we'd rather,
for example, get our Touhy regulations in place before
rescinding this.

Part 1635, again, part of one of Charles' two
recommendations, was that we consider placing
additional data requirements on our grantees. I would
say management is always careful before putting
additional data collection requirements on our
grantees. So again, we haven't considered this
particular recommendation in any detail.

Apart from that, management believes that Part
1635 ought to be reviewed. It is one of the most
significant. This is the part that deals with data
maintenance and collection and timekeeping and other
very important aspects of our oversight. We think Part
1635 should be revised.

The reason it is in tier 3 is not because it
is of less significance than the other regulations
above it, but because this would require -- it would be
a very complicated effort. It would be a very lengthy effort.

And we don't think we should start the 1635 revision process until we've completed the 1630 and 1610 and 1627 sets of regulations just because this will be very labor-intensive, not only for staff but for the committee.

And lastly, part 1638, the anti-solicitation regulation. This is actually quite an important regulation. There are few functions that our grantees do that are more important than communicating with the communities in which they serve about the nature of the services that are available.

We all know that not only is it the case that our grantees turn away roughly one or more eligible clients for every one they're able to serve, but there are many more eligible clients who are unaware either that the problems they face might be assisted by a lawyer or that there might be a lawyer available to help them.

So communications with the community are very important. We are concerned that the way the
regulation is currently is more restrictive than Congress intended with regard to anti-solicitation. Anti-solicitation rules are typically thought of as either consumer protection rules, that is, people misleading consumers about the nature of their services and an effort to induce them to come to them for pay. There's also a tradition of anti-champerty and barratry. There are probably champerty and barratry experts on our board, but --

(Laughter.)

MR. FLAGG: I don't think --

MR. MADDOX: I regret to say that I've actually had a case in federal court involving the doctrine of champerty.

MR. FLAGG: We even have a board member who can pronounce the term properly, so that's even more commendable. But in any event --

MR. LEVI: I appreciate your humor.

MR. FLAGG: -- much of what we do, much of what our grantees do, is defense work that doesn't even implicate those rules.

We had an opportunity earlier this year, and
actually, Davis Jenkins, one of our law fellows, as well as Mark and the rest of the team, put together a very good opinion which at least eliminated some of the problems associated with this rule that were caused by a prior OLA opinion and were able to clarify some things, which eliminated some of the exigency. But this is one that we think ought to be addressed.

So that is our set of recommendations.

MR. LEVI: Can I ask you, given that, why is that off in the corner?

MR. FLAGG: Because we've taken care of the worst exigency with this opinion. We still think the regulation ought to be clarified, but it's not quite as exigent as it was six months ago. But look. All 11 or 12 of these, we think, are very important initiatives. And one might fairly say, gee, these are all important. Why not do all of them, now?

(Laughter.)

MR. FLAGG: And that's why we've added this attachment about the regulation history, and Jim is going to talk more about this in his presidential report. I just want to make one point from the chart
that again should be at the back of this memo and Jim
will talk about at greater length.

I believe this year and next year we will
complete four more rulemakings. That will mean that
from 2014 through 2017, a four-year period, we will
have completed -- you will have completed -- ten
rulemakings. What does that mean? Is that a lot? Is
that a few?

In the prior, I think, 11 or 12 years, the
corporation completed a total of 11. So you will have
accomplished in four years roughly what was
accomplished in the prior 11, just in terms of numbers
of rulemakings. Now, we all know not all rulemakings
are created equal. But certainly the PAI rulemaking,
the 1610, 1627, and the 1630 rulemakings are all major
rulemakings for us.

So this is to say that the level of rulemaking
activity today, during which we're working presently on
four rulemakings, is quite substantial. We think it's
appropriately ambitious. But that is a reason why we
can't work on all 12 of these at once.

And what we have done is tried to list the 11
or 12 rulemakings that we think are most important and ought to be on our short-term and medium-term radar, and would ask the committee to approve the agenda as submitted.

What does that mean? It means it sets a goal for the committee and the board and for staff, exactly as Charles said, subject to change. If all of a sudden circumstances change and some other issue becomes more significant, nothing precludes the board or the committee or management to say, we have a crisis. We need to do something else.

CHAIRMAN KECKLER: Yes. Just one comment on that. I do appreciate OLA's support, and we do need to be cognizant, and I think we are, that OLA has other responsibilities besides the production of regulations. And I think the term "appropriately ambitious," when I look at that and I look at the last two years, production of three rules, and annually, again recognizing that rules are distinct and not equally comparable, that seems to me, just very impressionistically, to be a very appropriately ambitious pace because if you go beyond three, then
you're getting more than one rule per quarterly session.

We have the rulemaking agenda at this session, and we can have a rule approximately every quarter, just as a very rough guide. But if you get multiple rules, multiple final rules or multiple NPRMs, in a single session, I think that's putting a lot of pressure both on you and on the committee.

So three is about where we can go annually, maybe, in terms of our institution. So that's my own impression of things. And I'll turn it over to questions.

MR. LEVI: But there are four quarters.

CHAIRMAN KECKLER: There's four quarters. But we have the rulemaking agenda in this one. Right.

But yes, Father Pius?

FATHER PIUS: I was just afraid you were going to see the 1997 number as a challenge.

(Laughter.)

FATHER PIUS: Two questions. One, it's not rulemaking specifically, but the way in which we think about rulemaking, and that's the executive order
talking about cost/benefit analysis with regards to rules, which I don't think we're directly required to follow.

But there are some things, for example, in which cost/benefit analysis makes some sense. The 1629 rule change is one in which a cost/benefit analysis is, I think, pretty easy, and it's something that -- I'm putting it out as something that should be considered, anyway, is whether we should do something like that for a regulation that really is a numbers issue or a money issue.

MR. FLAGG: Yes. That's part of our justification memo, is a cost/benefit analysis.

FATHER PIUS: Okay. Good, good.

MR. FLAGG: Look. You're going to see, in about five minutes, a classic case of that. We're proposing to, for the first time, put in a de minimis standard for the review, the pre-review, of subgrants of --

MS. DAVIS: $15,000.

MR. FLAGG: -- $15,000. That's not because a $12,000 subgrant is unimportant. It's a matter of
The time spent reviewing a $12,000 subgrant could be, we believe, better spent doing something else.

FATHER PIUS: Okay. No, that's helpful.

CHAIRMAN KECKLER: Right. So if you look at the rulemaking protocol in particular, that's where the -- our approval of the new rulemaking protocol introduces elements of cost/benefit analysis more explicitly into the process.

FATHER PIUS: And one other thing that occurred to me as I was reading some of these, thinking about our rules in general, and related to the representation of groups. So, for example, many of our things are keyed off -- and I talked to Ron a little about this, but I haven't looked through the regulations closely enough -- but many of our regulations are cued off of eligible clients, which is explicitly limited to individuals.

So, for example, if you look at the preamble or the justification for 1627.1, it talks about subgrants in regards to eligible clients. But obviously, the rest of the rule doesn't apply just to
subgrants to eligible clients. It would also a
subgrant to somebody who was a group, which is by
definition not an eligible client.

So I just wonder if we should take some look
through and make sure that we're not using the term
"eligible client" in a way that's too restrictive.

MR. LEVI: You're referring to a chart, and I
don't see a chart.

PROFESSOR VALENcia-WEber: In the handout.

MR. LEVI: Oh, sorry.

PROFESSOR VALENcia-WEber: That was just given
out.

CHAIRMAN KECKLER: Yes. So if management
wants to respond. I'll just say that -- there's no
need to respond.

FATHER PIUS: There's no need to respond, but
just think about it.

CHAIRMAN KECKLER: But that's a good point,
Father Pius and --

FATHER PIUS: I brought it up because I don't
know the answer. But somebody should, I think, think
about it.
CHAIRMAN KECKLER: Right. I think one of the things I'm going to do is I'm going to put a pin in a note for myself that that's a topic that, as we talk about the definition of eligible client and we think about our representation of associations, is something that might or might not be included in that provision.

MR. FLAGG: We'll look into that. Thank you for the suggestion.

CHAIRMAN KECKLER: Laurie?

MS. MIKVA: Is there any mechanism for other outside stakeholders to weigh into this other than flooding OLA with requests for guidance?

MR. FLAGG: The answer is yes. We routinely hear from grantees, certainly monthly if not more often, about issues. Now, they don't call us and say, please change Part 1614.7.5. They ask a question about it, and we try to answer their questions very promptly. But if two or three grantees ask a question about the same provision, that causes us to say, is it them or is it us? And so that is one way we get input.

NLADA gets the same sorts of questions, and they again will come to us and either ask the questions
in the form of a question about an existing regulation or may say, gee. We've gotten 16 questions about this. You might want to think about clarifying it.

So we do regularly receive input from the field from a variety of sources. That gives us that opportunity. And then of course once we get the process where we are on this rulemaking agenda, we in many different ways reach out to the communities. We, as we're doing on 1630, have workshops in advance, really, of a specific rulemaking proposal to think about the direction we should go.

In some cases, as was the case with Part 1610 and Part 1627, we, in advance of a notice of proposed rulemaking, floated some general ideas in an ANPRM. What is the A?

MS. DAVIS: Advance notice of proposed rulemaking.

MR. FLAGG: Advanced notice of proposed rulemaking, which in essence says, here's some ideas. What do you think about them? And then even once we get to the notice of proposed rulemaking, we solicit public opinion. And I think this committee and the
board and staff have been very -- the fact that we put something in an NPRM does not mean it's final. And we've been very good about changing things where we get public comment that causes --

DEAN MINOW: Absolutely.

MS. DAVIS: If I could just add on to Ron's comment, although we're not bound by the APA, the Administrative Procedure Act does authorize the public to petition an agency for rulemaking. And we've adopted a similar procedure in our rulemaking protocol. So the public can -- even though they don't, as Ron noted -- the public certainly can write to LSC and say, hey, we think it would be great if you did an overhaul of 1635. So that option is also there.

MS. MIKVA: I agree completely that once the proposed regulation -- or even thinking the proposed regulation is out there, that there's lots of room for input. I'm just wondering if we want a more formal way to allow input into this part, which is --

MR. FLAGG: I don't think there's a need. I think people understand that operators are on duty 24/7, and if they want to call us -- I mean, we
literally get calls multiple times a month about our rules. Again, they usually don't take the form of a suggestion that we change our rules. They usually have a question. But that leads us to think about it. And certainly NLADA and some grantees do think in terms of, why don't you change this rule in one way or another? So I don't think there's any lack of knowledge about that.

MR. FREEDMAN: And if I can add also, OPP and OCE provide terrific opportunities for identifying issues. While they're working with grantees, they're having conversations with them. They're at their offices. Issues simply come up, and they get a much better sense of things.

And frequently an issue will come up. It might be a live issue as part of what they're doing. It might be unrelated. Where they'll be talking with someone at a grantee, a grantee will have a chance to say, hey, I'm wondering about this, or we're having trouble with that.

And that can also percolate into our consciousness or to questions for us, and that's become
an increasingly useful conduit for getting a sense of what's concerning our grantees and what are they experiencing.

CHAIRMAN KECKLER: Julie?

MS. REISKIN: This is great. Just a comment as you're thinking about timing. There were a few -- two, in particular -- rules that I think clients are going to want to have a lot of input on. And I appreciate that particularly the one about the board members came from the feedback that we've gotten.

And so as we're thinking about what's going to happen and when, that NLADA conference is the best opportunity to be able to speak to clients in a group. So just a thought. And then Jim and I have that standing workshop that we do, and that's where people have come to expect, not that we can't get comments any time any other way, but that's just one way particularly. Not all of them are on the internet, and that's just one place where they come and they know.

So just a timing thought.

MR. FLAGG: Thank you. As I said, with regard to 1607, our thought is the first thing we ought to do
is talk to people and gather more information. So that would be a great vehicle. Thank you.

CHAIRMAN KECKLER: Harry?

MR. KORRELL: Thank you. Two quick thoughts. One, the idea that we make sure that people have an opportunity to weigh in on our agenda, I think, is going to be served by having this annual discussion about our rulemaking agenda.

I do think that the grantee and client community -- or grantee community, anyway -- pays attention to what we're doing at these things, and I think doing this annually gives them that opportunity. I think it may be an unintended consequence, but an important one.

And I would just also ask, in setting the priorities, we not overlook the value of actually rescinding a regulation. I just think that --

(Laughter.)

MR. LEVI: Well, I think that's quite important, actually.

MR. FLAGG: The other thing is, you might look at this and say, well, here are 12 more regulations.
But most of these are not -- our goal here is not more regulation but better regulation. So a lot of these -- for example, if you look at what we're proposing in the 1627, 1610 domain, it's not more regulation. It is, we hope, better-thought-out regulation, which in some instances is a reorientation and hopefully an improvement in the way we do things. But we're not looking to expand. We're looking to improve.

MR. KORRELL: No. My comment wasn't to suggest that we were. It just seems like it would be such a neat opportunity to actually rescind a regulation, and to act as if we looked at ourselves, we looked at our operation, and we looked at our regulation, and we went, wow! This doesn't do anything. Why don't we get rid of it? That just seems like a wonderful thing to be able to do, and to tell people, and tell our grandchildren.

(Laughter.)

CHAIRMAN KECKLER: Right up next to the LCAD. You can have 1603 up there.

MR. FLAGG: You could even have the Harry Korrell Rescission Act of 2017.
CHAIRMAN KECKLER: Yes. That's very good. Are there any other questions about it? (No response.)

CHAIRMAN KECKLER: So I think this is a fine working plan -- oh, sorry, Martha. Go ahead.

DEAN MINOW: Just a small question. Do we ever think about sunsets on any of the rules?

MR. FLAGG: I think we've thought about them. The volume of our rules is sufficiently small that we basically think about them every year. This is not HHS, it's not HUD, it's not DOJ, where it would be impossible.

So I think it's possible if we had a particular initiative, the effect of which we were uncertain about. I could see, with regard to that sort of thing -- I mean, as just a completely hypothetical illustration, if we were interested in permitting more than nominal fees to be charged -- and again, management has reaching no conclusion or has even given it a great deal of thought -- but that sort of thing, if we were uncertain about what the effect would be, I could see that would be the kind of regulation or
initiative where we would say, gee. Let's make sure we come back to this in three years or four years or five years, not necessarily to sunset it, but at least to force ourselves to consider the effect of this regulation.

Again, I think we regularly do look at all of our regulations and consult with our field. So it's a good thought, but I think --

FATHER PIUS: And we've done something like that before, where we required an annual report when we were a bit unsure. So we've done not quite sunset, but at least inquired as to management to come back to us about the effectiveness of the regulation.

CHAIRMAN KECKLER: Yes. It's a mechanism. A sunsetting is a mechanism. If something's not inherently time-limited, it's a mechanism that compels regulatory lookback. But as Ron says -- there might be some other way to institutionalize that idea rather than sunsetting for us, that was feasible for us, because of the relatively discrete universe we have.

Anything else?

(No response.)
CHAIRMAN KECKLER: Well, with that, thank you for this excellent memo and for this. I think it's pretty clear that tier 1, in my view, the things we're working on, we need to get them squared away. And as we proceed further along, we can provide input on an ongoing basis. This is something that we're already looking forward into 2017 about the work.

So we'll have some further thoughts, I'm sure, as we go along, and we'll also have a greater sense of what our resources are when we see where we finished with the ones we're working on right now, in particular the issue of the PAMM and 1630. It's a big one. We need to know where we're at when we're at.

So with that, I'll ask for a motion to approve the agenda going forward as a work plan.

MOTION

MR. LEVI: So moved.

MS. MIKVA: Second.

CHAIRMAN KECKLER: I'll take a second. All in favor?

(A chorus of ayes.)

CHAIRMAN KECKLER: Opposed?
(No response.)

CHAIRMAN KECKLER: Thank you. The agenda's approved and gives us a guideline going forward. Thank you.

So with that, let's turn quickly to an update on the rulemaking workshops for 1630. And I just want to mention -- which I'm sure you will -- but to everyone that we will be having the first rulemaking workshop on Wednesday. And that will be here?

MS. DAVIS: Correct. That will be here, from 1:30 to 4:30 in the afternoon.

CHAIRMAN KECKLER: Okay. So I just want to invite people with an interest to come, including all members of the board and the committee.

Julie?

MS. REISKIN: Those are webinars. Correct?

MS. DAVIS: Yes. We will have some panelists here in Washington with us, and others will be participating via webinar.

MS. REISKIN: Is there a way to listen to it after the fact? Are they going to be recorded?

MS. DAVIS: We will be recording it, yes.
MS. REISKIN: Yes. If you could send that. I'm very interested, but I'll be on the Hill. So thanks.

MS. DAVIS: Sure. Yes. We'll make sure you get that.

CHAIRMAN KECKLER: Great. So I'm going to go ahead and turn it over to Ron and Stefanie to give a sense of what we're going to be doing with the rulemaking workshop, which will be the first of three. Yes?

MR. LEVI: Can I just ask, will you be attending?

CHAIRMAN KECKLER: I will be attending and will be chairing the workshop.

MR. LEVI: Oh, good. Are any other board members planning to be here, just a show of -- I guess not.

PROFESSOR VALENCIA-WEBER: That's Wednesday?

CHAIRMAN KECKLER: It's Wednesday. It coincides with ABA Day.

MR. LEVI: That's the problem.

CHAIRMAN KECKLER: Right. So that's the
challenge, that people are at ABA Day. But we'll have that available for the committee and the board to view.

MR. LEVI: We can review it.

MR. FLAGG: Okay. I'll turn the mike over to Stefanie to briefly summarize where we are on 1630.

MS. DAVIS: Sure. Thank you, Ron. So in the board book is the notice that we sent out in February to solicit participants in our three rulemaking workshops for Part 1630 and to announce the dates of the workshop.

We received 19 comments in response to our request, and we selected 15 panelists who will be participating with us over the course of the three workshops. Some participants will be at all three. Others will be attending one or two.

We will be holding the first session, as we mentioned earlier, on Wednesday from 1:30 to 4:30 here, and that session will focus on how our recipients' obligations to other grantees interact with ours.

CHAIRMAN KECKLER: Let me pause, Stefanie. I think we might have some people on the phone that might need to mute their phone. That's coming through.
We're all here, but that would be very kind if you'd do that.

Please go ahead, Stefanie.

MS. DAVIS: Sure. That was actually my ventriloquism. I'm thrilled to see that it's working.

(Laughter.)

MS. DAVIS: So we will be focusing at the workshop on Wednesday with the interaction between LSC's requirements on our grants and what other funders require from our grant recipients. Many of our grant recipients receive funds not only from us but also several other funding sources, up to as many as 120 other funding sources. So we want to respect and understand all of the obligations that our recipients are currently under.

We, of course, need to maintain accountability for the use of our funds. But we also want to, where possible, remove burdens on our grantees if our requirements are different or not particularly well-designed toward getting information that's useful.

We also had some conversations prior to the workshop with outside funders. We spoke with the
Bureau of Justice Assistance and the Office of Violence Against Women, both at DOJ. We spoke with the Corporation for National and Community Service, and thanks to Julie for the introduction, we spoke with Caring for Colorado as a private funder, and got an idea from them about what they require from their grantees, particularly in areas of prior approval for purchases of goods and services and for the treatment of intellectual property developed with other grantees' funds, or other grantors' funds.

We ultimately decided not to invite the funders to this conversation, thinking that it made more sense to focus on the input that we get from the field. But we did find their input to be really useful as we were developing our questions and thinking about, moving forward, how our roles might interact with other funders.

So we are looking forward to our conversation on Wednesday. We will make that recording available to you. And I'm happy to answer any questions you have at this time.

CHAIRMAN KECKLER: Are there any questions
about it? I hope that thinking again about what we're
doing in these rulemaking workshops, it's an early
stage information-gathering effort. And so nothing's
going to be decided there, but hopefully much will be
learned.

If there aren't any further questions, I
think, unless you have further comments on that, we can
turn to our next item, which is subgrants.

MR. FLAGG: Thank you. We have, as Stefanie
will describe, gone through quite a collaborative
process within LSC, working with our colleagues in
other offices and with other parts of our senior
management. And Stefanie will describe where we're at.

There's material at page 69, starting at page 69 of
the board book. And Stefanie, why don't you take it
from there.

MS. DAVIS: Sure. Thank you, Ron. There is a
draft of the notice of proposed rulemaking, the further
notice of proposed rulemaking, beginning at page 69.
And if you're interested in the redlined version of the
rule text itself, that can be found beginning at page
We have spoken about the history of this rulemaking quite a bit at previous meetings, so I won't rehash that. I will only say that we received several comments about various parts of the proposal, and there were four in particular that we decided we needed to seek additional comment on. Those are reflected in this NPRM -- I'm sorry, this FNPRM. Sorry, Jim. And there's one additional proposal that we at LSC included as part of our working through these issues.

The further notice of proposed rulemaking is limited to comment on these five items, so nothing else in the rulemaking has been reopened for comment. All of the committees that we received in response in the original NPRM remain live and valid and will be considered when we are ready to publish the final rule. So I just wanted to make that clear.

So the first change that we're seeking comment on is that we have proposed to remove the definition of the term "programmatic" from --

MR. LEVI: Can somebody mute their phone? I think there's --

MR. FREEDMAN: It sounds like somebody who has
called in has a crying child or other loud, shrieking
object. If that is you, please mute your phone. Thank
you.

(Laughter.)

MR. FLAGG: Well put.

CHAIRMAN KECKLER: Thank you, Mark. Go ahead.

MS. DAVIS: I know it's rulemaking, but jeez.

(Laughter.)

MS. DAVIS: So the first issue that we are
seeking comment on had to do with the definition of the
term "programmatic." We sought to introduce this term
in the NPRM in an effort to make clear that the rule
was intended to reach those third party agreements that
were for the delivery of legal assistance.

We received significant pushback from the
field on that. We thought about it. We tried more to
figure out whether there was a way to define the term
programmatic that didn't either capture too much or
leave out too much. And after many, many discussions,
we determined that there was probably a better way to
capture what we were looking at than to define a term
with what we knew was significant imprecision to it.
So we propose to remove the term programmatic from the further notice of proposed rulemaking. We propose instead to introduce a definition of "procurement contract" in a way to highlight that is like, procurement contracts are for services/goods that you need in order to carry out the grant, and that subgrants are really for those things that involve delivery of legal assistance.

Another part of the way that we did that was that we are keeping, or proposing to keep, the five factors indicative of a subgrant that we borrowed from the uniform guidance. But we've included the term "regarding delivery of legal assistance" in paragraph (b)(3) of Section 1627.4.

So this language, we hope -- I'm sorry, 1627.3 -- we hope now that the term reads, or that the factor reads, "Has responsibility for programmatic decision-making regarding the delivery of legal assistance under the recipient's LSC grant." Makes it clear that what we are talking about is subgrants, sub-awards, that are used to deliver legal services rather than an award to purchase a videoconferencing
system. That's really what we are talking about.

The second change that we propose to make respond to opposition to LSC's proposal to limit all subgrants to be in cash. LSC had encountered situations in which recipients were exchanging space, long-term uses of space, to other organizations who were ostensibly providing PAI services, but the grantee was not able to value the use of that space. They weren't able to tell LSC how much they were giving this other organization, essentially, to provide this service. So in the NPRM we propose to say, you can only use cash.

We received significant opposition from the field, who pointed out that really, a recipient's space is often its most valuable asset, and if we adopted this rule, it may in some ways interfere with or prevent future collaborations with bar associations who want to use recipients' space to engage in pro bono activities.

We heard that. We thought about it some more. And we agreed that that should not be a limitation that we would place on our recipients. So we are revising
the subgrant rule to make it clear that recipients may use goods or services to support a subgrant, but that if they are funded in whole or in part with LSC funds, we expect them to be valued in a certain way and we expect them to be accounted for responsibly.

So we propose doing that through revising the term subgrant and through putting language in the prior approval procedure and in the accounting procedures explaining how we want recipients to value those things. So we hope that that's a change that will be positive and appreciated by the field.

Following along with that as we were having this discussion, if I recall correctly, one of the comments said, even if you do these in-kind subgrants, or perhaps it was discussion internally, it's like if you're allowing a recipient to use or if a recipient is allowing a bar association to use your offices for one Saturday every month, do we need to approve those?

And as we were talking about that, we were like, that doesn't really make a whole lot of sense. It's a lot of bean-counting. It's a lot of specifics for not a lot of information.
So we determined that it made sense that LSC should have prior approval over those agreements if they reached a value of $15,000. We then decided that that actually made sense with regard to cash subgrants as well.

You can see in the chart that Lora Rath produced -- at page 103, there's a memo and a chart that describes all of LSC's subgrants over the past three years, I believe, two years and this year to date -- and there are several which are for amounts -- $2,000, $7,000, $10,000. And we still need to have oversight over those subgrants. They're uses of our funds.

But when thinking about the amount of time and resources that recipients invest in drawing up their subgrant approval requests and that LSC internally spends reviewing those requests, which can involve review from several people within both the Office of Compliance and Enforcement and the Office of Program Performance, we decided there was a line at which we thought prior approval should kick in rather than for every subgrant.
So we are for the first time introducing here a threshold of $15,000. So $15,000 or above, a recipient has a seek prior approval of the subgrant. $14,999 or below, they do not. But that does not mean that they are not subgrants. They are still subgrants. They are still subject to the subgrant rules. They are still subject to the restrictions as they are described. But it just means that recipients don't have to seek prior approval for those subgrants.

FATHER PIUS: Could they if they wanted to?

MS. DAVIS: Absolutely. They could if they wanted to, and LSC still has the ability to request that if there is a grantee that has a history of performance problems or has a history of issues with subgrants, that we may still do that.

CHAIRMAN KECKLER: Julie?

MS. REISKIN: I'm really glad. I really appreciate that you reconsidered the space issue. We have that problem in Colorado, and now what the word on the street is -- and I'm really glad that I'll be able to say when I'm in the visits, because I'm sure I'm going to hear about it, is LSC evicted the veterans in
Colorado Springs, which of course isn't what happened and we're trying to -- people are very upset about it because of that space thing.

So I don't know if that particular situation's fixable. But at least I could say that it was heard and that kind of thing is no longer going to be a problem because it was that exact situation of the bar association used a conference room like once a month or something.

Now, are they still going to have to report? Because one of the issues was they didn't want to have to -- they're willing to report a lot of stuff, but there are certain things that they were not willing to report. Or is that a separate issue?

MS. DAVIS: I think that's a separate issue, and I don't want to get into the details of the Colorado situation here. But what I will say is that recipients will still -- I mean, the restrictions still flow along with the use of space.

MS. REISKIN: Right.

MS. DAVIS: So if you are a bar association that's doing a legal assistance clinic, you would still
have to screen and you would still have to show -- the recipient would still have to show that -- if this was done as part of the recipient's PAI project, the bar association would have to screen and the recipient would still have to show that there was a screening process in place.

MS. REISKIN: Sure. Yes.

MS. DAVIS: Yes. I guess I'm not sure if that was really part of the issue, but it's like even though you're using our space, you either have to be paying for it, if you're carrying out restricted activities, or you can't be doing restricted activities.

MS. REISKIN: But you can rent? They could rent?

MS. DAVIS: They could rent. The issue is using LSC-funded resources to carry out something that would conflict with one of the entity restrictions.

MS. REISKIN: And I have a question about how you came up with $15,000. I mean, I think it's way better than everything, but I'm wondering -- when I was looking at all of the numbers, I was just wondering, what should the number be, how you got to that 15
versus a number more like 50 or --

MS. DAVIS: Sure. So 15 was -- it is the number that's in the FNPRM. If anyone in the public who wishes to comment -- comment early, comment often -- wants to remark on that, they certainly can. And if they can justify why a higher level would be appropriate, LSC is happy to listen to that.

$15,000 was the level of comfort that the Office of Compliance and Enforcement and management felt was appropriate for including in the rule, that it would prevent us from having to look at the very small subgrants for prior approval, but it was a level at which we said, that's enough of an investment of LSC resources that the burden of having to look at those subgrant approval requests is less than the benefits of catching something up front and having the prior approval of it.

MR. LEVI: Now, should this be written in such a way that it can be easily adjusted based on inflation or whatever without having to go through a whole process again?

MR. FLAGG: I don't think so. I think the
better course is for us to look at this -- because moving at the $15,280 -- 

MR. LEVI: No. I don't mean that.

MR. FLAGG: But I think this was a matter -- to answer Julie's question and really indirectly yours, John, this was a matter of professional judgment, if you will. There's no science to this. And I think you index a number if you're confident that that level is absolutely the right level and you just want it to stay even with inflation.

This is the first time we've done this. We picked $15,000 for the reason that Stefanie identified that seemed to eliminate a large volume of reviews that are currently taking place. So this goes to the opportunity cost. Instead of having the grantees and ourselves spend time with a large volume of relatively small subgrants, we and they can spend our time doing more productive things.

I do think, per your suggestion, John, this is a number we ought to look at. We ought to ask OCE to produce a chart, as they've done with Lora's memorandum starting at page 103, periodically to look at how many
subgrants are we still reviewing? What is our experience? What is our experience after the fact? We're no longer doing pre-reviews of these --

MR. LEVI: Well, what I'd like to do is --

we'll put this rule into place at what point, do we think?

MS. DAVIS: I would love for this to be voted on as a final rule in October. I'm hesitant, of course, to commit to that, given the path that the rule has taken so far. But that would be the optimal point.

MR. LEVI: Well, it would seem to me our board might want to take one more look at it just to see how that's working, how that number's working -- if there's any intelligence; maybe there won't even be enough experience -- before we exit. But hopefully, there will be something and --

MR. FLAGG: I don't want to -- I'd like to --

MR. LEVI: I don't want to kick it down the road to somebody else if it's not working.

MR. FLAGG: Here's the -- whether it's working, I think, will be best evidenced by what do we see not within the next 12 months, but in a year or two
years when we go back and look at these smaller than $15,000 subgrants. Were there all sorts of problems that didn't previously occur because of the prior review? So it's probably going to take more than a year for that to surface.

MR. LEVI: All right. You'll put it in our transition memo.

(Laughter.)

MR. FLAGG: I do want to add that with regard to the regulatory agenda, and we're going to have, during the governance committee, a small report on succession. And I think there should be committee transition documents, and really, the regulatory agenda for the Ops and Regs Committee is a primary transition document.

Presumably there'll be one more, at least one more, regulatory agenda from this current committee, and that is going to be a great document for a new board and a new Operations and Regulations Committee to see what it is that this group thought was important, and including coming back to look at the $15,000 threshold.
CHAIRMAN KECKLER: John, you raise a good point generally, I think, about thresholds and about numerical thresholds. This is sort of a perennial bug in the regulatory system that we have these monetary and regulatory thresholds. It's not specific to LSC. It's something that's throughout the world of regulation.

But I think that one of the -- this is a broader point -- one of the things that you can do as a process of regulatory review and regulatory lookback is make a compendium or think about getting somebody to make a compendium of thresholds that are in the regs, and then periodically go through this as a checklist and say, hey, does this make sense?

And that's something that would be a peculiar regulation, as an update of these numerical thresholds.

But it might be one way that you could do that from time to time.

MR. FLAGG: I think that's a good idea. I think a regular lookback at all the thresholds -- again, I'm not religiously indexing every single numerical threshold that doesn't make sense to me. But
I do think looking at them regularly and perhaps indexing some of them, again, in effect, our financial eligibility guidelines, those are a specific number. They need to be indexed. Where you're just picking a number because in your judgment it's about the right number, $15,000, that just doesn't strike me as the right vehicle for indexing.

MS. DAVIS: Right. And just to tie both of those points together before moving on, I will note that there are some regulations that anticipate what Charles indicated, which is the look back at thresholds or eligibility amounts, and it's built into the regulation that the baseline is the number or such other number as the director, the secretary, the assistant director, determines is appropriate.

So in some regulations, that's already built into the reg and the agency then just has to issue guidance on whatever basis when they take a look back and determine that the threshold needs to change.

CHAIRMAN KECKLER: Okay. So go ahead and close out 4 and 5, I think.

MS. DAVIS: Four and 5, yes. So there are two
more changes that we are seeking comment on. One was regarding the decisions on prior approval requests. The existing rule requires LSC to make a decision on prior approval requests within 45 days. If we don't, the recipient is to let us know. If we still don't, the subgrant is deemed approved and the recipient can move forward with it.

That's not optimal for us because we should be reviewing these more quickly and responding to our recipients just as a matter of good guess. But it's also not a good grants management practice to deem the use of funds permissible if inaction results.

So we received a comment that objected to our proposal to remove the deemed approved process from the regulation. We have decided that we want to propose a provision similar to 2 CFR 200.308(i) of the uniform guidance, which basically says that if LSC has not made a decision on a subgrant within the number of days that we specify in the notice announcing the application process, we will send the grantee a notice with an anticipated date of decision.

So that is committing us to either make a
decision or to tell the recipient when we will make a decision. We think that balances the need to notice and to hold ourselves accountable as well as to make sure that our grants are being spent appropriately.

CHAIRMAN KECKLER: Julie, did you have a question on that?

MS. REISKIN: Yes. Is this an issue? Are there times when you -- I mean, is there a history with this where you don't respond? And what is a recourse of a grantee? If they need to get a program going and they need an approval, 45 days to me sounds like a long time.

But what if they got a letter that said, we'll do it next year? I'm not saying you guys would do that. But I'm now, as we're in transition, thinking beyond.

MS. DAVIS: Sure. So I just took a look back at Lora Rath, and she's shaking her head at me that this isn't generally an issue. I'm not sure what the history of this provision is and whether it was written in response to LSC not responding to responses or requests from grantees. I know that that is a comment
that we heard often when I worked for the federal
government, that the government simply doesn't respond
quickly.

But I think that in this provision, I think
LSC is operating in good faith, that if we can't make a
decision or are not in a position to make a decision by
the date that we've committed to providing, we will
give you a reasonable date in which we'll do that.
It's not going to be we'll wait for six months or
something like that.

So I think the short answer is, there is not a
recourse provision built into the regulation. But I'm
not sure that we would need one.

MR. FLAGG: And I think that's accurate as a
matter of history. And since we're proposing to take
out of the review process a substantial number of very
small subgrants, it will leave us more time to timely
review all of the other subgrants.

MS. DAVIS: All right. Number 5 is more
flexible timekeeping requirements. We proposed in the
NPRM to require all sub-recipients to do 1635 compliant
timekeeping in the interest of trying to have a uniform
standard across at least two of our regulations.

    We received pretty much universal disapproval of this proposal, with the field saying their bar associations, other law firms, generally have their own acceptable, perfectly functional, and reasonable timekeeping systems. It's not appropriate to impose a one-size-fits-all solution.

    We considered that. We heard it. And we decided that we still were interested in the same information that 1635 requests from grantees, so how much time an attorney is spending on a case or a matter, aggregate information on pending or closed cases by legal problem or type.

    But we've said, this is what we need from you. How it gets collected, who collects it, in what format it gets provided, is up to you. And we envision that that would take place through the subgrant agreement, where those responsibilities are shaken out.

    We still need this information. Someone needs to make it accessible to LSC. But we're no longer saying, you have to do it, and here's how you have to do it.
So we are happy to take questions. And the
ask we're making today is for the committee to
authorize publication of this FNPRM for 45 days, a
45-day public comment period.

CHAIRMAN KECKLER: Are there any further
questions about the FNPRM?

(No response.)

CHAIRMAN KECKLER: I want to comment and
compliment you on that last provision as a classic of
standards-based rulemaking as opposed to -- okay.

So if there are no further questions, may I
have a motion to approve publication of the FNPRM?

MOTION

MR. KORRELL: So moved.

MS. MIKVA: Second.

CHAIRMAN KECKLER: All in favor?

(A chorus of ayes.)

CHAIRMAN KECKLER: Opposed?

(No response.)

CHAIRMAN KECKLER: The publication is
approved, and I look forward to the comments that we
will receive on it.
MR. FLAGG: Thank you. Thank you to the committee.

MS. DAVIS: Thank you.

CHAIRMAN KECKLER: We can now turn to Traci Higgins to get an update, in our operations element of this committee, on performance management and human capital management here at the corporation.

MS. HIGGINS: Good morning. So yes, I'm going to be reporting out on our progress with the implementation of our performance management process and our human capital hiring/recruitment efforts.

Our progress on the rollout of the performance management process has been good. In 2015 -- as you will recall, last year we didn't implement the full process. This year we did. In 2015 and in early 2016, all components of the performance management process have been rolled out and utilized.

And of the 81 staff members who were here in 2015 to be evaluated, all 81 received their written assessment and met with their management to discuss it. And this includes some employees who joined us in 2015 who weren't here for a very long period of time, so
they received either a six-month check-in or a 90-day evaluation. But all 81 folks were assessed.

And of those 81, only six or seven had comments or responses to their assessments. So we take that as positive, that managers and their employees were pretty much on the same page with respect to how they were performing. With respect to our managers, all but five have been assessed, and those are in the process and should be delivered shortly.

2016 performance management is already underway, and we've finalized our office performance plans which, as you recall, link our work to the strategic plan of LSC and to the other work of the offices, and our employee performance plans, which link the work of the employee to the office plan, which links to the strategic plan. Approximately 80, 85 percent of those have been completed.

So with respect to that, next steps, as part of the collective bargaining agreement, we agreed to hire a management consultant to come in and look at our performance management process and offer recommendations for improvement. So we're in the
process of seeking proposals for that work.

Lessons learned: We need to be a little more timely. Although we largely hit our March 31st deadline, so all employees were assessed by that time, there were some who hadn't met with their manager by that time. Everyone met with their manager by April 15th, so we're over by about two weeks. And travel plans and vacations complicated that.

But still next year -- or this year; we're already in it -- we should do better. And because this was the first year, we ruled out all of the components. It was a heavy lift. So we're anticipating that this year it'll be a smoother implementation now that all the managers have it under their belt and they understand what is required to get it done.

So on the human capital side, staff training and professional development is the order of the day. And with the exception of just a few employees who tested out, all of the management and grants operations employees have been scheduled for Microsoft Word training, which will begin later this month.

Because of the dollar amount involved, we had
to seek proposals from vendors, and we selected a local outfit that was super-responsive, very flexible. We've met with them. We are constantly in communication with them. And the purpose of this is to help us maximize efficiencies and to address the pain points.

As you well know, a lot of us can make our way with Word, but we create these work-arounds that aren't necessarily the most efficient way of doing things. So we're looking forward to improving our skills there.

Employees have been assigned to one of three training levels. There's the introduction, intermediate, and advanced. And each will receive six hours of instruction that we've broken out into two three-hour blocks. So we're not tying up the entire day for anyone. And then later this summer, we'll roll out Excel training, following the same format.

As I said, providing professional development and training is the number one priority of the Office of Human Resources. And we are partnering with Maru Willson, who is our training and implementation specialist. She joined us in January, and she's been a great value add already.
Our plan is that after our Word training, Maru will be in a good position to help us identify discrete areas that we need to drill down further and provide in-house training to staff to further strengthen their skills.

I continue to meet with our managers twice a month to address personnel issues that they may have. Those meetings have been going well. We've addressed some need for professional development and training, and have provided support to a handful of employees around that.

The recruitment and hiring front: I think I recorded last time that we were, as part of our human resources and payroll service, Paycom, there was an applicant tracking component, which we have fully utilized and rolled out and it's saving us lots of time. It's allowing us to get additional information about applicants, and it's allowing managers to see in real time the applicants for their offices. It's a great time-saver.

Last year we hired 16 new employees. This year we've hired five. I'm hoping that we don't match
last year's number; that's a lot of time and effort. But we've made some really great new hires. I'd like to make mention of a few.

Dan Tenney is joining us today as our new deputy director for fiscal compliance. And we have open searches for two fiscal compliance analysts that he will help us with those searches. And as you also know, we have hired our first ever Office of Data Governance and Analysis. You'll hear from Carlos in just a minute. And we have open searches for his staff, and screening calls are being conducted and those searches are ongoing.

Then finally, in the Office of Program Performance, we have two openings for program counsel, program counsel for Pro Bono Innovation Fund and then a program counsel for Pro Bono Innovation Fund, disaster relief and recovery, and veterans great administration. That's a mouthful. We've received over 60 applicants for those positions, and they're being reviewed, and we're going to be starting those interviews shortly.

So again, not to beat a dead horse, but professional development and training is where we're
putting a lot of our energy and attention this year.

CHAIRMAN KECKLER: Thank you for your report, Traci. It sounds as though LSC remains an attractive place to come to work.

MS. HIGGINS: Absolutely. And we're looking to make it an even better place.

CHAIRMAN KECKLER: One question I had about the program performance of performance management. And this is something that anything can chime in on, is that over time, and maybe next year when this is done or whenever, I'm wondering what kind of aggregate statistics or information might be useful for this comment or for the board to summarize and give us our overall sense, how is LSC doing, an analysis.

I think that's one of the things that we've looked forward to from the performance management plan. And so at some high level of aggregation, and maybe ultimately the most useful thing from my perspective is maybe not even the raw numbers in the offices but the year-over-year change, the trends within the offices. Something like that would be useful from my perspective, but I'm not sure what others think.
MS. HIGGINS: Yes.

CHAIRMAN KECKLER: It's certainly something that you and the rest of the management team can think about as a reporting model.

PRESIDENT SANDMAN: That's something we can also take up with the consultant that we'll be hiring, not only to have a good system in place, but to figure out what the right reporting tools are as a result of the system that they'll advise us on.

CHAIRMAN KECKLER: Father Pius and then Martha.

FATHER PIUS: Does the OIG participate in the performance management program that you've set up, or do they have their own system? I assume they have their own system.

MS. HIGGINS: They have their own system.

FATHER PIUS: Maybe if there's somebody from OIG -- well, maybe it can be part of the OIG's report -- but the extent to which they have a similar system, whether they're reviewing their employees in the same way.

MS. HIGGINS: They do review their employees
regularly. Their system doesn't look like our system.

CHAIRMAN KECKLER: Martha?

DEAN MINOW: I just want to say, this is an enormous culture change as well as implementation of a lot of work. And the professionalism, the speed, the quality, I just think that the board would want to say, well done. And the focus on professional development, well done.

MS. HIGGINS: Thank you. Thank you.

CHAIRMAN KECKLER: We can now turn to our last substantive item, which is our first report from the new Office of Data Governance and Analysis on data validation and the enhancement process.

Welcome.

MR. MANJARREZ: Thank you. Thank you very much. I'm happy to be one of the five new hires at LSC. I want to thank the board for the opportunity to speak today.

But before starting, I also want to thank my new colleagues. I've received a very warm welcome here, and really a very professional on-boarding process by OHR, and countless meetings with my
colleagues have really made this the best on-boarding process I've been in in my 20 years of professional policy research experience.

So during these three months, I've had the opportunity to review data holdings, to hold informal interviews with about 20 folks outside of the agency, countless meetings inside of the organization, and I'm excited to tell you that without reservation, any reservation whatsoever, I think there's a tremendous amount we can do with the robust data holdings that LSC has.

I'll start out with telling you a little bit about where I come from in data quality and my assumptions, if you will. So the light green circles on the right represent the pre-collection data quality efforts that any organization needs to go through.

They include design of the collection at the top, and they include providing tools and guidance for data providers, the second to the right; monitoring the collection process, literally collecting metadata on the collection process; and then post-collection, which are the dark circles on the left; post-collection
analysis; release of public findings; and sharing and
preservation of data.

I've presented this here as sort of a cyclical
process, constantly affecting -- the process affects
improvement at the top and in collection in succeeding
years.

I'll tell you a bit about the status of the FY '15 post-collection review. And I make a distinction
here between substantive and subject-neutral data
edits. And then I'll talk a bit about the
post-collection analysis and data enhancement. This is
a step process, as the slide implies. And I'll start
just a bit talking about the subject-neutral edits.

So what do I mean by subject-neutral edits? Basically, I'm talking about a review of data that
involves trend analysis, within a single variable, for
example -- case closure, staffing changes within an
individual organization. Are those changes within
reasonable limits? Are there outliers?

I'm talking about multi-item trend analysis.

So presumably a decrease in staff will not result in an
increase in case closures. So the data that people are
providing, does it co-vary in logical ways?

There's also some logical errors, which I'm happy to say that many of which have been taken care in the data ingest process. So, for example, there really should not be a negative case closure reported, negative staff. You'd be surprised at how many organizations don't control for these kinds of data entry errors in their systems.

And this is an important issue as we transition to a new reporting system. We'll want many of the same sort of logical data error checks or data entry checks to transition into the new reporting system. And I'm working with my colleagues on that as well.

I also want to note that we're doing analysis of missing data or nonresponse. Nonresponse is a data element. It provides us a lot of information about, for example, in case closures. In case closures, we have information about the number of case closures. We have information about the substantive areas that are not being closed or not being worked on by a specific program.
Looking at those over time, whether they've diminished over time or whether there was a nonresponse ten years ago and a response in that cell today, that's all important information to look at over time.

So why subject-neutral edits? First of all, I'll say that subject-neutral edits are important for me as a newbie. Coming in, within a month all of a sudden we had 2015 data collection. And so I needed to jump in and look at the data, if you will, with a novice's eye.

I looked at successive years of data so that I could see whether or not the tolerance levels that are in place are reasonable, looking at the response patterns, as I mentioned, and collecting metadata -- metadata on how long it took for people, from the point of opening up the report until the time in which they've closed and submitted the report. That's information that's recorded in the system in the process of reporting but has not been analyzed previously. And so I'm very interested in the metadata.

Also, the number of people that are logging in
-- we can look at the IP addresses if there's multiple IP addresses logging and reporting. That tells us something about the reporting burden, the number of people who are participating in the reporting process. Yes?

MS. REISKIN: Does that always tell you about the number of people, or just how many different places they're logging in from?

MR. MANJARREZ: Yes. It's not dispositive. That's an excellent point. But it is, if you will, making use of as much -- gathering as much information as we can about the process to at least start us down that path.

So on the substantive edit checks, I find it useful to distinguish between quantitative assessments and qualitative assessments. With our quantitative assessments, we're looking at the correlation between different variables. The director will show the relationship between closures and funding over time. But we also will be doing some regression analysis to look at what the logical outcomes or what the statistically predicted outcomes would be over time.
The qualitative assessments are things that folks often overlook or they think to be among the easiest things to do. I've not found that, in my experience. I think it's very important that we look at the ways in which questions are asked as to whether or not we have true construct validity in our questions; if the information people are providing is really addressing the questions we're asking; does the information continue to be useful over time? This is a long collection, from my perspective.

I've come from a number of different grant-making organizations where every year you have a new crop of grantees, so what you have is cross-sectional data on grantees. You don't have longitudinal data like LSC does.

This is a very unique grant-making scenario or organizational scenario, and it's part of why I said there's very robust data holdings here, because we can basically reconstruct the organizational structural and their performance over multiple years. That's something that's very rare among grant-making organizations.
And then efficiency, of course. Are we making efficient use of the collection? Are we collecting things that are gathered elsewhere? That's an important question. Are we asking for things in multiple ways, perhaps in our application and the grant activity report? These are all things that we're reviewing.

CHAIRMAN KECKLER: Yes. But one question about that. We're going to have this rulemaking workshop on funding issues, and one of the concerns now is, as you may have heard, that the grantees get funding from all sorts of different entities that have all sorts of different rules, which of course could include data collection and reporting rules.

And as you point out, they may -- for management purposes, they may collect data internally that's not tied to our grant-making process or our regulations. It's tied to their own management needs, or the demands of other funders.

And so I think that -- I mean, obviously you probably don't have this at this point, but I think going forward, along the lines of what you're saying,
is a compendium or an understanding of the universe of
data that the grantees have that they might not give to
us but yet they have.

And then I think that might in itself be
interesting to know. On the one hand, we don't want to
duplicate. On the other hand, there is this data that
they already have -- we're not asking for them to do
more, but that might be useful that they already
collect.

MR. MANJARREZ: Sure. Sure. It also informs
future collection strategies as to whether or not 90
percent of the grantees are already collecting things
in a certain way. This is something I've experienced
in a previous position.

CHAIRMAN KECKLER: Martha?

DEAN MINOW: This may be covered under your
category of relevance. But as an example of a question
that I guess I might put to the power of information
that's collected, we've heard people raise questions
about case closed as a measure of performance.

And I just wonder about the sensitivity of the
existing -- being able to do longitudinal comparison if
we make changes, but also how complicated would it be to add more sensitive measures of performance.

MR. MANJARREZ: I'm not sure I can address the substantive question. But I can tell you that in looking at the information we've been collecting over time and looking at the way it's been reported out, frankly, it's been reported in highly aggregated fashion. There's a lot of variation beneath the national case closure estimate. It varies by organization. It varies, obviously, by size.

And so making good use of the information that we collect, obviously it varies by closure type, by substantive issue. And so one of the first things that I'll be working on is a cluster analysis to look at logical subgroupings within the total grantee group because I think it's a very reasonable question to ask whether or not a national median is a good basis of comparison for every organization across our 134.

Those subgroupings could be based on staff size. They could be based on internal/external funding. They could be based on rurality. They could be based on case closure type. So one of the first
orders of business is that sort of cluster analysis. And then I think that'll tell us a lot more about also what to look for in the future.

So one of the first things I did was I tried to make a conceptual map of the data collection, of the GAR data collection. What you see here are really -- is my attempt to break out the units of analysis that are implied that are based within our grant activity report.

At the top, that's information that is specific to the grantee, the grantee organization. I was really impressed when I looked at the data collection level at the office level. As an organizational sociologist, I couldn't believe that I had staffing data, hours invested, where staff spent their time per office, and literally the office structure, their titles.

So as a consequence, we can literally reconstruct -- we can actually make an organizational chart for every organization over time. I've never seen a data structure like that in all of my years.

We also have information in the green area,
the service area, again something that few grantees really have, but a bounded service area, which is very, very important when you consider the fact that we can include a lot of public data within the boundaries of that service area, whether we're talking about data from the American Community Survey, other census data, whether we're talking about information available from courts at the county level.

We really have an opportunity here to use the polygons of the service areas and to fill them with a lot of public data, and obviously look at the way in which they correlate with legal services, which is the ultimate objective.

And then of course at the bottom, the red is the branch-level data. As an urban planner, I'm interested not just in the organizational structure, but where these institutions sit, what kinds of communities they sit in. So we've geocoded every office. There's a longitude and latitude for every office. And that can place the office within a neighborhood, and neighborhood attributes can be associated with a specific office.
CHAIRMAN KECKLER: I think that's great, and I think that going forward, I think one of the overarching things that we've always talked about is our capacity to identify best practices and to compare organizations and organizational performance. But understanding the geographic and demographic context in which the grantees operate obviously is our crucial control variable for understanding and comparing organizational performance. So that's excellent.

MR. MANJARREZ: Great. So a little bit about post-collection analysis and enhancement, and why it matters, and why I've included it in the data quality discussion.

For me, one of the most important parts of the post-collection analysis and reporting is getting the reaction from the data providers. I've had a number of experiences where I've visualized the data in a different way for the stakeholders, and all of a sudden they see themselves in way that they've never seen themselves before. They realize, oh, in a previous job, our circulation was not that high. Where did you get that number? I said to them, I actually got that
number from you.

(Laughter.)

MR. MANJARREZ: And so it starts a new dialogue about the data they're providing. As I said, they see themselves in a different way. Also, the information is meaningful to them in a different way. The information does not go into a large grey box; it's information that they can use at the local level, they can provide to their stakeholders as well, so making sure that they're getting information in a way that's actionable.

Data enhancement: As I've said, we have organizations that sit within places where there's lots of data that's already available. But there's also other data at the organizational level that can be linked to our organizations. I'm thinking particularly of IRS 990 data.

That is information that's submitted on an annual basis now, much more consistently than ever before since IRS rule changes. That data obviously focuses on staffing, but financial investments or receipts. And so that's another source of information
that does not require tapping into the grantees directly.

What I've put together here, this odd model, is another way to visualize the data that we collect and the information that we can add on to improve and enhance the value of the administrative data we collect. On the left you see that we are collecting data from the grant application process, from the grantee activity reports, and also our site visits. That's a way of gathering information.

The LSC grantee is a unit of analysis. It's an organizational unit of analysis. But it's obviously connected to office locations. So we have that sort of linkage. All of that action happens within a service area.

That bounded service area we can add information to. For example, down at the bottom I listed nonprofit data. What does civil legal services look like in a service area where there are very, very few human service organizations? Right? That's an organizational ecology question that I think is -- that points to exactly what Mr. Keckler mentioned.
You can provide civil legal services in a community that is rich with human service organizations, or you may be providing civil legal services in a community where you are one of the very few human service organization providers. I have not done that analysis yet, but it would be surprising to me that that has no effect.

The American Community Survey now is a very, very rich resource of population data that's available at the census track level if we use the five-year trend file. That's population information that can be used to characterize the concentration of low-income households within a service area.

It can be used to demonstrate linguistic isolation -- many different demographic attributes of a given service area -- and, quite frankly, can be very, very useful for programming for our stakeholders.

Home Mortgage Disclosure Act: Why would I put that up there? First of all, that Home Mortgage Disclosure Act really does provide a tremendous amount of information right at the address level that shows mortgages that are at risk, for example. And I put
that up there as a way to suggest that there are proactive things we can with our data collection, our public data collection, to show where potential risk areas are within our service areas. HMDA data is just one example of that.

And of course, the U.S. courts PACER program, Public Access to Court Electronic Records, and data from the National Center for State Courts are all things that we will look to to help really fill out the picture of what's going on within a specific service area.

That data is not always contiguous with the service areas, so we're going to have to make some rules about how we incorporate that data in the service data. But it does provide opportunities, I think, that have not been utilized previously.

CHAIRMAN KECKLER: Julie?

MS. REISKIN: How hard is it to reconcile the time period with all of these different -- like I know the American Community Survey, I think 2014 is the most recent thing, at least that's available to the public, right now. And are all of these different -- how far
back is everything, and how hard is that to reconcile
the different times that you're talking about?

MR. MANJARREZ: Fortunately, we have
annualized data for many of the same organizations. So
we have that annual observations on that end. ACS is
annualized at the state level, but it has a rolling
collection such that you have a five-year estimate. It
is a five-year window. The advantage, though, is that
you have very detailed information at the local level.

There are other sources of data. County
Business Patterns is annualized as well. And so the
nonprofit IRS data is annualized as well. So most of
these sources are annualized so you can at least match
at that sort of aggregate annual level.

And I would say -- I didn't want to take too
much time. I did want to leave some time for questions
as well. So I did race through that a little bit. I
apologize if I did.

CHAIRMAN KECKLER: No. That was an excellent
presentation. Are there further questions for Carlos
at this time? Father Pius?

FATHER PIUS: It's not really a question, but
just a thank you. I don't know about anyone else, but I think this is very exciting, and this ability for us now to really gather data that's going to not only support our grantees, but provide us a better way on which to understand the context in which we provide legal services and to enhance the ability to do that.

Your ability to just jump onto this so quickly and get all of this together as quickly as you have done, I'm amazed. And I will say I'm impressed. And I'm really looking forward to the work that you'll be able to do, and when we finally get some staff for you, the work that you're going to do. And this is a great preview of it.

And so thank you for the work. Keep on going. And we look forward to the future.

MR. MANJARREZ: Thank you. Excellent. Thank you.

CHAIRMAN KECKLER: Gloria?

PROFESSOR VALENCEA-WEBER: I was wondering, as you were looking at the IRS 990 nonprofits, where the prototypical use would be -- we have grantees who want some help on locating potential donors, potential
non-LSC sources of money in their area, and if that
information would be helpful, to be able to tell them
what they have and the strengths of given nonprofits so
that perhaps they can focus their own efforts better on
more likely to be the organizations that can respond to
their appeals.

MR. MANJARREZ: Thank you for that question.
That's an excellent question. And if you'll note at
the top, I referenced the Foundation Center and private
grants. Foundation Center, you're familiar with them,
they're a data aggregator. They collect information
from the top 1,000 foundations in the country and all
grants over $10,000.

What a lot of people don't realize is that
they make their data available at the grant level. So
a data purchase from the Foundation Center would allow
us to see, over a ten-year period, all of the grants
that have been made for legal services by those top
1,000 foundations, right down to the organization
level.

What it is is a very, very rich network
database that links private foundations to individual
nonprofit organizations. And looking at that, we can see not only if they've invested in legal services, but what other human service organizations the same grantees have given to.

I've worked with this data for over ten years. I've worked with that data mostly in the arts and culture realm. And I can tell you, the data, many grant-makers make 60 percent of their grants within the state, at least in that realm. And what I'm guessing -- I don't have the data yet -- is that we'll see a similar sort of structure, an affinity to grant-making within the state.

But what it'll allow us to do is to make a profile of the grant-making community and where they're spending their dollars. And I think that'll help Legal Services as an organization at the national level, but it could be very, very valuable for our stakeholders at the local level as well.

CHAIRMAN KECKLER: Thank you. And this has been a strong commitment to data-driven decision-making here at the corporation, and I'm looking forward to be able to do that and to think about -- have a long-term
dialogue with your office and with management about the questions that we need to get answered, and find a match to the data that are required to answer them. But I also, as Gloria was pointing out on some of the information, my own hope for it is that some of the new levels of sophistication in data analysis will be useful to the grantees as well and help them over time. So thank you very much for your first report.

MR. MANJARREZ: Thank you for your time.

(Applause)

CHAIRMAN KECKLER: Is there any public comment for the meeting?

(No response.)

CHAIRMAN KECKLER: Seeing no public comment, we can now move to consider and act on other business. Is there any other business to bring before the committee?

(No response.)

CHAIRMAN KECKLER: If there is not, I will consider a motion to adjourn the meeting.

MOTION

MS. MIKVA: So moved.
MR. KORRELL: Second.

CHAIRMAN KECKLER: All in favor?

(A chorus of ayes.)

CHAIRMAN KECKLER: The meeting stands adjourned.

(Whereupon, at 10:58 a.m., the committee was adjourned.)

* * * * *