

ORIGINAL

RETURN TO CORPORATION
SECRETARY AT 1111 P.E.S.

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

JOINT MEETING OF THE
OPERATIONS AND REGULATIONS
COMMITTEE

AND

PROVISIONS FOR THE DELIVERY OF LEGAL SERVICES

OPEN SESSION

Friday, February 23, 1996

10:04 a.m.

The Legal Services Corporation
750 First Street, N.E., 11th Floor
THE BOARD ROOM
Washington, D.C. 20002

Diversified Reporting Services, Inc.
1025 VERMONT AVENUE, N.W. SUITE 1250
WASHINGTON, D.C. 20005
(202) 296-2929

BOARD MEMBERS PRESENT:

LaVeeda Morgan Battle, Chair,
Operations and Regulations Committee
Hulett "Bucky" Askew, Chair,
Provisions for the Delivery of Legal Services Committee
John G. Brooks
Douglas S. Eakeley
Maria Luisa Mercado
Ernestine P. Watlington
Edna Fairbanks-Williams

STAFF PRESENT:

Alexander D. Forger, President
Martha Bergmark, Executive Vice President
Victor Fortuno, General Counsel and Secretary
Edouard Quatrevaux, Inspector General

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P R O C E E D I N G S

1
2 CHAIR BATTLE: I would like to welcome all of
3 the members of the committee that are here. With the
4 fog and the snow and the rain and everything else that
5 we have sustained, it's just a joy for us to finally be
6 able to get back together without all of that to make
7 it difficult for us.

8 I know that Bill McCalpin, who is another
9 member of this committee, will be joining us shortly.
10 I understand that he has been delayed this morning, but
11 he will be with us by approximately 11:30. But
12 nonetheless, I'm going to go ahead and call us to order
13 this morning so that we can get started.

14 And I will first entertain a motion for
15 approval of the agenda.

M O T I O N

16
17 MS. WATLINGTON: So moved.

18 MR. BROOKS: Second.

19 CHAIR BATTLE: All right. It has been
20 properly moved and seconded that we adopt the agenda
21 that is contained in the agenda book that you have
22 before you for this meeting on February 23, 1996. All

1 in favor?

2 (Chorus of ayes.)

3 CHAIR BATTLE: All opposed?

4 (No response.)

5 CHAIR BATTLE: Motion carries. On the agenda,
6 the first reg that we have up has to do with "Consider
7 and Act on Proposed Regulations Restricting
8 Representation in Certain Eviction Proceedings and the
9 Public Comments Thereon." And as you know, when we
10 first considered this particular regulation, Laurie
11 Tarantowicz did the background work on it. Since
12 Laurie is no longer with us, I believe Donna has done
13 the work on the eviction reg and will be joining us in
14 presenting where we are based on our last meeting.

15 As you recall, we had drafted a reg and
16 presented it to the Board. And at that time, there
17 were Board members who had some concern about the
18 construction of the language as it related to the
19 pending resolutions and how they identified certain
20 aspects of what we were considering as it related to
21 this reg.

22 And based on those concerns, we decided that

1 we would as a committee revisit this reg and take a
2 look at it in light of the concerns that were raised
3 and come up with some changes that we could recommend
4 to the Board when the Board meets tomorrow.

5 So Donna, if you'll come forward at this time,
6 what I would like for us to do is to go over the
7 changes that we have made since the last Board meeting
8 and talk about -- first of all, looking at the reg,
9 talk about the changes that we have made and see if
10 those changes are consistent with the concerns that
11 were raised at the last Board meeting, as well as any
12 concerns that any of the members of this committee
13 might have about the drug-related evictions reg.

14 We are referencing 45 CFR Part 1633, which is
15 a reg which we are proposing to adopt -- to recommend
16 to the Board for adoption on restriction on
17 representation in certain eviction proceedings. We
18 have before us a draft copy of the final rule. The
19 draft is dated February 20, 1996.

20 And Donna, if you would, lead us through the
21 changes that have been made to the rule. The changes
22 to the actual rule are contained on page 9 of the draft

1 that you should have before you.

2 MS. FEINBERG: Thanks. How does that sound,
3 too loud?

4 CHAIR BATTLE: Okay. Linda, if you had any
5 suggestions or comments, if you wanted to come forward
6 now, you can.

7 And Linda Perle is going to join us. Part of
8 the way that we have done our review is to try to give
9 all consideration to the concerns from the field and
10 other constituents who have an interest in the regs as
11 we review them. And with this being our final review,
12 I welcome comments from the public, if there are any,
13 as well as comments from the staff.

14 MS. PERLE: Thank you.

15 MS. FEINBERG: Okay. The first change that we
16 are making is in Section 1633.2 in the definitions. At
17 the last committee meeting, 1632.2(c) included a
18 definition of "being prosecuted." It was decided that
19 the prohibition would apply when a person was being
20 charged with or convicted of engaging in illegal drug
21 activities. Therefore, we decided to omit the
22 definition of "being prosecuted."

1 CHAIR BATTLE: Okay. Let me just suggest
2 something. One thing that I didn't mention -- and I've
3 only had a chance to review it briefly -- and that is
4 that Bill McCalpin, because he is not here with us
5 today as we are reviewing this particular reg, sent
6 written copies of his comments. And he has a comment
7 on the very first section, which is 1633.1. Do we have
8 copies of Bill's comments for all the committee
9 members?

10 MR. BROOKS: I have not seen them.

11 CHAIR BATTLE: Okay. I just received a copy
12 as I was walking into the room, and I think --

13 MR. BROOKS: Are they on the table outside?

14 MS. FEINBERG: I'll go check, if you would
15 like.

16 CHAIR BATTLE: Okay. Why don't we do that?

17 MS. PERLE: I think these are based on the
18 earlier version of the reg, because he talked at one
19 point about the words "as pending," which in this
20 version are taken out.

21 CHAIR BATTLE: I'm looking for my comment. I
22 do think that there was some comment that he made about

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1 how the purpose needed to be structured. And his
2 concern is that the purpose needs to be structured so
3 that it addresses the issue of Corporation -- the fact
4 that this particular reg is -- the purpose of this reg
5 is to restrict representation in eviction proceedings
6 without mention being made to the distinction between
7 Corporation and non-Corporation funds in the purpose.

8 He had a proposal -- and I'll just read it to
9 you -- that the purpose section read, "This rule is
10 intended to preclude recipients from providing
11 representation in eviction proceedings of persons
12 engaged in certain illegal drug activity. That was the
13 proposal that he had.

14 I think that his intent -- and again, I've
15 only just briefly read his comments, because I received
16 them about two minutes before walking into this meeting
17 -- was to assure that the purpose rings out as
18 encompassing the spirit and the intent of the
19 Congressional intent in the present appropriations
20 language.

21 And so it seems to me that if we -- I also
22 have some concern about his proposal in that it does

1 not limit the eviction proceedings to those which are
2 specified in the rule which only pertain to public
3 housing eviction proceedings.

4 So it probably -- one way to address the
5 concern that he has raised is to take the second part
6 of what is now contained in the purpose which addresses
7 the non-LSC Corporation's fund issue and place that
8 language in the comment, because that section I believe
9 is there because at present, we don't have a final
10 statute which sets out the scope of the effect of this
11 particular regulation, whether it will apply both to
12 LSC funds as well as non-LSC funds.

13 And if we raise this issue in the comments, it
14 will ultimately be decided by whatever the final
15 Congressional determination being made either in
16 appropriations language or in some reauthorization
17 language down the line.

18 And I think that the first statement that we
19 now have in the purpose is clear. It is consistent
20 with what we have discussed, and it should be
21 sufficient to meet both the concern that Bill has
22 raised, as well as any concern that might be raised by

1 what happens with the final appropriations language.

2 MS. PERLE: You also need to, I think, take
3 out (d) in the definition section, because there would
4 be no reason to define non-LSC funds.

5 CHAIR BATTLE: Okay. John?

6 MR. BROOKS: I wonder -- and I'm not sure I
7 got Linda's comment -- leave out what?

8 MS. PERLE: In the definition section, you
9 find in (d) non-LSC funds as "any funds received from
10 the source other than the Corporation." If you're
11 taking out the reference to non-LSC funds in the rule,
12 you want to take out the definition, because it won't
13 be defined anywhere.

14 CHAIR BATTLE: Because it's not used anywhere
15 else in the rule.

16 MS. PERLE: That's correct.

17 MR. BROOKS: Are we moving towards
18 eliminating, then, the underlined second sentence?

19 CHAIR BATTLE: Yes. I think so. I think so,
20 because that sentence does not have any legal effect.
21 If you read that section, it says, "This part shall
22 apply to non-LSC funds if the Corporation is

1 statutorily required to ensure that recipients refrain
2 from using non-LSC funds to provide representation in
3 eviction proceedings." Well, it's a conditional
4 statement that doesn't have any effect.

5 And it seems to me that we can in the
6 commentary express the dilemma that we have right now
7 with the bill pending which might apply several
8 restrictions, including this to non-LSC funds. And if
9 that becomes the law, then that will affect every rule
10 that we have and all restrictions without us making
11 this a part of the final rule.

12 MS. PERLE: I think that goes a little far in
13 that statement. I mean, there are things that are now
14 restricted under the LSC Act that won't be affected by
15 the appropriations bill.

16 CHAIR BATTLE: No, I'm speaking only of the
17 restrictions in the appropriations which --

18 MS. PERLE: Right. I just wanted to make that
19 clear.

20 CHAIR BATTLE: Yes. Yes. I was only speaking
21 of the restrictions that are identified in the
22 appropriations that would apply both to LSC funds as

1 well as non-LSC funds.

2 MS. PERLE: And the operation of the statute
3 would extend the restriction. I think you might want
4 to give some notice to programs, or you might want to
5 make at that point a change in the rule, which would be
6 sort of a technical amendment to the rule. But
7 nevertheless, if you don't do that, it still is the
8 law. So programs would still not be able to use non-
9 LSC funds.

10 CHAIR BATTLE: John?

11 MR. BROOKS: Well, the way -- if we have
12 Bill's statement without the underlined second
13 sentence, then we decree by this rule that the non-LSC
14 funds shall not be used by any recipient regardless of
15 whether House 2076 becomes law or not. And I wonder if
16 we want to go that far, or should we make it
17 conditional on statutory requirement.

18 MS. PERLE: The actual language of the
19 prohibition doesn't do that though.

20 CHAIR BATTLE: What I would suggest, I think
21 that Bill's language is -- the intent of Bill's
22 language is to focus not on funds but the intent of

1 this reg to restrict the use of LSC funds for
2 representation in eviction proceedings. And if you
3 take the second sentence out, then even though I know
4 his intent was to take the whole focus on funds out,
5 paragraph 1 itself does not -- excluding the second
6 part, the second sentence, in my view is not such a
7 focus on funds as much as it is a focus on the
8 restriction.

9 MR. BROOKS: Well, that's my point. Do we
10 want to have that restriction written in stone in the
11 regulation regardless of whether the ultimate statute
12 requires it or not, or do we want to leave it
13 conditional, which seems to me to be a more appropriate
14 --

15 MS. PERLE: I think the thing is, though the
16 purpose is just a general statement. It's not self-
17 executing in any way. The way the rule is actually
18 applied is in terms of the way the prohibition is
19 written. The prohibition is now written, and it
20 applies only to Corporation funds. So I think that
21 would be okay.

22 CHAIR BATTLE: I think that, John, my

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1 suggestion is that we just delete the second sentence,
2 period, and that after we delete the second sentence,
3 that we are making a statement which is consistent with
4 what our view has been on anything that we do, and that
5 is that the Corporation's position generally has been
6 that our task is to oversee what happens with
7 Corporation funds. If Congress's view is that they are
8 setting restrictions not only on LSC funds but on other
9 funds, then that will be self-executing when that
10 happens.

11 MR. BROOKS: It still bothers me that in view
12 of all the discussion of the application of the rules
13 to non-LSC funds, that if we have a flat prohibition to
14 recipients to represent these drug-related defendants,
15 that that's going to be taken literally, regardless of
16 the principle that heretofore we have been applying the
17 regulations only to LSC funds. And I think it could
18 very well be construed more broadly than I think we're
19 thinking at the moment.

20 MS. PERLE: Donna and I are confused as to
21 whether you're suggesting that we adopt Bill's
22 language or that we just leave -- or that we leave the

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1 first sentence as is, so that this sentence then does
2 say, "This part is designed to ensure that recipients
3 do not use Corporation funds to provide representation
4 in certain public housing eviction proceedings to
5 persons charged with or convicted of illegal drug
6 activities." Is that what you're suggesting?

7 CHAIR BATTLE: Yes.

8 MS. PERLE: I just want to make sure that
9 everybody's clear on that.

10 CHAIR BATTLE: Yes.

11 MR. BROOKS: I'm suggesting we leave it as is
12 in the draft, with two minor exceptions which are not
13 material to this issue.

14 CHAIR BATTLE: Right. Okay. All right.

15 MS. PERLE: I think you two are in agreement.
16 I think at least we were confused as to what you were
17 proposing.

18 CHAIR BATTLE: I think we are agreeing, John,
19 that we will adopt sentence number one as the purpose.
20 Did you have some editing to that sentence?

21 MR. BROOKS: Well, in the second sentence,
22 it's now written, "This part shall apply to non-LSC

1 funds if." And I prefer "to the extent that" rather
2 than "if." We don't know whether it's going to be
3 flat.

4 MS. PERLE: But we're deleting that sentence.

5 MS. FEINBERG: That sentence is deleted.

6 CHAIR BATTLE: Yes. That sentence will be
7 placed in the commentary, because right now, my
8 point --

9 MR. BROOKS: I'm sorry. All right.

10 CHAIR BATTLE: Yes. That will be placed in
11 the commentary, because it really speaks to what will
12 happen with the appropriations law. Yes.

13 Okay. Now, Donna, we can move on to 1633.2,
14 the definition.

15 MS. FEINBERG: Okay. As I said a little
16 earlier, we have decided to include a definition of
17 "being charged with" as opposed to "being prosecuted,"
18 because the prohibition section now requires -- well,
19 requires -- recipients may not provide representation
20 to individuals who have been charged with or convicted
21 of certain illegal drug activities.

22 So 1632.2(c) is now -- we have decided that we

1 need to revise the definition that was included in the
2 February 20 draft. And this may be a little confusing,
3 but I'll read it the way we believe it should read. "A
4 person is charged with engaging in illegal drug
5 activities if a criminal proceeding has been instituted
6 against such person by a governmental entity with
7 authority to initiate such proceeding" -- oh, excuse
8 me, "with authority to initiate such proceeding and the
9 criminal proceeding is pending." Is that correct?
10 Somehow, this doesn't quite follow here, it looks like.

11

12 MS. PERLE: No. "And the criminal proceeding
13 is pending," or, "and such proceeding."

14 MS. FEINBERG: "And such proceeding is
15 pending."

16 MS. PERLE: So in other words, this change in
17 the first part of the sentence is as is shown. We
18 removed "being prosecuted" and substitute "charged
19 with." Then we would be removing "engaging" -- wait a
20 minute. Sorry. Remove the "is" which is underlined
21 and substitute back in the "has been." Take out "such
22 prosecution" in the bottom line.

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1 MS. FEINBERG: "Authority to initiate such
2 prosecution, and the criminal prosecution is pending."

3 MS. PERLE: "Is pending." That's not clear.
4 Why don't we read it one more time?

5 CHAIR BATTLE: Let's read it one more time.
6 "A person is charged with engaging in illegal drug
7 activities if a criminal proceeding has been instituted
8 against such person by a governmental entity with
9 authority to initiate such proceedings and such
10 proceeding is pending."

11 MS. FEINBERG: "And such criminal proceeding
12 is pending"?

13 CHAIR BATTLE: Or "and the criminal proceeding
14 is pending."

15 MR. BROOKS: I think it should be "such."

16 CHAIR BATTLE: Okay, "and such." Okay. Does
17 everybody have that?

18 MR. BROOKS: I was going to make the same
19 suggestion.

20 CHAIR BATTLE: "A person is charged with
21 engaging in illegal drug activities if a criminal
22 proceeding has been instituted against such person by a

1 governmental entity with authority to initiate such
2 proceeding and such proceeding is pending."

3 MS. PERLE: I guess I do -- I think we
4 discussed this, and I'm not sure whether this really
5 responds to the concern that I have. I have some
6 concern that a -- the charge has been made and is
7 pending, but the prosecuting authority doesn't really
8 have any intention of going forward with the charge but
9 it hasn't been dismissed. And I wonder whether we
10 might want to put some notion in there that it's an
11 active prosecution. Or is that too --

12 CHAIR BATTLE: That's going to be real
13 nebulous, because I don't know how you determine
14 whether something is active or not, given the way the
15 criminal proceedings occur in various states. And with
16 the backlog that you have in a lot of states with
17 regard to criminal proceedings --

18 CHAIR BATTLE: Could we say something like
19 "and such proceeding is pending and active"? Would
20 that be possible? In other words, it's not just
21 something that's sitting there that nobody's ever going
22 to get back to, but it hasn't been dismissed.

1 Or is there some other word other than
2 "active" that might convey a little bit better that it
3 is something that the -- I mean, I've heard of
4 situations in responding to some of the charges where
5 criminal proceedings were instituted, were not really
6 pursued or began to be pursued and then they stopped,
7 and then three or four years later, they were
8 dismissed.

9 CHAIR BATTLE: I think that may be true,
10 Linda. The concern I have is that as long as it's
11 pending, I don't know how a program is going to be able
12 to make a determination that, "Well, this one is not
13 active enough" as far as to decide whether to take this
14 case or not. And I really think that that kind of
15 language may make it more confusing than helpful to
16 programs in making their determination.

17 MS. PERLE: And maybe it would be possible for
18 them to actually take the word "pending" and go to the
19 prosecuting authorities and say, "Is it really pending,
20 or you just haven't gotten around to dismissing them?"
21 And then if they have a statement from the prosecuting
22 authorities that, "Well, we're not going to go forward

1 with that," then the program itself could make the
2 determination it's no longer pending?

3 CHAIR BATTLE: Yes. "Pending" means there is
4 some record somewhere that says there is an open file
5 on this matter.

6 MS. PERLE: Well, that's my concern, that
7 there's an open file someplace and that it's really
8 stale and that it hasn't been officially dismissed, but
9 nobody's paying any attention to it and nobody's ever
10 going to prosecute the person for it. That's my
11 concern.

12 CHAIR BATTLE: John?

13 MR. BROOKS: I agree with LaVeeda about the
14 difficulty of it being kind of vague as to definitions
15 in various places. And I wonder if the provision in
16 33.3(b) doesn't take care of it as a practical matter
17 in that the eviction proceeding is brought for such a
18 illegal drug -- on the basis of such illegal drug
19 activity and that that does now -- did or does now
20 threaten the health or safety of other tenants.

21 That's an escape or a control, it seems to me,
22 which as a practical matter would be more effective

1 than trying to define "pending."

2 CHAIR BATTLE: John, I think that may be true,
3 because to the extent that there's something that's
4 laying around that nobody's paying attention to in an
5 office but there's still an immediate threat, then I
6 think a program can be guided by that in making a
7 determination as to whether this is something that
8 doesn't have an initial -- a present threat.

9 There's no activity in the prosecutor's office
10 on it, it's just still there but not yet dismissed,
11 then that might give the program some guidance as to
12 what they need to do. But by and large, I think the
13 intent of this particular regulation is to allow
14 programs to have some definite benchmarks as to what to
15 look for in determining whether or not to take a case
16 if illegal drug activity is the issue and health and
17 safety of tenants is the issue in that particular
18 proceeding.

19 MS. PERLE: So you have to really read those
20 two provisions together, those two parts together.

21 CHAIR BATTLE: Right. I think we have all
22 agreed that Section (d) should be deleted.

1 MR. BROOKS: May I go back (c)?

2 CHAIR BATTLE: Okay.

3 MR. BROOKS: One more small thing. We talk
4 about "engaging in illegal drug activities." That's
5 the language, I believe, in House 2076. In the
6 commentary on page 5, there's some considerable
7 discussion about the restriction consistent with that.
8 And it distinguishes between illegal sale and
9 distribution but does not include possession, use, or
10 manufacture.

11 I think that was the intention as we went
12 through it before, but as I read .2 paragraph (c), it
13 covers all illegal drug activities, which would, taken
14 at face value, include possession.

15 MS. PERLE: Except that the prohibition only
16 says "charged with sale or distribution." So the
17 prohibition narrows that definition.

18 MR. BROOKS: I'm sorry. There it is.

19 MS. MERCADO: Yes, because you don't want to
20 extend it.

21 CHAIR BATTLE: Yes. I think you would have to
22 read those two together. Do we need to have a

1 definition of "illegal drug activity," which is I
2 think, the point that John is raising?

3 MS. PERLE: No. But I think the prohibition
4 specifies clearly what specific illegal drug activity
5 is the focus of this rule.

6 CHAIR BATTLE: Okay.

7 MS. MERCADO: Where would that be
8 distinguished anywhere? Because, I mean, if you're
9 just looking at it on its face, then "illegal drug
10 activity" is an illegal drug under criminal law.

11 MS. PERLE: Right, but if you look at the
12 prohibition, the prohibition says, "shall not be used
13 to defend any person if the person has been charged
14 with or within one year of the date when services are
15 requested from a Legal Services provider has been
16 convicted of the illegal sale or distribution of a
17 controlled substance."

18 So it only applies to those specific illegal
19 drug activities. I would have no problem if you wanted
20 to change the definition to reflect only applicability
21 to those specific things, but I don't think it's
22 necessary. Because the prohibition is quite specific.

1 CHAIR BATTLE: Okay. What about using -- we
2 use the word "certain" to death in this thing, but
3 "engaging in certain illegal drug activities"?

4 MS. PERLE: Yes. That would help.

5 MS. FEINBERG: That's in the definition?

6 CHAIR BATTLE: Yes. "A person is charged with
7 engaging in certain illegal drug activities if a
8 criminal proceeding has been instituted against them by
9 dah, dah, dah."

10 MS. MERCADO: I'm sorry. Could you read it
11 for me?

12 CHAIR BATTLE: Okay. I'm on page 9. It's
13 subparagraph (c) under the definition. We have made
14 some changes to that just before you --

15 MS. MERCADO: Yes.

16 CHAIR BATTLE: I'll read it all. "A person is
17 charged with engaging in certain illegal drug
18 activities if a criminal proceeding has been instituted
19 against such person by a governmental entity with
20 authority to initiate such proceeding and such
21 proceeding is pending." That's the way that will read.

22

1 MR. BROOKS: Did I hear you put the word
2 "certain" in the first line there?

3 CHAIR BATTLE: Yes, "certain illegal drug
4 activities."

5 MS. MERCADO: Okay. But the last part of
6 that, after the "if the criminal proceeding has been
7 instituted against such person" --

8 CHAIR BATTLE: "Instituted against such person
9 by a governmental entity with authority to initiate
10 such proceeding and such proceeding is pending."

11 MS. MERCADO: "And such proceeding."

12 CHAIR BATTLE: Right.

13 MR. BROOKS: Why do we need the word "certain"
14 in there?

15 CHAIR BATTLE: It was only to address -- I'm
16 not sure that "certain" really works there, even though
17 I suggested it, quite honestly, when I read it, because
18 I don't -- I think that Linda is right that the
19 prohibition itself sets out the illegal drug activity
20 that we're really addressing. But we were trying to
21 get at whether we needed to define "illegal drug
22 activity," which we do in the prohibition.

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1 So when you define -- you're really in
2 paragraph (c) defining what "charged with" means more
3 than anything else. So you're charged if you've got a
4 criminal prosecution that's pending. That's what
5 "charged with" means.

6 And then in the prohibition, we actually set
7 out what the illegal activity is. And it's the sale or
8 distribution of a controlled substance, which is drug
9 dealing, basically. That's really what we're trying to
10 get all.

11 Okay. All right. So let's take the "certain"
12 out. I think since the purpose of subsection (c) is
13 really to define "charged with," that we need to do
14 that, with the focus being on how to make that explicit
15 enough that programs can be guided by what is intended
16 by "charged with." Okay?

17 Okay. Now, we're clear that (d) has been
18 eliminated. We're down to the prohibition itself.
19 Now, one of the things that we did after some
20 discussion -- and I came up and met with the staff, and
21 we talked about it -- there was some concern that six
22 months was too short a time period, and we were trying

1 to come up with a time period that would be something
2 that we could use consistently across the board and
3 would also express the dire understanding and intent
4 that the Corporation had of making sure that we don't
5 use the meager resources that we have to defend drug
6 dealers.

7 We decided to go with one year from the date
8 of the request. And that's reflected in subsection
9 (a). So it has been changed and should now read, under
10 (a), "the person has been charged with or within one
11 year of the date when services are requested from a
12 Legal Services provider, then convicted of the illegal
13 sale or distribution of a controlled substance."

14 MS. PERLE: I would just suggest that we add a
15 "has" before the second "been," just because it reads a
16 little better.

17 MR. BROOKS: I'm sorry. I didn't hear that.

18 MS. PERLE: The second line says, "When
19 services" --

20 CHAIR BATTLE: "Has been convicted of illegal"

21 --

22 MS. PERLE: Yes. I just think it reads a

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1 little better that way.

2 CHAIR BATTLE: Okay. All right. Okay.

3 MR. BROOKS: Now, I wonder if the definition
4 is "is charged with -- has been charged with" -- it
5 bothered me whether it "has been charged with" -- does
6 that include, I guess, the continuation in such
7 proceedings as still pending? I guess that comes out
8 all right. Okay.

9 MS. PERLE: If your point was should we say
10 "has been charged," I think we probably should say "has
11 been charged" rather than "is." The reason that it was
12 "is" is because it was originally "is being
13 prosecuted."

14 CHAIR BATTLE: So you want to say "has been
15 charged"? You want to go back and amend (c) to say
16 "has been charged"?

17 MS. MERCADO: "A person has been charged."
18 Okay.

19 MS. PERLE: I think that's right. Is that
20 what you intended, Mr. Brooks?

21 MR. BROOKS: Yes. It's okay, I think as is.

22 CHAIR BATTLE: "Has been charged with

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1 engaging"?

2 MR. BROOKS: Yes.

3 CHAIR BATTLE: Okay. Now, (b)? Donna?

4 MS. FEINBERG: Okay. What we did in (b) was
5 we made a small change in the first line. It had said,
6 "The eviction proceeding is brought by a public housing
7 authority." We thought the correct term was "public
8 housing agency." So that's the reason for that change.

9 And then "the proceeding is brought by a
10 public housing agency on the basis that such illegal
11 drug activity for which the person has been charged or
12 for which the person has been convicted." And the
13 change there is that we are no longer prohibiting --
14 the prohibition is no longer based on being prosecuted.
15 It's based on being charged or convicted.

16 CHAIR BATTLE: Okay. And I think that's also
17 consistent with the Congressional intent that we used,
18 the public housing agencies, which may include housing
19 authorities, as well as other agencies under that
20 rubric.

21 MS. MERCADO: So we decided to get away from
22 being prosecuted as opposed to being charged?

1 CHAIR BATTLE: Yes. The language in the
2 actual -- I think the appropriations language uses the
3 term "charged." And we decided to defined "charged" by
4 assuring that all programs would be able to go and see
5 a document and talk with someone to find out that there
6 is an action that is pending going on, rather than have
7 that charge be a nebulous statement that you can be
8 charged by someone else in the housing authority who
9 says, "I believe you're selling drugs," or some third
10 party. So we took the term "charged" as a term of art
11 and decided to define it for purposes of this
12 regulation.

13 MS. MERCADO: Well, because sometimes, people
14 may be arrested and a police entity like a municipality
15 may charge them with X amount, and then after they
16 bring it to the grand jury or whatever, they may decide
17 that actually, the charge is not warranted.

18 And so an indictment doesn't come down. And
19 so at what point in time are you saying that the charge
20 starts, when they are arrested or at the point at which
21 there is actually an indictment and which there is
22 actually going to be a prosecution?

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1 CHAIR BATTLE: Well, we used the term
2 "criminal proceeding" because we wanted there to be
3 some action taken. Because I think there was some
4 concern that oftentimes when police go in and do an
5 arrest, they'll arrest everybody in the house. And
6 that broad scale arrest may touch people who have
7 absolutely nothing to do with drugs.

8 And we also thought that this definition
9 really gets at those people that the local authorities
10 have taken the time and resources to go after and
11 prosecute as drug dealers. And those are the people
12 that I think we really want to make sure we don't use
13 our meager resources to defend.

14 MS. MERCADO: Well, I'm glad, because that's
15 exactly what happens.

16 CHAIR BATTLE: Yes. Okay. Now, are there any
17 other questions on the recordkeeping, 1633.4,
18 recordkeeping?

19 (No response.)

20 CHAIR BATTLE: There were no changes to that.
21 Are there any questions about it?

22 (No response.)

1 CHAIR BATTLE: And if not, we have effectively
2 made it through our regs.

3 MR. BROOKS: I have a couple of suggestions on
4 the commentary. I think we should go through that.

5 CHAIR BATTLE: I was going to get to that.
6 Okay. And John is absolutely right. The next point
7 was, I wanted us to go through the commentary now that
8 we have gone through the reg to make sure that it is
9 consistent with the regulation. My hope is that we can
10 finalize the regulation and present it to the Board
11 tomorrow.

12 I hope to be able to maybe talk with the other
13 Board members as they come in to see if they -- there
14 were some concerns that some Board members who are not
15 here expressed to make sure that what we have got is
16 consistent with the concerns that they have raised.
17 But if we can following our review of the comments
18 adopt as a committee this reg, then we can present it
19 to the Board, and there may be some editing changes
20 that we need to make to the commentary following that
21 process. But why don't we now take up the commentary?

22 MR. BROOKS: I just have one query. I have

1 not read Bill's memo. And have we covered everything
2 that he brought up?

3 MS. MERCADO: I'm just reading it right now.

4 CHAIR BATTLE: Why don't we just go through it
5 real quickly? I read it very briefly. We talked about
6 the first concern. He had a concern in 1633.2.

7 MR. BROOKS: That relates to the commentary.

8 MS. MERCADO: What page 4 is he talking about?
9 Do you know?

10 CHAIR BATTLE: It's page 4 of the draft
11 probably that he had before him, 1633.3.

12 MS. MERCADO: Because he talks about in
13 paragraph 4 --

14 CHAIR BATTLE: He believes that we should use
15 the word "represent" rather than "defend," and I think
16 we decided to use the word "defend" because of the
17 language in the appropriations conference reports used
18 "defend," and we were attempting to be consistent with
19 that. You're really talking about defending someone in
20 eviction proceedings, generally.

21 MS. MERCADO: Yes, because technically, I
22 suppose, you could represent a landlord.

1 CHAIR BATTLE: Yes, if they qualified for our
2 services.

3 MS. MERCADO: Yes. Very important point.

4 CHAIR BATTLE: He speaks of having problems
5 with Subsection (a) of 1633.3. I think the way we have
6 addressed the concern that he is raising is "pending"
7 means "pending." As long as it's pending, we're not
8 taking it. "Conviction" means at least a year after
9 the conviction is over with, we're in a different
10 position.

11 But if you've got a person who has been
12 convicted and it has been at least a year since the
13 conviction, I think that's the outer limit that we have
14 for the reg, but we certainly do hope that programs
15 will be guided by good sense and the fact that they
16 have meager resources in determining which cases they
17 will take on.

18 MS. PERLE: It's also -- we also again have to
19 read it with the section about health and safety of the
20 tenants and so that somebody could have been convicted
21 long ago, they have served their time or whatever, and
22 then they're being evicted because several years ago,

1 they were convicted of this kind of crime, but there's
2 no evidence that they're doing it now and that it's
3 currently affecting the health and safety.

4 CHAIR BATTLE: We may need to in our
5 commentary talk about that, that if there's a question
6 -- that we found a year as an appropriate time frame,
7 but that health and safety is an overriding factor, as
8 well. And to the extent that a person may still
9 present a health and safety problem for tenants, then
10 this restriction still applies.

11 MR. BROOKS: But we have picked up the
12 language -- I have the Kassebaum bill, Senate 1221
13 before me. And there they say the proceeding is
14 brought by a public housing agency because the illegal
15 activity threatens the health and safety of another
16 tenant. That language is pretty well tracked in what
17 we have.

18 CHAIR BATTLE: Right.

19 MR. BROOKS: I think that's the same as 2076.

20 CHAIR BATTLE: It is. Bill suggests --

21 MR. BROOKS: Here it is. Same language in
22 2076.

1 CHAIR BATTLE: Okay. Then, he has some
2 suggestions regarding the commentary. And I guess we
3 can address those concerns when we get to the
4 commentary.

5 MR. FORGER: Madam Chair, if somebody was
6 charged or convicted 11 months ago for this activity
7 which threatened public safety and nothing has
8 transpired in the last 11 months and somebody brings an
9 eviction proceeding where there is no current threat to
10 public safety or well-being, we can't represent that
11 person? I'm just wondering if I'm interpreting this
12 correctly.

13 CHAIR BATTLE: Well, if the eviction
14 proceeding itself does not allege that this person's
15 activities threaten the health or safety of tenants but
16 that person was convicted 11 months ago --

17 MR. FORGER: At which time, it did threaten or
18 no longer does.

19 CHAIR BATTLE: Well, our language is "did or
20 does now." And it seems to me that if it did at some
21 time earlier --

22 MR. FORGER: Eleven months ago.

1 CHAIR BATTLE: Eleven months ago, then --

2 MR. FORGER: The landlord just wants to get
3 the apartment now for a relative, and so he brings an
4 eviction proceeding.

5 MS. PERLE: Well, I think the notion is that
6 there is some bright line test. If it happened 11
7 months ago, no, we can't represent the person. If it
8 happened 13 months ago, then we can.

9 MR. FORGER: Okay, but there's no requirement
10 that the current eviction proceeding is brought in
11 order to preserve public safety.

12 MS. PERLE: I think it does.

13 CHAIR BATTLE: I think it did publish the 12-
14 month time frame.

15 MS. PERLE: But I think Section (b) says -- of
16 the prohibition says the eviction proceeding is brought
17 by a public housing agency on the basis that such
18 illegal drug activity for which the person has been
19 charged or for which the person was convicted did or
20 does now threaten the health or safety of other
21 tenants.

22 MR. FORGER: Or it did. It just doesn't

1 happen to threaten it now.

2 MS. PERLE: At the very moment?

3 MR. FORGER: Yeah, when they brought the
4 proceeding. I don't know why they're bringing the
5 proceeding. Just reading it literally, it looks to me
6 as if it says the proceeding is brought by a public
7 housing agency on the basis of such illegal activity
8 for which the person has been convicted did threaten
9 the health and safety.

10 CHAIR BATTLE: Yes, and I think that's right.

11 MR. BROOKS: Well, that reflects the proposed
12 legislation, which says the eviction proceeding is
13 brought by a public housing agency because the illegal
14 drug activity of the person threatens the health.

15 MR. FORGER: That's present tense, as of the
16 bringing of the eviction proceeding. Is that what this
17 language does?

18 MR. BROOKS: I think this language goes a
19 little --

20 CHAIR BATTLE: It's broader. This is actually
21 broader. Our language is broader.

22 MR. FORGER: So I've been clean for 11 months,

1 but I still can be evicted, if I read this correctly?

2 CHAIR BATTLE: Yes. That's right.

3 MR. FORGER: I don't today have to be a
4 threat. That was 11 months ago. I was convicted. I
5 served my time. I've been rehabbed. I don't threaten
6 anybody, but somebody is charging me with --

7 CHAIR BATTLE: If that happens within one year
8 of the date that you requested it, you're right.

9 MR. FORGER: I can't represent this person no
10 matter what?

11 CHAIR BATTLE: No.

12 MR. FORGER: No matter what the basis of the
13 eviction proceeding is?

14 CHAIR BATTLE: Well, the basis says you did
15 threaten the health or safety.

16 MR. FORGER: Eleven months ago.

17 CHAIR BATTLE: Yeah, 11 months ago.

18 MR. FORGER: But I've reformed, and I've been
19 through rehabilitation, and now the landlord is
20 evicting me because a child of mine creates a nuisance.

21

22 MR. BROOKS: Congress has said so.

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1 MR. FORGER: I beg your pardon?

2 MR. BROOKS: Congress has tried to say so, and
3 we have tried to reflect --

4 MR. FORGER: But is it current with Congress?

5 MR. BROOKS: No. As of the time of the
6 bringing of the eviction process.

7 MR. FORGER: So did we put the one year in, or
8 did Congress?

9 CHAIR BATTLE: We put the one year in, because
10 there was no time frame that Congress had actually set
11 out, and we thought that we needed to come up with a
12 time frame that was realistic.

13 MS. MERCADO: If somebody was convicted 10
14 years ago and they haven't done anything since then
15 because they were convicted, you can't represent them.
16 They were truly reformed.

17 CHAIR BATTLE: And the prospect of
18 rehabilitation within 11 months is magnanimous, and it
19 does happen sometimes. But I think that prospect does
20 become more realistic as you look 5, 10 years down the
21 road.

22 MR. FORGER: I guess I would have felt more

1 comfortable if Congress had said the eviction
2 proceeding is commencing now because of a threat or if
3 it occurred 11 months ago, it continues to be a threat,
4 rather than this guy has become a model citizen.

5 MS. PERLE: Well, I think this is a very
6 difficult set of issues. I mean, my civil libertarian
7 side would suggest that we ought to say unless it's
8 currently a threat, that we shouldn't prohibit the
9 representation. I think Congress -- this is an
10 inartfully drafted provision from Congress.

11 It doesn't go as far as I think Congress
12 meant, and I also think as Donna just pointed out, that
13 it's probably unrealistic for us to insist that there
14 was this activity going on, it took a while for them to
15 get wind of it, it took a while for them to actually
16 get it together to do the eviction.

17 But as long as they manage to do it within a
18 year, what this says basically is it's close enough. I
19 have trouble with that, but I also think that there's
20 some practicalities in terms of how you draft
21 something.

22 CHAIR BATTLE: And I think, too, Ernestine,

1 when we talked about this, you mentioned that --

2 MS. PERLE: The wheels of justice turn
3 exceedingly slow.

4 CHAIR BATTLE: Yes. They do sometimes turn
5 slow ,and we have to account for that and account for
6 the fact that even though the specific charge may not
7 be a threat, drug dealing is a continual kind of
8 activity. And though that specific charge may not be
9 at issue, the fact that that person may engage in other
10 activity is much more likely within that first year.

11 MS. PERLE: I just worry also that we are too
12 literal in interpreting -- I agree that we should use
13 the Congressional language whenever possible, but if
14 we're too literal and as a result we read this
15 restriction very narrowly, that the Corporation will be
16 subject to lots of criticism.

17 CHAIR BATTLE: Right. And so we have done a
18 more expansive job here.

19 MS. PERLE: It seems justifiable. I'm not
20 totally comfortable with it, but I think it's
21 justifiable.

22 CHAIR BATTLE: Sure. So we have expanded it.

1 We have come up with a year time frame. We have given
2 definition to "charged." And I think we have done
3 those three things to give teeth to what I think
4 Congress intended and we have adopted as a policy as to
5 how we're going to address the issue of drug dealing in
6 public housing agencies.

7 MR. FORGER: It could have occurred in a
8 different jurisdiction, right? The disappointed
9 relative now calls the public housing authority and
10 says, "Hey, did you realize that Alex Forger 11 months
11 in New Mexico was convicted?"

12 CHAIR BATTLE: No. You have to threaten the
13 health and safety of the tenants residing in the public
14 housing project or employees there.

15 MR. FORGER: Okay. In this public housing?

16 CHAIR BATTLE: Yes.

17 MS. FEINBERG: I've done a quick look at the
18 HUD regs, and public housing authority is probably only
19 going to pursue eviction proceedings if it happened on
20 the premises, because there are certain obligations
21 that tenants enter into that they will not engage in
22 criminal drug activities on the premises. So I would

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1 suspect they would have to look to see what within
2 their authority has been violated.

3 MS. PERLE: Except for that we do know from
4 the examples that we have seen that there are lots of
5 times when public housing authorities premise an
6 eviction on an activity that happened off the premises.

7 MS. FEINBERG: That could be, because they
8 have the criminal activity.

9 MR. FORGER: But this conviction could have
10 been in New Mexico, and I now move to New York, and
11 I've been here for 10 months leading a good life.

12 MS. PERLE: But then they couldn't allege that
13 it currently threatens the health.

14 MR. FORGER: But it did when I was convicted.

15 MS. PERLE: But we're in another public
16 housing project.

17 MS. FEINBERG: Not at that public housing
18 project.

19 MR. FORGER: No, but it doesn't have to be in
20 this public housing project.

21 CHAIR BATTLE: Nonetheless, if the allegation
22 is in the public housing authority eviction proceeding

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1 notice, then I think that the allegation is going to be
2 sufficient to put us on notice that they have taken the
3 position that that person is threatening the health and
4 safety of people in that authority.

5 MS. WATLINGTON: In answer to what you're
6 saying, if that happened somewhere else, that would
7 have been on the records before they even got into the
8 place.

9 MS. PERLE: They wouldn't have gotten in
10 there.

11 MS. WATLINGTON: They wouldn't have gotten in
12 there at that time.

13 MR. FORGER: But he reformed, Ernestine.

14 MS. WATLINGTON: That still --

15 MR. FORGER: Okay.

16 CHAIR BATTLE: Okay. Is there anything else?
17 Let's move on to the commentary. Take a look to see if
18 there are some things that we need to address in the
19 commentary. First, of course, what we're going to do
20 when we get to -- first, I will say this. I think that
21 the authority to promulgate the rule is much too long
22 and that we need to -- oh, it has been cut.

1 I sent Donna a little not earlier this week
2 because we had this long section on the whole issue of
3 the authority to promulgate the rule, and I felt that
4 it could be shortened. And it has been shortened, and
5 I think that's fine.

6 MS. PERLE: So it's shorter than what's --

7 CHAIR BATTLE: What we had in an earlier
8 draft.

9 MS. FEINBERG: Basically, we just summarized
10 the rather lengthy discussion about the TRLA decision
11 and decided that the statutory provision is cited in
12 the decision for the background or whatever.

13 CHAIR BATTLE: Okay. Good. Now, under the
14 purpose section now on page 3, we're going to add the
15 language that we had underlined in the rule after that
16 first sentence. Well, it's almost -- the language that
17 Bill suggested, I think, may more appropriately go in
18 the comments. "This rule is intended to preclude
19 recipients from providing representation in certain
20 eviction proceedings of persons engaged in certain
21 illegal drug activity" as the purpose.

22 And then a second sentence which speaks to the

1 non-LSC funds issue following that, with some editing
2 to what Bill has proposed, because it --

3 MS. MERCADO: He doesn't like the "defend"
4 wording.

5 CHAIR BATTLE: I know.

6 MS. FEINBERG: I'm confused about what you
7 just said. I'm sorry.

8 CHAIR BATTLE: Okay. I was suggesting that we
9 amend the section that we now have in the comments
10 under 1633.1 to affirmatively state, "This rule is
11 intended to preclude recipients from defending persons
12 who have been charged or convicted of illegal drug
13 activities in eviction proceedings" rather than the way
14 that it's now stated, so that it is an affirmative
15 statement of what the intent of this reg is, followed
16 by the language that we have now pulled from the rule
17 dealing with the non-LSC funds issue.

18 MS. PERLE: So in other words, the language
19 that Mr. McCalpin suggested, you want to add?

20 CHAIR BATTLE: With some editing, yes. With
21 some editing, add that.

22 MS. PERLE: But you still want to add the part

1 about it only applies to LSC funds now, but if --

2 CHAIR BATTLE: Right. Yes. Okay. Are there
3 any other comments on page 3?

4 (No response.)

5 CHAIR BATTLE: Page 4?

6 MR. BROOKS: We already have the provision in
7 line 3 there on page 4 about the complaint being still
8 pending.

9 CHAIR BATTLE: Yes. I think we had a lengthy
10 discussion early on about the whole issue of "pending"
11 and how it ought to be defined and interpreted. And I
12 think that this comment is consistent with that.

13 MS. PERLE: Consistent with what Ms. Mercado
14 said before, I would suggest on page 4 on line 3 that
15 we take out the word "complaint," because she had
16 talked about it in terms of an arrest, but even if
17 someone goes down to the police station, makes out a
18 formal complaint, that doesn't mean that the person's
19 going to be formally charged and prosecuted.

20 So I would take out that "complaint." I mean,
21 unless it's a term of art in a particular jurisdiction
22 in terms of whatever it is that commences the

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1 prosecution.

2 MS. MERCADO: That's information on
3 background.

4 CHAIR BATTLE: Okay. Donna?

5 MS. FEINBERG: I was just going to say I do
6 think it was a term of art, but if I'm wrong, let's
7 take it out. I didn't mean that it could just be a
8 citizen complaint. I never intended that.

9 CHAIR BATTLE: Okay. "Information or
10 indictment" is probably more appropriate for criminal
11 purposes.

12 MS. PERLE: Right. And certainly, if in a
13 particular jurisdiction they use another word --

14 MS. MERCADO: But the issue is still that it's
15 a non-indictment.

16 MS. PERLE: Well, you could say "information
17 or indictment or their equivalent."

18 MS. MERCADO: That's good.

19 MS. PERLE: I didn't go to law school for
20 nothing.

21 CHAIR BATTLE: "Or the equivalent"?

22 MS. MERCADO: Remember the KISS rule now.

1 MS. PERLE: The KISS rule?

2 CHAIR BATTLE: Keep It Simple, Stupid. All
3 right. Anything else on page 4?

4 MS. PERLE: Yes. You need to take out the
5 paragraph that starts, "Finally." It says, "Finally,
6 the rule may apply to non-LSC funds."

7 MS. WATLINGTON: I just was going to point
8 that out.

9 CHAIR BATTLE: Okay. All right, Ernestine.
10 Okay. The section on the prohibition on page 4, 1633.3
11 on prohibition. We have really only made a couple of
12 changes to an earlier draft. We have reviewed this
13 since the comments, but what we have really here
14 intended to do with the prohibition is to try to
15 reflect the apparent intent of Congress as declared in
16 HR 2076 in how we have set up the prohibition.

17 Because we had comments saying it should be
18 broader. We had comments saying it should be more
19 limited. We had Board members who said, "You're going
20 beyond the scope of what Congress has actually set
21 out." We had some ADA concerns that were raised about
22 use. And we have various jurisdictions and how they

1 treat different levels of use.

2 And controlled substance is a pretty broad
3 spectrum of entities on that list that rather than get
4 into a situation where we may go beyond the limit and
5 the scope of what Congress intended -- and what we're
6 trying to get at is really drug dealers more than
7 anything else. We have come back to the language
8 reflected in HR 2076. And I think that's pointed out
9 aptly here.

10 Is there anything else on page 4?

11 (No response.)

12 CHAIR BATTLE: Page 5? Page 5 at the top
13 reflects our determination to move from six months to a
14 year. And we have a section on illegal drug
15 activities. And we there point out that it does not
16 include possession, use, or manufacture of controlled
17 substances. Because Congress did not include those
18 things, as well.

19 The Constitutional objections is a real
20 difficult piece for me, because I think that there were
21 comments that expressed that this does impinge on
22 people who have been alleged to have committed certain

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1 acts but have not proven to have committed certain
2 acts. And that is a difficult issue.

3 And I think we had to do a balancing of the
4 interests of health and safety for tenants with the
5 Constitutional rights of the individual in coming out
6 that we did and setting a specific time frame for it on
7 the exclusion. But I think there is some merit to the
8 Constitutional objections that were raised by some of
9 the commenters about the scope of the way that this
10 regulation works.

11 Any other comments or questions on page 6?

12 MR. BROOKS: Yes.

13 CHAIR BATTLE: Okay.

14 MR. BROOKS: Fourth line and the beginning of
15 the fifth line. I wonder whether --

16 MS. MERCADO: What page, John?

17 CHAIR BATTLE: Page 6.

18 MR. BROOKS: Page 6. The parentheses, "Nor
19 could it." I wonder if that's a correct statement and
20 whether it is or not -- is it appropriate. "The rule
21 denies certain individuals access to legal services
22 intended to represent them in certain eviction

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1 proceedings. It does not nor could it deny such
2 individuals."

3 CHAIR BATTLE: Have we looked at the HUD regs,
4 and do the HUD regs entitle each person who is subject
5 to eviction proceedings access to its proceedings?

6 MS. PERLE: I don't think that's really the
7 point that Mr. Brooks is making. I think the point
8 that he's making is that it could, in fact, effectively
9 deny them access to the eviction proceedings if they
10 don't have the wherewithal to utilize those procedures
11 themselves, then they really need a lawyer to do it. I
12 think that's -- but that it effectively precludes them
13 from access to the procedures, because they can't
14 really do them themselves without representation.

15 CHAIR BATTLE: Is that your point, John?

16 MR. BROOKS: Well, are we saying that the rule
17 could not deny such individuals access to the eviction
18 proceeding under the regulations of HUD?

19 CHAIR BATTLE: As I've read -- and maybe I'm
20 understanding you a little bit differently from what
21 Linda is saying. I'm reading you to say does the Legal
22 Services Corporation have the authority to deny someone

1 the opportunity to access a proceeding under HUD
2 regulations. No, we don't. Our jurisdiction only
3 extends to our recipients. So we cannot deny someone
4 the right to access to proceedings that are promulgated
5 under the Department of --

6 MS. PERLE: My point is that you could be
7 effectively denying -- I would be more comfortable if
8 we took out the parenthetical.

9 MS. FEINBERG: Or explained it.

10 MS. PERLE: I think just take it out.

11 MR. BROOKS: I think it raises unnecessary
12 issues.

13 CHAIR BATTLE: So you would take it out, is
14 that it, John?

15 MR. BROOKS: I would take it out.

16 CHAIR BATTLE: "Nor could it"?

17 MS. PERLE: Just the little parenthetical that
18 says, "Nor could it."

19 MR. BROOKS: And then I have one other
20 suggestion. "Deny such individual access to the
21 eviction proceeding." What I think we mean there is to
22 deny such individual representation in the eviction

1 procedure, rather than access to --

2 CHAIR BATTLE: Well, it does deny them
3 representation, but it does not deny them the
4 opportunity to represent themselves.

5 MS. PERLE: Or to find another attorney.

6 CHAIR BATTLE: Yes, or to find someone else to
7 do it. It does not deny such individuals the
8 opportunity to participate in the eviction proceeding
9 procedures.

10 MR. BROOKS: I just think representation is
11 what we're talking about, rather than the more --

12 MS. PERLE: But the point is, it does deny
13 them representation.

14 CHAIR BATTLE: It denies them Legal Services
15 representation, but it doesn't deny them representation
16 by others or the opportunity to participate.

17 MS. PERLE: But it will effectively deny them
18 representation, most people. Many people.

19 MR. BROOKS: Not important, but it just seems
20 to me representation is what we're talking about,
21 rather than the more nebulous --

22 CHAIR BATTLE: What about "the opportunity to

1 participate"? Does that make it clearer, John?

2 MR. BROOKS: It does to me.

3 CHAIR BATTLE: Okay. "The opportunity to
4 participate."

5 MS. MERCADO: Tell me how --

6 CHAIR BATTLE: It would read, "It does not
7 deny such individuals the opportunity to participate in
8 the eviction procedures provided under regulations of
9 the Department of Housing and Urban Development."
10 Okay? Do we have anything else on page 6?

11 MS. PERLE: If we could, at the very bottom of
12 page 5, I would add -- the last sentence starts, "Under
13 the final rule, the prohibition applies when a" -- it
14 says "a charge." I would like to say "a formal
15 charge."

16 CHAIR BATTLE: Okay.

17 MS. FEINBERG: One other point. Do you want
18 to add "certain" every time we say "illegal drug
19 activity"? I thought we got a little -- I don't think
20 it's necessary in the commentary.

21 CHAIR BATTLE: No, because what we finally do
22 is say the prohibition sets the parameters for the

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1 illegal drug activity that we're talking about.

2 MS. FEINBERG: Okay. I just wanted to make
3 sure.

4 CHAIR BATTLE: So since we're saying "certain
5 eviction proceedings," let's just save the rest of our
6 "certains" for the eviction proceedings and not use
7 them up on illegal drug activities.

8 Anything about health and safety or --

9 MR. FORGER: How do you determine that,
10 LaVeeda? I'm just a Johnny-Come-Lately, wondering
11 what's the predicate for that.

12 CHAIR BATTLE: For the health and safety
13 issue?

14 MR. FORGER: Yes.

15 CHAIR BATTLE: Really, it's not our
16 determination to make. It's the housing authority's
17 determination to make. If the housing authority in
18 their eviction proceeding says, "We want this person
19 out because we think they're threatening our tenants;
20 they have been convicted," then it's out of our hands.
21 It is the allegation alone by the housing authority
22 that determines for us the scope of whether or not we

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1 can consider that particular case.

2 MR. FORGER: I just wonder whether, you know,
3 dealing in drugs a thousand miles away is a threat to
4 health and safety. I suppose it could be if the Mob is
5 coming after this guy or he hasn't paid up or
6 something. So it would not be the fact of illegal drug
7 activity? I don't know what is added by the health and
8 safety, unless you have to prove that --

9 MS. WATLINGTON: It's in your lease usually,
10 because that creates a lead to illegal activities to
11 the apartment which would then make it unsafe. Any
12 time you bring in drugs to surroundings, it creates --
13 it's unsafe for tenants.

14 MS. PERLE: I think it does make the
15 connection between the tenancy and the illegal
16 activity. I mean, at least it -- there has to be -- in
17 the allegation, they can't allege that something that
18 happened 3,000 miles away affects the health and
19 safety, or it's very difficult for them to allege it.
20 I think it just puts up a slightly higher barrier to
21 invoking this restriction.

22 MS. WATLINGTON: Of the rest of the tenants.

1 MR. FORGER: I'm just curious, Linda, as to
2 what you think would -- what would I have to allege in
3 my complaint and prove that if --

4 MS. PERLE: Well, I think you have to make the
5 allegation, because the proof comes later. And by that
6
7 time --

8 MR. FORGER: But what is the nature of the
9 proof that you would think adequate? I mean, a
10 physical threat to somebody next door, or just the fact
11 that here is somebody dealing in drugs that is likely
12 to create a bad model for others? I just don't know
13 the --

14 MS. WATLINGTON: I can give you an example.
15 In January, I had an annual inspection by the state and
16 the housing authority at the site, the Section 8
17 apartment that I manage. And during the annual
18 inspection, the housing authority director saw the drug
19 paraphernalia on the cabinet, and he immediately wrote
20 a letter to me to evict that tenant. Because if there
21 was drugs there, that meant the whole thing. So that
22 was a -- you know. I mean, I had no choice. But, I

1 mean, it was good. But just in seeing those things
2 that you use on the cabinet during this site
3 inspection, he wrote a letter to the tenant and myself
4 and told me to evict them because of drugs.

5 MR. FORGER: I just don't know the Legal
6 Service lawyer is going to make that judgement that he
7 is now precluded because somebody has alleged.

8 CHAIR BATTLE: That's going to be sufficient.
9 The position is, the allegation in the eviction notice
10 alone will be sufficient to put the Legal Services
11 lawyer on notice that if there is an allegation that
12 the health and safety is threatened and that drugs are
13 the basis for the health and safety threat, that's it.

14 MS. PERLE: And if the person has been charged
15 with or convicted.

16 CHAIR BATTLE: And the person has been charged
17 or convicted, those things. If you look at the actual
18 eviction notice and it has those things on it, then
19 we're precluded.

20 MS. WATLINGTON: It's covered in the lease to
21 the point that --

22 MS. PERLE: We're not happy about that. I

1 mean, we don't -- at least I would prefer that we not
2 have to impose this restriction. But I think that's
3 what Congress was intending. MR. FORGER: No, no. I'm
4 accepting the restriction, Linda. And I'm now the
5 Legal Service lawyer, and somebody has alleged that
6 this activity, whatever it was, wherever it took place
7 -- it doesn't have to be on the premises -- threatens
8 the health and safety of the tenants.

9 CHAIR BATTLE: And we don't get to the
10 underlying activity. All we have to have is an
11 allegation of a threat.

12 MR. FORGER: So all they have to do is allege
13 it, whether it is true or not?

14 CHAIR BATTLE: Exactly.

15 MR. FORGER: And you can't represent the
16 person?

17 CHAIR BATTLE: Exactly.

18 MS. MERCADO: It's part of a prong, though,
19 because the person has to have been charged or
20 convicted in the last year.

21 MR. FORGER: I understand that. I dealt drugs
22 somewhere, and I was convicted. And then simply by

1 reason of that, maybe the world takes notice that I'm a
2 threat to everybody around me.

3 MS. PERLE: I think, you know, as
4 uncomfortable as it may make some of us, Congress, I
5 think, has made it clear that they really don't want
6 Legal Services programs representing drug dealers. And
7 so we --

8 CHAIR BATTLE: And I think Maria does more
9 criminal work and can probably speak to this more than
10 anything else about the nebulousness of what it's like
11 to have someone who says, "Oh, no, I didn't do it and I
12 don't know why they're after me and what this is all
13 about." And here we are, Legal Services, expending our
14 resources on that. And then we come to find out this
15 person is the ringleader.

16 You cannot make the judgements about the truth
17 or any of those other things once the housing authority
18 takes the position this is threatening the health and
19 safety. We then are not going to be able to use our
20 resources on it. And it's a difficult issue, because
21 there are going to be people who are innocent who have
22 these allegations launched against them who have cases

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1 pending against them that we will not be able to touch.

2 But once you step into trying to make an
3 assessment as to the truth or the veracity of any of
4 these allegations, we're in a difficult position
5 because you don't know until it's all said and done
6 what the result is going to be.

7 MS. PERLE: This does still permit us to do --
8 if you look down a little bit further in terms of the
9 other household members, for example, the grandmother
10 is the lessee and a child has been convicted, you can
11 still defend the grandmother or other members of the
12 family. And I think those are much more often the
13 situations that Legal Services programs find themselves
14 in.

15 And as long as the rights of those people are
16 well protected, I think that the other situations will
17 be fewer, first of all.

18 MR. FORGER: I'm not arguing that case on
19 that. I'm simply trying to understand the
20 circumstance. Here, it seems to me that this is
21 basically saying from what you tell me that if you've
22 been convicted of illegal drug activity, you cannot be

1 represented in an eviction proceeding.

2 MS. PERLE: As long as the allegation is made
3 that it --

4 MR. FORGER: If somebody says, "Oh, it affects
5 the health, safety, the atmosphere," that's now part of
6 the standard allegation, I guess. So in a sense, it is
7 if you've been convicted of illegal drug activity, you
8 cannot be represented.

9 CHAIR BATTLE: If there's an allegation by the
10 housing authority.

11 MR. FORGER: So long as somebody says, even
12 though it may not be true.

13 MS. WATLINGTON: More of that emphasizing on
14 the housing authority, instead of saying anyone making
15 an allegation --

16 CHAIR BATTLE: Yes. Well, the whole -- this
17 entire reg turns on the housing authority instituting
18 an eviction proceeding because it is their belief that
19 someone threatens the health and safety of their
20 tenants and also there is documentation that there is a
21 pending action for drug-related activity that is
22 prohibited by this reg.

1 MS. WATLINGTON: I definitely knew what I was
2 talking about. There is a concern you're giving a lot
3 of authority to the housing authority and they have too
4 much already with your tenants there and it's really
5 leaving a lot open there without Legal Services being
6 able to defend them.

7 But that has gotten to be such a touchy issue
8 today that it's really hard to call, especially with
9 Congress, the way they're thinking about it. And you
10 really have to be in it every day to really be aware
11 just how difficult that is.

12 CHAIR BATTLE: Yes. Are there any other
13 concerns that we need to address about the comments?
14 We're now down to page 7.

15 (No response.)

16 CHAIR BATTLE: No? We're really only talking
17 about recordkeeping. We have made some minor editing
18 changes to that. It's changed to take out the word
19 "admonishing" to "advising." And the attorney-client
20 privileges and rules of responsibility, professional
21 responsibility, as opposed to conduct. And if there
22 are none -- Bill, we're happy to see you.

1 MR. McCALPIN: I'm sorry to be late.

2 CHAIR BATTLE: Thank you for coming. And we
3 appreciate your coming. We tried to in our discussion
4 today because you were gracious enough to send your
5 comments in advance, knowing that you weren't going to
6 be here when we first started, to consider your
7 comments as we went through the reg.

8 And some of them we have encompassed in how
9 we're going to do some edits to the comment section.
10 And we have discussed them in relationship to the rule,
11 as well. I just want to put you on notice.

12 We're now at a point that I will entertain a
13 motion to recommend with the changes that we have made
14 as a result of our discussion today the rule, Part
15 1633, restriction on representation in certain eviction
16 proceedings, to the Board of Directors.

17 MR. BROOKS: For adoption as a final rule?

18 CHAIR BATTLE: Yes, for adoption as a final
19 rule.

20 M O T I O N

21 MR. BROOKS: I so move.

22 MS. WATLINGTON: Second.

1 CHAIR BATTLE: It has been properly moved and
2 seconded that we will make the changes that we have
3 discussed today to the rule part 1633, restriction on
4 representation in certain eviction proceedings, so that
5 we may recommend for adoption by the Board as a final
6 rule the changes that we have discussed today. All in
7 favor?

8 (Chorus of ayes.)

9 CHAIR BATTLE: All opposed?

10 (No response.)

11 CHAIR BATTLE: Motion --

12 MR. McCALPIN: Not having participated in the
13 discussion and not knowing what changes were made, I
14 think that I will abstain until I see what we have
15 done.

16 CHAIR BATTLE: Okay. I'll be happy to share
17 it with you during the first break. We can now move on
18 to the second item that we have on our agenda, which is
19 to Consider and Act on Guidelines and the Development
20 of a Form for Directors' Annual Disclosure Pursuant to
21 Section 305 of the Corporation's Bylaws. And Suzanne
22 is now joining us in our discussion on this.

1 MS. GLASOW: I want to make sure everyone has
2 Bill's comments. Everybody has a copy of the
3 guidelines, right?

4 CHAIR BATTLE: Do all of the Board members
5 have a copy of the guidelines? There should be a draft
6 before you which is dated February 20, 1996.

7 MR. McCALPIN: It has been a bad couple of
8 days. I need to find my guidelines.

9 CHAIR BATTLE: We can probably get you a copy.

10 CHAIR BATTLE: We are now considering updating
11 the disclosure of information form that the members of
12 the Board will be called upon on an annual basis to
13 submit which will allow them to disclose certain
14 information which is required by our bylaws to the
15 Corporation so as to apprise the Corporation of
16 potential conflicts that may arise during the course of
17 our activities as a Board.

18 And we have both guidelines and we have got a
19 form before us that we're going to consider today that
20 Suzanne has worked on. Why don't we start with the
21 guidelines, Suzanne? You can give us the background.

22 MS. GLASOW: Okay. As a preliminary

1 statement, I would like to say that I threw everything
2 but the kitchen sink in here, basically, to give you an
3 idea of the breadth of what you could consider, but
4 that doesn't necessarily -- there's no legal
5 requirement that a lot of this is in here. It's just
6 to give you everything to look at and then make a
7 decision about what you want to include. Do you want
8 to go paragraph by paragraph on this?

9 CHAIR BATTLE: Why don't we just see if there
10 are concerns? Has everyone had a chance to look at
11 this, the Board members?

12 MR. BROOKS: My concerns relate to paragraph
13 5, as I gather Bill's do, also.

14 MR. McCALPIN: Well, I did have a comment
15 about paragraph 3.

16 CHAIR BATTLE: 3?

17 MS. GLASOW: And I agree with that comment,
18 and I think there should be some reference to the
19 definition of "member of the immediate family" in the
20 bylaws.

21 CHAIR BATTLE: Okay. So are there any
22 questions about 1 or 2?

1 (No response.)

2 CHAIR BATTLE: And 3, Bill?

3 MR. McCALPIN: Well, as I looked at this, I
4 thought I've got five adult kids. I'm not about to try
5 to find out what all of their interests are. And I
6 suppose they could be considered members of my
7 immediate family. So then I went back and looked at
8 the definition in the bylaws, and it says "spouse and
9 minor children." I think that's right, but you
10 wouldn't get that from reading paragraph 3.

11 CHAIR BATTLE: So we need to amend paragraph 3
12 to give further definition to the term "immediate
13 family" so that it encompasses the consistent
14 definition in the bylaws of "spouse and minor
15 children." Okay. I think that's a good point. I
16 don't have any adult kids yet, Bill, but --

17 MR. McCALPIN: I can see my kids saying, "What
18 do you mean" --

19 CHAIR BATTLE: I do have an adult child.
20 That's right. I do have one. She doesn't have any
21 interests yet, financial interests yet. Okay.
22 Paragraph 4. John, I think you mentioned -- well,

1 yours was with 5, right?

2 MS. GLASOW: 4 is basically a restatement of
3 the bylaws.

4 CHAIR BATTLE: Okay. Now, 5 has to do with
5 significant person financial or ownership interest.
6 John?

7 MR. BROOKS: Well, I had trouble with defining
8 -- saying an interest includes real estate, just
9 semantically, gave me trouble. Secondly, on the
10 substance of the thing, I think we have got two
11 different concepts here, if I understand what you're
12 aiming at, Suzanne. One is interests in property owned
13 by or with the firm or organization. That might be
14 joint interest in real estate.

15 The other is interest in securities, for
16 example, issued by or bank deposits or life insurance
17 policies, two different relationships.

18 And I was in the process of drafting -- trying
19 to draft a paragraph to distinguish between those two
20 kinds of things and coming out somewhat this way, that
21 "For the purpose of paragraph 4, financial or ownership
22 interest shall include but not be limited to interest

1 in property owned with or by such firm or organization
2 such as real estate, livestock, commercial crops,
3 capital accounts, or other assets in the business; and
4 obligations of or guaranteed or issued by such firm or
5 organization such as stocks, bonds, securities."

6 Then pensions are somewhat slightly different,
7 beneficial interests in trusts and "but shall not
8 include any fiduciary interest." Does that conform
9 with what your concept is?

10 MS. GLASOW: Right. And this is the provision
11 where I really threw a lot of interests in that you may
12 not want to include. There's no law that directly
13 relates to the definition of "financial ownership
14 interests" for LSC Board members, so we had to refer to
15 regulations that apply, for instance, to federal
16 employees.

17 And so we just made a long list and thought we
18 could talk about the items and see what you felt was
19 relevant to your membership as a Board member for LSC.

20 CHAIR BATTLE: I hear two different things. I
21 hear John saying that the nature of the interest has to
22 be set out a little bit differently, because when

1 you're talking about a pension fund, you don't
2 necessarily own it. You may have an interest in it or
3 obligations issued by when you're talking about stocks
4 and bonds.

5 So you're talking about, if you're going to
6 have categories, that they need to be grouped together
7 based on what that relationship would be. That's your
8 point.

9 MS. GLASOW: Right.

10 CHAIR BATTLE: What you're saying, Suzanne, is
11 that what you tried to do is to give a broad definition
12 of what a financial or ownership interest might be by
13 giving all of these different examples to us.

14 MS. GLASOW: Right.

15 CHAIR BATTLE: And that we have before us all
16 of the examples, and we can either constrict or expand
17 the list or the scope of how we want to define
18 "financial interest," right?

19 MS. GLASOW: That's correct.

20 CHAIR BATTLE: Okay. Bill?

21 MR. McCALPIN: Well, my problem is, if you
22 start with paragraph 2, it says, "The disclosure

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1 statement shall identify any firm or organization with
2 which he is associated."

3 And 4 says, "A member shall be deemed to be
4 associated with a firm or organization if the member,"
5 and so on -- 4, "has or has had within the two prior
6 years any significant financial or personal ownership
7 interest therein," all this relating to a firm or
8 organization. Now, when you get down to futures
9 contracts, livestock, commercial crops, antiques or
10 art, you're talking about individual investments or
11 ownerships, or else you are talking about a firm or an
12 organization whose assets include that kind of
13 property.

14 CHAIR BATTLE: The artwork in your law firm's
15 office is for example.

16 MR. McCALPIN: Up to this point, the
17 disclosure statement doesn't talk about personal
18 interests other than in a firm or organization, and I
19 don't think it intends to talk about the kind of assets
20 of a particular firm or organization.

21 MR. BROOKS: Unless they are owned by the
22 member jointly with or some kind of --

1 MR. McCALPIN: Well, but then you get back to
2 the personal ownership. Do you think that if I owned a
3 futures contract in October Cotton, I've got to
4 disclose that? And if I don't have to disclose it if I
5 own it personally, why do I have to disclose it if I
6 own it jointly with the ABC Trading Corporation?

7 MR. BROOKS: Or if the ABC Trading Corporation
8 issues the futures contract.

9 MR. McCALPIN: They don't. Futures contracts
10 are issued by the exchanges.

11 CHAIR BATTLE: You know, I think that we
12 really have to get back to the intent of the disclosure
13 to determine the scope of what financial interests
14 we're talking about trying to disclose, it seems to me.
15 And I think the point that Bill is making is, when you
16 get down to whether you've got a futures contract on
17 cotton, that's not an issue that we think there might
18 likely be a conflict of interest with regard to Bill's
19 serving on this Board.

20 And so you're really talking about conflicts
21 that come from your financial interest in or
22 relationship to your law firm or your corporation or

1 wherever it is that you work and having that
2 relationship disclosed so that everybody is on notice
3 if an issue comes up that relates to that, that this is
4 something that might create a conflict.

5 MS. MERCADO: Cotton -- it would with my farm
6 worker litigation. It's possible that there would be
7 an entity. I mean, as far as a Board. Whether or not
8 your interests --

9 CHAIR BATTLE: It's significant enough that
10 however you make your decision --

11 MS. MERCADO: Significant enough that the
12 decision would be affected one way or the other. But
13 unfortunately, in that --

14 MR. McCALPIN: If I had an interest in the
15 grower, maybe. But if I simply have an interest in the
16 futures contract, I don't think so. The way this is
17 written, I would have to list my home, real estate, and
18 I don't think we intend that.

19 CHAIR BATTLE: There's no conflict that can
20 grow from your house.

21 MS. MERCADO: Potential conflict is what we're
22 looking at.

1 CHAIR BATTLE: My point is, I think we need to
2 look at the whole issue of the scope of personal
3 financial or ownership interest from the standpoint of
4 trying to step back and figure out where conflicts may
5 arise. And your home is not going to create a
6 conflict. So I don't think that we intend that it
7 extend, for example, to real estate, unless one of us
8 happens to own this building that we are now housed in.

9 MR. McCALPIN: Well, it seems to me the first
10 thing we have got to do is to decide whether as I think
11 paragraphs 2 and 4 preceding 5 do, limit this to
12 interests in firms or organizations. Now, the
13 alternative is that it may not be so limited, and it
14 may include individual ownerships of properties,
15 interests independent of an ownership in a firm or
16 organization. Now, I think first we need to make a
17 decision which way we go on that issue.

18 CHAIR BATTLE: I almost read 4 -- and I may
19 stand to be corrected on that -- that "associated" goes
20 beyond firm or organization in paragraph 4, because it
21 says you're associated if you have a significant
22 personal financial interest in something. And so by

1 setting out that definition --

2 MR. McCALPIN: In a firm or organization.

3 MS. MERCADO: Yes, it's with a firm. The
4 association is with a firm or an organization. It's
5 not an association with you individually, as well.

6 MR. McCALPIN: That's right.

7 MS. GLASOW: Right. All of this is intended
8 to talk about interests with the firm or organization.

9 CHAIR BATTLE: And if that's the case, then we
10 need to then make the definition in paragraph 5 fit the
11 firm or organization rubric in terms of how we
12 structure it.

13 MR. McCALPIN: Which it seems to me, I mean,
14 it's limiting it to stocks, bonds, securities, maybe
15 beneficial interests in trusts or estates, because
16 maybe they're organizations, deposits in banks or other
17 financial institutions, which are organizations,
18 pensions and annuities, I'm not sure.

19 But remember, we have said up above in
20 paragraph 4 "is receiving any pension or deferred
21 compensation subject to the control of or modification
22 by such firm or organization." And maybe that takes

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1 care of the pension annuity situation. Mutual funds
2 certainly stays in. Accounts or other funds
3 receivable, again, not -- you're not talking about the
4 accounts receivable of a firm or organization.

5 Capital accounts, other asset or ownership in
6 the business, okay. Then, we get back to something
7 that John raised, and we haven't said anything about
8 insurance companies. And if you hold mutual insurance
9 policies, you have the equivalent of stock in that
10 company, because you vote at the mutual policyholders'
11 meetings.

12 CHAIR BATTLE: Meetings. Okay. So should we
13 then take paragraph 5, make it -- limit it to
14 significant personal or financial ownership interests
15 of -- see, 4.4 is really getting to the firm or
16 organization. Let me see if I'm understand this,
17 because I'm a bit confused. Are we saying, for example
18 --

19 MS. GLASOW: 5 is defining number 4.

20 CHAIR BATTLE: Right. But are we then saying
21 -- I have a significant personal interest in my law
22 firm. So then for my law firm, I must list these

1 things? Or does this --

2 MR. McCALPIN: No. 8 covers you. Paragraph 8
3 covers the problem you're raising now. That's back
4 over here.

5 CHAIR BATTLE: Okay. It says I don't have to
6 list this. It simply is saying, in order to determine
7 whether you have a significant personal financial
8 interest, look to see whether your association with
9 this firm includes ownership of stock in that firm.

10 MR. McCALPIN: An ownership interest, whatever
11 it may be.

12 CHAIR BATTLE: Okay.

13 MR. McCALPIN: It could be a partnership
14 interest.

15 CHAIR BATTLE: Yes. Now, by doing that, are
16 we excluding having to disclose significant personal
17 financial or ownership interest individually once we do
18 this?

19 MR. McCALPIN: I didn't -- say that again.

20 CHAIR BATTLE: My question is, because I'm
21 trying to make sure that once we put this list together
22 -- this list is really a further definition of 4.4. It

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1 is really just telling us what significant personal and
2 financial ownership interests are. This is giving an
3 example of what it is. But it is not extending any
4 disclosure requirement personally to me to disclose my
5 own personal stock that -- right?

6 MR. McCALPIN: If you own stock in AT&T,
7 you've got to disclose that.

8 CHAIR BATTLE: Okay.

9 MS. MERCADO: But where is the onus on you to
10 do that, if all you're being asked to disclose is what
11 your stock ownership is in the firm or an organization
12 as an individual?

13 MR. McCALPIN: That's right.

14 MR. FORGER: You simply write, "AT&T." I
15 don't see that this tells you how many shares you have
16 to have. You simply say you're associated with AT&T.

17 MR. McCALPIN: Well, I think you've got to say
18 you own -- you list AT&T -- it says here --

19 CHAIR BATTLE: But I don't think so. I'm
20 agreeing with Maria, because look at the disclosure
21 form itself. You're only disclosing firms or
22 organizations. You're not disclosing individually --

1 MR. McCALPIN: In which you have an interest
2 of \$5,000 or more.

3 MR. FORGER: And then you disclose AT&T. If
4 your stockholding is \$4,000, you don't list AT&T.

5 MR. McCALPIN: That's right. Exactly.

6 MR. FORGER: So I have an IRA, and I've got an
7 investment guy that keeps changing stocks. And so I
8 have to list maybe 30 corporations in which at the
9 moment that I fill this out I have an interest.

10 CHAIR BATTLE: That's more than \$5,000.

11 MR. McCALPIN: If each one is \$5,000.

12 MR. FORGER: Sure.

13 MR. McCALPIN: It's pretty nearly the same
14 thing we have to fill out in order to go through the
15 confirmation process.

16 CHAIR BATTLE: Yes. I just want to make sure
17 that we're clear that it extends to your personal
18 assets over and above \$5,000 interests, things that you
19 have an ownership interest in over and above \$5,000.

20 MS. GLASOW: If that interest is with a firm
21 or organization and, for instance, AT&T would fit that
22 definition.

1 CHAIR BATTLE: And then I disclose the firm
2 and organization if I have an interest that is worth
3 more than \$5,000 in that firm or organization.

4 MR. McCALPIN: Right.

5 MS. GLASOW: Yes.

6 CHAIR BATTLE: Okay.

7 MR. McCALPIN: At the end of paragraph 2, it
8 says, "But the member need not reveal the degree of
9 financial interest."

10 CHAIR BATTLE: Right, just the interest.

11 CHAIR BATTLE: Except to the extent that you
12 reveal it and people know as a result that it's \$5,000
13 or more, you don't have to reveal whether it's 50,000
14 or 500,000.

15 CHAIR BATTLE: Right.

16 MR. FORGER: Is the United States a firm or
17 organization for purposes of --

18 MR. McCALPIN: I suppose.

19 MR. FORGER: So I can't do business with the
20 United States. No more lobbying.

21 MR. McCALPIN: No more paycheck.

22 MR. BROOKS: Well, maybe we should exclude any

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1 interest in United States bonds or contracts.

2 CHAIR BATTLE: The United States. We say
3 stocks and bonds. We say it broadly.

4 MR. BROOKS: I think that might make sense.

5 MR. FORGER: State municipality.

6 MR. McCALPIN: It's one line, so you put down
7 "United States of America." It's just one line.
8 What's the difference?

9 CHAIR BATTLE: Does that --

10 MR. FORGER: Or I could say anything listed on
11 the New York Stock Exchange probably would be a better
12 way --

13 CHAIR BATTLE: For your disclosure, because it
14 moves.

15 MR. FORGER: That's my disclosure.

16 MR. McCALPIN: You guys go NASDAQ and --

17 MR. FORGER: Any listed security.

18 MR. McCALPIN: Well, you've got to do more
19 than that, because you very well may have an ownership
20 interest in a totally unlisted entity which could be
21 doing business with this corporation.

22 MR. FORGER: Suppose I buy into an index fund?

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1 I've got every share of stock in the Dow Jones average.

2

3 CHAIR BATTLE: Well, wouldn't your disclosure
4 of that indexed fund itself be sufficient? I think so.

5

6 MS. GLASOW: Right.

7 CHAIR BATTLE: You've got more than \$5,000 --

8 MR. FORGER: That's like saying stock by a
9 publicly traded corporation.

10 MS. GLASOW: Right. I would think so.

11 MR. FORGER: I don't know what you're going to
12 do with that information.

13 CHAIR BATTLE: Well, it's disclosed, I guess.
14 Do we have anything else? I think we're going to make
15 some significant changes to paragraph 5 based on our
16 discussion. Paragraph 6, we just simply -- as soon as
17 it's adopted, all of us need to fill it out. Paragraph
18 7, we needed a time frame is what I understand,
19 Suzanne, is that correct, for how many days after the
20 adoption of this guideline?

21 MS. GLASOW: Yes.

22 CHAIR BATTLE: Do we need 30 days?

1 MR. McCALPIN: I would think 30 days.

2 CHAIR BATTLE: Okay.

3 MR. FORGER: And this is two years back?

4 CHAIR BATTLE: No. This is prospective. This
5 is all going to be prospective.

6 MR. BROOKS: Within the prior two years,
7 anything has to be disclosed.

8 MR. FORGER: Within the prior two years?

9 CHAIR BATTLE: Yes. You disclose information
10 dating back two years. You don't have --

11 MR. FORGER: Suppose you didn't have a spouse
12 that goes back two years but only a year?

13 CHAIR BATTLE: That's within the two years.

14 MR. FORGER: But I have to disclose what the
15 spouse had when she was somebody else's spouse?

16 CHAIR BATTLE: I don't think so. Just since
17 she has been your spouse.

18 MR. FORGER: Only since she has been my
19 spouse?

20 CHAIR BATTLE: Right.

21 MR. BROOKS: I would give that a try and see
22 how management reacts to it.

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1 MR. McCALPIN: Do you have the bylaws here?

2 MS. GLASOW: Yes.

3 MR. McCALPIN: I have one, maybe two others.

4 CHAIR BATTLE: Okay. Let's move along to the
5 -- now, 8, I think you pointed out was one concern that
6 I expressed to Suzanne, and that is that the way that
7 this was written, it appeared to me when you start to
8 look at the form that you had a duty to disclose your
9 clients as an attorney, but if you are an attorney with
10 a firm, you did not have an obligation to disclose the
11 clients of the firm.

12 So that's something I think we can clear up.
13 We have already discussed. And paragraph 8 does clear
14 that up in the guidelines, because it does say that if
15 you're a member of a firm or a partner or an associate
16 with a firm, you're not required to disclose the
17 identity of the clients of the firm.

18 MR. BROOKS: But are we saying that an
19 individual practitioner must disclose the names of all
20 of his or her clients?

21 CHAIR BATTLE: If that individual practitioner
22 has a firm, though they are practicing solely, I don't

1 think so. Is it an -- really, I'll tell you the
2 language that concerned me, and it is -- I'm jumping
3 ahead, but it points to the point that John has raised.
4 At the bottom of the disclosure of information form in
5 that last paragraph, "A member shall be deemed
6 associated with a firm if such member is serving within
7 the last prior two years as attorney."

8 MR. McCALPIN: Where are you reading?

9 CHAIR BATTLE: I'm reading at the bottom of
10 the disclosure of information form itself.

11 MR. BROOKS: On the first page?

12 CHAIR BATTLE: On the first page. "A member
13 shall be deemed associated with a firm if such member
14 is serving or has within the prior two years as
15 attorney."

16 MS. GLASOW: And this is basically the same
17 paragraph as paragraph 4 in the guidelines.

18 MR. McCALPIN: Yes. That's exactly the same
19 language as the bottom of paragraph 4 of the
20 guidelines.

21 MS. GLASOW: This just shows the association
22 with the firm. I don't think it -- it's just a way of

1 determining whether you are associated with a firm.

2 CHAIR BATTLE: But I guess the concern I have
3 -- you're right, it is number 4. But the concern I
4 have is that when you say you're associated if you
5 serve as attorney, then if I represent a nonprofit, am
6 I associated with that nonprofit and do I have to
7 disclose that nonprofit if I am the attorney to that
8 nonprofit or for that nonprofit organization?

9 My view is no, because my representation of
10 that nonprofit organization is through my firm. But
11 John raised, I think, a valid point. Let's say I'm an
12 individual practitioner, I do not have a firm. Then do
13 I have to disclose all of my clients because I serve as
14 the attorney to these clients?

15 MR. McCALPIN: But it says, "A member is
16 required to include the name of a law firm but is not
17 required to disclose the identity of the clients."

18 CHAIR BATTLE: But I don't have a firm. I'm a
19 sole practitioner.

20 MR. BROOKS: I think that's a dangerous
21 scorpion's tale there, that if you're a law firm, you
22 don't have to disclose your clients; if you're a sole

1 practitioner, by implication from this clause, you have
2 to.

3 MR. McCALPIN: You can correct that if you say
4 "but is not required to disclose the identity of any
5 clients," period. That takes care of whether he's a
6 member of a firm or not.

7 CHAIR BATTLE: Well, then, why do you have
8 attorney as part of how you deem a person to be
9 associated, anyway? I mean, why do we need that term
10 in paragraph 4?

11 MS. GLASOW: Basically saying if you worked
12 with that firm as an attorney, you are associated with
13 that firm.

14 MR. BROOKS: I think we're talking not about
15 association with the firm but association with the
16 clients. And suppose you've had a class action that
17 you've been running for five years and you've got a
18 million dollar potential fee coming out of it. Should
19 that relationship be disclosed?

20 I think there's something to be said that it
21 should be, but I don't like the idea of having to have
22 lawyers disclose the names of their clients for any

1 purpose, because I don't think that's really what the
2 provision in the disclosure statement is supposed to be
3 getting at.

4 MR. McCALPIN: Right.

5 CHAIR BATTLE: Well, I think for the purpose
6 of the statement, a director who is a lawyer is
7 required to include the names of any law firms in which
8 the member is a partner or associate but is not
9 required to disclose the identity of any clients.

10 MR. BROOKS: Any clients?

11 CHAIR BATTLE: Any clients, period.

12 MR. BROOKS: Whether of the individual or of
13 the firm?

14 CHAIR BATTLE: Yes. Right.

15 MR. McCALPIN: LaVeeda, I want to go back to
16 paragraph 7.

17 CHAIR BATTLE: Okay.

18 MR. McCALPIN: I have two questions. One, we
19 talked about update on an annual basis. There has been
20 a feeling, a practice that we had to do it every year
21 at the time of the annual meeting, the end of January.

22

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1 If somebody is confirmed in October or
2 November and files a statement then, does that mean
3 that they file another statement at the end of January,
4 or on an annual basis, does that mean the following
5 October or November? It's a question of whether we
6 intend to have everybody file at a given time or
7 whether we're going to have people file on an
8 anniversary basis. I just think we need to make a
9 decision how we're going to handle it.

10 CHAIR BATTLE: I think that's a valid point,
11 that the guidelines really don't clarify specifically
12 what that annual basis is going to be. I think from a
13 recordkeeping and keeping up with the directors
14 standpoint or view, it probably makes sense to file, of
15 course, upon confirmation, but also at a time specific
16 so that we can make sure everybody has got their filing
17 in at the same time.

18 MR. MCCALPIN: The other question I want to
19 raise -- I think it goes to the conversation we have
20 been having -- I thought that these guidelines were
21 going to require a disclosure when an issue arises
22 concerning an entity which for whatever reason had not

1 previously been disclosed. And this may get to what
2 John was talking about.

3 Somebody's about to get a big fee from an
4 entity which has a matter pending before this Board.
5 Should there be some kind of a generalized requirement
6 that in addition to the annual disclosure, a member of
7 the Board ought to disclose when an issue arises
8 concerning an issue involving the corporation arises
9 concerning a previously undisclosed firm or
10 organization with which the member has an association?

11 CHAIR BATTLE: So really what you're saying,
12 Bill, is subsequent to the filing of an annual
13 disclosure --

14 MR. McCALPIN: Or between.

15 CHAIR BATTLE: Or between filings, an issue
16 arises where there is a significant potential conflict
17 of interest because of a financial interest that a
18 Board member might have, that a Board member has an
19 obligation to at that time make a disclosure. Yes.
20 Now, is that covered at all in our bylaws?

21 MR. McCALPIN: Well, that's why I asked
22 Suzanne for the bylaws. And I do not read 305 as

1 requiring that specifically. It says, "They may not
2 participate in a decision, action, or recommendation,"
3 but that leaves it up to the member to say, "I'm
4 leaving it alone; I disqualify myself," or whatever,
5 without revealing the fact of the potential conflict.

6 MS. GLASOW: The issue may come up at a
7 meeting that the Board member didn't even anticipate
8 there might be a conflict, realizes there's a
9 conflict, and would have to recuse himself from taking
10 action on that. And maybe at that point, it should be
11 followed up with an amendment to the disclosure form.

12 MR. McCALPIN: Well, I think there ought to be
13 a requirement of a disclosure. I think that a simple
14 recusal without explanation doesn't give us the
15 protection we need to have.

16 MS. GLASOW: Do you think the statement should
17 be made at the meeting and then followed up with a
18 written amendment to the disclosure form?

19 MR. McCALPIN: It ought to be disclosed before
20 the meeting.

21 CHAIR BATTLE: Well, we could amend 7 to say
22 "shall update his or her disclosure form on an annual

1 basis or where a financial interest of significance
2 appears before the Board."

3 MR. McCALPIN: "A previously undisclosed
4 financial interest."

5 CHAIR BATTLE: Yes, "a previously undisclosed
6 financial interest appears to create a conflict."

7 MR. McCALPIN: "Creates or gives the
8 appearance of a conflict."

9 CHAIR BATTLE: Yes. We can amend the language
10 to avoid the appearance of bias.

11 MR. FORGER: Can I ask you another question?

12 CHAIR BATTLE: Sure. I love your questions.

13 MR. FORGER: I don't know what "firm or
14 organization" -- what sort of juridical entity that is,
15 but if I am a trustee of a firm or organization or an
16 executor of an estate, I don't know whether an estate
17 is an organization, but I have to disclose all
18 fiduciary relationships.

19 CHAIR BATTLE: It says, "but shall not include
20 any fiduciary" -- oh, that's interests but not
21 relationships. Okay.

22 MR. FORGER: That's only the financial, right.

1 So as a trustee of the university, I disclose the
2 university. Fiduciary, I guess I have to disclose any
3 estate or trust. Is a trust an organization or a firm?

4 CHAIR BATTLE: We don't define "firm or
5 organization."

6 MS. GLASOW: It's in your bylaws. It's not
7 defined.

8 CHAIR BATTLE: And it's not defined in our
9 bylaws.

10 MR. FORGER: Should it exclude an individual?
11 Although that wouldn't cover an estate or a trust as an
12 entity.

13 MS. MERCADO: That's a good point.

14 MR. McCALPIN: Without answering directly, I
15 would think that organization must necessarily include
16 a partnership, a business.

17 MR. FORGER: Yes, I would think so.

18 CHAIR BATTLE: But your point is well taken.
19 Does that include an estate? Is an estate an
20 organization?

21 MR. FORGER: It's not important, I guess.

22 CHAIR BATTLE: Well, I think that all that we

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1 can do, because if we try to get into a more expansive
2 list than we have got, it's really going to depend on
3 each person to read into this their individual
4 circumstances and to make disclosures where there are
5 interests over \$5,000.

6 MR. FORGER: The purpose is to avoid the
7 reality or the appearance of having any conflict in the
8 discharge of your responsibilities either as members of
9 the Board or as president where you're engaging in
10 transactions with the outside world purchasing or
11 entering into contracts or whatever, so that it doesn't
12 appear that you're taking advantage of your interest in
13 that entity in which you are acquiring merchandise for
14 the corporation or building bombers or something or
15 other.

16 CHAIR BATTLE: Probably what we could do is --
17 Suzanne, have like a purpose section in the disclosure
18 guideline that just sets out what the purpose of this
19 is all about, so that each Board member or the
20 president can be guided by any interests that they
21 believe should be disclosed so as to put on notice the
22 Board and the Corporation as to potential conflicts

1 that might arise.

2 MS. GLASOW: Okay.

3 CHAIR BATTLE: And if we have an overall
4 definition to that effect, I think that may cover your
5 concern about those specifics.

6 MR. FORGER: It seems to me, really what we're
7 looking to is dealing with suppliers. I don't know who
8 else, whether we're getting computers and buying them
9 from some company. We ought to know who owns a share
10 of stock in that company. But paper, pencils, that's
11 about it, coffee.

12 CHAIR BATTLE: AT&T stock. We get telephones.

13 MR. McCALPIN: If you're buying from a
14 familiar national paper company --

15 MS. GLASOW: The purposes will pretty much
16 come from paragraph A in Section 305 of the bylaws.
17 It's a firm or organization that's going to be affected
18 by the decision or action or recommendation taken by
19 the Board members. So if we put that in --

20 MR. McCALPIN: We'll add in the appearance,
21 too.

22 CHAIR BATTLE: The appearance of conflict, as

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1 well as the actual conflict. If we do a purpose
2 section, I think that should guide us. And the purpose
3 of the guideline is so that as new Board members come
4 on board, they will be guided by and understand and
5 have an appreciation for why we have the disclosure and
6 what it is that they need to disclose.

7 And I think having a section that sets out
8 what the purpose is will help people to determine what
9 needs to be included on their list. Do we have
10 anything else on the guidelines themselves?

11 MR. BROOKS: One question. Does this apply to
12 holdover directors?

13 CHAIR BATTLE: All of us. We're not going to
14 let you out of your disclosure.

15 MR. FORGER: You mean you can be unethical if
16 you're a holdover?

17 MR. BROOKS: Well, nobody has asked me for
18 anything yet. It hadn't occurred to me that I was
19 responsible, but I may as yet be.

20 (Laughter.)

21 MS. GLASOW: Are we going to get together on
22 paragraph 5? It's not clear in my mind everything that

1 should be included in there. I will need Mr. Brooks'
2 comments for categories and clarification of just
3 what's supposed to go in there.

4 CHAIR BATTLE: John, the suggestions that you
5 made about how to redelineate paragraph 5, I think,
6 would be helpful to Suzanne. So if you just jot out
7 your suggestion, then you, I, and Suzanne can get
8 together and finalize paragraph 5.

9 MS. GLASOW: Can we go through the list on 5
10 and I can underline everything you want included and
11 leave out -- we're leaving out real estate. Included
12 would be stocks, bonds, securities, not future
13 contracts, not livestock.

14 CHAIR BATTLE: For commercial purposes.

15 MS. GLASOW: Do you want -- not commercial
16 crops. Included --

17 CHAIR BATTLE: Not antiques or art sales.

18 MR. McCALPIN: Not antiques or art.

19 MS. GLASOWZ: Okay. Include beneficial
20 interests in trusts and estates.

21 MR. McCALPIN: You know, that's marginal, it
22 seems to me.

1 MS. MERCADO: Isn't that more around what you
2 were talking about?

3 MR. FORGER: No.

4 MS. MERCADO: Not really, because you're
5 talking about a legal representation as an executor.

6 CHAIR BATTLE: And legal representation is
7 excluded.

8 MR. McCALPIN: If you have a beneficial
9 interest in an estate or a trust, it seems to me that
10 there could only be an appearance or an actuality of
11 conflict if that estate or trust was likely to enter
12 into a business transaction with the Corporation.

13 MR. FORGER: And you can't force that if
14 you're simply there as a beneficial interest.

15 MR. McCALPIN: That's right. And it seems to
16 me that that's an extreme enough situation that it
17 could be taken care of with what we just added to 7,
18 about if something previously undisclosed arises and
19 gives the appearance of it, then there ought to be a
20 disclosure. But the odds are so long, it seems to me,
21 that the beneficial interest in a trust or estate
22 doesn't qualify.

1 MS. GLASOW: And also, this paragraph says,
2 "It shall include but is not limited to," so it would
3 be one of those -- if it's really marginal, then we can
4 just leave it up to the individual member.

5 CHAIR BATTLE: We can take it out. Deposits
6 in bank or other financial institutions?

7 MS. GLASOW: Include that?

8 MR. McCALPIN: Yes, I think you should.

9 MS. GLASOW: Pensions an annuity, I think Bill
10 said that was already taken care of, so we don't need
11 that. Mutual funds.

12 CHAIR BATTLE: I don't think you have any
13 control over a pension or an annuity in the sense that
14 you --

15 MR. McCALPIN: Except that I think we have
16 taken care of that in 4.3.

17 MR. BROOKS: But annuities could be issued by
18 an insurance company. Annuities is different from
19 pensions.

20 MR. McCALPIN: Yes, it is.

21 MS. GLASOW: So include that?

22 MR. McCALPIN: Does that have to influence you

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in --

MR. BROOKS: Well, if I have a policy in the John Hancock Life Insurance Company --

MR. FORGER: Sure. We'll switch our carrier to John Hancock to make sure it has got a little more business by our 403(b) contracts here or something. I mean, theoretically.

MR. BROOKS: And if I have an annuity with John Hancock --

MR. FORGER: Yes. You want to make sure they're solvent, so we'll give them more business.

MR. BROOKS: That's right. So I would suggest taking out pensions but leaving in annuities as related to insurance policies.

MS. GLASOW: Okay. Mutual funds, keep in?

MR. McCALPIN: What? Mutual funds?

CHAIR BATTLE: Yes.

MR. McCALPIN: Accounts receivable is not.

MS. GLASOW: Capital accounts?

MS. MERCADO: Accounts receivable or just that whole phrase is out?

1 MR. McCALPIN: Yes, accounts or funds
2 receivable.

3 CHAIR BATTLE: Capital accounts or other
4 assets, asset ownership in a business.

5 MS. GLASOW: Keep in?

6 CHAIR BATTLE: Keep in.

7 MR. McCALPIN: I don't know what "capital
8 account" means.

9 MS. GLASOW: I don't, either.

10 MS. MERCADO: Well, it's to beef up the
11 business, whatever it is.

12 CHAIR BATTLE: It's just money in the bank,
13 isn't it?

14 MS. MERCADO: Well, I mean, it could be other
15 things.

16 MR. FORGER: It's like a share in an entity
17 that happens to be a partnership rather than a
18 corporation. You can be a limited partner in some
19 commercial venture and have a capital account.

20 MR. McCALPIN: I think maybe you ought to put
21 partnership interest in, although --

22 MS. MERCADO: But doesn't the ownership

1 interest cover that? Because that is --

2 MR. McCALPIN: Number 8 may cover that, except
3 you have partners --

4 MS. MERCADO: It can be a partnership. It can
5 be limited. It can be any other.

6 MR. McCALPIN: That's right. I think that a
7 business partnership interest needs to be disclosed.

8 MS. MERCADO: But, I mean, wouldn't you --

9 MR. McCALPIN: A law firm partnership interest
10 is going to be disclosed under 8.

11 MS. GLASOW: Does that get back to what a firm
12 or organization is, and we decided to leave that
13 somewhat open?

14 MR. McCALPIN: I don't think we had as much
15 trouble trying to define that as we're having listing
16 these things.

17 MR. FORGER: I think it at least excludes an
18 individual.

19 CHAIR BATTLE: Yes, it does. Now, we are
20 going to include "shall not include any fiduciary
21 interest."

22 MR. McCALPIN: Right.

1 MS. GLASOW: Do we put in partnership
2 interest, or not?

3 MR. McCALPIN: I think a business partnership.

4 MS. GLASOW: Business partnership interest.

5 MS. MERCADO: Does it really? Because an
6 organization can be a corporation, and a corporation
7 consists of an individual.

8 MR. FORGER: But it's a corporate entity.

9 MS. MERCADO: Well, it's a corporate entity
10 realistically.

11 MR. FORGER: It's an organization. At least
12 I'm not an organization, so far as I know.

13 CHAIR BATTLE: So, Bill, you're suggesting
14 that partnership be included just among the list?

15 MR. McCALPIN: Yes, I think so, because there
16 are some pretty significant business entities which
17 are, in fact, run as general or limited partnerships.

18 MS. MERCADO: So where would we put it, Bill?

19 MR. McCALPIN: What?

20 MS. MERCADO: Where does it go in here?

21 MR. McCALPIN: I don't know. Anyplace.
22 Stocks, bonds, securities, partnership interests.

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1 MS. GLASOW: I'll fit it in.

2 CHAIR BATTLE: You'll fit it in. When you get
3 down to asset ownerships or partnerships, maybe, I
4 think that might be a better place. Okay?

5 MS. GLASOW: Okay. Good. And then I'll get
6 John's --

7 MR. McCALPIN: Any business, including a
8 partnership.

9 CHAIR BATTLE: Okay. All right. Anything
10 else on the disclosure guidelines?

11 (No response.)

12 CHAIR BATTLE: I made the suggested changes to
13 paragraph 8 about making it clear that we do not have
14 to disclose clients. And are there any suggestions to
15 change 9?

16 MR. BROOKS: Well, I assume you've caught the
17 typo in both lines, knowingly.

18 CHAIR BATTLE: Yes.

19 MR. FORGER: If you know about it, it's okay.
20 But it's only "knowingly." It's a loophole.

21 CHAIR BATTLE: The actual form itself, why
22 don't we --

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1 MR. FORGER: How often are you filing? Did
2 you resolve those questions?

3 CHAIR BATTLE: Well, annually, and I think
4 what we're going to do --

5 MR. McCALPIN: Annually on a specific date.

6 MR. FORGER: On the individual's anniversary
7 date, or just a uniform date?

8 CHAIR BATTLE: I would suggest at the time of
9 the annual meeting.

10 MR. McCALPIN: Yes.

11 MR. FORGER: Oh, good. This is the annual
12 meeting, and this will be prospective, so it's next
13 February?

14 CHAIR BATTLE: Well, we'll make one allowance,
15 and we'll try to get everybody --

16 MR. BROOKS: Within 30 days thereafter at the
17 time of the annual meeting.

18 MR. McCALPIN: Within 30 days of the annual
19 meeting. That way, it can make it either way.

20 CHAIR BATTLE: Well, it's 30 days after we
21 have adopted it, so that means that all of us have to
22 get it in 30 days after this meeting but from now on at

1 the annual meeting or at the time of the annual
2 meeting. Yes.

3 Okay. We are now down to the disclosure of
4 information form itself. And I think the comments that
5 we have made, some of them will flow through to
6 language that we have in this, because a lot of the
7 language on this form really comes right out of the
8 guidelines, and the guideline language comes out of the
9 bylaws. So do we have any specific other suggestions?

10 MR. McCALPIN: Why do we have "firm or
11 organization, nature of organization"? If I list AT&T,
12 do I have to list the nature of AT&T?

13 MR. BROOKS: Nature of association.

14 MS. GLASOW: It's the nature of the
15 association.

16 MR. McCALPIN: What?

17 CHAIR BATTLE: Nature of association.

18 MS. MERCADO: See, here, it has client in
19 there.

20 MR. BROOKS: Nature of the association of the
21 Board member with the firm or organization.

22 MR. McCALPIN: That makes more sense.

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1 MR. BROOKS: That's the way I read it.

2 MS. GLASOW: In other words, if you come under
3 4 -- over in the guidelines, if you come under 4.4 and
4 that nature is a financial interest, it repeats 4.4,
5 basically.

6 MR. FORGER: So is the second column going to
7 change?

8 CHAIR BATTLE: Yes. It's going to be nature
9 of the association of the Board member with the firm or
10 organization.

11 MR. BROOKS: Well, wait a minute. There are
12 two things, "nature of the association" in the text and
13 then the heading, "nature of organization."

14 MR. McCALPIN: Why do you want the nature of
15 the organization?

16 MR. BROOKS: Well, is it a business trust? Is
17 it a corporation? Is it a charitable organization?

18 MR. FORGER: Do you care? I think for
19 purposes of disclosure, if you've identified the entity
20 --

21 MR. McCALPIN: I don't think so.

22 CHAIR BATTLE: "State the firms or

1 organizations of which the Board member has been
2 associated or immediate family thereof within the past
3 two years and the nature of the association." So we
4 could really just have as a heading "nature of
5 association."

6 MS. MERCADO: Because it's really what you
7 mean.

8 CHAIR BATTLE: Right. "If the nature of the
9 association with the firm includes a financial
10 interest, the facts should be reflected in the
11 statement, but the member need not reveal the degree of
12 financial interest."

13 MS. GLASOW: So you don't have to declare the
14 nature of it.

15 CHAIR BATTLE: Right. Just in terms of how
16 the form is written out, I think that we probably need
17 to allow more space for the listings. We have got very
18 short lines -- and I know that this is a draft, but we
19 have got very short lines, and we don't have much room
20 to put many listings on.

21 And for all of us with multiple holdings and
22 different business interests in stocks and bonds and

1 mutuels and all of those things, we won't be able to
2 crowd all of that on this with this page.

3 MS. GLASOW: Actually, we could put all the
4 writing above and then put a page with all of this. It
5 would be easy to do.

6 CHAIR BATTLE: Yes. I think that's what we
7 need to do, and allow for a second page and a signature
8 line at the bottom of both so that as people have more
9 than one page, they can add additional pages to this
10 and then sign at the bottom of the listing.

11 MR. FORGER: Suppose your spouse refuses to
12 disclose?

13 MR. BROOKS: Disclose that fact.

14 CHAIR BATTLE: It is now 12:10. And we have
15 this afternoon to pick up and address the competitive
16 bidding of grants.

17 MS. MERCADO: That is going to be joint?

18 CHAIR BATTLE: Right. That is going to be a
19 joint meeting. And I talked with Bucky about it. He
20 said that the reason we set it for 3:00 is because he
21 doesn't think he's going to get in until 3:00, but he
22 said go on if the other members of his committee are

1 here and get started. We do have, I think, quite a
2 bit, and we hope to be able to complete competitive
3 bidding this afternoon.

4 My concern is this. I understand from talking
5 with Vic that this Board is only scheduled to meet
6 potentially maybe two more times this year, given the
7 budget that we put together last year. So --

8 MS. MERCADO: Is that quarterly?

9 CHAIR BATTLE: That's -- well, we had five --

10 MR. FORGER: This is our third meeting, I
11 believe.

12 CHAIR BATTLE: This is our third meeting, and
13 we had five meetings in the budget, is it, Alex? So we
14 have got two more meetings.

15 MS. MERCADO: Oh, you mean from the fiscal
16 year?

17 CHAIR BATTLE: From the fiscal year. We have
18 two more meetings scheduled this year, so we're in a
19 position that we're going to have to complete our work
20 today on this competitive reg. And so Bucky has given
21 me his proxy to go ahead and get started this
22 afternoon.

1 And we will right after our lunch break get
2 started and as his members arrive, certainly bring them
3 up to date bring them up to date so at the end of the
4 day, we can all be apprised of what we must make our
5 decisions on as it relates to that reg. But why don't
6 we go ahead and take a --

7 MR. FORGER: Do you have anything else on your
8 agenda?

9 CHAIR BATTLE: Well, I think that the
10 competitive bidding and grants is the only other item
11 that we have on our agenda.

12 MR. FORGER: I thought we were going to have
13 some reference to personnel.

14 CHAIR BATTLE: That is on the general Board.

15 MR. FORGER: You're not going to do that at
16 Ops and Regs?

17 CHAIR BATTLE: That's not in the agenda for
18 us.

19 MR. BROOKS: Other business?

20 CHAIR BATTLE: It's other business.

21 MR. FORGER: Okay.

22 CHAIR BATTLE: Why don't we take an hour lunch

1 break? Vic, is that going to be a problem, if we get
2 started before 3:00? It's on our agenda, as well.
3 It's on theirs for 3:00. It's on ours for today.

4 MR. FORTUNO: But I think that the notice that
5 appeared in the Federal Register did state that the
6 expectation was that that rule, that portion of the
7 agenda would be gotten to at 3 o'clock as part of a
8 joint meeting with Provisions.

9 So with the notice so indicating, I don't
10 think we can start before 3:00. Because essentially
11 what we have done is put the public on notice that it
12 would start at 3:00. Anyone who was to come in order
13 to be here for that who got here at 3 o'clock and found
14 out that it had started at 2 o'clock or 1 o'clock, I
15 think, would have good reason to be upset.

16 CHAIR BATTLE: Well --

17 MS. MERCADO: What about other business?

18 CHAIR BATTLE: We don't really have -- no, not
19 significant.

20 MR. FORGER: Suppose it's just general
21 dialogue, Victor, no decisions are being taken, and --

22 MR. McCALPIN: How about a briefing?

1 MR. FORGER: You'll have a warm bench by the
2 time you get --

3 CHAIR BATTLE: This is what I plan to do,
4 because I think that it is significant that we do have
5 the members of the Provisions Committee here. I think
6 we can begin our discussion, and I think we will
7 revisit everything that we discuss at 3 o'clock when
8 the members of Bucky's committee are here, everything.
9 There won't be anything that we discussed before 3:00
10 that we won't discuss after 3:00. Does that cover your
11 concern?

12 MR. FORTUNO: I think it cures it as a
13 practical matter. And again, as a practical matter, I
14 doubt that there will be anyone who arrives at 3
15 o'clock.

16 CHAIR BATTLE: Right. But I made that point
17 at the beginning, that I knew that his meeting was
18 scheduled for 3:00. It was scheduled for 3:00 based on
19 his time of arrival. He gave me his proxy and said,
20 "If you get to it before then, get started."

21 But I will go back and visit every issue at
22 3:00 and apprise Bucky and the members of his committee

1 of all of those issues and allow for full discussion at
2 that time, as well. And maybe we can make some
3 progress.

4 MR. FORTUNO: So long as no decision making is
5 taking place prior to that.

6 CHAIR BATTLE: No decision making.

7 MR. FORTUNO: But we do need to be careful as
8 a general matter when we notice something for a certain
9 time not to start it before then, because the public
10 isn't on notice of it possibly starting before then.

11 CHAIR BATTLE: Sure. Sure.

12 MR. FORTUNO: But I think we can do that this
13 time.

14 CHAIR BATTLE: Okay. All right. Thank you.

15 Lunch break until -- what time is it now?

16 MR. FORGER: It's now 12:15.

17 CHAIR BATTLE: Until 1:15 -- 1:30.

18 (Whereupon, a luncheon recess was taken.)
19
20
21
22

A F T E R N O O N S E S S I O N

(1:45 p.m.)

1
2
3 CHAIR BATTLE: We are sometime after 1:30. I
4 have missed my own deadline for getting started. We
5 have joined with us this afternoon the Chair of the
6 Provisions Committee, Mr. Bucky Askew, and we're glad
7 to see him with us.

8 CHAIR ASKEW: Keep your seat.

9 (Laughter.)

10 CHAIR BATTLE: To see him with us so that we
11 can begin this afternoon by convening a joint meeting
12 of the Provisions Committee. I think Nancy is also
13 here and should be joining us. There she is. Nancy is
14 here. Nancy has joined us, too, this afternoon, so we
15 have a quorum of the Provisions Committee joining the
16 Ops and Regs Committee this afternoon to begin our
17 discussion of the regulation of 45 CFR Part 1634, which
18 will address competitive bidding for grants and
19 contracts.

20 We understand that this particular part of the
21 meeting was noticed for 3 o'clock, and so therefore, at
22 3 o'clock, to the extent that we have had any previous

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1 discussions previous to 3 o'clock, we will go back over
2 and make decisions after 3 o'clock so members of the
3 public who may want to participate will have an
4 opportunity to do so in any of our deliberations.

5 But since we do have a quorum of both
6 committees present and available, we think it wise,
7 given the breadth of what we have got to cover this
8 afternoon, that we get started now. So we're going to
9 do that with our discussion.

10 Each of the committee members should have
11 before them a copy of a draft final rule. Mine is
12 dated 2-13-96. Is that the proper date on it, Suzanne?

13 MS. GLASOW: That's correct, yes.

14 CHAIR BATTLE: Okay. And you should have
15 compiled before you a draft rule which comprises the
16 comments -- a review of the comments that we received
17 in after publishing a proposed rule, an assessment of
18 some of the discussion that we had following having
19 looked at those comments, and some final determinations
20 and recommendations from the staff as to how the
21 committee needs to proceed with regard to our
22 recommendation to the Board regarding the comments that

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1 were reviewed.

2 We are going to begin our discussion by
3 actually addressing the regulation itself and the
4 changes to the regulation. Essentially, the way -- and
5 I did have a chance to read and I hope that you have,
6 as well, members of both committees, the commentary
7 section that is attached to the regulation.

8 And in it, Suzanne points out a good general
9 discussion of the comments that we did receive and the
10 responses that were appropriate from management's
11 standpoint or view and that we have discussed in an
12 earlier review of this particular reg.

13 So we're going to try to keep the comments in
14 mind as we go through. But when we finish, we're going
15 to go back. And if there are editing and other changes
16 to the comments, we'll consider that on the back end
17 after we have had a chance to go through the rule
18 itself.

19 We can start with the first section of the
20 rule, which is Section 1634.1, the purpose. And as I
21 see it, there's only one change which has to do with
22 striking or deleting the word "efficient" and adding

1 "economical." And, Suzanne, you can tell us why.

2 MS. GLASOW: That's basically a technical
3 change. The LSC Act uses the word "economical," and we
4 should not have had "efficient" in there.

5 CHAIR BATTLE: All right. Section 1634-2,
6 definitions, has a change in the configuration and
7 composition of the review panel. And, as I understand
8 it from reading the comments, this change is a result
9 of some concerns that were raised in the comments about
10 the composition of the review panel and assuring that
11 you have people who both have knowledge, skill, and
12 history with the Corporation or recipients
13 participating on the review panels, both from the legal
14 community as well as from the client community.

15 MS. GLASOW: That is correct.

16 CHAIR BATTLE: Okay. Are there any questions
17 about the change to the definition of what a review
18 panel will comprise? John?

19 MR. BROOKS: I just have a question why we use
20 italics in the definition in this particular reg and we
21 have not used them in others, as I remember.

22 MS. GLASOW: I think it's just because you had

1 a different attorney using it. Actually, I thought
2 that instead of putting it in quotes, I thought the
3 Federal Register has now switched to italics, but I may
4 be wrong on that. I need to check with Joanne Gretch.

5 CHAIR BATTLE: And we will do whatever the
6 Federal Register now does with respect to how to handle
7 the title of the definition.

8 CHAIR ASKEW: May I ask a question?

9 CHAIR BATTLE: Yes.

10 CHAIR ASKEW: What's the thinking behind
11 prohibiting staff from serving on review panels? Is
12 that -- well, I'll just let you answer that and not
13 speculate.

14 MS. GLASOW: I think especially a concern from
15 outside the field and an interest there that because
16 there -- through the years, there's changeover of
17 Corporation staff, that we want to make sure that the
18 interests of the Legal Services community in a general
19 sense are taken into account and that there is a step-
20 back, there is an objectivity in terms of that.

21 And also because the competition rule also
22 allows staff to review the review panel's

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1 recommendation and to make their own if they are
2 opposed to it in some way. So we felt that they should
3 be two distinct levels of review, one by an objective
4 sort of a third party review, and then the staff would
5 look at it, too. And we don't want the staff involved
6 in that objective third party review.

7 CHAIR ASKEW: So that the staff's role would
8 be to support the work of the review panel in any way
9 that's appropriate and then after the review panel
10 makes a recommendation, if the staff disagrees with
11 that recommendation, they're free to state their
12 disagreement to the president before he or she makes a
13 final decision?

14 MS. GLASOW: That is correct. I do have some
15 program people here who will, I hope -- because I can't
16 see them behind me -- just speak up if they have
17 anything to add on any of these questions.

18 CHAIR ASKEW: Okay.

19 CHAIR BATTLE: I had a question just following
20 up on what Bucky has raised about former staff. Does
21 this exclusion apply only to existing staff of the
22 Corporation, or does it apply to former staff of the

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1 Corporation, as well?

2 MS. GLASOW: I think it's only intended to
3 apply to current staff.

4 CHAIR BATTLE: Okay. Is there anything else
5 that we need to review with regard to the review panel
6 definition, any other questions?

7 CHAIR ASKEW: The assumption is these review
8 panels would be held here in Washington, or is there no
9 assumption?

10 MS. GLASOW: I don't think that's necessarily
11 true. I think economics will determine a lot of that
12 as to how many we can have and whether we can have them
13 in different geographical areas, have them all in
14 Washington or outside. That will be a determination
15 made by management on any one competition, depending on
16 what funds are available.

17 CHAIR ASKEW: But in terms of the exclusions
18 for people who are not qualified to sit on a review
19 panel, there's nothing that would exclude someone from
20 that service area from being on a review panel? That
21 is a possibility?

22 MS. GLASOW: Oh, that is correct, as long as

1 they don't have --

2 CHAIR ASKEW: As long as they don't have a
3 connection?

4 MS. GLASOW: Right.

5 CHAIR ASKEW: So it would be possible that a
6 review panel might even be held in that service area?

7 MS. GLASOW: That is correct. That's a
8 possibility.

9 CHAIR BATTLE: The members of the review panel
10 are to be selected by the Corporation?

11 MS. GLASOW: Yes.

12 CHAIR BATTLE: Okay. There's nothing that
13 really addresses how one goes about being considered to
14 be on a review panel. Is the staff going to develop
15 some sort of procedure for developing a pool of
16 candidates to consider for developing review panels?

17 MS. GLASOW: Yes.

18 CHAIR BATTLE: Next, service area. Are there
19 any questions about that?

20 MS. GLASOW: No changes to that.

21 CHAIR BATTLE: No changes to service area and
22 no changes to subpopulation of eligible clients?

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1 (No response.)

2 CHAIR BATTLE: In Section 1634.3, competition
3 for grants and contracts, we have a blank. And that
4 blank exists in Subsection A because there is a date
5 which we're hoping will be the date that the
6 appropriation or reauthorization provision is enacted
7 into law.

8 But it appears from what we know right now
9 that it may be that the Corporation will function this
10 year under a continuing resolution rather than an
11 Appropriations Act or a Reauthorization Act. Is there
12 any other way that we can address the date here?

13 MS. GLASOW: We could put the effective date
14 of this part. And there are several parts in
15 especially the supplementary info, where we're either
16 going to have generalize the language if we don't have
17 specific legislation by the time this is promulgated,
18 and we'll just have to deal with that to see what the
19 status of the law is at that time.

20 CHAIR BATTLE: All right. There were no
21 changes to Subsection (c), and we have completely
22 stricken Subsection (d) and substituted a new section

1 which address the issue of whether or not more than one
2 grant can be provided for a particular service area.
3 Would you bring us up to date on the substitution?

4 MS. GLASOW: We wanted to state a preference
5 or a presumption for making an award to one -- to make
6 one grant or contract within a service area, but we
7 wanted to allow the Corporation a certain amount of
8 discretion when it was necessary.

9 And so we added, "The Corporation may award
10 more than one grant or contract to provide legal
11 assistance to eligible clients or a subpopulation of
12 eligible clients within a service area only when the
13 award of more than one such grant or contract will
14 ensure that all eligible clients within the service
15 area will have access to a full range of high-quality
16 legal services in accordance with the Act and other
17 applicable law."

18 MS. PERLE: There was a notion throughout the
19 discussion over the last several years about
20 competition. There was a concern that what the
21 competition might be used for was a kind of a
22 balkanizataion of Legal Services programs, so that a

1 broken up into two and half of it go with an adjacent
2 service area and the other half with a different
3 adjacent service area. So we wanted to give the
4 Corporation some flexibility to do what made sense in
5 the particular situation, but to guard against this
6 sort of fragmentation of services.

7 CHAIR BATTLE: Sure.

8 John?

9 MR. BROOKS: I'm bothered by the "will" in
10 line 5, that "The Corporation may award more than one
11 only when the award of more than one will ensure." And
12 I suggest that that should be reworded so that it will
13 be "more than one grant only when the Corporation
14 determines it to be necessary to award more than one
15 grant or contract in order to ensure."

16 MS. GLASOW: "Only when the Corporation
17 determines it is necessary"?

18 MR. BROOKS: "To award more than one such
19 grant or contract in order to ensure that."

20 MS. GLASOW: Okay.

21 CHAIR BATTLE: Okay. There were no changes to
22 Subsection (e). Section 1634.4, announcement of

1 competition. There were no changes, and were there any
2 comments on that? I don't remember. I remember there
3 being some discussion about the RFP and the fact that
4 Bar journals are published at different times.

5 And so you have to be able to be assured that
6 you do as broad a notice as possible but not commit
7 necessarily to pre-notice the RFP in a Bar journal that
8 may not be published until post the time that the
9 announcement is made.

10 MS. GLASOW: That is right. I just looked at
11 the supplementary info, and it doesn't mention any
12 comments. So that either means that a comment was
13 general enough as to say, "We approve of this," and so
14 we didn't talk about it, but there obviously were no
15 substantive comments asking for any changes to this
16 section.

17 CHAIR BATTLE: Okay.

18 MR. BROOKS: I would just note here that in
19 paragraph (c) on page 28, we incorporated a change
20 which we discussed before. "The Corporation shall make
21 available a copy of the RFP." I think the commentary
22 still retains the wording that "The Corporation shall

1 provide a copy."

2 MS. GLASOW: Okay. Thank you.

3 MS. MERCADO: What page is that on the
4 commentary, John?

5 MR. BROOKS: I'm looking it up. It's page 9,
6 the last two lines or the next to the last line.

7 MR. FORGER: It says "shall send a copy."

8 MR. BROOKS: "Send a copy."

9 CHAIR BATTLE: "Send a copy. Is required by
10 paragraph (c) to make available a copy."

11 MS. GLASOW: Okay. Good catch.

12 CHAIR BATTLE: Okay. And in (b), we have
13 covered the concern that John just raised in (c). Are
14 there any concerns about (b)?

15 (No response.)

16 CHAIR BATTLE: Which (b) really just kind of
17 outlines what goes in the RFP. Were there any comments
18 about what goes in it? I don't see that there were.

19 MS. GLASOW: No.

20 CHAIR BATTLE: All right. So really, (a),
21 (b), and (c), with the editing suggestion that John has
22 made, it pretty much is set out as it is.

1 have never been exactly sure what this means. The best
2 we can come to is that it means a public interest firm
3 that is issue oriented on some specific issue, and
4 Congress did not want to have such public interest
5 firms to be LSC grantees.

6 And they distinguished by those who expend
7 more than 50 percent of their resources in some sort of
8 a public interest. I may not be absolutely right on
9 that, but it's the closest we could get. It's there,
10 it's in our Act, and there's nothing in the new
11 legislation that has been pending, is no longer
12 pending, or whatever will possibly come out of the Hill
13 to say that this has been taken out of the LSC Act.

14 MS. PERLE: There's not much in the
15 legislative history of the LSC Act either, that really
16 explains very much what Congress meant. And I think
17 that we put it in just to make it kind of clear that
18 it's still in the LSC Act. And to the extent it means
19 anything, it's still the law. If the committee decided
20 that they wanted to take it out, it would still be in
21 the Act.

22 I don't think it's of tremendous moment

1 whether we leave it in or not leave it in. It means
2 something, but it has never been tested, as far as I'm
3 aware.

4 CHAIR BATTLE: Maria?

5 MS. MERCADO: How would you envision that a
6 private law firm that is for profit would have a
7 governing body?

8 MS. PERLE: Well, they would have a policy
9 body. And what this says in the regulations is that if
10 you're not an entity that must under the law have a
11 governing body, i.e., you're not a nonprofit devoted to
12 the provision of legal assistance for eligible clients,
13 that the notion was -- and it's in the regulation that
14 we adopted last year, as well -- that you have a body
15 which meets the same criteria for selection but whose
16 function is devoted to setting policy for the project
17 funded by the Corporation.

18 In other words, we don't expect -- if a law
19 firm, for example, does get one of these grants or
20 contracts, we don't expect that the Corporation is in a
21 position to force them to impose on their whole
22 practice a governing body that meets these criteria,

1 but that there is some entity, some group, a policy
2 board which will meet and help determine the policies
3 for the grant for the use of these public funds.

4 CHAIR BATTLE: I had just some questions
5 following up on what Maria has raised about a law firm,
6 for example, that would be in part of their practice
7 taking clients and having them pay a fee for their
8 service or a law firm who in the other aspect of that
9 practice would be taking cases on some sort of
10 contingency and expecting to get a fee from awards and
11 how all of that would even if they qualified otherwise
12 fit into the scheme of how you administer and oversee
13 LSC funds.

14 And I wonder whether there's any guidance as
15 to a law firm who might file a notice to compete to
16 obtain one of these grants as to the kinds of
17 constrictions and restrictions that would apply to the
18 other aspect of that practice, whether there's anything
19 that gives guidance on that. I'm not certain that when
20 I read this that there's anything in here that says
21 that I can't charge my clients a fee.

22 And so what you could possibly have is someone

1 who comes in the door and you find, "Well, you don't
2 qualify for Legal Services, but if you step over to box
3 number 2, we'll charge you \$10, and we'll do your
4 divorce." Suzanne?

5 MS. GLASOW: In essence, though, this rule --
6 I guess it's trying to define who can be an applicant,
7 because this rule just deals with the competitive
8 process, and anybody who won a competitive process
9 would have to comply with all the LSC Act and rules.

10 Depending what comes out of Congress, it may
11 be that a private law firm who wants to have private
12 clients and take fee generating cases simply won't be
13 able to apply, because the way the law would be written
14 is saying that you cannot be a grantee if you do that
15 type of activity. We have to wait for the law to come
16 out before we can know that clearly.

17 CHAIR BATTLE: Where do we stand now based on
18 the appropriations language that we have in the
19 continuing resolution? Does it presently preclude a
20 law firm from being able to charge their clients a fee,
21 number one; and two, take a fee generating case where
22 there's a statutory fee?

1 MS. PERLE: No, it doesn't.

2 MS. GLASOW: Under the current CR, we are
3 under the '95 appropriations restrictions. That means
4 that any current grantees -- and this has come through
5 general counsel opinions -- our grantees cannot charge
6 clients fees. They can still take fee generating cases
7 under the current law. That may --

8 MS. PERLE: Under the regulations.

9 MS. GLASOW: Right. That may change as of
10 March 15th. We don't know --

11 MS. PERLE: No, no. It's not in the
12 appropriations bill. The fee generating case
13 restriction is no longer in the bill. The broad
14 prohibition on fee generating cases is no longer in the
15 conference report.

16 CHAIR BATTLE: It's not?

17 MS. PERLE: No.

18 MS. GLASOW: But we're not under the
19 conference report restrictions right now. What's going
20 to happen on March 15th, we don't know. And we'll have
21 to see what law they make us subject to in terms of
22 restrictions.

1 MS. PERLE: I think the thing -- it's really
2 outside the scope of this competition regulation, but
3 the thing to kind of keep in mind is that there are
4 many, many restrictions that are in that conference
5 bill that will make it -- while it won't make it
6 legally impossible for a private law firm to apply as
7 an applicant, it will make it practically impossible
8 for most private law firms to actually participate as a
9 recipient.

10 I mean, all of the restrictions that are on
11 their Legal Services practice would be on their non
12 Legal Services practice. So there are very few private
13 law firms, unless they're struggling to make it in
14 private practice and what they really want to do is
15 say, "Oh, forget the private practice; I'm just going
16 to take this grant and become a Legal Services
17 program."

18 I mean, very few if any would apply, because
19 they would be subject to a whole litany of restrictions
20 on not just their LSC funds, but their non LSC funds,
21 as well, which, of course, is one of the arguments that
22 you can use in Congress against the application of

1 these restrictions to non LSC funds.

2 If they really, in fact, want to open up this
3 competition to the private Bar, they did not really
4 think through the consequences of applying these
5 restrictions to everything that a recipient did.

6 CHAIR BATTLE: Nancy?

7 MS. ROGERS: It's not really related to this
8 provision, but it's a question I'm wondering whether we
9 address somewhere in the regulations, and that is the
10 situation of a private firm that does decide to be an
11 applicant for the funds and is successful. If they can
12 interview a person coming thinking that they're getting
13 Legal Services because they qualify and then suggest
14 that they can handle the case for a fee, that troubles
15 me greatly. I wonder whether we regulate that
16 anywhere.

17 MS. PERLE: Well, the Corporation has not done
18 it yet. My guess is it's one of the issues that this
19 committee will have to address at some time in the not-
20 too-distant future.

21 CHAIR BATTLE: Right. Well, Nancy, that is
22 why I raised that issue. It seems to me the minute you

1 open this to private law firms, that you're going to
2 have sliding fee scale clinics who will look upon the
3 prospect of Legal Services funds as a way to fund the
4 portion of their business where they have clients that
5 come in that cannot afford to pay anything.

6 MS. MERCADO: But again, under the
7 restrictions that we have, the bulk of firms are in
8 private practice. By nature are going to have --
9 unless they're solely reliant on the grant from Legal
10 Services for their business, not having any other
11 outside clients, even if you're talking about fee
12 generating cases, if they have got PI cases, they're
13 going to be getting -- which under normal regulations,
14 LSC wouldn't be able to keep unless it has been
15 rejected by --

16 MS. PERLE: They would have to refer them to
17 somebody else first before they could take it.

18 MS. MERCADO: Right. Or if they're talking
19 about their ability to do criminal work or their
20 ability to sue federal entities if they're doing labor
21 type cases against them --

22 CHAIR BATTLE: Well, let me give you an

1 example. And I'm laying this out as an example so that
2 I can test this and get a better feel for how this
3 particular section would work. A divorce. A divorce
4 is a case that a lawyer may be able to charge a fee
5 for, but some clients may not be able to afford to pay
6 the fee.

7 If there is a firm that does extensive divorce
8 and you've got a service area and somehow, you've got a
9 splinter and you've got to find someone in that area
10 because the predominant cases for that particular Legal
11 Services entity that previously existed was they did a
12 lot of family law and they did divorces, if a private
13 group of attorneys got together with their firm and
14 said, "We'll do the divorce work for Legal Services;
15 we'll apply for the grant to do that, and we'll do
16 divorces for people who qualify for free," could they
17 if someone comes in and they can afford to pay because
18 they don't meet the guidelines for Legal Services, then
19 take that case and do it for a fee?

20 MS. PERLE: I don't think there's an answer to
21 that question right now. I think that's a question
22 that's one of those that's sort of floating around and

1 it has been for quite some time.

2 And it has never been challenged because Legal
3 Services' programs, the nonprofit recipients that we
4 have as our programs haven't generally wanted to do
5 that, but there has been a lot of discussion I would
6 say in the Legal Services community over the last
7 couple of years about doing exactly that, having
8 sliding fee scales for clients who are above our
9 eligibility guidelines.

10 And there has been a lot of discussion about
11 whether that would be consistent with the current LSC
12 Act or these restrictions. And I don't think there's
13 an answer, and I don't think there's any answer that
14 specifically jumps out from the current LSC Act. I
15 think that it's something that this Board will be
16 forced to grapple with.

17 MS. GLASOW: I think it will be interpretation
18 of the law that controls when we finally get it. Even
19 currently, our LSC grantees can serve ineligible
20 clients if they're not using LSC funds. So there's all
21 sorts of areas that it's really going to depend on how
22 strong the restrictions are when the legislation

1 finally comes out. And then it will be a matter of
2 interpretation.

3 MS. PERLE: Right, but I don't think these
4 restrictions address that issue.

5 MS. GLASOW: No, not currently.

6 CHAIR BATTLE: Because the issue that I'm
7 raising is a particular area that I don't think is
8 going to be subject to restrictions, but that will be
9 subject to service.

10 MS. PERLE: And I think there will be a lot of
11 policy decisions that the Corporation will have to
12 make. And I think you're going to be subject to a lot
13 of concerns, not just by private attorneys, but by
14 current recipients that need to find mechanisms to get
15 other resources.

16 So I think it is a set of questions that
17 you're going to have to grapple with. I don't think
18 you have to grapple with it in the context of this
19 rule, but I think you will.

20 MS. GLASOW: As a matter of fact, when we were
21 working on our fee generating case, we were talking
22 about this issue. And the Board was going to

1 reconsider that. And all I can say is currently, the
2 OGC opinions have said that you can't charge clients
3 fees, but it was going to be taken under
4 reconsideration. But it's --

5 MS. PERLE: But it was never clear that that
6 applied in a situation where you had an over income
7 client, for example. That was a murky area.

8 MS. GLASOW: That's correct.

9 CHAIR BATTLE: Okay. Well, I wanted to raise
10 that because I think that you're absolutely right, that
11 at some point, we are going to have to address that
12 issue as we take in new applicants for service --
13 existing or newly configured service areas as to how
14 we're going to address that. Okay?

15 Are there any questions about any of the other
16 -- there's a listing, Nancy, of five different kinds of
17 persons or groups or entities that can apply for the
18 grants.

19 MS. PERLE: That comes right out of the --

20 CHAIR BATTLE: Yes.

21 MS. ROGERS: I just wondered whether if we
22 decide to address it once the competition starts, we'll

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1 be precluded from addressing it for that year. I guess
2 it's not going to be a significant issue unless
3 Congress decides not to regulate the nonfederal funding
4 part of an entity's operation.

5 CHAIR BATTLE: I think that decision is really
6 going to be made by Congress in how the restrictions
7 are constructed initially.

8 MS. PERLE: I guess my problem is that I don't
9 know that Congress will address your particular set of
10 concerns. There are provisions in the reauthorization
11 bills about copayments and things like that, so that in
12 the authorization process, it's conceivable that they
13 may address the issues to some degree. But I don't
14 think it's going to be addressed in the appropriations
15 --

16 CHAIR BATTLE: Well, what Nancy is saying,
17 then, that does not preclude a law firm who intends to
18 do for fee divorces from being able to apply to do not
19 for fee divorces for eligible clients.

20 MS. PERLE: No, that's true, but the
21 Corporation has the discretion to decide whether that's
22 the right -- whether they're the right recipient or not

1 for a variety of reasons.

2 MS. ROGERS: But I guess I think it would be
3 good for the staff to start thinking about the issue,
4 because we may have to decide fairly quickly. And
5 although I can think of some ways in which it could be
6 quite appropriate, it also seems to me that there are
7 some avenues that there might be in which there might
8 be overreaching, and we ought to think about those.

9 An example might be the lawyer who says, "Our
10 priorities are such that if it's a Legal Services
11 funded case, we're not going to be able to reach it for
12 three months. However, if it's a paying case, we can
13 do it right away." And there might be a temptation
14 there to try to exact a payment from someone unable to
15 pay.

16 MS. PERLE: Of course the Corporation through
17 the General Counsel's Office does have some authority
18 to interpret the law and if those situations are
19 brought to its attention can make some decisions about
20 how the law should be interpreted with respect to that
21 particular situation. It may be that there will be
22 enough situations where interpretation is an issue that

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1 the Board will be forced to sort of bite the bullet and
2 do a regulation on that.

3 But, of course, it takes a long time for that
4 to happen, as we can tell just by looking at this. And
5 so I don't think you'll have necessarily the problem of
6 the kind of retroactive application to current
7 grantees. I mean, you might have a situation where you
8 come up with a rule that will be effective with the
9 next grant cycle, and if a program that's receiving
10 funds doesn't want to live with that in the future,
11 then they just don't have to apply.

12 MS. ROGERS: They might have to live with it
13 for a year.

14 MS. PERLE: Well, I think it's going to take
15 at least a year to sort it out.

16 MS. GLASOW: Unless the OGC comes out with a
17 decision to say that under the current grant, that
18 that's not appropriate. And that would be a legal
19 decision that the OGC would make.

20 CHAIR BATTLE: Okay. The next section is
21 1634.6, notice of intent to compete. And it basically
22 in (a) and (b) sets out how applicants have to give

1 notice, whether you are a current grantee or not, of
2 your intent to participate in the competition.

3 And I think there was some discussion about in
4 the commentary whether existing grantees should have to
5 give notice, because it's just presumed that if you're
6 an existing grantee, that you would participate in the
7 competition. And the decision was made that everybody
8 who intends to participate would need to give notice of
9 their intent to compete.

10 MS. PERLE: It wasn't so much notice of their
11 intent to compete as giving in -- as supplying the
12 Corporation with information which the Corporation
13 already had. The way it was written originally was to
14 suggest that if it was a current recipient and the
15 Corporation already had the information that was asked
16 for, that they didn't have to submit it again.

17 What this does is changes that and says you
18 have to submit it again, even if the Corporation
19 already has it. I disagree with that change. I think
20 that that's sort of silly, but that's up to you.

21 CHAIR ASKEW: What is the information?

22 CHAIR BATTLE: It's a listing, the names and

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1 resumes of principal and key staff people, the names
2 and resumes of the current governing body and the
3 members that make there appointments and a description
4 of the service area.

5 MS. PERLE: It's not a horrible burden.

6 CHAIR BATTLE: So it can be just one form that
7 people fill out and fax up to the --

8 MS. GLASOW: It was an administrative decision
9 that it would be easier on our staff to get it rather
10 than have to go back and find files and dig out old
11 information.

12 CHAIR BATTLE: Okay. Are there any other
13 questions about the process of the notice of intent to
14 compete under 1634.6?

15 (No response.)

16 CHAIR BATTLE: And if not, Section 1634.7,
17 application process. It appears that Section (a), (b),
18 and -- well, (a) and (b) are essentially the same. (c)
19 has been changed to read, "Incomplete applications will
20 not be considered for awards by the Corporation."

21 CHAIR ASKEW: Excuse me. Can we go back to 6?

22 MS. GLASOW: Yes.

1 CHAIR ASKEW: I'm sorry. We went past it.
2 The concern that was expressed about competitors having
3 access to each other's competitive grant applications
4 has been dealt with by saying that you have to go
5 through the FOIA process to get that information,
6 right?

7 MS. GLASOW: That is correct. Right, and
8 that's discussed here.

9 CHAIR ASKEW: Okay. Is that satisfactory to
10 the field the way this was handled?

11 MS. PERLE: Well, I mean, I think that the
12 description of the presumptions that will be made in
13 applying the FOIA, I basically agree with them. And I
14 think I would feel more comfortable and had proposed
15 that it specifically say that they are not subject to
16 FOIA, but I think that there certainly is a rationale
17 for saying that a lot of the information that's
18 provided should be public information.

19 The concern that was expressed to me by people
20 in the field and I think also was sent by way of
21 comment was that a program that submits information and
22 gets the award would then be at a competitive

1 disadvantage in the next round if a competitor could
2 have access to all of the information that they had
3 submitted previously, so they would know kind of in
4 advance what to put in their application.

5 And to the extent that that information will
6 continue to be protected where it's appropriate under
7 FOIA, I think that goes somewhat to assuage the
8 concerns.

9 CHAIR BATTLE: If there's a real danger, I
10 think Linda that you're pointing out that can occur,
11 that all that one would have to do sitting somewhere in
12 North Dakota as a lawyer with no practice is to send a
13 Freedom of Information Act request up for all the
14 applications for the service area where they exist and
15 to get all the documentation --

16 MS. PERLE: For the last 10 years.

17 CHAIR BATTLE: Yes, and to take all of that
18 information to put together what sounds on paper like a
19 wonderful application.

20 MS. PERLE: Right. And, of course, the
21 Corporation may or may not have the resources to really
22 go and check out what's in these applications, whether

1 it's really realistic to expect this person to --

2 CHAIR ASKEW: I'm trying to think of what
3 information a putative applicant could take from an
4 existing grantee and turn and use to the disadvantage
5 of that grantee that is really unfair.

6 And I'm having trouble coming up with an
7 example of what -- if it's case closings for the past
8 10 years, if it's whose on your board, if it's how
9 you're governed, if it's your budgets, I can't envision
10 something that is really something like a trade secret
11 or something that is so inherently important to that
12 program that it has to be protected.

13 If somebody does what LaVeeda is suggesting in
14 North Dakota and says, "Okay, we have discovered that
15 Legal Aid of North Dakota in the past 10 years has done
16 38 percent domestic, 12 percent whatever, so we're
17 going to submit a proposal saying we're going to do
18 exactly the same thing," well, they're going to have to
19 do it. I mean, they can't just say, "We intend to do
20 it."

21 They have got to come up with a governing
22 structure. They have got to do all the things that's

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1 required to put a program together. And I just don't
2 see it as that threatening to an existing grantee.
3 Maybe if you heard from programs what they are
4 particularly concerned that would be released and used
5 against them?

6 MS. GLASOW: Yes. We have gotten both. We
7 have gotten requests for the applications, and we have
8 gotten requests not to send out their applications.
9 The bottom line is, if FOIA requires we release
10 something, we have to release it, and we can't change
11 that in this rule.

12 What we plan to do under FOIA -- and we have
13 checked with other agencies that do grants -- is
14 protect the applications until the grant decisions are
15 made. Then, if there has been a request for them for
16 the successful applications, someone writes in, says,
17 "Under FOIA, I want a copy of that application," then
18 we're going to go into a process that many -- a FOIA
19 process that many agencies use which is called
20 submitter's right.

21 And we go back to the applicant and we say,
22 "There has been a request for your application. You

1 convince us that there's proprietary information here
2 that needs protection."

3 Then, we look at it. If we agree, we still
4 protect it. If we don't, we send it out. And that's
5 pretty much what FOIA requires. And it's already
6 covered in our rule. So that's why we discussed it in
7 the supplementary info and didn't make any provision
8 for it in the rule itself.

9 CHAIR ASKEW: Are you saying that if we wrote
10 the rule saying, "We're going to deny access to these
11 applications to anyone else," that would be in
12 violation of --

13 MS. GLASOW: If FOIA required that parts of
14 those applications go out, then we would be in
15 violation of law, in essence. And then somebody could
16 challenge it legally.

17 CHAIR ASKEW: What's an example of the kind of
18 information a program would want to protect from a
19 competing applicant?

20 MS. GLASOW: Sometimes, it's not the
21 particulars, it's the compact idea, it's a creative
22 idea and the fact that someone else can sit and copycat

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1 it and send in an application that sounds credible
2 basically using the work of somebody else, the creative
3 idea of somebody else. They now have a competitor, and
4 it's hurting their competitive advantage.

5 CHAIR BATTLE: You could potentially, Bucky,
6 end up with two applications saying exactly the same
7 thing. And if you look at the applications on their
8 face, if they say precisely the same thing, that
9 they'll service the same thing, then the person who has
10 done no work but just taken the application and put the
11 information in it is at a competitive advantage,
12 because their application will look to be pretty
13 similar to the person who originated the ideas on the
14 application.

15 CHAIR ASKEW: Maybe they ought to copyright
16 their application. If anybody copies it, they can sue
17 them for it.

18 MS. PERLE: I mean, I think the notion that
19 Suzanne said, which is basically that we have a set of
20 rules on governing the release of public information
21 and if we apply them in the appropriate fashion, we'll
22 be able to protect the things that need protected, I

1 think I'm pretty comfortable with that.

2 What I was concerned about was that the issue
3 you raised and that there be some awareness that it
4 might be an issue and that the Corporation wouldn't
5 just -- you know, they get a request for an application
6 that doesn't come in through FOIA, just a letter, and
7 somebody says, "Okay, here," without thinking about it
8 or without consulting the applicant. So I think that
9 the resolution and the way this was done does address
10 the concerns.

11 MS. GLASOW: And we have already developed --

12 CHAIR ASKEW: I think requiring FOIA is a good
13 way to go about it.

14 MS. GLASOW: We have already developed an
15 internal policy and distributed it out through the
16 Corporation so that if anybody accidentally gets a
17 request that should go through FOIA is well aware that
18 it needs to go through our FOIA office.

19 MS. PERLE: Treats it as a FOIA request for
20 it.

21 MS. GLASOW: Right.

22 CHAIR BATTLE: (d) is essentially the same.

1 We're on page 30, Bill, the application process,
2 Section 1634.7. We were just discussing the commentary
3 which addresses the issue of once you've made your
4 application whether someone else can get a copy of it,
5 what might happen if they can.

6 MR. McCALPIN: At an appropriate time, I would
7 like to go back and offer some comments as to what
8 you've already covered.

9 CHAIR BATTLE: Okay. Is it 3 o'clock yet?

10 MR. McCALPIN: No. It's 2:30.

11 CHAIR BATTLE: When 3 o'clock gets here, we'll
12 do that. Okay. We are now at, I think, (d), and there
13 are no changes to (d). Now, Section (e) is deleted.
14 Suzanne, can you tell us why?

15 MS. GLASOW: This is the section on mediation.
16 And we had really in-depth discussions about this, and
17 management and staff really agree and I think some
18 outside comments also agreed that because grant
19 applicants have no property rights and no hearing
20 rights, that although with the best intentions with
21 establishing a mediation right, we felt that it would
22 actually create an expectation of rights that didn't

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1 exist and at a time when the Corporation is
2 understaffed and having budget constraints, that it
3 just might be beyond our ability to handle that type of
4 a situation.

5 And the Corporation already has authority that
6 if someone does write in a complaint on any issue to
7 handle it and to do some sort of paper hearing or give
8 it whatever attention we have, so we took out the
9 provision.

10 CHAIR BATTLE: Okay. I noticed in the
11 commentary on page 16 the -- I would edit the way that
12 it reads, "The Board agreed to delete the mediation
13 provision from this rule.

14 "In addition to the concerns raised in the
15 comments, the Board also noted that the provision is
16 unnecessary. The Corporation already had authority to
17 respond to complaints about its activities and to
18 decide the appropriate forum to address and resolve
19 those complaints" I think is a better way to say it.
20 And I had a question. How does the Corporation now
21 resolve and respond to those complaints? How is that
22 done?

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1 MS. GLASOW: Probably a variety of ways.
2 Often, we will get complaints, and often, they'll go to
3 the president of the Corporation. And he will pass
4 that complaint on to the appropriate office. It may be
5 the Office of General Counsel. It may be OPEAR.

6 And they look into it, and they come back to
7 the president with some sort of response, and the
8 president if he agrees sends it back out to the person
9 who had the complaint. And then the person, of course,
10 could write back.

11 So it's a paper hearing, in essence. We do
12 look into it, but it depends on what it is and to what
13 department it goes. But to my knowledge, nobody writes
14 in with some sort of request or complaint that doesn't
15 get some sort of response and that the Corporation
16 doesn't do its best to look into it.

17 CHAIR BATTLE: Okay. But the response is not
18 in any way a substitute or equivalent to mediation. It
19 is, from what I'm hearing from you, a paper response.
20 Someone complains. It gets from the president to
21 someone who addresses that complaint and gets the
22 information back out; is that right?

1 MS. GLASOW: Right. In terms of our former
2 grantees, of course, they had hearing rights, so that's
3 the process we use with those, and those are
4 incorporated in our regulations for something that was
5 really substantive. I don't know that we have ever
6 used mediation in a sense. I'm sure we have talked to
7 people and even brought them in and sat down and
8 discussed issues with them, but I don't know that there
9 has been an occasion to use mediation per se.

10 CHAIR BATTLE: And nonselected grantees aren't
11 normally given mediation as an option; is that right?

12 MS. GLASOW: That is correct, right.

13 MS. PERLE: I think the point that was made is
14 that once you've awarded the grant, what's there to
15 mediate, unless you're going to suggest that you don't
16 award the grant until the mediation is completed, in
17 which case you have a situation where those people
18 aren't getting services.

19 CHAIR BATTLE: Okay. Selection process.
20 Section 1634.8 addresses the whole issue of the
21 selection process and kind of walks you through how the
22 selection process will occur, with (a) setting out what

1 the Corporation staff will do in points (1) through
2 (5). I had in number (5) some editing changes that I
3 would propose.

4 (5) is kind of a sentence stated in reverse,
5 because you've got, "After receipt of all applications
6 for a particular service area, the Corporation staff
7 shall, unless there's only one applicant for a
8 particular service area and the Corporation determines
9 the use of the review panel is not appropriate, convene
10 a review panel." And I would flip that to say, "The
11 Corporation staff shall convene a review panel unless
12 there's only one applicant for a particular service
13 area and the Corporation determines that the use of the
14 review panel is not appropriate."

15 MR. McCALPIN: That's what it says.

16 CHAIR BATTLE: But I would flip it. I would
17 put --

18 MR. McCALPIN: But it starts out, "The
19 Corporation staff shall, unless there's only one
20 applicant." Look up at (a), the introductory part of
21 (a).

22 CHAIR BATTLE: Yes, I know.

1 CHAIR ASKEW: She read that.

2 CHAIR BATTLE: I read that. What I would say
3 is, "The Corporation staff shall convene a review
4 panel, unless there's only one applicant for a
5 particular service area and the Corporation determines
6 that the use of a review panel is not appropriate."

7 MR. McCALPIN: Oh, I see. Okay.

8 CHAIR BATTLE: I would just flip it.

9 MS. PERLE: How does that work grammatically
10 with (i) and -- oh, you have additional --

11 CHAIR BATTLE: Yes. And then the second
12 sentence will be, "The review panel shall review the
13 applications and summaries prepared by the
14 Corporation."

15 I would also make some editing changes to the
16 parenthetical and say -- you really have -- "The review
17 panel shall, (i), review the applications and the
18 summaries prepared by the Corporation staff" and then
19 in parentheses, "The review panel may request other
20 information identified by the Corporation staff in
21 order to evaluate the applications fully."

22 MS. GLASOW: Can you read that again?

1 CHAIR BATTLE: Sure. "The review panel may
2 request other information identified by the Corporation
3 staff in order to evaluate the applications fully."

4 MS. GLASOW: Okay.

5 CHAIR BATTLE: Are there any other editing
6 changes or suggestions to 1634.8 on the selection
7 process? I had one other one. If you turn to page 32,
8 number 6, we used the term "president" throughout, and
9 then there are places where we say "the Corporation
10 president." I don't think we need to say
11 "Corporation." I think if we say "president," we have
12 been consistent throughout as to what president we're
13 talking about.

14 MR. McCALPIN: I'm sorry I missed the
15 beginning of this. What are we doing? Are we making
16 -- we're certainly not making changes until 3 o'clock.

17 CHAIR BATTLE: We're just discussing.

18 MR. McCALPIN: But are we discussing every
19 change that we think ought to be made?

20 CHAIR BATTLE: Yes. And then at 3 o'clock,
21 we're going to go back through and say which ones we're
22 going to adopt.

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1 MR. McCALPIN: Well, I've got a couple of
2 comments over page 32. One, I don't understand why the
3 review panel's recommendation doesn't always go to the
4 president along with the staff recommendation, whether
5 they agree or not. I know that that's the last
6 sentence in (6), and there's a comment about it in the
7 commentary.

8 You know, I see no reason why the review
9 panel's report and recommendation, whatever it is
10 you're going to get, shouldn't go along with the staff
11 recommendation to the president. He may see something
12 in the review panel report or recommendation that the
13 staff didn't.

14 MS. GLASOW: The staff tells me they don't
15 care. It can go --

16 MR. McCALPIN: What?

17 MS. GLASOW: The staff is telling me that
18 there's no real preference here, that if you prefer
19 that both recommendations go, that's fine.

20 CHAIR BATTLE: I thought -- now, I may have
21 been just in my reading unclear about this. I thought
22 that the review panel recommendation if adopted by the

1 staff was going to the Corporation president anyway.

2 MR. McCALPIN: The other way around. Only if
3 it disagrees with the staff.

4 CHAIR BATTLE: Yes. If it's a disagreement,
5 yes. Then --

6 MR. McCALPIN: I think it ought to go in every
7 case.

8 CHAIR BATTLE: Okay.

9 MS. GLASOW: Okay.

10 CHAIR ASKEW: Maybe just a Paperwork Reduction
11 Act issue.

12 MR. McCALPIN: You must have been doing your
13 income tax returns. Also, the last sentence of (b)
14 duplicates something that appears elsewhere. Do we
15 need to say it twice?

16 CHAIR BATTLE: No, we don't.

17 MS. GLASOW: Where is this?

18 CHAIR BATTLE: The last sentence in (b), "The
19 president of the Corporation shall not make an award of
20 a grant or contract for a term longer than five years."

21 MR. McCALPIN: We have already said that.

22 MS. GLASOW: I think we said the Corporation,

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1 right? Where did we say that?

2 MR. McCALPIN: That statement, I think, does
3 appear somewhere else.

4 MS. GLASOW: On page 27, (e), "In no event may
5 the Corporation award a grant or contract for a term
6 longer than five years."

7 CHAIR BATTLE: Right. Well, it's redundant.
8 The president obviously has no further authority than
9 does the Corporation, so we can strike it.

10 MS. GLASOW: Do you want to take the second
11 one out?

12 CHAIR BATTLE: Yes.

13 MS. GLASOW: Okay.

14 CHAIR BATTLE: Okay. Here we are on (c). We
15 have got some changes to (c). And I'm assuming based
16 on the discussion we had, Suzanne, that this is really
17 just to assure that the Corporation has the flexibility
18 to take steps to ensure that there is the continuation
19 of Legal Services in a service area if there are no
20 applications.

21 Nancy?

22 MS. ROGERS: I'm wondering whether we want to

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1 state it so definitively when we don't know the level
2 of funding that we will have. In the event that the
3 level of funding is very, very low, might the
4 Corporation not decide to serve only some of the areas?

5 MS. GLASOW: I believe the way our funding is
6 granted to us by Congress, it basically says there are
7 levels for each service area, so we're basically
8 required to fund each service area at a certain level,
9 so we --

10 MS. PERLE: That's true under the new -- under
11 the conference report language, that we need to fund
12 every service area on a per capita, census-based -- I
13 don't think there is anything under the current LSC Act
14 that actually states that, but that has been the policy
15 of the Corporation since the completion of expansion.

16 CHAIR BATTLE: Well, but I think Nancy's
17 raising a point about whether in this reg for purposes
18 of competition, we need to state the affirmative duty
19 of the Corporation to take steps to continue the
20 provision of Legal Services in service areas given --

21 MS. PERLE: I don't think this language says
22 that you're required to fund a service area. It says

1 you're required to take steps necessary to ensure the
2 continued provision of legal assistance in that service
3 area. I mean, it's conceivable -- although I wouldn't
4 advocate this, but I think it's conceivable that the
5 Corporation could enlist the Bar association to get --

6 MS. FAIRBANKS-WILLIAMS: To increase pro bono
7 activity?

8 MS. PERLE: Yes, to increase pro bono activity
9 or ask the judiciary to appoint private attorneys or a
10 whole variety of things that would be alternatives. I
11 think this suggest that what the optimum situation
12 would be would be that the Corporation would find
13 someone to fund to provide services in that area, but I
14 don't think it necessarily says that it must be.

15 MS. GLASOW: I'm going to have Gerry speak to
16 you on this, because he's more familiar with that
17 funding formula issue.

18 MR. SINGSEN: I'm not sure that there's a
19 perfect answer to your question, because I don't think
20 the question has been legally tested. But we have
21 certainly had situations, for example, in the migrant
22 area where we have had states with migrant funding

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1 determined in our migrant counts but not distributed
2 that funding and then used it for other migrant
3 purposes.

4 I'm not sure we have had a basic field area
5 that we didn't fund, but I think the legislation might
6 require us to hold the money -- the current proposed
7 2076 -- to hold the money until we had a recipient in
8 the area, conceivably to use the money in that area
9 because of the distribution formula, although I can
10 imagine developing a position that said we had the
11 authority to use it for basic field purposes, not
12 necessarily in the area if we had a failure of any
13 applicant to be available to provide services.

14 CHAIR BATTLE: So essentially, this language
15 gets at steps rather than an obligation relating to
16 service.

17 MS. ROGERS: I think it's stronger than that.
18 It says, "It shall take steps necessary to ensure."

19 MS. PERLE: But I don't think it requires that
20 those steps be necessarily funding. I mean, there
21 could be other steps. Like I said, I think that under
22 2076, you might be obligated.

1 CHAIR BATTLE: Do you have another proposal?

2 MS. ROGERS: Well, I'm not sure with whether I
3 agree with what I've been thinking about, but let me
4 throw it out and see what the reaction is. To say,
5 "The Corporation shall endeavor to" --

6 CHAIR ASKEW: "Make every effort."

7 MS. ROGERS: Or "endeavor." "Every effort."
8 Okay. "Shall endeavor to ensure."

9 MS. GLASOW: I think that Gerry seems to feel
10 that that would be okay.

11 CHAIR BATTLE: "Endeavor to ensure"?

12 MS. GLASOW: We basically want to give the
13 Corporation authority to do it and not say that they
14 can't do anything at all in essence other than --

15 MS. PERLE: But if you notice what we had
16 before, there was -- the Corporation had discretion to
17 do that. And what this says is that the Corporation
18 has an obligation to do that. And I think that you
19 probably want to state as strongly as the committee is
20 at least comfortable with that there should be -- that
21 we really should be providing service.

22 And, I mean, obviously, if there's an

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1 impossibility, if the current recipient is totally
2 terrible or they don't apply and there is no one else,
3 we may be in a situation of impossibility. I don't
4 know how we deal with that situation.

5 CHAIR BATTLE: And I guess the concern you
6 have is --

7 MS. PERLE: I don't think we want this rule to
8 say the Corporation can decide because it doesn't have
9 enough money to fund everybody at an adequate level
10 that it's only going to fund some programs.

11 CHAIR BATTLE: Well, and I don't think that
12 this has anything to do with a determination the
13 Corporation might make on that issue as much as it does
14 how the Corporation is going to once competition is
15 implemented address the issue where service areas have
16 no competitors who are applying for grants.

17 And, Nancy, your concern was -- I guess my
18 reading is this: "Nevertheless, take steps necessary
19 to" is language that does not state an obligation as to
20 what those steps are or what the continued provision of
21 legal assistance ends up being, but it is strong
22 language which compels the Corporation to do something

1 about those unserved areas.

2 And if we use language which says "has
3 discretion to," that seems optional. If we use
4 language that says "endeavor," that stronger than the
5 optional, but it's not quite as strong as "take steps
6 necessary to." And I need to hear your level of
7 discomfort with the "necessary" piece.

8 MS. ROGERS: I think in the event we're not
9 obligated by law to serve every area, I could imagine a
10 point at which funding goes so low that one can't fund
11 even one lawyer for a particular area and that the
12 Corporation might well say, "At this point, we're going
13 to fund at least a complete lawyer or not fund the
14 area."

15 I hate to think of it, but it seems to me that
16 the "endeavor" language at least gives the -- it puts
17 an affirmative obligation on the Corporation even in
18 that situation to endeavor to ensure, but it doesn't
19 mean that they have to make -- they have to reach the
20 result that legal assistance really is available if
21 they don't have the resources to.

22 MR. BROOKS: I agree with Nancy. "Necessary"

1 bothers me as an absolute obligation which I don't
2 think we can undertake to fulfill. And it may be not
3 only there's no funding for the Corporation to
4 undertake any support, but there may not be local
5 resources which would be available.

6 CHAIR ASKEW: This language is addressing a
7 situation where there are no applicants for a service
8 area, "or the Corporation determines that no competitor
9 meets the criteria."

10 And in that situation, not in any of these
11 other situations we're raising -- we're talking about
12 this situation -- we're saying the Corporation will
13 take all the steps necessary to see that services are
14 continued in that area while we are soliciting a new
15 application or trying to find a new grantee or figuring
16 out what we're going to do in that service area.

17 We're not speaking to the issue of funding
18 reductions and how we're going to serve the whole
19 country. That's controlled by the Act and by other
20 regulations than by this. It seems to me this is only
21 speaking to that narrow issue where we don't get a
22 grant application or there's no competition there, and

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1 what are we going to do. We're saying it's incumbent
2 upon the Corporation to find a way to keep services
3 going in that area while we're figuring out what we're
4 going to do.

5 MS. ROGERS: And I'm suggesting we don't know
6 the future well enough to know whether we want to take
7 that obligation on. I would like to see us be able to,
8 but I --

9 MS. PERLE: But this is a regulation that you
10 can change. In the event that circumstances change so
11 drastically, you have the authority to change the
12 regulation. It's not like you're writing a law that
13 you can't change in the event of a major change in
14 circumstance.

15 But I agree with Bucky that what you're really
16 doing is addressing an issue that's not addressed in
17 this rule that doesn't need to be addressed in this
18 rule.

19 CHAIR BATTLE: I see two committee members at
20 least of the joint committee, one of each of the
21 committee members seeming to feel that the "shall
22 endeavor" language is strong but flexible and that it

1 sets out the Corporation's obligation to ensure to
2 continue to provide legal services without putting an
3 obligation in terms of taking necessary steps to
4 provide that service.

5 MS. PERLE: I want to reiterate that I think
6 that it doesn't absolutely obligate you to fund a
7 grantee the way -- it's "take steps that are
8 necessary." The most obvious one would be to fund a
9 program to do it, but there are other things that the
10 Corporation could do in that circumstance.

11 I mean, you know, I guess it's because maybe
12 it's just my own personal perspective having worked at
13 the Corporation from 1975 through '83 when there was
14 such -- and Bucky, of course, understands this better
15 than anybody -- that there was an effort made to really
16 have this be a program that covered the whole country
17 and at least theoretically provided service throughout
18 the country and that our whole effort to increase
19 funding for the program has been sort of derived from
20 this notion that there be minimum access throughout the
21 country and that the commitment be throughout the
22 country.

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1 It bothers me tremendously to talk in the
2 kinds of terms that you're talking about. I understand
3 that there may be a reality, that we may be facing a
4 funding reality. But I think at that point, the
5 Congress is going to give us other directions anyway
6 and that they're going to override anything that's
7 written in here.

8 CHAIR ASKEW: I would also think that if we
9 face the day of \$100 million appropriation or whatever
10 the figure would be, the Corporation would adopt a
11 funding policy, and the funding policy would say any
12 number of things. This regulations wouldn't violate
13 that funding policy if we decided we can't afford to
14 fund their service area. We can only fund certain
15 service areas.

16 MS. PERLE: You define the service area to be
17 the state, and then you give a certain amount of money
18 to a state-wide program, and then they determine where
19 they can realistically provide services or put offices.
20 I mean, there's a whole range of possibilities..

21 MR. BROOKS: I don't think we can guarantee
22 that the Corporation can, in fact, do this. And if we

1 use the word "necessary," I think it's an absolute
2 commitment, moral or otherwise. And it seems to me we
3 do --

4 MS. PERLE: Well, what if we just took out the
5 word "necessary"?

6 MR. BROOKS: We want to do the best we can,
7 but not more than we can.

8 MS. PERLE: What if we took out the word
9 "necessary" and said "shall nevertheless take steps to
10 ensure"? That doesn't necessarily mean that those
11 steps absolutely reach the goal, but that -- I don't
12 know. I mean, I'm bothered by it, and it's hard for me
13 to articulate.

14 CHAIR BATTLE: I think that what we're talking
15 about -- again, getting back in part to something that
16 Bucky said, and maybe that is a compromise; let's hear
17 back on that -- about what we're really talking about.
18 We're talking about a situation where we do at least
19 have funding.

20
21 We are in existence. We have taken applications. We
22 have had people to apply for a number of service areas,

1 and then, boom, we have got a service area where there
2 are no applicants.

3 The question is, what does the Corporation do.
4 And if we say that "The Corporation shall nevertheless
5 take steps to ensure the provision of services," what
6 we're saying is we have got funding, and we take some
7 steps to determine how that service area is going to be
8 met, given whatever the -- I mean, maybe we need to put
9 something in like "given whatever the funding formula,
10 given whatever the requirements are otherwise," we take
11 steps for those areas where there is no application to
12 determine what to do about it is really what we're
13 talking about here.

14 If the word "necessary" comes out, Nancy, does
15 that make you feel more comfortable?

16 MS. ROGERS: It does. I mean, I think if the
17 steps should stay in, "should nevertheless take steps,"
18 I would say "to try to ensure."

19 CHAIR BATTLE: "To endeavor to ensure"?

20 MS. ROGERS: I don't care. But if the taking
21 steps -- I have no problem with the Corporation being
22 obligated to actually do something affirmatively. And

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1 so "to take steps to try to ensure" would be fine.

2 MS. PERLE: Do we have to have the "try"? I
3 mean, I think if you say "they'll take steps to
4 ensure," you have a goal, which is to ensure. You're
5 going to take steps. If you reach the goal, that's
6 great. If you don't reach the goal, well, you've --

7 MS. ROGERS: I think realistically, that's
8 susceptible to two interpretations.

9 MR. BROOKS: It's interesting, because you're
10 viewing the word "necessary" as a mandate, and I would
11 view the word "necessary" as giving us more
12 flexibility, because we could say, "We have taken
13 steps, but there were some things we couldn't do, and
14 they weren't necessary to do."

15 MS. ROGERS: Well, you could do it the other
16 way, say, "shall as much as is practicable." But I
17 think -- we're trying to write a regulation for all
18 purposes, and because it is difficult, we say we can
19 always revise, but it is difficult to do that. And
20 it's better if we can foresee circumstances to do it in
21 a way that will be flexible.

22 CHAIR ASKEW: How about "shall nevertheless

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1 take all practical steps to ensure"?

2 CHAIR BATTLE: John, Nancy?

3 CHAIR ASKEW: We're going to have to come back
4 to this after 3:00 anyway.

5 CHAIR BATTLE: I've already put down here, "3
6 o'clock vote."

7 CHAIR ASKEW: Mr. McCalpin's going to have his
8 own ideas, I'm sure.

9 CHAIR BATTLE: Well, we have struggled with
10 that, and maybe that's one that we know we'll defer to
11 3 o'clock and come back.

12 MS. PERLE: It's 3 o'clock now.

13 CHAIR BATTLE: Is it? Well, let's go ahead
14 and finish. We have got just a few more pages. My
15 suggestion is that we finish what we're doing now.
16 Then at 3 o'clock, we're going to come back, go through
17 the whole thing, see if anybody has any comments,
18 concerns, questions, and finalize it. But we know that
19 we have got to come back and really grapple with this
20 one some more.

21 MS. PERLE: On this section, the staff has a
22 proposal which we have discussed, although not in total

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1 detail, to deal with some --

2 CHAIR BATTLE: Now, which section are you
3 referencing now?

4 MS. PERLE: On (c).

5 CHAIR BATTLE: On (c).

6 MS. PERLE: To deal with some situations that
7 have come up in the context of the competitive bidding
8 process. And you may want to consider them, discuss
9 them now. And it's after 3 o'clock, so you can do
10 whatever you want.

11 CHAIR BATTLE: This also adds an (e), (c),
12 (d), and (e).

13 MR. SINGSEN: Gerry Singesen, for the record.
14 (e) is simply an alternative to the changes in (c).
15 It's the same language but dealing only with the
16 situation that hadn't previously been covered in (c)
17 when "during the term of a grant" as opposed to "during
18 the process leading to selection," a grantee ceases to
19 be able to function for whatever reason. So you can
20 choose either way as far as the draft is concerned.

21 CHAIR BATTLE: The proposal that we have
22 before us in (c) is the following: "In the event that

1 there are no applicants for a service area or that the
2 Corporation determines that no competitor meets the
3 criteria and therefore determines not to award a grant
4 for a particular service area or that a recipient is
5 unable or unwilling to finish the full duration of a
6 grant that has been awarded, the Corporation shall
7 nevertheless take steps necessary to ensure the
8 continued provision of legal assistance in that service
9 area.

10 "In addition, the Corporation shall have
11 discretion to determine how legal assistance is to be
12 provided to the service area, including but not limited
13 to enlarging the service area of a neighboring program,
14 putting a current recipient on month-to-month funding
15 in order to permit the Corporation to conduct a new
16 competition, or entering into an interim contract with
17 another qualified provider for the provision of legal
18 assistance in the service area until the completion of
19 the next competitive bidding process and the award of a
20 grant to an applicant pursuant to this section."

21 MS. ROGERS: Rather than "month-to-month,"
22 don't you want "short-term funding"?

1 MR. SINGSEN: Where it says "month-to-month,"
2 it's in the current draft. I'm just repeating what was
3 in the draft that you already had.

4 CHAIR BATTLE: It says "month-to-month" at
5 present.

6 MS. ROGERS: Don't we want just "short-term"?
7 Wouldn't that be more flexible?

8 CHAIR BATTLE: "Short-term"?

9 MS. PERLE: I think realistically, you never
10 fund a program for less than a month, right? And
11 month-to-month funding has been something that has been
12 used by the Corporation from the beginning, so it's
13 sort of a term of art for the Corporation. I don't
14 have any objection to changing it. I'm just saying
15 that it is --

16 CHAIR ASKEW: It could be a three-month grant,
17 something like that.

18 MS. PERLE: Right. It could be.

19 CHAIR BATTLE: "On no less than month-to-
20 month"?

21 CHAIR ASKEW: I would just say "a recipient on
22 short-term funding." That gives you whatever it is.

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1 CHAIR BATTLE: Okay. Now, what this does is
2 it actually gives you what alternative steps may be
3 taken.

4 It actually sets out some of the options
5 available to the Corporation to ensure that an area
6 where there is no competition or no selected grantee,
7 what the Corporation might do to serve that area in the
8 interim. And I think that -- does this cover
9 everybody's concern? John, does this cover your
10 concern?

11 MR. BROOKS: It does if we go back to the same
12 issue we just bypassed in 405.

13 CHAIR ASKEW: I think we ought to adopt this
14 change but save that one clause for discussion when we
15 go back through this.

16 MS. ROGERS: Fine with me.

17 CHAIR BATTLE: So is it fine as it is, or do
18 you want to go back and discuss it?

19 MS. ROGERS: Oh, same thing, to go back to
20 discuss the language, but the rest of it's fine.

21 CHAIR BATTLE: Okay. All right. Good.

22 CHAIR ASKEW: And you're proposing adding both

1 (e) and this language, or the alternative?

2 MR. SINGSEN: No. We would propose, assuming
3 the committee wanted it this way, that it be as it is
4 in (c), that version, because (e) repeats a lot of
5 language from (c) I think unnecessarily. But the
6 reason we proposed it both ways to look at was that we
7 didn't know whether you would want to put in the
8 Section (c) which is in the selection process sequence
9 the provision that deals with when an applicant or now
10 a recipient can't go forward.

11 CHAIR BATTLE: There are no selectees. Yes.

12 MR. SINGSEN: And there are a variety of ways
13 that happens, from defunding to bankruptcy to a
14 decision to stop taking our grant.

15 CHAIR BATTLE: Okay. So let's examine (e).
16 "In the event that a recipient is unable or unwilling
17 to finish the full duration of a grant that has been
18 awarded, the Corporation shall take steps necessary to
19 ensure the continued provision of legal service in that
20 area -- legal assistance in that area.

21 "In addition, the Corporation shall have
22 discretion to determine how legal assistance is to be

1 provided to the service area, including but not limited
2 to enlarging the service area of a neighboring program
3 or entering into an interim contract with another
4 qualified provider for the provision of legal
5 assistance in the service area, until the completion of
6 the next competitive bidding process and the award of a
7 grant to an applicant pursuant to this section."

8 This is a totally different issue, quite
9 honestly, isn't it? It really doesn't have to do with
10 the -- it's basically what you're saying. It doesn't
11 have to do with the selection process. It's saying if
12 at any other time we lose somebody, this is how we plan
13 to address covering the service area until we can set
14 out a competitive bid process for the area again.

15 MR. SINGSEN: And what it has to do with the
16 selection process is, we have got a requirement in 2076
17 if it passes that we use a competitive bidding process.
18 And if we had a failure in the middle of a grant term,
19 we need to know whether we have to do another
20 competition on a special basis to give a short-term
21 grant -- and if the failure came up suddenly, there's
22 no way we could -- in order to provide continuity of

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1 services until we get to a regular competitive process.

2 So this is part of the competitive bidding
3 process. It simply comes up in a different time frame
4 than the rest of the discussion. And obviously, it's
5 exactly the same language in (c) and (d) with regard to
6 this circumstance and the possible remedies.

7 CHAIR BATTLE: Okay. Any discussion? John?

8 MR. BROOKS: Well, I suggest that it be a new
9 Section 11, since it does address a different problem,
10 in effect picking it up so that it throws this
11 situation back into the competitive bidding procedure.
12 But it doesn't seem to me to quite fit in the Section
13 8. It's more or less an addendum that we change the
14 present 11 to 12.

15 CHAIR BATTLE: And call it "incomplete term"
16 or come up with a title that addresses the issue of
17 someone who doesn't complete their term and what we do
18 with it.

19 MS. WATLINGTON: Isn't all that incorporated
20 into (c)?

21 CHAIR BATTLE: Well, (c) has to do with when
22 we're in the competition process and all of a sudden,

1 we have a serviced area that's not addressed. This one
2 really has to do with let's say we give an attorney who
3 puts in a great application a grant, and about four or
4 five months in, he decides, "I don't want to do this.
5 Here, you can have the rest of your money back. I want
6 to go back to the private practice of law."

7 Then at that point, we have got an obligation
8 to make sure that those clients in that area are still
9 served. And that's a little bit different from at the
10 beginning of the competitive process. So I agree with
11 John. We need to have a separate section to deal with
12 that issue.

13 MR. BROOKS: Could we say "default by
14 recipient"?

15 CHAIR BATTLE: Yes. That's a good idea.

16 MR. SINGSEN: Beg your pardon. "Default" is a
17 word that is narrower than the range of possible
18 circumstances. This would even arise if we defunded
19 somebody.

20 CHAIR BATTLE: "Noncompletion of the duration
21 of grant" or something? I mean, be creative. Find
22 some language between now and the end of today.

1 CHAIR ASKEW: It would be 12 rather than 11,
2 wouldn't it? Don't we already have an 11?

3 CHAIR BATTLE: Yes, it would be 12, because we
4 are now on 9.

5 MR. BROOKS: I wonder if 11 doesn't sort of
6 override even this new one, the wavier situation.

7 MS. PERLE: I mean, it could also be under --
8 it could fit under 10 sort of as a different form of
9 transition.

10 CHAIR BATTLE: Okay. Let's get into that.
11 Let's stick that in where we -- I think you may be
12 right, but let's get to 10 and see if it's consistent.
13 Let's look at 9 first on page 32, selection criteria.
14 There really is one -- there are just a few editing
15 changes to this. Let's go through it.

16 (a), which deals with the knowledge of the
17 basic Legal Services selection criteria. (b) has to do
18 with quality and feasibility of the applicant's
19 approach to delivery. (c) has to do with whether they
20 can meet all the requirements of the law, regs, and so
21 forth.

22 (d) has to do with their ability to comply

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1 with the Act, the rules, the regulations, the
2 guidelines in there, and having some evidence to show
3 their capacity to comply with the Corporation's rules,
4 regulations, and guidelines. (e) has to do with their
5 reputation. (f) has to do with the knowledge of the
6 various services that are already available in the
7 state and their ability to cooperate with those various
8 services.

9 Subsection (1) has to do with the capacity to
10 develop and increase non Corporation resources. And
11 (2) has to do with -- now, we made an editing change
12 there. We have taken "its capacity to" out of the main
13 sentence in (f) and added it to (1) and (2). Is that
14 just an editing change?

15 MS. PERLE: I think it's an editing change,
16 because (3) is a different form.

17 CHAIR BATTLE: Okay. All right.

18 MS. PERLE: And the syntax didn't work. I
19 think that's what it was.

20 CHAIR BATTLE: Okay. So you've got in (1) the
21 capacity to develop non Corporation resources, (2), the
22 capacity to cooperate state and local Bar associations

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1 and other entities that will be involved in the
2 delivery of legal assistance, and (3) has to do with
3 knowledge and willingness to cooperate with Legal
4 Services providers in the service area.

5 MS. ROGERS: On (e), I wonder if we need to
6 clarify what we mean by the reputations. Professional
7 reputations?

8 MS. PERLE: That comes right out of the Act.

9 MS. ROGERS: Oh, it does? Okay.

10 MS. PERLE: I think in an earlier draft, we
11 did have some qualifications, and then there was some
12 disagreement as to what that meant. And so --

13 CHAIR BATTLE: We took it straight out. Okay.
14 We picked up on (3). Now, (g), continuity in client
15 services and representation is another factor. And
16 (h), finally, conflicts of interest, institutional and
17 otherwise. Are there any questions about that?

18 MS. FAIRBANKS-WILLIAMS: Why did you strike
19 out the line that "may arise during the term of the
20 grant or contracts"?

21 CHAIR BATTLE: When you make the -- you have
22 to have known or potential conflicts when you file the

1 application, but applications that may arise during the
2 term of the contract, it seems to me if you don't know
3 about it at the time you file it, you can't disclose it
4 at the time you file it. If it arises during the term,
5 that's a different issue.

6 MS. WATLINGTON: Is that addressed anywhere?

7 MS. GLASOW: That wouldn't be addressed in the
8 competitive process because what happens after they get
9 the grant is then a matter of other regulations and
10 laws.

11 MS. FAIRBANKS-WILLIAMS: But is it addressed
12 anywhere in --

13 MS. GLASOW: In other regs and laws?

14 MS. FAIRBANKS-WILLIAMS: Yes.

15 MS. GLASOW: I know we have general counsel
16 opinions on conflicts of interest, but right at this
17 moment, I can't think of any.

18 MS. PERLE: Most of those deal with conflicts
19 of interest of Board members, program Board members.
20 And I think the notion here is that because we are
21 looking at a different kind of potential recipient
22 where there may be conflicts of interest, and I think

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1 this is really intended to focus most on the situation
2 where you might have a government agency that was an
3 applicant or a private law firm that was an applicant,
4 where we haven't really had those kinds of situations
5 before.

6 I don't know why we took out "that may arise
7 during the term of the grant or the contract." I'm not
8 aware of why that was done.

9 MS. GLASOW: I think basically for what
10 LaVeeda said.

11 MS. PERLE: That you can't anticipate it in
12 advance?

13 MS. GLASOW: Right.

14 CHAIR BATTLE: If you anticipate it, it's
15 known or potential at the front end, so you already
16 have covered it, it seems to me. Does that address,
17 Edna, your concern?

18 MS. FAIRBANKS-WILLIAMS: Yes.

19 CHAIR BATTLE: You can only disclose what you
20 know about at the time you make your application. It's
21 either known, or you've got the potential, and you have
22 to disclose that when you make your application. If it

1 arises afterwards, you can't have known about it such
2 that you could have disclosed it at the beginning.

3 MR. BROOKS: But if you say "potential
4 conflicts" in the beginning and then "such conflicts,"
5 it seems to me that it covers it.

6 MS. FAIRBANKS-WILLIAMS: So the potential goes
7 into the future, to me.

8 CHAIR BATTLE: Right. It does, and it's
9 covered, because it says "known or potential
10 conflicts." And you've got an obligation to disclose
11 those known or potential conflicts right on the front
12 end. And then the words "such conflicts" covers known
13 or potential conflicts. So it was really redundant to
14 have that additional language. Okay?

15 1634.10, transition provisions. (a) addresses
16 when someone other than the current recipient gets a
17 grant, what happens and you've got a transition time
18 frame. (1) and (2) address some of those transition
19 provisions. You can level out the funding of the
20 previous grantee and level up the funding of the new
21 grantee.

22 (b) again deals with incremental increases,

1 and that's hopefully to allow the winding down of the
2 current recipient's funding and case management and
3 responsibility. Are we talking about adding a (c) to
4 transition? Are we talking about doing this as a
5 separate section?

6 MS. PERLE: I think that's really up to you.
7 I'm just suggesting that it could be viewed as a
8 transition provision, the transition between one
9 recipient and the next. But that's really up to you,
10 your pleasure, whatever you decide makes the most
11 sense.

12 CHAIR BATTLE: I think we could probably call
13 it a third -- we have got an (a). I think we could
14 call this (c), because it is a transitional issue.

15 MS. MERCADO: Which one?

16 CHAIR BATTLE: I'm talking about what used to
17 be (e).

18 MS. PERLE: You're talking about the proposal
19 that was just --

20 MR. BROOKS: I think it's different.

21 CHAIR BATTLE: You think it's different?

22 MR. BROOKS: I think it's different.

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1 CHAIR ASKEW: Yes, I think it's different,
2 too. I think it ought to be 11, and then we make
3 what's currently 11 12.

4 CHAIR BATTLE: And what would we call it? Do
5 you have, John, a suggestion as to what we call it?

6 MR. BROOKS: Well, best I can do is "failure
7 of recipient to complete grant agreement."

8 CHAIR BATTLE: "Failure of recipient" --

9 CHAIR ASKEW: "To complete term"?

10 CHAIR BATTLE: "To complete term"?

11 CHAIR ASKEW: Does that cover all the --

12 CHAIR BATTLE: Yes. That's good. Do you
13 think that's good? That will do.

14 MR. BROOKS: It's short.

15 CHAIR BATTLE: I think you're right. There is
16 a difference between transitioning out because we have
17 selected somebody different and someone we have
18 selected who hasn't been able to complete the term.
19 And also, it will be helpful to have it as a separate
20 in your index of regs down the line, so I think that
21 works.

22 MS. MERCADO: And the one that we're selecting

1 for that one was the one -- number 2?

2 CHAIR BATTLE: Number 11. Well, it's --

3 MS. MERCADO: Which page?

4 CHAIR BATTLE: It's on the second page of the
5 handout that we got from Gerry, the draft that he
6 called Section (e) will now become 1634.11. And now,
7 we'll renumber 11 that we have on our draft as 12.
8 Okay? And 12 is just the waiver provision for the
9 president. No changes to it. Okay. Now, what we can
10 do, since it is after 3 o'clock but we don't have Bill
11 with us and we don't have -- I think Doug stepped in
12 for just a minute.

13 CHAIR ASKEW: Let's take a short break.

14 CHAIR BATTLE: I feel comfortable that we can
15 take a break for about five minutes. Let's see if we
16 can gather everybody up, and then we'll do a walk-
17 through of the reg and any -- we tried to kind of cover
18 the comments as we covered the reg, pretty much.

19 So when we do the walk-through, if anybody has
20 comments about the commentary as well as the regs, we
21 can do the final look. I'm real proud of us. We
22 really did well to get through this in this brief -- I

1 thought we would be here just until the stroke of 5
2 o'clock, but we're in good shape.

3 MR. BROOKS: We might inquire whether anybody
4 has arrived at 3 o'clock who was not here when we
5 reopened the meeting.

6 CHAIR BATTLE: Yes. Is there anyone who is
7 here now who was not here when we began the meeting?
8 I'm seeing a head shake "no," with the exception of one
9 of our staff members. All right. Well, that's good.
10 Thank you.

11 (A brief recess was taken.)

12 CHAIR BATTLE: We have our after 3 o'clock
13 crowd amongst us here. and I would like for us to do a
14 once-over once again of the regulation, taking into
15 account any concerns that might be raised by anyone who
16 did not participate in our earlier discussion as we
17 review Part 1634, competitive bidding for grants and
18 contracts once again.

19 Just in terms of procedure, since we -- I
20 believe that with the exception of -- we have with us
21 now our chairman, Mr. Eakeley, and Mr. McCalpin has
22 been able to join us again. Everyone else participated

1 in our earlier discussion, but we do want to since this
2 meeting was noticed for 3 o'clock give -- and Edna.
3 Edna was here for a part but not all of our discussion
4 this afternoon.

5 We do want to go back through the reg and take
6 up any comments that anyone might have that we have not
7 had an opportunity to discuss, starting with the
8 purpose and moving forward. So why don't we just do it
9 this way? We have got on page 24 listed all of the
10 different sections. And if there are -- I'll do a
11 review of what we have discussed, and anybody else can
12 jump in as we go through it or raise other concerns
13 that they have.

14 MR. McCALPIN: Are you going to do section and
15 commentary on the section at the same time?

16 CHAIR BATTLE: Yes. The first has to do with
17 Section 1634.1, the purpose.

18 MR. McCALPIN: LaVeeda, if I could make a
19 comment. There is a certain material that even
20 precedes the commentary. I would suggest that on page
21 2, where it says -- three to six lines down,
22 "Operations Committee met to consider written policies

1 or comments to the rule," I would say that it was today
2 and Operations and Regulations and Provisions.

3 MS. GLASOW: I've already actually put that in
4 in pencil in mine, yes.

5 MR. McCALPIN: You've already put that in.
6 Sorry. Well, go ahead.

7 CHAIR BATTLE: Okay. Is there anything else
8 prior to the purpose that we need to discuss?

9 (No response.)

10 CHAIR BATTLE: If not, we went through, and
11 the only change essentially to the purpose was language
12 to make it consistent with the Act, which is to change
13 the word from "efficient" to "economical" in Subsection
14 (a) of 1634.1, purpose.

15 MS. PERLE: Can I make a suggestion? This is
16 on the commentary.

17 CHAIR BATTLE: Okay.

18 MS. PERLE: I noticed on page 3 towards the
19 bottom, but I think it's several other places, it says,
20 "In addition to the fact that the Corporation is
21 required by law to implement a competitive bidding
22 process." Well, right now, the Corporation is not

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1 required by law to implement a competitive bidding
2 process.

3 And we need to figure out some way to put
4 language in here that covers it if the rule is passed,
5 if the legislation between now and when this is
6 published.

7 MS. GLASOW: I'm basically -- as I prepare
8 this to go to the Federal Register, if no legislation
9 has yet been passed, I have to go through the whole
10 thing and make sure it conforms with the status of law
11 at that time.

12 MS. PERLE: Right.

13 MR. McCALPIN: Well, it's pretty clear that
14 nothing is going to be passed before the middle of
15 March, and I assume you're going to publish before
16 then.

17 MS. FAIRBANKS-WILLIAMS: So you write "may"
18 instead of "is"?

19 MS. PERLE: Yes. I think you should say
20 something like "may" or "pending, legislation, would
21 require," or something like that.

22 CHAIR BATTLE: Right. Suzanne and I discussed

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1 that this morning as it relates to several places
2 throughout this particular rule. She prepared it at
3 the time with the view that we would have a final law
4 by now and we would implement it based on that, but
5 that has not occurred.

6 MS. PERLE: I understand. It's not a
7 criticism. It's just to point out --

8 CHAIR BATTLE: Sure. And what we probably
9 will have for the remainder of this year is a
10 continuing resolution. So given that, I think we're
11 going to massage all of the language in places where
12 there is some mention of the law which now does not
13 exist to make sure that it's actually --

14 MS. PERLE: But the continuing resolution
15 might, in fact, include the requirement. We don't
16 know.

17 CHAIR BATTLE: Right. John?

18 MR. BROOKS: May I suggest in the preceding
19 sentence reversing the two clauses so that it would
20 read, "The Board made no changes to the rule in
21 response to the contents."

22 CHAIR BATTLE: I agree.

1 MR. McCALPIN: I agree. Where are we now?
2 I'm a little lost.

3 CHAIR BATTLE: Where are we what?

4 MR. McCALPIN: What are we talking about?

5 CHAIR BATTLE: We are talking about the
6 purpose, which is on page 24, and any comments
7 regarding the purpose.

8 MR. McCALPIN: Have we corrected the grammar
9 in the second sentence in 1634.1?

10 MS. PERLE: In the actual rule?

11 MR. McCALPIN: "The purposes of such a
12 competitive system are," because we have listed five of
13 them.

14 MS. GLASOW: Are we in the supplementary info
15 or the --

16 MR. McCALPIN: No, no. We have listed five of
17 them. There has got to be --

18 CHAIR BATTLE: You're right. Okay. Anything
19 else to the purposes?

20 (No response.)

21 CHAIR BATTLE: In the definition, there was a
22 question raised about whether we should italicize the

1 words being defined. And it's our understanding that
2 the Federal Register is moving to italics. And if they
3 are not, then we're going to use quotations as we have
4 in the past. And I think Suzanne said she would check
5 on that.

6 MS. GLASOW: Right.

7 MR. BROOKS: That, incidentally, would apply
8 to the other regulation we were working on this
9 morning.

10 CHAIR BATTLE: That's right. That would also
11 apply to drug related eviction proceedings that we
12 discussed this morning, as well. We have some changes
13 to the review panel, and the changes will allow for
14 assuring that a majority of the review panel members
15 are either clients or lawyers who are supportive of the
16 purposes of the LSC Act and experienced and
17 knowledgeable about the delivery of legal services.

18 MS. PERLE: I have sort of an additional
19 suggestion. This is only coming from my head, and I
20 should be barred from making the proposal, since this
21 was language I think that I proposed in my comment.
22 But I'm wondering whether we might want to on page 25

1 in the rule itself say, "A majority of the review panel
2 shall be lawyers who are supportive of the purposes,"
3 et cetera, et cetera, "and the panel shall also include
4 eligible clients."

5 Because then what we say is that it's sort of
6 much more consistent with what the rule is with respect
7 to our governing bodies, which we sort of modeled this
8 on, and it also ensures that substantially more than a
9 majority then are the lawyers and clients. Does that
10 make sense?

11 MR. McCALPIN: I thought that what it said is
12 that a majority had to be composed of lawyers and
13 clients.

14 MS. PERLE: That's what it says. And what I'm
15 suggesting is that we might want to change it to say
16 that a majority is lawyers, and in addition, there are
17 clients, so that there will be then more. It's a
18 policy decision that you obviously have the
19 authority --

20 MR. McCALPIN: How big is a review panel?

21 MS. PERLE: I don't know.

22 CHAIR ASKEW: It's undefined.

1 MR. McCALPIN: What?

2 CHAIR ASKEW: It's undefined.

3 MS. GLASOW: It's undefined, but I don't think
4 they're normally very big.

5 CHAIR BATTLE: Three, four --

6 CHAIR ASKEW: Three lawyers and a client.

7 MS. PERLE: Well, then, maybe if it's three
8 people, two lawyers and a client, then maybe that's
9 unreasonable. I was really thinking about it in terms
10 of a larger group,
11 so --

12 CHAIR BATTLE: No. I don't think it's going
13 to be much larger than that.

14 MS. PERLE: Then I withdraw that suggestion.

15 CHAIR ASKEW: That's up to the staff, though,
16 isn't it? I mean, under the regulation, the staff
17 would appoint.

18 MS. PERLE: Do you have any idea if you're
19 talking about three -- if they're talking about three
20 people, then I withdraw the suggestion.

21 CHAIR BATTLE: Okay.

22 MR. McCALPIN: Go back to (a), qualified

1 applicants. And in the commentary on page 5, the
2 definition of "qualified applicants" includes
3 recipients and other lawyers, which implies that a
4 recipient is a lawyer. "Recipients and other lawyers."
5 Now, obviously, the recipient is not a lawyer.

6 CHAIR ASKEW: "Or lawyers or entities."

7 MS. PERLE: Why don't you switch "lawyers" and
8 "entities"? It would be "other entities or lawyers
9 qualified to compete."

10 MS. MERCADO: That works.

11 CHAIR BATTLE: "Recipients, other entities, or
12 lawyers." Okay. This is why I love doing reg work. I
13 mean, you can go through it a zillion times, and you
14 will still find additional things if you go through it
15 one more time.

16 MS. PERLE: And you love that?

17 MR. McCALPIN: Look at the middle paragraph on
18 page 6, particularly the second sentence. "Situations
19 where there could be a conflict of interest would be
20 where the person has been" -- that's a pretty bad
21 sentence. "In any case, litigated by him or has issued
22 a complaint against the applicant." Now, when you say

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1 "complaint," is that a term of art, a pleading, or does
2 that mean cover any bitch?

3 CHAIR ASKEW: The latter. I would use that
4 word.

5 MS. MERCADO: A gripe.

6 MR. McCALPIN: Well, I just didn't know
7 whether it meant there had to be a pleading.

8 CHAIR BATTLE: So can we edit that to clarify
9 it? Okay. So let's put "edit" on that. All right.
10 We have looked at Section (a) and Section (b).

11 MR. McCALPIN: Could I ask another question?

12 CHAIR BATTLE: Sure.

13 MR. McCALPIN: When the review panel sits, are
14 they going to consider an applicant, or are they going
15 to consider all the applicants for award or contract
16 within the service area? Because we keep talking about
17 "the applicant." Actually, it's -- what we're probably
18 talking about is if one of the group of applicants --
19 this is not just here but various other places
20 involved. We keep talking about "the applicant," as
21 though there's only one applicant before a review
22 panel.

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1 MS. PERLE: So it should be "any of the
2 applicants"?

3 MR. McCALPIN: Right, or "an applicant."

4 CHAIR BATTLE: Well, what about "qualified
5 applicants"? I mean, that's the term that you've used
6 and defined just before that.

7 MS. PERLE: Well, that's fine, but I think
8 that the point that Mr. McCalpin is making is that we
9 just don't want to suggest they're only going to be
10 looking at one application. They're going to be
11 looking at all of the applicants for that particular
12 area.

13 MS. FAIRBANKS-WILLIAMS: If you say "qualified
14 applicants," and it has to go to a review panel, you
15 don't know that that person has qualified yet.

16 CHAIR BATTLE: That's true. You're right.
17 You're right. Okay.

18 MR. McCALPIN: Now, are you to service area
19 yet?

20 CHAIR BATTLE: We are on service area now.

21 MR. McCALPIN: In the rule and in the
22 contract, why could it not be an area smaller than one

1 served, particularly if you get around to a separate
2 service area for a particular group? You might have a
3 state-wide or half a state for general service but a
4 smaller area than that for migrants or Native Americans
5 or something of that sort.

6 You wouldn't necessarily have to have a state-
7 wide program for migrants if they're only in a part of
8 the state. So why don't we simply say -- instead of
9 "an area larger than the area served," might it not in
10 some cases be smaller?

11 MS. PERLE: But the phrase before that, "may
12 consist of all or part of the service area served by a
13 current recipient."

14 MR. McCALPIN: Well, then, why do we say, "or
15 it may include an area larger"?

16 CHAIR BATTLE: Because then you've got all
17 examples. You've got all, smaller, and larger. And I
18 think that that's the intent there, to ensure that
19 you've got all three possibilities.

20 MS. PERLE: Right. The Corporation isn't
21 obligated to define the service areas as they are now
22 defined.

1 MR. McCALPIN: Right.

2 CHAIR BATTLE: They could be smaller, or they
3 could be larger.

4 MS. MERCADO: Because a lot of the discussion
5 grew from the fact that there are actually a lot of
6 current service areas who probably ought to be
7 consolidated into larger areas, even though they're
8 being serviced at the current time by different
9 entities, that economically --

10 MS. PERLE: Or it may make sense if you have
11 an area that has five current recipients, you might
12 want to put that together and come out with two or
13 three rather than five, so that you want to be able to
14 kind of do what makes sense in terms of being able to
15 really provide services.

16 CHAIR ASKEW: Let me ask this, and I thought
17 this was the question Bill was going to ask. If we
18 define a service area as five counties and we get an
19 application from a group that says, "I only want to
20 serve three of those counties," that's not responsive
21 to the RFP, is that right, and that application would
22 not be received?

1 MS. PERLE: Is that right?

2 MS. GLASOW: That decision's made early in the
3 competitive process by the Corporation staff. It would
4 depend on the funding policy made by the Board. And at
5 that point they define the service area, that service
6 area is defined in the RFP, and then the applicants
7 must respond to that RFP. Those service areas could
8 change from one competitive process to another.

9 MS. PERLE: But it does say later on in the
10 rule that you could give more than one grant for a
11 service area.

12 MR. McCALPIN: Right.

13 MS. PERLE: So I think the staff has made a
14 determination that for this competitive bidding round,
15 you're not going to entertain applications for less
16 than the full service area. I guess it's conceivable
17 that in the future, you might. You might want to
18 define the service area as the state and then see what
19 comes in and makes the most sense within that state.
20 So I think this gives you some flexibility in that
21 regard.

22 MS. GLASOW: This sets out the possibilities

1 in the rule, and then the RFP sets out the specifics
2 for any one competitive process.

3 CHAIR ASKEW: I just wanted to make certain
4 that once you've defined a service area, an applicant
5 can't apply for less than that service area. You would
6 say that's not a qualified application if you're
7 applying for a piece of the service area.

8 MS. GLASOW: If that's what the RFP says,
9 that's correct.

10 CHAIR ASKEW: If that's what the RFP says.
11 Now, the Corporation could get three applications for
12 that service area and decide to fund two grantees to do
13 different things in that service area.

14 MS. PERLE: Right.

15 CHAIR ASKEW: But the grantees have to be
16 applying for the entire service area.

17 MS. GLASOW: If that's what the RFP says,
18 that's correct.

19 MS. PERLE: I think that the point that
20 Suzanne is making is that this rule is not absolutely
21 clear on that point, but that it depends on what the
22 specific RFP says. And that is the policy for the

1 current competitive bidding cycle, but it may be
2 different in the future.

3 CHAIR BATTLE: Okay. Are there -- I'm sorry.
4 Nancy?

5 MS. ROGERS: A question of whether you've
6 thought about this in (b), "supportive of the purposes
7 of the LSC Act." And I'm not sure the word "purposes"
8 -- I guess the Act does a lot of things, "purpose" in
9 small (c).

10 The purpose clause is very general, but it
11 also has the purpose of restricting lawyers in a
12 variety of ways in what they do. And I'm wondering if
13 this could be used in a restrictive way to say that a
14 lawyer who disagrees with some portion of the Act and
15 isn't supportive of it is therefore not supportive of
16 the purposes.

17 MS. PERLE: Where are we? I'm sorry.

18 CHAIR BATTLE: She's looking under (b) on
19 review panel. And, Nancy, I think I asked a question
20 similar to that, because "supportive of the purposes of
21 the Act" has to be given greater meat in order to
22 actually use it as a screening device to determine who

1 ought to be selected and who ought not to be selected.

2

3 But suffice it to say that the review panel
4 members are going to be selected by Corporation staff,
5 whoever gets to serve. And whatever measure they come
6 up with for determining how you ascertain when a person
7 is supportive and not supportive will probably be some
8 criteria that they come up with, probably some specific
9 things that they pull out of the Act to say, "Do you
10 know and understand what this is or that?" and have
11 some sort of response to it; or it may be the
12 experience that they already have with particular
13 applicants for the review panel, that they use that as
14 one of the objective criteria for determining who will
15 qualify.

16 But I agree that that term, just "supportive
17 of the Act" in and of itself doesn't really give good
18 definition to how you make a determination as to who's
19 supportive and who's not and supportive of what, what
20 particular aspect of the Act and how it might be
21 measured.

22 MS. GLASOW: It's pretty much the same

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1 language we have used for recipient Board members, and
2 we really have had no real problem figuring that out.
3 It has been an administrative type of thing.

4 CHAIR BATTLE: Okay. We are now on (d).

5 MR. McCALPIN: I wonder about the word
6 "system" at the end of the third line. I have always
7 thought of "system" as being staff, judicare, mixed,
8 that sort of thing, rather than one applicant versus
9 another. It seems to me that I wouldn't understand
10 "system" to be what we're talking about here. "Better
11 served by a separate applicant"? Is that what we're
12 talking about?

13 MS. GLASOW: I'm not sure.

14 MS. PERLE: I think they're really talking
15 about that at least there has been heretofore a sort of
16 system of migrant service delivery, a system of Native
17 American service delivery, which is -- they're not
18 always necessarily a separate recipient or --

19 MR. McCALPIN: Well, but there also are
20 migrant grants within the general grants, and that's
21 not a separate system.

22 MS. PERLE: Yes. Well, they're not within --

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1 they have at least in the past been separately awarded.

2 MS. GLASOW: It's really a term of art that
3 the Corporation has used to describe the differences
4 between migrant grants, et cetera, and basic field or
5 whatever. And it's -- that's all we meant here. I
6 don't think --

7 MS. PERLE: Well, I think it's really also the
8 notion that there's a separate delivery system for
9 migrants.

10 MR. McCALPIN: Well, it's not a different
11 delivery -- well, it's a separate --

12 MS. PERLE: Well, it is to a certain extent.
13 I mean, I think that we could change the word if it
14 bothers you and could certainly come up with something
15 different.

16 CHAIR BATTLE: Do you have a proposal, Bill?

17 MR. McCALPIN: "By a separate recipient."

18 MS. MERCADO: But at that point, it isn't
19 really going to the recipient. It is going to the
20 manner in which that particular -- not only the manner,
21 but the expertise that that particular recipient would
22 have to have to service that particular client

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1 population, because it wouldn't be the same as a
2 general basic field population.

3 I mean, if, for example, taking migrant
4 predominantly deals with labor issues. They deal with
5 the delivery system of being out in rural areas and
6 actually doing in-take of more -- their processes are
7 different in how they deliver. I mean, it is a
8 delivery system.

9 MS. PERLE: And also, it's not necessarily a
10 different recipient. I mean, I think it --

11 MS. MERCADO: The recipient's the same.

12 MS. PERLE: Particularly this year, it's true
13 that there are no migrant grants going to any program
14 that is not also a basic field recipient. But it is a
15 separate sort of component within that and separately
16 funded. I think Gerry might have some insights into
17 why --

18 MS. MERCADO: Because "recipient" would be
19 incorrect, because there are a lot of migrant programs
20 that have basic field money, also.

21 MR. McCALPIN: That's right.

22 MS. MERCADO: There are some Native Americans

1 that have the same thing that have basic --

2 MR. McCALPIN: And the other way around.

3 Legal Services of Western Missouri has a migrant
4 component to its grant, but it's not a separate system.

5 MS. PERLE: No, but it is sort of a separate
6 program within that program. And they probably have
7 people who do only migrant delivery.

8 MS. MERCADO: Part of the system goes not only
9 to the expertise and the kind of legal work that they
10 do but also in the cost per -- I don't know whether you
11 can break it down per individual, but the cost in
12 rendering that service is much different because of the
13 physical or geographic type problems that you're having
14 to deal with, so that it is -- I think it's a term of
15 art in how you come up with a percentage of money and
16 whether or not that particular entity is capable of
17 delivering a service that has that experience of
18 delivering that service and understand what it
19 encompasses in that system to get the delivery of
20 services to that client population.

21 MR. McCALPIN: I'm not persuaded, but I
22 desist.

1 CHAIR BATTLE: Okay.

2 MR. BROOKS: Well, what about a different
3 criteria for determining the grant or determining the
4 recipient? I think that's what we're basically looking
5 at.

6 MS. PERLE: I think if we just change the
7 words around and said "set by a separate delivery
8 system in order to serve that client group
9 effectively," that would capture what we have always
10 said was true about migrant and Native American
11 service, that there is a separate and somewhat
12 qualitatively different kind of delivery system that's
13 necessary for those.

14 CHAIR BATTLE: Separate delivery system? So
15 it would read, "Subpopulation of eligible clients
16 includes Native Americans and migrant farm workers and
17 may include other groups of eligible clients that
18 because they have special legal problems or face
19 special difficulties of access to legal services might
20 be better served by a separate delivery system in order
21 to serve that client group effectively"?

22 MS. PERLE: Yes. But maybe the word that's

1 bothering us is "separate." I'm not sure. Do you
2 think that's okay?

3 CHAIR BATTLE: Okay. While staff confers, do
4 we have anything else on 1634.2 that we need to
5 consider?

6 (No response.)

7 CHAIR BATTLE: If not, let's move on to
8 1634.3, competitive grants and contracts. We decided
9 that the blank that we have there will be filled in
10 with the effective date of this part, because we
11 originally thought that the date will depend upon
12 appropriation and reauthorization provisions that are
13 enacted, and that may not happen for this year.

14 MR. MCCALPIN: Let me go back to the very
15 first words in (a) and relate to that. "After the
16 effective date of this part." As a matter of fact,
17 don't we have to do it as of April 1 irrespective of
18 the effective date of this part, which is 30 days after
19 publication?

20 MS. GLASOW: That law has not been enacted
21 yet.

22 CHAIR BATTLE: Since we have the continuing

1 resolution, we do not have that April date as an
2 effective date for the implementation of the law that
3 we envisioned at the time we started --

4 MR. McCALPIN: The April date is not in the
5 CR?

6 MS. GLASOW: No. The CR only refers to the
7 '96 legislation in the conference report for the rate
8 of operations, which is 278 million. It refers back to
9 the '95 appropriations for all the restrictions and
10 conditions. All we get out of the '96 right now is the
11 amount of funds that we have.

12 MR. McCALPIN: But we, in fact, intend to
13 implement this as of April 1, don't we?

14 CHAIR BATTLE: It may be --

15 MS. PERLE: In a sense, we have already --

16 MR. McCALPIN: What?

17 MS. PERLE: In a sense, the Corporation has
18 already implemented this.

19 CHAIR BATTLE: I mean, competition has been
20 implemented. This particular reg as a matter of
21 operation of law will not become final until 30 days
22 after it is published in the Federal Register. So the

1 competition that we have already implemented, we have
2 implemented based on our own decision as a Corporation.

3

4 MR. McCALPIN: And we will be making awards as
5 of April 1 based on the competition?

6 CHAIR BATTLE: Yes.

7 MS. GLASOW: That is correct.

8 CHAIR BATTLE: The competition that is already
9 ongoing, yes. It doesn't have anything to do with the
10 reg.

11 MR. McCALPIN: Well, it's ongoing, but it
12 hasn't resulted in the awarding of any grant.

13 CHAIR BATTLE: Exactly. Exactly. We will
14 have a reg in place 30 days after we are publishing it
15 as final, but the competition itself began in January,
16 and final awards will be made in November.

17 MS. MERCADO: We're doing it on our own
18 initiative, at this point. We're not mandated by
19 statute to do it.

20 CHAIR BATTLE: That's right. Or by our own
21 reg.

22 MS. MERCADO: Or by our own reg.

1 MR. BROOKS: Well, we're safe, aren't we, if
2 -- suppose this becomes effective on March 25th, which
3 is not likely, I expect. But then the awards would be
4 made at a time when the regulation is effective.

5 CHAIR BATTLE: Right.

6 MR. BROOKS: Are we sure enough that the
7 awards as then made would comply with the regulations?
8 The competition process would have been completed
9 except for the final award, really. But I just don't
10 want to get into --

11 MS. GLASOW: You're correct in that we had
12 better make sure that whatever we say here doesn't
13 conflict with the date that we intend our competitive
14 process, and we'll make sure that whatever we say here
15 doesn't upset the process that's already in action.

16 MR. BROOKS: Just don't publish until March
17 31st.

18 MS. PERLE: I don't think -- I mean, what's
19 the date of today?

20 MR. BROOKS: The 23rd.

21 MS. PERLE: And then tomorrow is when the
22 Corporation Board will presumably meet and adopt this.

1 And the 25th is Monday. There's no way that this is
2 going to -- the 26th, so there's no way it's going to
3 the Federal Register before Monday. It takes several -
4 - there's no way that will happen that this will be
5 effective before April 1.

6 MR. BROOKS: But just don't let it by mistake.

7 MS. GLASOW: That's a good point.

8 CHAIR BATTLE: Okay. Anything else in (a)?

9 (No response.)

10 CHAIR BATTLE: (b)?

11 (No response.)

12 CHAIR BATTLE: (c)?

13 MS. ROGERS: (c), point 8? Where are you?

14 CHAIR BATTLE: (c) on page 27 in point 3. We
15 are now on (d), which has been substantially changed.
16 And the new language addresses the prospect that the
17 Corporation will award no more than one grant to a
18 particular area but that the Corporation has the
19 discretion to award more than one when the Corporation
20 determines that it is necessary to do an award of more
21 than one in order that all the eligible clients be
22 served in a particular area. And we basically

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1 discussed some editing changes to make sure that that
2 was clear from Subsection (d). Do we have any changes
3 to (e)?

4 MR. McCALPIN: Yes.

5 CHAIR BATTLE: Okay.

6 MR. McCALPIN: At the end of the first
7 sentence, "Congressional appropriations or restrictions
8 on the use of those funds by the Corporation,"
9 actually, the restrictions are on the use of the funds
10 by the recipients, basically. Most of the restrictions
11 --

12 MS. PERLE: Well, most of the restrictions,
13 but there may be restrictions on the Corporation saying
14 who they could -- and that's what really was
15 anticipated here, that there would be restrictions on
16 what the Corporation could use the funds for.

17 For example, the allocation doesn't allocate
18 funds -- the conference bill doesn't allocate any money
19 for support services, for example, so that --

20 MR. McCALPIN: Well, but it seems to me the
21 funding also has to be subject to whatever other kinds
22 of restrictions Congress puts on them.

1 MS. GLASOW: Yes, but that doesn't necessarily
2 need to be addressed in this rule. I mean, that's not
3 the point we're trying to address here.

4 MS. PERLE: This is only referring to the
5 amount of funding. It says, "The amount of funding
6 provided annually under each grant or contract is
7 subject to changes in Congressional appropriations or
8 restrictions on the uses of those funds."

9 In other words, if the Corporation gives a
10 grant for migrant services, for example, next year,
11 next January and determines it's going to give five-
12 year grants, then the Congress comes in the following
13 year and says, "We don't want there to be any separate
14 migrant funding," the Corporation wouldn't be permitted
15 to give that grant. That's really the kind of
16 situation that this was anticipated to deal with.

17 MR. McCALPIN: I would also suggest that the
18 first -- that the compound sentence under (e) ought to
19 be two separate sentences, because they really deal
20 with different ideas.

21 CHAIR BATTLE: "In no event may the
22 Corporation award a grant or contract for a term longer

1 than five years," period?

2 MR. McCALPIN: Period.

3 CHAIR BATTLE: "The amount of funding provided
4 annually under each contract is subject to changes
5 because of Congress." Okay. I think that's fine.

6 MS. PERLE: The reason they were in the same
7 sentence was really just to suggest that even though we
8 give you a five-year grant, it doesn't guarantee that
9 you're going to get money the following year if things
10 change. But I think it's no problem to put them in two
11 separate sentences.

12 MR. McCALPIN: In the second to the last line,
13 I think that the funding is appropriated "to the
14 Corporation," not "for the Corporation."

15 CHAIR BATTLE: Okay. Anything in Section
16 1634.4, announcement of the competition?

17 (No response.)

18 CHAIR BATTLE: (a). I think there was some
19 mention in the comments that we discussed about the
20 publications in Bar journals and the timing dates for
21 such and accounting for the fact that RFPs may not go
22 out in such a time that we're able to reach all of them

1 but that we would make an effort to do so.

2 MS. GLASOW: And I made the change Bill
3 mentioned earlier to say that we will make available a
4 copy of the RFP. There's the last sentence.

5 CHAIR BATTLE: Instead of -- making available
6 as opposed to providing a copy?

7 MS. GLASOW: Right.

8 CHAIR BATTLE: And that is contained in
9 Subsection (c); is that right?

10 MS. GLASOW: That's right.

11 CHAIR BATTLE: Okay. "The Corporation shall
12 make available a copy." Okay.

13 MR. McCALPIN: Well, why don't you move the
14 word "available" to follow "RFP"? "Make a copy of the
15 RFP available."

16 CHAIR BATTLE: Okay.

17 MR. McCALPIN: A couple of points about (b),
18 if we're there.

19 CHAIR BATTLE: Okay.

20 MR. McCALPIN: First, the end of the fourth
21 line, do we really anticipate putting in the RFP the
22 whole Act, all the regulations, all the guidelines and

1 instructions and any other applicable federal law? It
2 says, "and the Corporation shall issue an RFP which
3 shall include information regarding." Now, how do we
4 put in information about all of those things?

5 MS. PERLE: We had a lot of discussion about
6 that issue, as I recall, during the period when the
7 Corporation was drafting this. And I think what we
8 concluded was, by saying it "shall include information
9 regarding it," it doesn't necessarily mean that they
10 have to actually include everything, as long as there
11 is information to the recipient or to the applicant so
12 that they're aware of what they're going to be subject
13 to. I think, in fact, when they sent out the RFP, they
14 did include the Act and all the regulations, right?

15 MS. WELCH: Not to all, but to some. We made
16 it clear in the RFP what the cites were for all of
17 those, and we made them available through the Internet
18 so people could pull them down.

19 MR. McCALPIN: Then my other point is, go back
20 to page 9 in the commentary. In the third to last
21 line, it says, "Paragraph (b) leaves to the Corporation
22 the details of what the RFP will include." Actually,

1 we have spelled out in (b) what the RFP will include.
2 We haven't left it to the Corporation. We have spelled
3 it out.

4 MS. GLASOW: I think what that means is in
5 terms of the procedures and the service areas, all that
6 information will vary from time to time, and that's
7 basically -- there will be --

8 MR. McCALPIN: If we --

9 MS. GLASOW: For instance, one year, we may
10 decide to just summarize the restrictions; another
11 year, we may decide to send out the actual legislation.
12 I think that's what that is speaking to.

13 MS. PERLE: And the last sentence of (b) says,
14 "The RPF may also include any other information that
15 the Corporation determines to be appropriate."

16 MR. McCALPIN: I understand, but it doesn't --
17 it seems to me that (b) is so detailed that it doesn't
18 really leave to the Corporation what the RFP's going to
19 include.

20 MS. MERCADO: That's right. It would seem
21 like you would have the (b) part in the actual
22 regulation to be in the commentary and then what's in

1 the commentary to be in the other one, because you're
2 restricting and you're almost detailing in the
3 regulation what it is that you want included in it.
4 It's supposed to give the discretion if you intend to
5 give the discretion.

6 MS. PERLE: Well, I think the rule is intended
7 to set out a minimum -- set out the minimum of what
8 should be included and that that suggests that there
9 might be other things. What we might want to do is
10 say, "Paragraph (b) sets out the minimum context for
11 the RFP but leaves the Corporation discretion to
12 include other details." Does that meet your concerns?

13 MR. McCALPIN: Yes.

14 MS. MERCADO: Yes.

15 MR. McCALPIN: But it just seemed to me it was
16 inconsistent to spell it all out in (b) and then say
17 that (b) leaves it to the discretion of the
18 Corporation.

19 CHAIR BATTLE: You used the term "minimum
20 contents"?

21 MS. PERLE: Yes.

22 CHAIR BATTLE: Instead of "general contents"?

1 MS. PERLE: Yes.

2 CHAIR BATTLE: Okay. Anything else under
3 announcement of competition?

4 (No response.)

5 CHAIR BATTLE: We did make some editing
6 changes to the next sentence I think Bill suggested.
7 John?

8 MR. BROOKS: Back to (b), 1634.4(b). It seems
9 to me it would be easier to read and clearer if instead
10 of using semicolons, we used commas.

11 MS. GLASOW: That's paragraph (b)?

12 MR. BROOKS: Yes. So "the information
13 regarding who may apply, application procedures," and
14 so on.

15 CHAIR BATTLE: Okay. Anything else under
16 announcement?

17 (No response.)

18 CHAIR BATTLE: Identification of qualified
19 applicant for grants and contracts, Section 1634.5.

20 MS. PERLE: I made a comment to Suzanne
21 earlier that you define "qualified applicant," but I
22 don't think you actually use that term anyplace except

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1 in the title of this section. So I think you might
2 want to -- for example, in (a), you might want to say,
3 "The following persons, groups, or entities are
4 qualified applicants and may submit a notice of intent
5 to compete in an application," something like that.

6 MR. BROOKS: "Who may submit."

7 MS. PERLE: "Who may." Right.

8 CHAIR BATTLE: Good point.

9 MS. PERLE: And I think we might want to at
10 the end of (c), you might want to say, "Applications
11 may be submitted jointly by more than one qualified
12 applicant" instead of "qualifying individual, group, or
13 entities." Just say "qualified applicant."

14 CHAIR BATTLE: Sure.

15 MR. McCALPIN: As long as we're at (c), let me
16 make the point that I think that if we have an
17 application submitted jointly by more than one
18 applicant, they need to spell out the respective rules
19 and responsibilities of each applicant in the
20 performance of the grant. Because otherwise, unless
21 you do that, everybody's responsibility is nobody's
22 responsibility.

1 MS. PERLE: I think that's a very good point.

2 MS. GLASOW: That would come out in the RFP.

3 CHAIR BATTLE: The RFP does address that?

4 MR. McCALPIN: What?

5 CHAIR BATTLE: What I'm hearing rom there
6 staff is that the RFP addresses that.

7 MS. SARGEANT: There's a section on joint
8 applications that's set out in the criteria and what
9 has to be included in the memorandum of understanding
10 between the joint applicants that addresses those
11 issues that you had raised.

12 CHAIR BATTLE: Okay.

13 MR. McCALPIN: I would still like to see it.

14 MS. MERCADO: It is in the commentary
15 somewhere?

16 MS. SARGEANT: No. It's in the RFP, the
17 actual document.

18 MS. MERCADO: But I'm saying for purposes of
19 the regulation itself for someone who maybe is debating
20 whether or not they ought to do it jointly, that maybe
21 it ought to be in the regulation.

22 MR. McCALPIN: I would like to see it in the

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1 regulation.

2 MS. PERLE: Maybe we want to say something
3 like, "In accordance with" -- something that spells out
4 the joint responsibilities in accordance with
5 provisions of the RFP.

6 CHAIR BATTLE: I tend to think that the reg
7 should leave flexibility for how that joint application
8 should be designed to the RFP. You know, the question
9 is whether we give notice to people who are making
10 joint applications as to what they are in for. And
11 there may be some way that we can address that, but the
12 construction of what that application ought to include,
13 I think that --

14 MR. McCALPIN: Well, I wouldn't detail it
15 beyond saying that the application has got to spell out
16 the respective rules and responsibilities.

17 CHAIR BATTLE: Okay.

18 MS. MERCADO: In the joint application.

19 CHAIR BATTLE: Is that -- I'm trying to get
20 from the staff -- I don't want us to say anything -- is
21 that fine?

22 MS. GLASOW: I don't think it will hurt

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1 putting it in. Those are the types of details that we
2 envisioned when we said that the Corporation would iron
3 out the details in the RFP, but, I mean, if it makes
4 everyone more comfortable, we certainly could put that
5 in here.

6 MR. McCALPIN: Well, also, the RFP can change
7 from time to time without any action here.

8 MS. GLASOW: We say, "Applications may be
9 submitted jointly by more than one qualified applicant
10 as long as the application clearly delineates their
11 respective obligations under the grant" or --

12 MR. McCALPIN: "Rules and responsibilities in
13 the performance of the grant."

14 MS. PERLE: Or just say "in accordance with
15 the RFP."

16 MR. McCALPIN: I'm worried that the RFP may
17 sometime for some reason or another not spell it out.

18 MS. MERCADO: Suzanne, read that for me again.

19 MS. GLASOW: "Applications may be" --

20 CHAIR BATTLE: I think it's a bit
21 micromanaging for us to even get into what the RFP
22 ultimately sets out as the respective roles and

1 responsibilities. When you talk about more than one
2 qualified applicant, I can envision two attorneys. The
3 question is, could one attorney apply for a grant and
4 set out all the things necessary to be able to service
5 a particular area? Maybe.

6 If two attorneys do it, are you talking about
7 two qualified applicants with that? I would tend to
8 think that the specifics need to be in the RFP. We
9 need to at least make it clear that more than one
10 person can apply for one service area, or more than one
11 qualified applicant as we have defined qualified
12 applicants can apply and leave how that application
13 needs to be done to the RFP.

14 How the application is done for the single
15 applicant is left to the RFP the way that we have done
16 it. How the application is done for two, I think,
17 needs to be left to the RFP, unless we here spell out
18 how the application is done for one. If we're going to
19 spell it out for one, then we can spell it out for two.

20 MR. McCALPIN: You don't have the problem with
21 one. You don't have any potential falling between the
22 cracks when you've got one responsible recipient --

1 applicant recipient. When you have two, you've got a
2 potential for falling between the cracks.

3 MS. GLASOW: I do know that in, for instance,
4 our Veterans Court grant, where we had two individuals
5 applying -- kind of two groups saying, "We're going to
6 take the (b) grant," that in their applications, I
7 believe they did spell out their respective
8 responsibilities.

9 And in the grant language we gave them, we
10 clearly delineated responsibility so that it was clear
11 who actually accepted the money and then what their
12 obligations were under that. So as a matter of
13 practice, I think it has been handled through the
14 process of the grant application and the grant
15 language. So it's really your call.

16 CHAIR BATTLE: Okay. Well, I guess that's my
17 view. I understand what Bill is saying. We need to
18 determine what the committee's preference is as to how
19 we handle it. Whether we need to on a section
20 delineating that applications may be submitted jointly
21 by more than one qualifying applicant, whether we need
22 to spell out there what needs to go into the

1 application of a joint applicant.

2 MR. McCALPIN: I don't want to spell it out in
3 detail, but I want to make it understood that they have
4 to have a clear understanding of who's going to do
5 what, and we have to have. We have to know what they
6 undertake in that respect so that we can monitor.

7 Now, I guess you can leave it to the RFP. The
8 RFP is beyond our control. We don't have anything to
9 say about what goes in the RFP from time to time. This
10 may be adequately covered there or not. But it seems
11 to me this goes to our ability to determine whether
12 there is adherence to the provisions of the grant.

13 CHAIR BATTLE: Well, do we have proposed
14 language?

15 MS. GLASOW: I can repeat what I suggested.

16 CHAIR BATTLE: Okay. Go ahead, Suzanne.

17 MS. GLASOW: "Applications may be submitted
18 jointly by more than one qualified applicant as long as
19 the application delineates the respective roles and
20 responsibilities of each qualified applicant."

21 CHAIR BATTLE: Okay. All right. Okay.
22 1634.6, notice of intent to compete. Subsection (a).

1 There was some editing to Subsection (b)(1), (2), and
2 (3). We move on to Section 1634.7, application
3 process. There was -- I think, Bill, you walked in
4 just as we were looking at this before for some reason.
5 We talked about (a), (b), and in (c), "Incomplete
6 applications will not be considered for awards by the
7 Corporation."

8 We deleted (e). (e) had to do with mediation.
9 And upon reflection, we acknowledged that mediation
10 probably was not appropriate for one who was not
11 selected for a grant, particularly because a grant
12 decision has to be made, so that's out. And in the
13 commentary, we handled how complaints would be
14 prospectively handled as they have been handled
15 internally in the past. Section 1634.8, selection
16 process.

17 MR. McCALPIN: You know, you're running too
18 fast.

19 CHAIR BATTLE: Okay. We're doing this for
20 your benefit, Bill, so you slow me down if I get to
21 moving too fast.

22 MR. McCALPIN: I've got to go back to page 14.

1 And this is something that you were talking about when
2 I came in. It's the second paragraph, "will not
3 release any grant" -- and then there was some
4 conversation going on about that when I came in a while
5 ago.

6 CHAIR BATTLE: Right.

7 MR. McCALPIN: "Once grants are awarded,
8 however, the Corporation intends to release all
9 successful applications." Why would we do that? Why
10 don't we simply make them available for release under
11 FOIA? Why should we undertake the burden of actually
12 releasing them all?

13 MS. GLASOW: That's not intended to mean that.
14 We would only release them if there's a request for
15 them, and usually it's a request for --

16 MR. McCALPIN: "Make them available for
17 release."

18 MS. GLASOW: That's right.

19 MS. PERLE: And also, I'm not sure that you
20 want to say "for any proprietary information contained
21 therein." You might want to say "for any information
22 that should be withheld under FOIA." I'm not sure that

1 it's --

2 MS. GLASOW: That's a term of art in this
3 grant area, but I can generalize it if --

4 MS. PERLE: I just think that there may be
5 things that are withholdable under the FOIA that are
6 not proprietary information. There may be personal
7 information --

8 MS. GLASOW: Right. The very last line on
9 page 14, I said, "Finally, the Corporation will protect
10 any other information protected under FOIA." There's
11 another provision in FOIA that protects certain privacy
12 information. It would be another one of these you
13 redact certain things and release other things. So
14 this was just to give a general idea.

15 MR. McCALPIN: At the end of the paragraph I
16 was talking about, I understood there was an intention
17 to make it consistent that it's "Corporation president"
18 as distinguished from that other President.

19 CHAIR BATTLE: Right.

20 MR. McCALPIN: Give that decision to the
21 Corporation rather than the president of the
22 Corporation. Okay. I guess I'm caught up with you

1 now.

2 CHAIR BATTLE: All right. We are at 1634.8,
3 the selection process. And in it, there were five, six
4 different things set out as part of the selection
5 process (1) through (6). We did some editing to number
6 (5) so that it reads more consistently with the other
7 sections.

8 And we edited out "Corporation president" in
9 number (6) and decided -- I think you made the
10 suggestion, Bill, that there ought to be in the
11 recommendation that goes to the Corporation president,
12 the review panel's recommendation in all instances.

13 MR. McCALPIN: Right.

14 CHAIR BATTLE: Okay?

15 MR. McCALPIN: And we talked about the last
16 sentence in (b).

17 CHAIR BATTLE: Right.

18 MR. McCALPIN: Go back, though, to page 16.

19 CHAIR BATTLE: Okay.

20 MR. McCALPIN: In the third line, I thought we
21 were talking about six years rather than five.

22 MS. GLASOW: Right. I noticed this this

1 morning, and I mentioned to LaVeeda that I either need
2 an extra sentence, but Linda just came up with
3 something.

4 I think what I need to say in the second
5 sentence, "The proposed rule required the Corporation
6 to review all relevant information about each applicant
7 that is no more than five years old." And then I go on
8 to discuss why we changed it to six.

9 MR. McCALPIN: But you are going to look at
10 something that's six years old?

11 MS. PERLE: But that's stated in the next
12 paragraph.

13 MS. GLASOW: Right.

14 MS. MERCADO: On page 17, the first sentence.

15

16 MS. PERLE: Where it says, "The Board agreed
17 that the cutoff time should be changed to six years,"
18 and then it describes why.

19 CHAIR BATTLE: Yes.

20 MR. McCALPIN: But this talks about the
21 present point 8, not the proposed point.

22 MS. PERLE: No, no. The point I made to

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1 Suzanne says, it says, "It requires," and it shouldn't
2 say that. It should say, "The proposed rule required."

3 MR. McCALPIN: Oh, then it makes sense. Then
4 it makes sense.

5 MS. GLASOW: Right.

6 CHAIR BATTLE: All right. Anything else,
7 Bill? Pages 16 and 17?

8 MR. McCALPIN: On page 32 in (c), in the
9 second line, do we want to talk about them as
10 competitors or as applicants, that "no applicant meets
11 the criteria"?

12 MS. PERLE: I think that should be
13 "applicants." We have used that word.

14 MR. McCALPIN: I would think. Then, I wonder
15 whether the words "in addition" are needed to start the
16 next sentence. "In the event there are no applicants,
17 the Corporation shall take steps. The Corporation
18 shall determine -- have discretion to determine how to
19 provide -- how legal assistance should be" -- do we
20 really need the "in addition"?

21 MS. GLASOW: That's fine. We can take that
22 out.

1 MS. PERLE: That's just redundant.

2 MS. GLASOW: Yes.

3 CHAIR BATTLE: Okay.

4 MR. McCALPIN: Let me see. Where are we now?

5 CHAIR BATTLE: Right. Bill, you leaped over
6 the biggest discussion of the afternoon in Subsection
7 (c) that we had. We had considerable discussion that
8 we decided to defer until after 3 o'clock on how
9 actually to capsule the circumstance where there are no
10 applicants for a particular service area, no competitor
11 meets the criteria, and the Corporation has to do
12 something about a service area.

13 There were three levels of concern given to
14 how the Corporation needed to approach that. The
15 original language was that the Corporation would have
16 discretion to ensure the provision of legal assistance
17 in that area. Then, as a response to a feeling that
18 the Corporation needed to be compelled to take or an
19 obligation to take steps, the language was suggested
20 "shall nevertheless take steps necessary to ensure the
21 continued provision of legal services."

22 Nancy and John both had some concern about

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1 that, given the drop in funding level and some other
2 issues that may arise about what resources the
3 Corporation might have in order to take steps and
4 proposed alternative language, "shall endeavor to
5 ensure the continued provision of legal assistance or,
6 as an alternative, shall take steps to ensure the
7 continued provision of legal assistance."

8 And we kind of batted those alternatives
9 around this afternoon, really not reaching a final
10 decision about how we would capsule the Corporation's
11 responsibility for those service areas in a competition
12 where either no applicant meets the criteria or there
13 are no applicants at all.

14 MS. PERLE: During the break, we had a
15 discussion. And one of the things that I realized that
16 I hadn't articulated when I was talking about it before
17 is that we're really talking in this rule about a
18 situation where the Corporation has already determined
19 that it has funds to make available in that service
20 area, because we're talking about in the context of an
21 existing competition, where there just happens to not
22 be a competitor or an applicant, an appropriate

1 applicant.

2 So I think that we don't have to get to the
3 issues that Nancy was raising about whether we decide
4 that we're going to provide funding for every service
5 area or not, because we're talking about it in the
6 context of already allocation decisions. The decision
7 is made to provide funding to this particular service
8 area, and it's just that we don't have anybody to
9 receive the grant.

10 MR. McCALPIN: Well, that's right. Under the
11 statute, assume that there's half a million dollars set
12 aside for providing service in that service area. What
13 I heard was, where will the Corporation get the funds
14 to go out and find somebody to provide that service in
15 view of the restriction in the M&A budget.

16 And I would assume we could not use part of
17 the half a million dollars for that purpose, that the
18 half a million dollars is for the provision of legal
19 service in the service area.

20 MS. PERLE: Yes, although I don't think that
21 was the issue that we were discussing, but I think
22 that's a point.

1 CHAIR BATTLE: Well, it did have to do with
2 resources that the Corporation might have to take this
3 search for getting legal services to that particular
4 area. And the steps, there were specific -- there was
5 language about steps, and then the rest of Section (c)
6 actually identifies alternative steps that could be
7 taken.

8 It doesn't set out all the steps, but it
9 actually -- in a draft that Gerry suggested to us,
10 there were some changes to (c), and then there were
11 some specific steps outlined that the Corporation could
12 consider as alternatives to the provision of some
13 service in that uncovered area.

14 And those steps included, number one,
15 enlarging the service area of a neighboring program;
16 number two, putting a current recipient on short-term
17 funding; or number three, entering into some sort of
18 interim contract with another qualified provider with
19 the provision of legal services until another
20 competition can be done.

21 Now, with that being a definition of the
22 steps, Nancy, that can be taken, and John -- because

1 the two, I think, of you were like-minded that we
2 didn't want to bind the Corporation to undertake
3 something that it might not have the resources to
4 undertake. Do you think that the additional language
5 spelling out what those steps are is sufficient to
6 cover your concern?

7 MS. ROGERS: No.

8 CHAIR BATTLE: Okay. All right. John?

9 MR. BROOKS: No. I think somebody suggested
10 at the end of our discussion earlier, I think, that
11 where the language could appropriately be, "The
12 Corporation shall nevertheless take all practical steps
13 to ensure."

14 CHAIR BATTLE: Okay. Does that satisfy you?

15 MS. ROGERS: Yes.

16 CHAIR BATTLE: Okay.

17 MS. MERCADO: Where -- are you on the third
18 line?

19 MR. BROOKS: Fifth line.

20 CHAIR BATTLE: Bucky, you were the one that
21 came up with that language.

22 MR. BROOKS: Fourth line.

1 CHAIR BATTLE: "Take all practical steps."
2 You're right.

3 MS. MERCADO: Okay. Oh, from this up here,
4 not from -- I'm sorry.

5 MR. BROOKS: From Gerry's redraft.

6 MS. MERCADO: Okay. I'm looking at the wrong
7 thing. So you're on the fourth line, and it would
8 read, "The Corporation" --

9 CHAIR BATTLE: "The Corporation shall take all
10 practical steps to ensure the continued provision of
11 legal assistance in that service area."

12 MR. BROOKS: Striking out "nevertheless."

13 MS. PERLE: "Nevertheless" is sort of
14 superfluous. Did you say taking out "necessary," or
15 leaving it --

16 CHAIR BATTLE: Taking out "necessary" and
17 using before the word "steps" "practical," "take all
18 practical." Does that satisfy you?

19 MS. ROGERS: Yes.

20 CHAIR BATTLE: Okay. And that satisfies John?

21 MR. BROOKS: Yes.

22 CHAIR BATTLE: And Bucky was the one who came

1 up with that proposal, so he resolved that for us.

2 MR. BROOKS: Thank you, Bucky.

3 CHAIR ASKEW: Any time.

4 CHAIR BATTLE: Need a word.

5 MS. PERLE: And I've calmed down.

6 CHAIR BATTLE: Okay. All right. With that
7 being cleared up, is there anything else in 1634.8 that
8 we need to talk about?

9 MR. McCALPIN: Look at the top of page 19.

10 "There's no applicant, paragraph (c) makes it clear
11 that the Corporation has discretion to determine how to
12 provide for the provision. How to provide" --

13 MS. PERLE: Legal assistance.

14 MR. McCALPIN: "Legal assistance in the
15 service area."

16 MS. PERLE: I had one which is -- it's just a
17 structural thing. I'm wondering whether (d), which is
18 the not granting the preference, whether that really
19 belongs in that section or whether it belongs under the
20 section of selection criteria. I don't know. It just
21 struck me when I read it again that it belonged -- it
22 wasn't so much part of the process as a criteria and

1 whether we ought to move it to 1634.9.

2 CHAIR BATTLE: As --

3 MS. PERLE: As Section (i).

4 CHAIR BATTLE: What is the committee's
5 preference? Do you understand the point?

6 MR. McCALPIN: I think that that makes sense.

7 CHAIR BATTLE: The point that she's making?

8 Okay. So this --

9 MS. MERCADO: Do you think it ought to go to
10 application?

11 MS. PERLE: No, to --

12 CHAIR BATTLE: Selection criteria.

13 MS. PERLE: Criteria.

14 CHAIR BATTLE: Because really, it speaks to
15 selection criteria. In selecting recipients, we're not
16 going to grant preference, so that's the selection
17 criteria. And we're going to change that over to (i)
18 so it will be 1634.9, point (i).

19 CHAIR ASKEW: Now, we have agreed to accept
20 Gerry's language in (c), right?

21 CHAIR BATTLE: That Bucky changed.

22 MR. McCALPIN: I think the "in addition" comes

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1 out.

2 MS. PERLE: We were just discussing -- yes,
3 the "in addition" comes out. We have a new draft.

4 MS. GLASOW: That will be Section 11, right?

5 MS. PERLE: Right, but we might want to
6 incorporate -- I think we want to incorporate the same
7 language in (c).

8 MS. GLASOW: This is going to be the new
9 Section 11, but it will be helpful to see this for the
10 language.

11 CHAIR BATTLE: And I'll talk about that, Bill.
12 We came up with a new Section 11, and we're changing
13 Section 11 to Section 12. And we're about to cover
14 that in just a moment.

15 MR. McCALPIN: So that reads pretty much like
16 8(c).

17 CHAIR BATTLE: It does. The distinction
18 is that this really has to do with the circumstance
19 after the competition. And you find someone has
20 competed, gotten the grant, and they get midstream and
21 they say, "I didn't really think this is what it was
22 all about.

I don't want to do this. I want to give it

1 up" and we have got to figure out how to cover that
2 situation. So since it's after the competition, we
3 thought it should be a separate section.

4 MS. PERLE: But I think that the point that we
5 were making is that the Corporation should have the
6 same range of options in either event. So we might
7 want to incorporate the additional language which --
8 "entering into a short-term interim contract with
9 another qualified provider for the provision of legal
10 assistance in the service area until the completion of
11 a competitive bidding process within a reasonable
12 period of time."

13 We want to add that to (c). I think that's
14 what Gerry would have been suggesting. He's not here,
15 but that's correct, isn't it?

16 MS. GLASOW: Yes. Make the two really
17 consistent.

18 MS. PERLE: So that the two are parallel, that
19 we really are dealing --

20 CHAIR BATTLE: Can we do that, just make those
21 two parallel in terms of the options available?

22 MS. GLASOW: Yes.

1 CHAIR BATTLE: Okay. We are now into
2 selection criteria, 1634.9(a). Bill?

3 MR. McCALPIN: Well, I think that this
4 section, like so many others, needs a run-in, that you
5 can't just start -- take the title "selection
6 criteria." I think you have to say, "Criteria to be
7 used in selecting or in determining a successful
8 applicant or something shall include" and then go down.
9 It seems to me that this is just too naked.

10 CHAIR BATTLE: Yes. That's right. I think
11 you're right.

12 MS. PERLE: Do we want to limit it to those,
13 or do we want to say "shall include"? Because that
14 suggests the Corporation can impose additional
15 criteria.

16 MR. McCALPIN: I would not -- we ought not be
17 hide bound. We ought to be able to add additional
18 criteria if we want.

19 MS. PERLE: We might want to then make that
20 (a) and then change the others to (1), (2), (3), and
21 then add the -- what I had suggested originally was
22 (i), we might want to make (b).

1 MR. McCALPIN: Whatever.

2 CHAIR BATTLE: (6) (a) and (b)?

3 MS. PERLE: Yes, (a) and (b). So then (a)
4 would be (1), (b) would be (2), (c) would be (3), (d)
5 would be (4), (e) would be (5), (f) would be (6).

6 MR. McCALPIN: What are you going to do with
7 the subdivisions under (f)?

8 MS. MERCADO: (a) and (b).

9 MS. PERLE: No. I think it's Roman i, Roman
10 ii or 1 and 2, small Roman. I think that's the way
11 they do it. But we just have to figure out how that's
12 done, because this is what the Federal Register wants.

13 MR. McCALPIN: What a waste of time, thinking
14 about structure.

15 CHAIR BATTLE: Well, we're going to try to
16 present this to the Board tomorrow, so I guess to the
17 extent we can finalize our thinking on everything, the
18 better off we are. Okay. We are now down to --

19 MR. McCALPIN: Wait a minute. Wait a minute.

20 CHAIR BATTLE: (ii) and (iii). (g) then
21 becomes (7) and (8).

22 MS. PERLE: (7) and (8). And then the no

1 preference thing becomes (b). That's not a criteria.
2 It can't be used as a criterion. Excuse me.

3 CHAIR BATTLE: Okay. Do you have some
4 comments, Bill?

5 MR. McCALPIN: Yes. I have kind of a generic
6 question to raise which has troubled me all along. And
7 that is, do I understand that the only requirement of
8 an applicant is to show an ability to participate in a
9 so-called "integrated system" if, in fact, there is one
10 and not requiring such a system? Because I can tell
11 you, in the Middle West, there ain't going to be those
12 systems.

13 And when I get down to (f) and it talks about
14 "knowledge of components in the state and willingness
15 to coordinate as appropriate to assure the full range,
16 including its capacity to develop," it seems to me
17 that's independent possibly of "and the integrated
18 system."

19 CHAIR BATTLE: The tie-in I see -- the first
20 one may be independent. The second one, in my view, is
21 not. Every state is going to have state and local Bar
22 associations.

1 MR. McCALPIN: Yes. I agree with that.

2 CHAIR BATTLE: And so every state is going to
3 have the prospect for pro bono services or the prospect
4 for referrals and the prospect for some relationship
5 between the provision of legal assistance through a
6 legal services provider and the Bar associations. But
7 (a), I think you're right, or what becomes (i) or
8 number 1, the ability to develop non-LSC resources may
9 be something separate.

10 MR. McCALPIN: Yes.

11 MS. PERLE: So you think that should be a
12 separate criterion?

13 CHAIR BATTLE: Yes, it should be. Because I
14 think you're really talking about a person's fund
15 raising abilities, and that's totally separate from
16 their ability to necessarily get along with state and
17 local Bar associations.

18 MS. PERLE: Okay.

19 MS. GLASOW: Okay.

20 MS. PERLE: Is that okay? I think tht's a
21 good point. I have a feeling that that was separate at
22 one time, and for some reason, it got included in and

1 then maybe we changed something and so sometimes, that
2 happens when you include things for a certain reason
3 and then something else gets changed and it doesn't any
4 longer make any sense.

5 CHAIR BATTLE: Okay. Anything else in --

6 MR. McCALPIN: Let me look at the top of 22.
7 The third sentence, "Applicants must show that they
8 would not be required by such conflicts." The
9 implication is that you can have the conflict if you
10 can show that it's not a conflict. It seems to me that
11 I thought that we were ruling out conflicts, and this
12 seems to imply the existence of a conflict and going
13 ahead nonetheless.

14 MS. PERLE: Well, how about if "Applicants
15 must show that they do not have any conflicts which
16 would require" --

17 MR. McCALPIN: Oh, that's fine.

18 CHAIR BATTLE: Okay. Did you understand that
19 reading? Okay. Anything else on the criteria?

20 (No response.)

21 CHAIR BATTLE: If not, we're on to transition
22 provisions, (a). I don't think we made any changes to

1 (a).

2 MS. GLASOW: These are just stylistic,
3 structural --

4 CHAIR BATTLE: Stylistic changes.

5 MR. McCALPIN: I am ordinarily one who takes
6 commas out, but I'm inclined to think that "other than
7 the current recipient" in the second line might well be
8 set off by commas.

9 MS. GLASOW: Okay.

10 CHAIR BATTLE: Okay. Nancy?

11 MS. ROGERS: I'm puzzled by one sort of
12 general thing, and it may be that you talked about it
13 before and I wasn't here. But it's hard for me to
14 imagine how a governmental entity would apply for these
15 funds to provide legal services. I have that difficult
16 issue.

17 But if they do, then it also seems
18 inconsistent to give them a governing board, because
19 probably by law, they couldn't have policy law, by law,
20 they probably couldn't have a policy law or that make
21 determinations for them. And I wondered if that has
22 been thought through, that issue with respect to an

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1 applicant that is a government entity.

2 MS. PERLE: I think there is some -- in places
3 where it's required, I think it does say "other laws"
4 or "other laws regarding the governing board." So I
5 think it does allow for the situation where it's
6 inconsistent.

7 MR. McCALPIN: Oh, I'm not so sure that there
8 would be a specific law which would prevent a
9 governmental body from having a separate policy board,
10 but it may simply be an attribute of government.

11 MS. PERLE: Or maybe you have to call it an
12 "advisory board" or something like that. You might
13 have to call it something different.

14 CHAIR BATTLE: And really, Nancy, you're
15 referring to on page 29 Section (b), which addresses
16 the whole concept of governing or policy body
17 consistent with the requirements of Part 1607. And the
18 rest of the language is, "or other law that sets out
19 the requirement for recipient's governing bodies." And
20 if you're talking about a governmental entity, there
21 may be a law which precludes the establishment.

22 MS. ROGERS: Maybe I'm actually totally

1 confused, because I don't see the policy board in 1607.
2 It just provides for the waiver.

3 MS. PERLE: Well, it says, "But a condition of
4 the waiver is that you set up a policy board."

5 MS. GLASOW: And there's a definition of
6 "policy board."

7 MS. ROGERS: Where is that part?

8 MS. PERLE: That's in the new 1607. Are you
9 looking at the new one or the old one?

10 MS. ROGERS: Oh, I'm looking at the old one.

11 CHAIR BATTLE: That's the old. I'm sorry.

12 MR. McCALPIN: Yes, that's the old.

13 MS. PERLE: That rule has been revised
14 substantially. That was the one rule that we actually
15 succeeded in revising.

16 MS. ROGERS: Right. Okay. And the policy
17 board's not required by the bill?

18 MS. PERLE: No.

19 MS. ROGERS: I guess my concern is that if we
20 create an impossible situation by requiring something
21 in the regulations that appears to conflict with
22 Congress's wishes to have governmental entities be able

1 to apply for these funds, that --

2 CHAIR BATTLE: Well, we have got policy bodies
3 in all of our other present recipients and spent
4 considerable time delineating how those policy bodies
5 work even if you have a recipient who has substantial
6 other funds, other private funds, other IOLTA funds in
7 operation.

8 When Congress said, "Now, put your programs on
9 for competition," the concept of a policy body and how
10 it has local control or local decision making
11 responsibility in our view doesn't wash out because you
12 have a competition. It still remains as part of that
13 framework for how the competition ought to take place.

14
15 And we would be in a difficult situation, it
16 seems to me, to be able to measure how local controlled
17 decisions were made if we didn't have some local policy
18 board or governing board responsible for that. And I'm
19 just not certain how we could have the same kind of
20 regulatory accountability on an entity that does not
21 have that.

22 MR. McCALPIN: There is a provision in this

1 legislation that I want to try to get to, because when
2 it talks about governmental bodies, there is an
3 additional qualification.

4 CHAIR BATTLE: I think John has the law here.

5 MR. McCALPIN: Do you have 2076, John?

6 MS. GLASOW: Is that where it says --

7 MR. BROOKS: Yes, I do.

8 MS. GLASOW: No, that's substate regional
9 planning and coordination agencies which are composed
10 of substate areas and whose governing boards are
11 controlled by locally elected officials?

12 MR. BROOKS: They're both there. 2076 is
13 underneath.

14 MS. GLASOW: I think that's probably what he's
15 talking about.

16 MR. McCALPIN: "A state or local government
17 without regard to Section 1006(a)(1)(A)(ii) of the Act
18 or a substate regional planning or coordinating agency
19 that serves a substate area whose governing board is
20 controlled by locally elected officials.

21 MS. PERLE: But this is not a governing board.
22 This is a policy board. This is something less than a

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1 governing board.

2 MR. McCALPIN: Yes, but how about -- I haven't
3 got the Act. What's 1006(a)(1) --

4 MS. PERLE: That's the current provision in
5 the current Act that basically says you can't fund --

6 MR. McCALPIN: What?

7 MS. PERLE: It's the section of the current
8 Act which basically says you can't fund governmental
9 entities.

10 MS. GLASOW: Because Congress has always
11 recognized that there's an inherent conflict.

12 MS. PERLE: Right.

13 MS. GLASOW: And so the current Act says you
14 can't fund those types of agencies.

15 MS. PERLE: Absent some extraordinary
16 determination by the Board.

17 MS. GLASOW: Right. But the new law is saying
18 they are a qualified applicant, and so that's why we
19 put this in here. And because of that possibility for
20 conflict, if one of these governmental agencies did
21 apply for a grant, then -- I mean, almost under their
22 own ethical conflict rules, they -- it would be good

1 for them to sort of partition off that grant and create
2 a policy board that would control that grant.

3 Because otherwise, they're current -- if they
4 have any kind of a local board, they may immediately
5 find themselves in conflict.

6 MR. McCALPIN: Well, 1006(a)(1)(A)(ii) says,
7 "The Corporation is authorized to make grants or
8 contracts with state and local governments only on
9 application by an appropriate state or local agency or
10 institution and upon a special determination by the
11 Board that the arrangements to made by such agency or
12 institution will provide services which will not be
13 provided adequately through nongovernmental
14 arrangements."

15 So that we can -- we presently could make a
16 grant to a governmental agency on a special
17 determination by the Board.

18 MS. GLASOW: But that's only if somehow in
19 that area, the private --

20 MS. PERLE: There's nobody else to do it.

21 MS. GLASOW: And the legislative history makes
22 it very clear the reason they did that is because

1 there's so much potential conflict there.

2 MR. McCALPIN: Not provided adequately through
3 nongovernmental arrangements.

4 CHAIR BATTLE: So is that a restriction? It
5 seems to me the question becomes, is that a restriction
6 on when and where and how a governmental entity might
7 apply for a grant?

8 MS. PERLE: That is, but I think this says --

9 MR. McCALPIN: That is, but this removes it.

10 MS. PERLE: Assuming -- and we're assuming
11 that the conference bill becomes the law and that
12 provision is incorporated into it. That will amend --
13 at least for the period of the appropriation, amend the
14 underlying Act. If that doesn't become law, then the
15 underlying Act is still in effect. And basically, we
16 won't be able to fund state and governmental entities
17 except under the circumstances that are laid out in the
18 LSC Act.

19 MS. WATLINGTON: But that does not mean if
20 those things would happen that the Corporation could
21 still require that they have that policy board.

22 MS. PERLE: It doesn't speak to that.

1 MS. WATLINGTON: So we really need to have
2 that, I feel. I feel that's very important.

3 MS. ROGERS: In the comments, it says that the
4 policy board would determine --

5 CHAIR BATTLE: Tell me where you're reading
6 from.

7 MS. ROGERS: Page 10 -- I'm sorry -- "a policy
8 body, on the other hand, a body that would formulate
9 and enforce policy," is that inconsistent with the
10 language of the Act that says that the governmental
11 entity would be responsible to its own governing board?

12 MR. McCALPIN: I can see your problem. Assume
13 that the Department of Community Affairs in a
14 particular state decides to apply to provide legal
15 assistance to members of the community. I have a hard
16 time saying that that state Department of Community
17 Affairs has got to create a policy body, when there's
18 no provision in the enabling Act for that particular
19 state department to have to create a policy body.

20 CHAIR BATTLE: However, I think that when you
21 think about how a lot of block grant funds will hit the
22 state with regulatory requirements that are put in

1 place by the departments which administer those block
2 grants, that there all kinds of specific requirements
3 that an entity can impose on how those funds are to be
4 managed once they are received by the state that
5 likewise, LSC could establish some or adopt some
6 regulations that aren't within the enabling legislation
7 which would enable the governmental entity to receive
8 those funds but in managing how they receive and
9 utilize those funds, put those requirements in place
10 and that it would not be inconsistent with our
11 authority for us to do so.

12 MS. WATLINGTON: It's comparable where there's
13 money that we're getting through HUD we have to get
14 through the government bodies, but it is also
15 stipulated in there that it must be a government body
16 or a policy board made up of the recipients of a
17 service to do, and that came through a lot of -- and I
18 think that's real important that we should not keep
19 that away. If that would happen in any case, it's
20 something that should be put in there.

21 And that was -- I'm comparing that the same
22 way that these came down to the federal level. You

1 must get it through your municipality, but still the
2 policy board must be in order to help implement it
3 properly in the community.

4 MS. PERLE: And there's probably nothing in
5 the enabling legislation that specifies that.

6 CHAIR BATTLE: That's the point I'm making,
7 that the enabling legislation may not specify those
8 specifics as to the policy body that you have at HUD,
9 and neither does our enabling legislation specify the
10 policy body that we may promulgate as part of the
11 receipt by the government -- local governmental
12 entities for LSC funds.

13 MS. PERLE: It's not so different, really,
14 from the fact that you've just adopted or proposed for
15 adoption a regulation on restricting program activity
16 in drug evictions, where right now, at least, there's
17 no legislative authority for that specifically. I
18 mean, in other words, there are some intrinsic powers
19 that the Corporation has with respect to the uses of
20 its money.

21 MS. ROGERS: My only real concern is that we
22 would appear to be making impractical something that

1 Congress has specifically stated they wanted to keep
2 practical. And I would be satisfied if our counsel
3 would before tomorrow look into the question of whether
4 that's the case, whether we have -- by saying that the
5 policy board actually will govern the policies of the
6 state agency, whether that puts governmental entities
7 into a position in which they can't apply for the
8 funds.

9 And if so, then I think Congress would feel
10 that we were indirectly trying to thwart the purpose
11 that they had in mind in putting governmental entities
12 into a position to apply.

13 MS. GLASOW: Actually, in a sense, I almost
14 think we're protecting the government agency by
15 creating this policy body, because all of our grantees
16 are going to be subject to the regulations that refer
17 to these grants. And many of those regulations say
18 that there has to be policies established by policy
19 boards or boards of directors.

20 And I'm not sure that a governmental agency
21 who's dealing with a lot of other things wants to have
22 to deal with those types of specifics. They would

1 probably be very happy to pull in a policy body that
2 includes members of the Bar, the local Bar
3 associations, that type of thing, who have some
4 expertise in this area to oversee and perform that
5 function for that grant.

6 MS. ROGERS: I guess I just want the Board to
7 be protected by a formal opinion from our counsel that
8 this does not thwart the language and does not make it
9 infeasible for most kinds of local entities to apply
10 for the funds.

11 MS. GLASOW: I don't know that we can answer
12 that definitively at this point, because Congress
13 hasn't given us any guidance on the meaning of that
14 language, and that's what we're trying to do in this
15 regulation. Between now and tomorrow, I don't know if
16 I can come up with a definitive answer to that.

17 We're doing the best we can to interpret it
18 with this regulation. And it's our feeling at this
19 point that this is a fair interpretation of that.

20 CHAIR BATTLE: Can any of these things be
21 waived? Can a policy body -- I think that the
22 provisions requiring a policy body in 1607, the new

1 one, we struggled with that issue of whether or not the
2 policy body is something that can be under any
3 circumstances waived.

4 MS. PERLE: Well, we struggled with whether we
5 could waive the governing body and decided we could
6 waive the governing body, as long as a condition of
7 that waiver that was a policy board. We do have
8 experience, you know, with these policy boards, not in
9 the context of a government agency, but during the
10 1970s, there were delivery systems study grantees, some
11 of whom were programs run by much larger organizations,
12 huge insurance companies.

13 And they said, "We can't do this." You know.
14 And we said, "Well, we're not asking you to impose this
15 governing body on your whole entity. We want you to
16 just have a body that can make policy for this very
17 little piece of what you're doing." And ultimately,
18 everybody came around, and it worked perfectly fine.

19 Now, obviously, there are differences between
20 a private insurance company and a government agency,
21 but I think in practical terms in terms of what that
22 body actually does on a day-to-day basis, it worked out

1 fine. And I think that we could make the same kinds of
2 accommodations, negotiations with a government agency
3 so that we could set up something which they might call
4 an "advisory body," we might call something else, but
5 that would, in fact, work appropriately.

6 MS. GLASOW: And they're in charge of that, in
7 essence, so it's not like we're taking a whole lot of
8 authority away from them. We could put in paragraph
9 (b) that requires the governing or policy body some
10 language that says "unless otherwise inconsistent with
11 applicable law."

12 This rule does have to go through a
13 reprogramming up on the Hill, and they'll certainly
14 tell us if they don't like that provision. And then
15 that language would cover that, I suppose.

16 MR. McCALPIN: Let me ask a question.

17 CHAIR BATTLE: Two things. I'm sorry. John
18 had his hand up and then Bill.

19 MR. McCALPIN: Oh, I'm sorry.

20 MR. BROOKS: Well, I'm thinking of the waiver
21 possibility here. I think in the first place, the 1607
22 waiver provision would not apply to this. This is a

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1 different situation in the selection process.

2 MS. GLASOW: That's right.

3 MR. BROOKS: Secondly, if it's waivable in the
4 1607 situation, I think we ought to think hard whether
5 it should be waivable in the 1634. I'm not sure that
6 that's the right answer. But I think we ought to give
7 it some serious consideration.

8 MS. PERLE: The point is that the governing
9 body requirement in 1607 is waivable. But as a
10 condition of waiver, you have to have a policy body,
11 which governs only the particular program that's being
12 funded by the Corporation.

13 MR. BROOKS: And that's not waivable under any
14 circumstances, except by either a governing body or a
15 policy body.

16 MS. PERLE: I think that's the way we wrote
17 the rule.

18 MS. WATLINGTON: I understood that she was
19 saying -- that Nancy excepted.

20 MS. ROGERS: Adding that exception that I
21 talked about?

22 MS. WATLINGTON: Right.

1 CHAIR BATTLE: So long as it's not
2 inconsistent with the other law? Okay. Edna and then
3 Bill.

4 MS. FAIRBANKS-WILLIAMS: Did we have any
5 problem in the past with those policy boards like
6 judicare and so on? I know Vermont had a policy board
7 on judicare, and we never had any problems.

8 MS. PERLE: Oh, we had problems. We had
9 problems with a lot of things. But, I mean,
10 ultimately, all those entities that got those grants
11 accepted the fact that they needed to have these policy
12 boards to make policy for those grants.

13 MS. FAIRBANKS-WILLIAMS: But did you have
14 major problems with those?

15 MS. PERLE: Initially, we had major problems.
16 It took a lot of convincing that they could have these
17 policy boards and that they would, in fact, work and
18 that they wouldn't interfere unduly with their other
19 operation. That was their concern, that -- their
20 concern was that we were actually requiring their board
21 of directors to comply with our -- to be appointed by
22 local Bars and whatever.

1 And we said, "No, no. That's not what we're
2 requiring under these grants. We're requiring you to
3 have a body that sets policy for this -- for the small
4 piece of your operation that's funded by this grant."

5 MS. GLASOW: So actually, letting them have a
6 policy body solved their problem.

7 MS. PERLE: I mean, we're not suggesting under
8 this that if you have a law firm, for example, that you
9 have to have a policy body that takes over for your
10 management committee. We're not suggesting that.
11 We're suggesting that to the extent that you're dealing
12 with the services that are funded under this grant,
13 that you have to have a policy body to get community
14 input.

15 CHAIR BATTLE: Bill?

16 MR. McCALPIN: Let me ask a question, the
17 answer to which I ought to know. Do the qualification
18 requirements of a governing board apply also to a
19 policy body? Must the majority be appointed by the
20 local Bar?

21 MS. PERLE: Yes. Yes. Those are the things
22 that do have to --

1 MR. McCALPIN: So that's another encroachment
2 on governmental authority, I suppose, if you say,
3 "You've got to have a policy body, and you've got to
4 let the Bar association pick the majority of the
5 members of your policy body."

6 CHAIR BATTLE: This is a knotty issue that I
7 don't think can be easily resolved. If it is
8 inconsistent with local law or authority, then I think
9 that to the extent that it's not inconsistent with
10 federal law -- federal law would supersede -- to the
11 extent that it has the effect that Nancy is concerned
12 about of dissuading local governmental entities from
13 being able to apply, then I think we need to take that
14 into account and figure out how to structure something
15 that allows for the accountability -- local
16 accountability and constituent client accountability
17 that we're concerned about and at the same time meet
18 the requirements of having some accountability to LSC
19 as to our setting priorities and all the other things
20 that a governing body has the responsibility for
21 getting done.

22 MS. PERLE: Merceria was just saying that this

1 has the same effect on any applicant, whether it's a
2 governmental entity, either it's a private law firm,
3 whether it's some --

4 MS. MERCADO: An individual.

5 MS. PERLE: An individual or whether it's some
6 other organization. And we're really trying to deal
7 with a level playing field. And I think that we should
8 leave the requirement in. I think we might want to put
9 something in that suggests that if there is some other
10 law that is inconsistent, that can be an exception.

11 But I think that's the only place that we
12 should limit the exception. I don't think that we
13 should sort of permit someone to come in -- a law firm
14 to come in and say, "Well, you know, I really can't do
15 this." I mean, I don't think there's really a whole
16 lot of difference if there's not a specific law, or an
17 insurance company that does prepaid legal services,
18 which is what they said in the 1970s. Those are some
19 of the grantees that we had. "We can't do this because
20 our shareholders won't like it" or whatever.

21 I think that unless we set up a real conflict
22 of laws, we shouldn't do that. But if that was the

1 only situation -- that's the only situation that I
2 think we should permit there not to be a policy board,
3 because I think it's sort of the heart and soul of this
4 program that these recipients -- that Legal Services
5 programs do have input from the community from the
6 legal community and the client community.

7 MS. GLASOW: And then have someone to whom
8 they're accountable. We lose a whole level of
9 accountability, and then if we require it of some types
10 of grantees and not others, we could have a lot of
11 disagreement over that.

12 CHAIR BATTLE: John?

13 MR. BROOKS: Well, I think it may be
14 significant -- I'm looking at 2076 here, Section 502,
15 which says, "None of the funds appropriated under this
16 Act of the Legal Services Corporation shall be used by
17 the Corporation to make grants, et cetera, unless the
18 Corporation ensures that the person or entity receiving
19 funding providing such legal services is 1, 2, 3, a
20 state or local government without regard to Section
21 1006(a)(1)(A)(ii) of the Legal Services Corporation
22 Act." I have not checked that, but what I'm thinking -

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MR. McCALPIN: That's what I read a while ago.

MS. GLASOW: That's basically saying that the section in the LSC Act that say you cannot fund this type of applicant except under some very extreme circumstances doesn't have effect. In other words, they're changing the Act and saying, "Now, this type of entity can be an applicant."

CHAIR BATTLE: Are they changing the Act or giving us an appropriation with a restriction in it that changes? I'm just wondering how you read those two in tandem. Are they saying now you can give it to them?

MS. GLASOW: Yes, without concern -- in other words, "Forget about that provision in the LSC Act that says you can only fund them under certain circumstances. Now, we're telling you you can fund them."

MS. PERLE: Right. I mean, it's the same as the provision that says the competitive bidding system works without regard to the sections that provide hearing rights. It's the same --

1 MR. BROOKS: But the point is that -- it comes
2 to me that we are not required to make grants or to
3 consider these state or local government entities
4 automatically eligible. And it seems to me that this
5 is a restriction which gives us the option to accept
6 the same criteria, the same rules for state or local
7 government grantees that we have for everybody else.

8 CHAIR BATTLE: Okay. All right.

9 MS. ROGERS: I think as long as counsel could
10 assure us that we're not going to be met with the
11 argument that what you have done is to make it
12 impractical for any governmental entity to apply for
13 the funds because their own local and state laws
14 wouldn't permit them to consent to governance by a
15 policy board appointed by the Bar.

16 MS. GLASOW: I hope that that exception
17 language will take care of that. I mean, for all
18 intents and purposes, it may be all these Congressional
19 restrictions have made it practically impossible for
20 law firms to be grantees, and yet they're listed as
21 possible grantees.

22 CHAIR ASKEW: I think there are a lot of

1 reasons why the government would not apply, and this is
2 not one of them.

3 MS. PERLE: Well, it may be one of them, but
4 there are so many others that --

5 CHAIR BATTLE: If there are restrictions on
6 what you can do with all your other funds, I think that
7 a governmental entity --

8 MS. ROGERS: We need to put that one on. It's
9 just that I don't want to put one on that makes it
10 impossible to do something Congress has said they want
11 to be possible.

12 MS. WATLINGTON: Do you think that everything
13 we do, we have to do it in a political way to satisfy
14 Congress? If we don't develop those based on what we
15 think they think, we're in trouble.

16 CHAIR BATTLE: Okay. Maria?

17 MS. MERCADO: In reality, though, governmental
18 entities have advisory boards and panels and
19 commissions that determine priorities or program -- or
20 expenditures of funds in different categories. And if
21 they allow those advisory panels who are generally
22 citizens in the community to not only make regulations

1 but make expenditures to particular areas --

2 MS. ROGERS: But they appoint them.

3 MS. MERCADO: I understand that they do. We
4 don't do any different.

5 CHAIR BATTLE: Well, we will have to revisit.
6 I think the resolution that we do have on the table is
7 what Suzanne has suggested in terms of reprogramming
8 and having unless it's inconsistent with other law, so
9 that we'll find out if it is inconsistent with other
10 law. And we certainly will revisit this in the
11 competition process if we find that it has the impact
12 that Nancy has raised, that we may have to revisit this
13 issue at another date.

14 Is there anything else? We're down to the
15 last section on transition provisions. And we're also
16 down to looking at the new Section 1634.11, failure of
17 a recipient to complete grant term. We discussed this
18 section earlier. Are there any questions about it?

19 (No response.)

20 CHAIR BATTLE: I will read it just for the
21 record. It now reads 1634.11 -- failure of the
22 recipient to complete grant term reads as follows: "In

1 the event a recipient is unable or unwilling to finish
2 the full duration of a grant that it has been awarded,
3 the Corporation shall take all practical steps to
4 ensure the continued provision of legal assistance in
5 that service area.

6 "In addition, the Corporation shall have
7 discretion to determine how legal assistance is to be
8 provided to the service area, including but not limited
9 to enlarging the service area of a neighboring program
10 or entering into a short-term interim contract with
11 another qualified provider for the provision of legal
12 assistance in the service area until the completion of
13 a competitive bidding process within a reasonable
14 period of time and the award of a grant to an applicant
15 pursuant to this section." Any questions?

16 MR. BROOKS: I just wonder whether the
17 "finished the full duration" is appropriate language.

18 CHAIR BATTLE: "Complete"?

19 MR. BROOKS: "Unable or unwilling to perform
20 its grant for the full duration of its grant."

21 MS. PERLE: Instead of "finish"?

22 MR. BROOKS: "Of the grant."

1 MS. MERCADO: I'm sorry?

2 CHAIR BATTLE: "Perform its grant" instead of
3 "finish"?

4 MR. BROOKS: Well, "finish the duration."

5 CHAIR BATTLE: "Unwilling to" --

6 MR. BROOKS: "To perform or to continue to
7 perform its grant for the full duration of the grant."

8 MS. PERLE: Because there might be a contract,
9 actually, we shouldn't say just "grant." We should say
10 "grant or contract." But it's really "to perform the
11 duties required under the terms of its grant or
12 contract."

13 MR. BROOKS: Yes. You can polish that
14 language, but I think it should be changed a little
15 bit.

16 CHAIR BATTLE: Anything else on this one?

17 CHAIR ASKEW: There's an alternative title, it
18 looks like, and maybe the second title is more
19 appropriate, "replacement of recipient that does not
20 complete grantor."

21 MS. PERLE: Yes. Because, I mean, "failure"
22 suggest that it's always a negative.

1 CHAIR BATTLE: Does everybody agree on the
2 second?

3 (No response.)

4 CHAIR BATTLE: Anything else on 1634.11?

5 (No response.)

6 CHAIR BATTLE: Then our final section is
7 1634.12, emergency procedures and waivers. No
8 discussion?

9 (No response.)

10 CHAIR BATTLE: Well, if there is no
11 discussion, at this point, I'll take a motion, Bucky.

12 M O T I O N

13 CHAIR ASKEW: I would like to move the
14 adoption of 45 CFR Part 1634 as amended by today's
15 meeting.

16 MR. BROOKS: I think you mean, Bucky, to
17 recommend to the full Board the adoption of.

18 CHAIR ASKEW: Yes.

19 MR. BROOKS: Is that a friendly amendment?

20 CHAIR BATTLE: That's a real friendly
21 amendment.

22 MS. WATLINGTON: Second.

1 CHAIR BATTLE: It has been moved and properly
2 seconded that we recommend to the full Board the
3 adoption of 45 CFR Part 1634 as amended based on our
4 discussion today to the full Board in its meeting
5 tomorrow. All in favor?

6 (Chorus of ayes.)

7 CHAIR BATTLE: All opposed?

8 (No response.)

9 CHAIR BATTLE: Motion carries. One last
10 housekeeping matter. During the break, John brought to
11 me language on the disclosure form that I believe he
12 did discuss with Suzanne.

13 MR. BROOKS: I handed it to her. I have not
14 discussed it yet.

15 CHAIR BATTLE: So, Suzanne, did you get that?

16 MS. GLASOW: I've got it. I have not read it.

17 CHAIR BATTLE: Okay. All right. And I've got
18 a copy, Suzanne has a copy, and John has a copy. Do we
19 need to all go over it? Do you want to go over it?

20 MR. McCALPIN: I just have one comment, that I
21 thought that in paragraph 7, we talked about not only
22 conflict but appearance of conflict.

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1 MS. PERLE: We did.

2 MR. BROOKS: "May appear to give rise" is what

3 I -- MR. McCALPIN: Well, no. I'm not sure
4 that an appearance of conflict is the same as appear to
5 give rise to a conflict. "Give rise to a conflict or
6 an appearance of conflict."

7 CHAIR BATTLE: Okay. Why don't I read it?
8 Does everybody have it? If not, let's start with
9 number 5.

10 MR. BROOKS: The committee has it. Ernestine
11 has it, but not the rest of them.

12 CHAIR BATTLE: Okay. "For purposes of
13 paragraph 4 in parentheses 4, financial or ownership
14 interests shall include, but not be limited to, any
15 beneficial interest in stocks, bonds, securities,
16 policies of life insurance, annuities, and other
17 obligations issued or guaranteed by a firm or
18 organization, and deposits in banks or other financial
19 institutions and other forms of business assets but
20 shall not include any fiduciary interest," colon.

21 MR. McCALPIN: Period.

22 CHAIR BATTLE: Is that a colon or a period?

1 MR. McCALPIN: Period.

2 MR. BROOKS: We're taking out a semicolon,
3 putting in a period.

4 CHAIR BATTLE: Period. Okay. "Firm or
5 organization shall include but not be limited to
6 corporations, business trusts, and limited and general
7 partnerships. No interest shall be considered to be
8 significant unless its fair market value is \$5,000 or
9 more."

10 MR. McCALPIN: Well, there's no dollar sign.

11 CHAIR BATTLE: We would make that into a
12 dollar sign. All right. And in paragraph 7, I'm going
13 to try to see if I can incorporate what Bill has
14 raised, as well. "If at any time a situation arises
15 where a previously undisclosed interest of a member in
16 any firm or organization may give rise to a conflict or
17 an appearance of conflict of interest, the member shall
18 promptly disclose such interest with the filing of a
19 supplementary disclosure statement." Does that cover
20 it? Okay. And did you get that, Suzanne?

21 MS. GLASOW: Yes.

22 CHAIR BATTLE: Okay. All right. Are there

1 any other matters that need to come before this
2 committee at this time?

3 MR. BROOKS: So did we act upon this conflict
4 statement, disclosure statement?

5 CHAIR BATTLE: We did by motion, I believe.

6 MS. GLASOW: I think you did.

7 CHAIR BATTLE: And if you not, I'll entertain
8 a motion now just to make sure that we have it on the
9 record. Who's taking minutes? Victor?

10 MR. FORTUNO: I wasn't here to know whether
11 you voted on that.

12 CHAIR BATTLE: Well, I'll entertain a motion
13 with regard to the recommendation to the Board on the
14 guidelines and the development of a form for the
15 directors' annual disclosure pursuant to Section 305 of
16 the Corporation's bylaws at this time.

17 M O T I O N

18 MR. McCALPIN: So moved.

19 MR. BROOKS: So moved.

20 CHAIR BATTLE: Is it seconded? I have two
21 motions, so I'm assuming one of them is a second. And
22 if there is no discussion, all in favor of adopting

1 what we have discussed today for recommendation to the
2 Board?

3 (Chorus of ayes.)

4 CHAIR BATTLE: All opposed?

5 (No response.)

6 CHAIR BATTLE: Motion carries. Now, just to
7 make sure, did we entertain a motion on the drug
8 eviction?

9 MS. MERCADO: No, you didn't.

10 CHAIR BATTLE: All right. Let's do that.

11 MS. WATLINGTON: Yes, we did.

12 MS. MERCADO: Did we?

13 MR. McCALPIN: Yes, you did, and I abstained.

14 CHAIR BATTLE: And you abstained. I remember
15 that now. That makes it real clear to me.

16 MS. MERCADO: Oh, okay.

17 CHAIR BATTLE: So are there any other matters
18 that need to come before us?

19 (No response.)

20 CHAIR BATTLE: It may be that -- and I'm just
21 speaking now to my committee. I did mention at the
22 onset that we have in this fiscal year budget five

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1 meetings for the Board, and so we are now attending our
2 third meeting and have possibly only two more meetings
3 this year.

4 We have -- and I think in good time --
5 completed all of the work on the regulations that we
6 decided to undertake last summer at the time that the
7 Board entered into a resolution directing us to
8 undertake these particular regulations that we have now
9 done. However, there may be some things that we need
10 to do that may need to be done during a time prior to
11 the next Board meeting, so what we may be able to do is
12 to take a look at our calendars.

13 And I don't know, Vic, what the schedule is
14 for our next Board meeting, but part of our
15 responsibility is operations and regulations, and we
16 may have some operations issues that come up before the
17 next Board meeting. So we'll need to get together to
18 see how we need to schedule a meeting if it's off time
19 for the Board meeting and if that's necessary.

20 MS. MERCADO: We have eight months to go in
21 the fiscal year.

22 CHAIR BATTLE: Right, and two meetings that we