1 so. It is proposed whether the Board discuss certain matters
2 relating to the appropriations and authorizations legislation
3 in Executive Session.
4 Those will also be the subject of public discussion
5 this afternoon.
6 Do I have a motion?
7 MR. KUTAK: So moved.
8 MR. ORTIQUE: It is not anticipated that any action
9 will be taken?
10 MR. CRAMTON: No, no action will be taken during
11 the discussion.
12 MR. THURMAN: Seconded.
13 MR. CRAMTON: Mr. Kutak has moved and Mr. Thurman
14 has seconded that an Executive Session be held for this
15 purpose.
16 All those in favor, please say aye.
17 (Ayes.)
18 MR. CRAMTON: Those opposed, please say no.
19 (No response.)
20 MR. CRAMTON: The record should reflect that a
21 two-thirds vote is required by the bylaws and was obtained
22 for holding the Executive Session.
23 VOICE FROM THE AUDIENCE: I am just wondering
24 about the propriety of allowing the discussion of appropriat-
25 ions in the Executive Session?

1 MR. CRAMTON: That was what I consulted with the
2 General Counsel on and we decided that it is appropriate.
3 VOICE FROM THE AUDIENCE: I am not asking whether
4 you are going to or not --
5 MR. CRAMTON: Let me inform you that those of you
6 who are joining us for lunch prior to the Executive Session
7 that we will meet all together for lunch and then the Board
8 will continue in Executive Session.
9 It is up on the second floor and I will show you
10 how to get there.
11 We will now adjourn for lunch.
12 (Whereupon,
13 lunch recess was taken.)
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1 AFTERNOON SESSION

2 2:45 p.m.

3 MR. CRAMTON: Please take your seats, ladies and

4 gentlemen.

5 MR. KUTAK: Mr. Chairman, at the time --

6 MR. CRAMTON: Just a moment, please, Bob.

7 Sorry to keep you all waiting, but the Board had

8 a very useful discussion limited to the matters specified.

9 It was a discussion of appropriations and extension legis-

10 lation that was before the Congress during the Spring.

11 No action was taken and the same matters will be

12 the subject of public discussion this afternoon.

13 We now go back to the report on the Committee

14 of Regulations. I recognize Bob Kutak.

15 MR. KUTAK: Mr. Chairman, when we adjourned, or

16 recessed, as I should say, we were at regulation 1621,

17 the regulation relating to client grievance procedures.

18 Rather lending some unusual support to an obser-

19 vation Mr. Ortique made earlier about keeping our minds

20 open and frequently reviewing or reconsidering what we do

21 by way of regulation and drafting, we bring to your attent-

22 ion at this time the regulation in a rather unusual form,

23 namely in the alternative form.

24 The reason for that is quite simple. While our

25 Committee did meet and did have a quorum at the meeting,

1 we customarily like to have all three members have their
2 not only continual, but complete input into any decision
3 that we make.
4 One of our members was unable to be at that meet-
5 ing. We were unable to get together by an informal conference
6 and visit afterwards.
7 Therefore, rather than come to you with a specific
8 draft in a specific form, we have given it to you in an
9 alternative form.
10 But they are so similar as to easily point out the
11 differences and then tell you which way the Committee would
12 lean.
13 MR. CRAMTON: Mr. Kutak, may I interrup you for a
14 moment to say that I should have added before the record should
15 state that Director Glee Smith has arrived from Kansas and
16 we are delighted that you are able to make it, Glee.
17 MR. SMITH: Thank you very much.
18 MR.CRAMTON: Excuse me, Bob.
19 MR. KUTAK: Thank you. This regulation is an un-
20 complicated one. It is simply in the nature of a notificat-
21 ion of any client of any recipient to know what he ought to
22 do in the event that he is unhappy with the kind of legal
23 services that are being rendered.
24 The first draft or draft 1 of the first alternative
25 is very similar to the second, except that it actually does

1 spell out in detail exactly what the procedure is.

2 The second alternative, which is Draft No. 2, which

3 parenthetically is the one which we would recommend, does

4 not dictate the exact procedure, but like the other regulat-

5 ions that we have had in the past, spells out the require-

6 ments and leaves to the recipient the responsibility of

7 developing the procedure.

8 As we look at it, we really have -- and had we

9 had all three together, we would have come to you with

10 Draft 2 rather than Draft 1.

11 The substance is the same. The difference is the

12 first draft literally does lay out the blueprint and the

13 second one provides that a blue print shall be established,

14 but it shall contain these certain ingredients or components

15 to comply with this regulation.

16 That latter form is the traditional form that we

17 have taken.

18 As you can see by looking, it is a rather simple

19 one and it merely requires that the client be informed of

20 the opportunity to register a complaint if he or she does

21 not feel that his or her actions have been responsibly

22 resolved or at least responsibly handled by his or her

23 lawyer.

24 It gives that built in assurance that they are

25 not foreclosed. You might ask, as I did, "Why should we have

1 such a regulation? Is it not rather odd that when a client
2 comes to see a lawyer that the first thing you tell him is
3 that if you are unhappy with our services, here is how you
4 can complain?".
5 This is not what you do in a normal law office.
6 The reply to me was -- and it is important because it is the
7 right one -- obviously where clients are paying for their
8 legal services, if they do not like their legal services,
9 they can put their hat back on and say, "Thank you very
10 much." and go across the street to another lawyer.
11 The client in our public law sector frequently
12 and, in fact, most generally does not have that alternative.
13 The legal services office is his only lawyer and
14 therefore the legal services office must have that double
15 concern, not only to deliver legal services, but to be
16 very practically conscious of and concerned about grievances
17 that may be legitimately expressed about them.
18 Therefore, Mr. Chairman, as you see it is a short
19 regulation, but a sound one.
20 If I may be so presumptuous, I would move rather
21 than the Committee -- I would move that we adopt Regulation
22 1621 in the second alternative vis-a-vis the first alter-
23 native and that regulation would be published for comment
24 and the opportunity to receive any further comment upon it.
25 If there is no comment that requires any substantive

1 change, I move that you delegate to your Committee the
2 executive authority to then publish in final form for adoption
3 after 30 days.
4 MR. THURMAN: Mr. Kutak, does not Draft 1 require
5 a decision by the Director in writing and that is not in
6 Number 2.
7 It seems to me a two-step thing, whereas in Step
8 2 you go right to the Grievance Committee.
9 MR. KUTAK: No. What you desctibe as Step 1 could
10 be envisioned in the blanket authority in 1621.3(a) of
11 Draft Number 2.
12 It says, you shall establish procedures for inter-
13 preting validity. That may include the Director making a
14 decision or he may have an advisory Board or there may be
15 some other method.
16 MS. DANIEL: We could later redraft Sub-section
17 3 -- 1621.3 of Draft Number 2 to take into account Mr.
18 Thurman's objections so that we could say the opportunity
19 for complaint appear before the Grievance Committee establish-
20 ed by the governing body, if staff attempts to resolve it
21 are unsuccessful or something like that.
22 MR. THURMAN: Yes, you are required to do that
23 in Draft No. 1.
24 MS. DANIEL: That was the intention and I think we
25 can make it clearer.

1 MR. THURMAN: Look under (c). You are talking
2 about this. He has to do it and then he has to make a
3 statement in writing and if you do not like that, you go
4 to the Committee, whereas the other does not refer to it.
5 MR. KUTAK: Just in the general sense of establish-
6 ment. I have no problem, however, with that. I would
7 accept that.
8 MR. CRAMTON: Is there a second on that?
9 MR. MONTEJANO: Seconded.
10 MR. CRAMTON: Is there any discussion?
11 MR. ORTIQUE: Did you hold hearings on this?
12 MR. KUTAK: Yes. By the way, when it came out,
13 I hope that we also can pick up the typographical error in
14 the second line.
15 MR. THURMAN: It is in both of them, so that is
16 the way I thought you spelled it.
17 MR. KUTAK: At least we are consistent.
18 MR CRAMTON: Are you prepared for the question?
19 (No response.)
20 MR. CRAMTON: The motion is for the adoption --
21 the adoption of the motion calls for publication and comment
22 of the Client Grievance Procedure, Draft Number 2 regulation.
23 All those in favor, please say aye.
24 (Ayes.)
25 MR. CRAMTON: Those opposed?

1 (No response.)

2 MR. THURMAN: With the amendment?

3 MR. CRAMTON: It has been adopted by unanimous

4 voice vote as amended. It will be put out for notice and

5 comment and will come back to the Board --

6 MR. KUTAK: My motion is that in the event that

7 there was no substantive --

8 MR. CRAMTON: Fine.

9 MR. KUTAK: Unless there is any substantive comment

10 that would require any major comments which require substan-

11 tive change, then we would have the executive authority to

12 publish it.

13 MR. CRAMTON: Okay.

14 MR. KUTAK: Mr. Chairman, the third of the three

15 regulations is the longest and perhaps the most sensitive

16 and I reserve that in contemplation of the Board being

17 together with Mr. Smith being here to join us.

18 MR. VEENEY: Mr. Chairman, may I have the floor

19 for a moment? My understanding is that you have now got

20 the authority on the Committee to publish in final form

21 after bringing it back to the Committee.

22 MR. CRAMTON: After notice and comment, the

23 Committee will consider the comments if they raise no

24 substantial questions. They have the authority to go ahead

25 and publish in final form.

1 MR. VEENEY: May I make a comment? I recognize
2 the fact that you have taken a vote and I do not want to
3 take a great deal of your time since you have other important
4 matters.
5 But had I known this was going to be not brought
6 back before this full body, I certainly would have commente
7 upon the differences between Draft No. 1 and 2.
8 I would make the comment to you that by your action
9 in terms of approving Draft No. 2, what you have done is to
10 set in motion the possibility of 250 some odd different
11 processes and procedures for hearing client grievances.
12 I think that is going to be administratively un-
13 workable and a nightmare for the clients trying to negotiate
14 with these systems and will differ in every case.
15 You had a very simple opportunity to lay out a
16 straight forward and clear set of instructions to programs
17 on how to do "x" kinds of things.
18 You could do that by regulation and do so all the
19 time. Why you backed off in this instance is beyond me.
20 I am sorry to have made my comments at an inappropriate
21 moment, but I would hope that the Committee, in fact, in
22 deciding whether it will make the alternative, would have
23 some instruction or sentiment from the members of the Board
24 as well as the members of the public.
25 MR. CRAMTON: I assume that these comments would

1 be considered by the Committee.

2 In the absence of a motion to reconsider, I think

3 that these comments are out of order and you can go ahead.

4 MR. VEENEY: The problem is that I made the comments

5 to the Committee previously.

6 MR. KUTAK: Yes, we have heard that input. Bernie

7 was there when we were discussing the alternatives.

8 MR. CRAMTON: You may proceed.

9 MR. KUTAK: Very well. Moving to 1606, which is

10 procedures governing application for and denial of refunding.

11 I asked that the Board look very carefully at the

12 policy statement or the introductory statement that preceeded

13 the draft regulation for it raises some very substantive

14 questions and focused on those issues quite completely.

15 The first question is that the grounds for denial

16 of refunding -- and while there is nothing in the Act that

17 requires the Corporation to issue a regulation that states

18 all the grounds and criteria that may be applied, the

19 Committee decided that it would be desirable to do so.

20 As you can see in Section 1606.4, the grounds are

21 set up.

22 The next sensitive issue was one of the presiding

23 officer. Should it be in all instances and independent

24 individuals or could it be in many instances an officer of

25 the Corporation?

1 As the memorandum discussed, there can really be
2 no really serious question raised about the propriety or
3 indeed the validity of designating a Corporation official
4 to preside at the hearing.
5 That alternative is elected with the discretion
6 to choose an independent outside person if it is deemed
7 appropriate.
8 The third question is what we would call in the
9 vernacular "the burden of proof issue", although we describe
10 it in the regulation as the obligations of the Corporation
11 issue.
12 As you can see the draft -- and I wish all of you
13 had been there to have a short refresher course on the law
14 of evidence at the time we got into this -- as you can see
15 by reading regulation 1606.11, the regulation imposes upon
16 the Corporation the obligation of proving by a preponderance
17 of the evidence any disputed fact relied upon as a ground
18 for denying of funding and on issues of policy, the
19 Corporation has the obligation of showing there is a sub-
20 stantial basis for denying the application for refunding.
21 If anyone in this room wants to go in and get into
22 the argument of what is the difference between the obligation
23 and the burden of going forward, I would defer to Roger
24 Cramton.
25 In the event quite seriously, the thrust was

1 that on an application for denial, the Corporation consistently
2 has the responsibility of establishing its basis for
3 taking that action.
4 That is how that regulation comes out.
5 We do have, and I do not know whether it is
6 called an errata sheet, or an addendum, but I would like
7 the Board now to focus on a change or two in your draft.
8 Please turn to 1606.2. By the way, this extra
9 sheet is attached in the package that had been circulated
10 to you this morning.
11 The request is to delete the clause that starts
12 in 1606.2(a) on the third line and runs to the end of
13 -- I guess I cannot say sentence, but the end of that
14 clause.
15 You can see where it is in your errata sheet.
16 MR. BROUGHTON: This was circulated this morning.
17 MR. KUTAK: The second change I would make would
18 be in 1606.3, the second line where the word "who" should
19 clearly be changed to the word "which".
20 Going on in 1606.4, you notice that he has an
21 added phrase, which is "denial will implement -- and in the
22 new language -- a provision of the Act -- or -- keep track-
23 ing".
24 The final change is in 1606.11, which is the desire
25 to add the clause that is underlined and spelled out in the

1 errata sheet or addendum, which follows the semicolon.

2 Because there is such complexity and senstitivity,

3 I want to assure the Board of the elaborateness of our

4 discussion and the thoroughness of the testimony given to

5 us, all of which was assimilated by Alice and perhaps Alice

6 would like to make any additions or as Breger would say,

7 any emendations to my remarks.

8 MS. DANIEL: No, unless there are any questions.

9 MR. KUTAK: Very well, then, Mr. President, I would

10 move that -- and Bernie, you listen, I would move the adopt-

11 ion of this regulation for public comment and to have the

12 executive authority to publish in final form in the event

13 that we receive no substantive comments that require any

14 change.

15 MR. ORTIQUE: I think this ought to come back to

16 the Board.

17 MR. KUTAK: Why not have that part withdrawn?

18 MR. ORTIQUE: Okay, publish it. I have no problem

19 with that. I just thought I was moving things along.

20 It is too much to take at this time.

21 MR. KUTAK: Okay. I move for it to be published

22 for comment.

23 MR. MONTEJANO: I second it. It should be noted

24 there was some substantial discussion as to whether or not

25 there should be an independent presiding officer outside

1 the Corporation on all cases.

2 As I understand the proposed draft, it leaves that

3 discretion to the staff; but it is really on a trial basis.

4 It can be looked at to see how, in fact, it turns out.

5 Down the road, we will make a determination and

6 decision as to whether to have an outside hearing officer

7 on all cases or not.

8 MR. KUTAK: That was in there, but we left it that

9 it was going to be published in this form and we would see

10 what it would be.

11 MR. MONTEJANO: Yes.

12 MR. EHRLICH: As I recall, the discussion of the

13 outside hearing officer made a dichotomy between those

14 cases in which there was a factual issue about either violation

15 of law or statute, or quality of service.

16 On those issues where there was a substantial amount

17 of sentiment that we ought to at least try at some point

18 for an outside hearing officer -- those are different kinds

19 of cases than you would have when you have the implementation

20 of a policy provision in the Act and so forth, which is not

21 of the same character as those issues.

22 MR. CRAMTON: Mr. Kutak?

23 MR. KUTAK: Any further questions?

24 MR. STOPHEL: What is the provision? As I under-

25 stand it, this comes up when you have an application for

1 refunding. What happens if there is perhaps even a testing
2 of a policy or statutory provision?
3 Do you have to wait until the next funding cycle
4 that comes around before anything is done in regard to this,
5 or is there any immediacy of action?
6 Let us suppose they are on a calendar basis and
7 there is a violation in January.
8 MS. DANIEL: The Act provides that the Corporation
9 may suspend for 30 days without a hearing or terminate after
10 full procedures, a grant in mid-stream for substantial vio-
11 lation.
12 Since that provision requires the procedures which
13 are the same as the denial for refunding, we thought that we
14 would first get agreement as to what it would look like.
15 Once we had this one in place, we would then move
16 on.
17 MR. STOPHEL: I see.
18 MR. CRAMTON: Is there further discussion on the
19 motion?
20 MR. THURMAN: I take it, Bob, that there is no
21 other regulation that pertains to applications for refunding
22 except this one very brief reference in here?
23 This is the only place you find anything in the
24 regulations on applications?
25 MR. KUTAK: Yes.

1 MR. THURMAN: Otherwise the whole business is
2 for turning down?
3 MR. KUTAK: Yes.
4 MS. DANIEL: I think that Charles Jones' staff
5 has issued instructions to programs dealing with the details
6 for applications for refunding and as done as through
7 regulations.
8 MR. THURMAN: Should there be any reference to
9 that fact here?
10 MS. DANIEL: Well --
11 VOICE FROM THE AUDIENCE: We cannot hear.
12 MS. DANIEL: The question was whether the regulation
13 should deal in any greater detail about the applications for
14 refunding.
15 What is says is that the application shall be
16 filed formally with directions that may from time to time
17 be issued by the Corporation.
18 One of the reasons that we are not putting it in
19 the regulation is that we are still learning what we think
20 our applications should include.
21 MR. THURMAN: That little section is far more
22 important to most people than all the rest of this business
23 -- when you get turned down.
24 MS. DANIEL: Yes, and we hope this can be used
25 very seldom.

1 MR. CRAMTON: I can testify that the Committee has
2 given very careful consideration to this procedural frame-
3 work by at least four separate meetings and has gone through
4 a series of drafts and approved them.
5 It may still have a way to go. That is what the
6 subsequent notice and comment provisions are for.
7 MR. KUTAK: As the commentary indicates, we received
8 a plethora of substantive comments. There was no dearth of
9 input.
10 MR. THURMAN: Would it be of any help to your
11 committee for us at the present time to express our views
12 on the outside individual versus the inside individual?
13 Or, do you want to postpone that?
14 MR. CRAMTON: Now is your best opportunity to do
15 so. The burden of proof and the presiding officer and so
16 on. I say this because although you can always do so when
17 it comes back to the Board, the longer the Committee talks
18 in terms of this particular procedural framework, the more
19 it may feel locked into it unless it is outvoted.
20 Would you say this is the best opportunity?
21 MR. KUTAK: Yes.
22 MR. ORTIQUE: I have no problem whether we talk
23 about it now or later, but I certainly do not feel locked
24 into this one.
25 That is why I made the comment that I did. I think

1 I have got to have some opportunity to sit down and digest
2 this.
3 I do not know when the staff thinks we got these
4 books, but mine arrived on Tuesday of this past week.
5 MR. KUTAK: Surely you dropped everything when you
6 got this book.
7 MR. ORTIQUE: I still have to make a living.
8 MR. KUTAK: Alice, do you have some comment?
9 MS. DANIEL: Unlike the earlier regulation that
10 we dealt with, which was quite simple, this does have a
11 lot of policy considerations that the Committee has considered
12 at great length and a number of technical things that we
13 have considered.
14 I certainly would be very happy to answer questions
15 that any Board member may have, not only here, but after
16 going home and looking at it again.
17 Please feel free to call on me.
18 MR. KUTAK: Not to extend that thought, but -- of
19 policy considerations -- but we really tried to not only
20 keep things fair, but to keep things simple. My goodness,
21 we certainly did not want -- it is clear what the ad
22 contemplates and that is the presumption of refunding.
23 MR. ORTIQUE: When I look at 1606.17, and I look
24 at the program that is being denied refunding, and you say
25 that you will decide whether you can reimburse them or not,

1 then I do not know -- I do not think that is very fair to
2 the program.
3 Certainly if they win their case they have an
4 absolute right to be reimbursed and even when they lose, I
5 have some thoughts that they ought to have the right to
6 have reimbursement.
7 What other opportunities are they going to have
8 to fund the development of a proper defense?
9 You have got their -- well, I do not want to use
10 the term. You have a strangle hold on them when you have got
11 their money.
12 MR. KUTAK: The posture of the regulation now is
13 that it will be published for comment. We will schedule
14 another meeting of our regulations committee on this matter
15 before it comes before the Board.
16 What I would like on that, Alice, is that -- I
17 want to make more than a mental note -- but I want to touch
18 base with Revius and perhaps he can be at the meeting.
19 MR. CRAMTON: The Committee considered that in
20 some detail and contrary to Mr. Ortique's view, the committee
21 reached the conclusion that since the regulation authorizes
22 the use of program funds for the defense, the question is
23 really rather whether the money ought to come out of other
24 legal services' pockets.
25 They said yes they can, but we ought to give them

1 an incentive to economize in terms of litigation.

2 Now that is a policy, but it seems to me to be a

3 sound one. The question is, should it be changed?

4 MR. ORTIQUE: As I said, I want to look at it.

5 MR. KUTAK: Very well. We will let you know when

6 the meeting is.

7 MR. CRAMTON: The date is getting late, however,

8 Revius, and you have got some problems with some of these

9 provisions.

10 If you do so, you had better let them be known.

11 MR. KUTAK: We will give him time and anyone else

12 in the room also.

13 MR. THURMAN: I have studied this thoroughly between

14 Denver and New Orleans. I would like to go on record as

15 agreeing with the Committee with .4 in setting forth the

16 specific grounds for denial of refunding.

17 Then under (c) and (d) there, putting the burden

18 of proof on the Corporation makes good sense.

19 MR. CRAMTON: Alice has just changed it back.

20 MS. DANIEL: No, no. In (c) and (d), the burden

21 is on the Corporation.

22 First of all, the Corporation has the burden in

23 all cases. The only change that we made was that in order

24 to avoid disputes or questions in each hearing as to what

25 is a factual hearing and what is something else, that the

1 change we have made between the meeting and here is to state
2 that there would be a requirement of proof by preponderance
3 of the evidence where there is a charge that a program has
4 violated the Act, or regulations or failed to maintain stand-
5 ards of quality.
6 There we can easily identify what the factual quest-
7 ions are. We say that the Corporation has the burden of
8 proving their existence by a preponderance of the evidence.
9 On all other issues, the Corporation still has
10 the burden, but there we have put it in terms of the applicat-
11 ion of establishing the substantial basis for denying refund-
12 ing.
13 So this is a significant change from the temporary
14 regulation, which placed the burden on the programs in all
15 cases to show that it was not arbitrary or capricious.
16 MR. THURMAN: This letter point that you make is
17 a little difficult for evidence. I do not know that I can
18 come up with anything better on it.
19 MR. KUTAK: That was Roger's action.
20 MR. THURMAN: It must be all right, then.
21 MS. DANIEL: We thought the need to deal with
22 reality of policy and discretion issues was critical.
23 MR. THURMAN: And then the other point which is
24 the business of who is to be the presiding officer -- I
25 agree with you on that also.

1 I like what you have done here. I am referring
2 to .8.
3 MR. CRAMTON: Is there further discussion on the
4 proposed regulation?
5 (No response.)
6 MR. CRAMTON: Very well.
7 MR. BROUGHTON: As I understand the motion as we
8 have it now, is to bring it back before the Board.
9 MR. CRAMTON: That is correct.
10 MR. KUTAK: That will mean that we will calendar
11 it at another regulation committee meeting before we bring
12 it back.
13 MR. CRAMTON: If there is no further discussion,
14 all those in favor of the adoption of the publication for
15 notice and comment of this proposed regulation, please say
16 aye.
17 (Ayes.)
18 MR. CRAMTON: Those opposed, please say no?
19 (No response.)
20 MR. CRAMTON: The regulation is unanimously adopted
21 for publication for notice and comment.
22 MR. KUTAK: Again, Mr. Chairman, I would not like
23 to close out my section of this agenda without really
24 expressing thanks to the amicus curiae. as well as to my
25 colleagues for what we consider to be very important inputs.

1 Your letters and calls are not simply mechanically
2 processed. We look at them. I hope that the end product
3 will reflect our best judgement.
4 Thank you.
5 MR. CRAMTON: That completes the report of the
6 Committee on Regulations.
7 We now go to the Committee on Appropriations and
8 Audit. I recognize Mr. Stophel.
9 MR. STOPHEL: Thank you, Mr. Chairman. Those
10 items on the agenda relative to the Appropriations and
11 Audit Committee refer to the recipt of the audit by Price
12 Waterhouse and Company.
13 I believe that each Board member received a copy
14 of the opinion through the mails and it was what we call
15 a clean opinion.
16 The Committee, at its meeting on December 15, had
17 a representative of the auditing company present. Their
18 comments concerning our staff and the procedures established
19 and the activities in the accounting section were all
20 favorable.
21 They were very complimentary of our comptroller's
22 office and the others who work with him in this.
23 As you have heard this morning from our regional
24 staff, they are also impressed with the comptroller's efforts
25 in establishing good management procedures even in our

1 programs. We hope this can be continued as a part of the
2 comptroller's office.
3 As a report on the status of investments -- you
4 will find a brief report concerning the investments status
5 and the investment of funds at 12/31/76.
6 You will find the availability of funds and the
7 amount of earnings through December 31, 1976. The total
8 interest earned as of that date was $1,345,000.
9 You notice also that we are staying almost exclusi-
10 vely with Treasury Bills, which was the decision of this
11 Board.
12 We have authority to move to up to 10 percent of
13 our funds into certain other categories, but a very limited
14 amount has been moved into that category.
15 You will notice that the projection there at the
16 bottom -- when we began the year we estimated perhaps
17 $4,200,000 in earnings.
18 This estimate that you shall see here on this is
19 probably high because our expenditures during the first part
20 of this year have been at a slower pace than anticipated,
21 but that pace will be accelerated as our expansion funds
22 are sent out and the programs receiving those funds receive
23 two months. So that is a large cash drain. That will
24 decrease our return on investments.
25 So, probably a good estimate at this time will be

1 in the range of $4.4 million in investment earnings for
2 this year.
3 MR. ORTIQUE: Our programs are receiving or will
4 receive their funds on a two-month basis?
5 MR. STOPHEL: First the cash flow -- as I understand
6 the cash flow procedure, they will receive two months' funds
7 when the grant is first made.
8 That gives them a 60 day flow and has helped with
9 making sure they have the funds to spend.
10 MR. ORTIQUE: I certainly do not wish to discourage
11 our effort along that line. This morning I forgot to mention
12 -- or to make a comment to the regional directors as to
13 whether we have an improvement in the manner in which they
14 receive their funds because I know in the old days there
15 were several paydays that people just did not get paid. I
16 thought that was a terrible thing.
17 People are working for starvation wages and they
18 are not getting those.
19 My concern, however, is this. Do we get the
20 report from our programs as to what their investment policies
21 are?
22 I am thinking specifically about the large programs
23 which receive a substantial mount of money. Certainly on
24 a one-month basis, it might find it appropriate.
25 I would suspect up to this point that no one has

1 looked into that or no program has made any efforts in
2 those directions.
3 I am sure that it does not take a smart regional
4 director or program director to decide that the Corporation
5 can make $5 million -- then certainly we can make $10,000.
6 $10,000 is $10,000 when you get down there to that
7 local program.
8 MR. STOPHEL: Their opportunity for such invest-
9 ment is very much restricted because of our month-to-month
10 sending out of funds.
11 We begin by giving them two months, but then we
12 give it on a 30 day increment. So their opportunity for
13 investment is very limited.
14 Our Committee has not looked into that question.
15 MR. EHRLICH: We have discussed it with the
16 regional directors.
17 MR. KUTAK: Why could -- you know, when you get
18 your computer cranked up and your system working, why could
19 you not pay out of a central fund and have all the money
20 right in Washington?
21 MR. STOPHEL: Bob, that was discussed substantially
22 when we decided whether we were going to invest funds or
23 not.
24 If you ask the programs, they will tell you to
25 send it at the beginning of the year entirely and have

1 themselves invest it.

2 So the idea of us in Washington issuing all the

3 checks is not really a feasible solution to the problem.

4 It is one that perhaps we ought not to discard,

5 but it is one which would cause a good amount of problems,

6 perhaps.

7 I think that a person receiving a paycheck would

8 prefer to receive it at the office rather than worry about

9 it traveling through our current mail system from Washington.

10 MR. CRAMTON: Does that complete the status of the

11 investments?

12 MR. STOPHEL: Yes, unless someone has a question.

13 MR. MONTEJANO: This question of Treasury Bills

14 has to be clarified. I understand there was a 10 percent

15 leeway factor there and our investment advisor would place

16 the money and hopefully place it in some minority institutions

17 or specifically minority banks.

18 I think we left it at the point of our saying that

19 we would look at the performance record and track record

20 before we do anything else.

21 I would like to see some advice and actual per-

22 formance with that 10 percent so that money goes into minority

23 banks.

24 I realize that a $20,000 or $40,000 investment

25 may not seem like a great deal of money to us here, and it

1 may seem like an administrative chore also in Washington,
2 but a $40,000 deposit in a minority bank can be considered
3 substantial.
4 I know it would be in our banks out in California.
5 I would like to have this matter brought before
6 the attention of the investment advisor that if there is
7 interest on some part of the Board that some of the money
8 be placed in minority institutions.
9 MR. STOPHEL: There has been that discussion at
10 the last meeting of the Board. We had a representative of
11 the investment advisory group -- no, rather it was at the
12 November meeting of the Committee.
13 We brought to their attention the thought that if
14 it were deemed appropriate as a safe investment within our
15 10 percent guidelines, which basically is Federally guaran-
16 teed, or similar, that he consider that.
17 The investment advisors are running us a parallel
18 program of investment which show what we could earn if we
19 released the restrictions -- not released, but reduced.
20 MR. BROUGHTON: Modified.
21 MR. STOPHEL: Yes, modified to permit a broader
22 range of investments.
23 MR. ORTIQUE: I would like to add to what Rudy
24 is indicating. That is that the bank closest to me indicated
25 to me that it is possible to have the same guarantee that

1 you have on the $40,000 on a $100,000 amount under some
2 special regulation.
3 Please mention that because the same banker told
4 me that $40,000 -- they would not be interested in because
5 of what they would have to go through, but $100,000 they
6 might be interested in.
7 MR. STOPHEL: Perhaps he could give us the benefit
8 of the regulation that he is talking about. We are not aware
9 of any guarantee over $40,000 in commercial banking.
10 MR. ORTIQUE: I will get a letter on that.
11 MR. BROUGHTON: Did you committee go into all of
12 that?
13 MR. ORTIQUE: Yes.
14 MR. KUTAK: Mr. Chairman?
15 MR. CRAMTON: Mr. Kutak?
16 MR. KUTAK: What would happen, Glenn, if you moved
17 your 30 day money to a regional office or district office
18 and it was invested and lost?
19 Is the Corporation obligated to send another sum?
20 MR. STOPHEL: None of our funds go to a regional
21 office.
22 MR. KUTAK: They go to a recipient?
23 MR. STOPHEL: A program.
24 MR. KUTAK: And they do not pay it out all at
25 once. They put it in the bank.

1 MR. STOPHEL: Right.

2 MR. KUTAK: Do we take the precaution that money

3 is secured? Suppose they put it into a bank --

4 MR. ORTIQUE: And the bank fails?

5 MR. KUTAK: -- the bank fails.

6 MR. DE LA TORRE: They have been instructed to

7 put the money in certificates of deposits or treasury bills.

8 In all of the seminars on a nationwide basis, Charles Jones

9 has so instructed.

10 VOICE FROM THE AUDIENCE: Run that by me again.

11 MR. STOPHEL: I will comment on it. The Comptroller

12 said that the instructions to the programs provide that they

13 are placing funds in savings accounts and certificates of

14 deposits, not exceeding $40,000, so they are Federally

15 guaranteed, or in U.S. Treasury Bills, which are obligations

16 of the U.S. Government, so that they are safe.

17 The question, of course, was whether they were

18 safe. That was the answer.

19 MR. CRAMTON: I suggest also that we get the record

20 clear on what it seems to me that the Board decided. I

21 though the 10 percent leeway on investments, which some of

22 us were concerned about, was designed to improve the income

23 but consistent with safety, and the preservation of the

24 funds.

25 MR. STOPHEL: That is correct and we have been