

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
OPERATIONS AND REGULATIONS COMMITTEE
OPEN SESSION

Monday, April 18, 2016

9:03 a.m.

Legal Services Corporation
3333 K Street, N.W., 3rd Floor
F. William McCalpin Conference Center
Washington, D.C. 20007

COMMITTEE MEMBERS PRESENT:

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

OTHER BOARD MEMBERS PRESENT:

Victor B. Maddox
Martha L. Minow
Father Pius Pietrzyk, O.P.
Julie A. Reiskin
Gloria Valencia-Weber

STAFF AND PUBLIC PRESENT (Continued):

Helen Guyton, Assistant General Counsel, Office of
Legal Affairs

Dianne Rouse, Research Coordinator, Office of Legal
Affairs

Davis Jenkins, Graduate Fellow, Office of Legal
Affairs

Jean Fischman, Graduate Fellow, Office of Legal
Affairs

Magali Khalkho, Director of Management Operations,
Office of the Inspector General

Roxanne Caruso, Director of Audit Operations, Office
of the Inspector General

David de la Tour, Program Counsel, Office of
Compliance and Enforcement

Daniel Temme, Office of Compliance and Enforcement

Reginald J. Haley, Program Analyst, Office of Program
Performance

James Scruggs, Program Counsel, Office of Program
Performance

Ronké Hughes, Program Counsel, Office of Program
Performance

Bristow Hardin, Office of Data Governance and
Analysis

Antwanette Nivens, Office of Data Governance and
Analysis

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

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

Thomas Smegal, Non-Director Member, Institutional
Advancement Committee

Allan J. Tanenbaum, Non-Director Member, Finance
Committee

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

Robin C. Murphy, NLADA

David Miller, NLADA

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Motions: Pages 6, 6, 39, 65, 95

1 (A chorus of ayes.)

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

7 MR. FLAGG: Right.

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

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

17 MR. FLAGG: Thank you, Mr. Chairman. I
18 commend the committee. I think this annual rulemaking
19 agenda is a terrific step, and if you look at the
20 lasting legacies of this board, one of them, in terms
21 of creating this marker and set of plans both for the
22 corporation and for the committee and the board and for

1 follow the memo, we've identified about a dozen
2 different areas in which we think additional work
3 should be done.

1 minutes.

2 MR. MADDOX: Okay.

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

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

19 These are not areas in which Congress has
20 said, thou shall, and clearly provided detailed
21 guidance. So this is areas in which the committee and
22 the board need to make policy judgments. And those two

1 proceedings are ongoing and occupying a lot of both the

1 that three-word term might suggest, and we frequently
2 get questions about it. And to clarify the term and
3 hopefully reduce the number of questions in the field,
4 we propose to hold a rulemaking.

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

9 Now, the second tier is a set of four
10 different potential areas of rulemaking, which we also
11 view as important, but they just need to stand in line.

12 And these would be the next in line, in our view.

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

21 On page 57 and 58, there's a discussion of
22 Part 1607. This is the part that deals with governing

1 bodies, the governing bodies of our grantees. I know
2 this board has spent a fair bit of time focusing on
3 governing bodies.

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

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

17 And there are at least two issues that have
18 been raised by people in the field. One is that some
19 of the groups charged with appointing client-eligible
20 members are themselves led by individuals who are not
21 client-eligible. And second, there's a concern that
22 there are client-eligible members who may not belong to

1 the club. And for both those reasons, that's an issue
2 we would like to think about.

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

12 There's concern again expressed from the field
13 that at times, people have -- their income has
14 increased sufficiently that they're no longer
15 client-eligible, and that that causes organizations to
16 lose potentially valuable client members because the
17 way our regulations are set up and the statute is set

1 1607, we would propose to engage in
2 information-gathering and then get back to the
3 committee with suggestions as to a path forward from
4 there. Likewise, that is the path we would respect to
5 Part 1609.

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

1 nominal fee would contravene the purpose of the Act,
2 but I would hasten to add the Act actually does not say
3 anything about this issue. It's the legislative
4 history that the OLA opinions were alluding to.

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

12 Charles, did you want to --

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

21 I will ask the question that occurred to me
22 after reading the memo, though, that since we do have a

1 1609 -- it's the same sort of discussion that we had
2 with the PAI rule. Do you do something specific with
3 the rule, or do you have a broader rulemaking? So
4 what's the thought?

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

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

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

21 CHAIRMAN KECKLER: Okay. Thank you.

22 MR. FLAGG: The two other tier 2 proposals are

1 ones, again, where management does have fully formed
2 thought as to what direction we should take. There are
3 certain definitions in Part 1600 that we propose be
4 modified. Those are described in detail at pages 59 to
5 61 of the board book.

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

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

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

1 that we should do.

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

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

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

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

20 So Part 1603 is an old chestnut at this point.

21 It's a basically unused provision that we've talked
22 about in the past. Our recommendation and the

1 recommendation of the IG is that it be rescinded. And
2 the only reason it's in tier 3 is again, it's not
3 pressing. Nobody seems to have been bothered by its
4 presence for the last decade or two. And we'd rather,
5 for example, get our Touhy regulations in place before
6 rescinding this.

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

14 Apart from that, management believes that Part
15 1635 ought to be reviewed. It is one of the most
16 significant. This is the part that deals with data
17 maintenance and collection and timekeeping and other
18 very important aspects of our oversight. We think Part
19 1635 should be revised.

20 The reason it is in tier 3 is not because it
21 is of less significance than the other regulations
22 above it, but because this would require -- it would be

1 a very complicated effort. It would be a very lengthy
2 effort.

3 And we don't think we should start the 1635
4 revision process until we've completed the 1630 and
5 1610 and 1627 sets of regulations just because this
6 will be very labor-intensive, not only for staff but
7 for the committee.

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

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

21 So communications with the community are very
22 important. We are concerned that the way the

1 regulation is currently is more restrictive than
2 Congress intended with regard to anti-solicitation.
3 Anti-solicitation rules are typically thought of as
4 either consumer protection rules, that is, people
5 misleading consumers about the nature of their services
6 and an effort to induce them to come to them for pay.
7 There's also a tradition of anti-champerty and
8 barratry. There are probably champerty and barratry
9 experts on our board, but --

10 (Laughter.)

11 MR. FLAGG: I don't think --

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

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

18 MR. LEVI: I appreciate your humor.

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

22 We had an opportunity earlier this year, and

1 actually, Davis Jenkins, one of our law fellows, as
2 well as Mark and the rest of the team, put together a
3 very good opinion which at least eliminated some of the
4 problems associated with this rule that were caused by
5 a prior OLA opinion and were able to clarify some
6 things, which eliminated some of the exigency. But
7 this is one that we think ought to be addressed.

8 So that is our set of recommendations.

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

11 MR. FLAGG: Because we've taken care of the
12 worst exigency with this opinion. We still think the
13 regulation ought to be clarified, but it's not quite as
14 exigent as it was six months ago. But look. All 11 or
12 of these, we think, are very important initiatives.

1 that again should be at the back of this memo and Jim
2 will talk about at greater length.

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

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

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

22 And what we have done is tried to list the 11

1 or 12 rulemakings that we think are most important and
2 ought to be on our short-term and medium-term radar,
3 and would ask the committee to approve the agenda as
4 submitted.

5 What does that mean? It means it sets a goal
6 for the committee and the board and for staff, exactly
7 as Charles said, subject to change. If all of a sudden
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1 you're getting more than one rule per quarterly
2 session.

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

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

13 MR. LEVI: But there are four quarters.

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

16 But yes, Father Pius?

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

19 (Laughter.)

20 FATHER PIUS: Two questions. One, it's not
21 rulemaking specifically, but the way in which we think
22 about rulemaking, and that's the executive order

1 talking about cost/benefit analysis with regards to
2 rules, which I don't think we're directly required to
3 follow.

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

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

14 FATHER PIUS: Okay. Good, good.

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

20 MS. DAVIS: \$15,000.

21 MR. FLAGG: -- \$15,000. That's not because a
22 \$12,000 subgrant is unimportant. It's a matter of

1 cost/benefit. The time spent reviewing a \$12,000
2 subgrant could be, we believe, better spent doing
3 something else.

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

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

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

19 So, for example, if you look at the preamble
20 or the justification for 1627.1, it talks about
21 subgrants in regards to eligible clients. But
22 obviously, the rest of the rule doesn't apply just to

1 CHAIRMAN KECKLER: Right. I think one of the
2 things I'm going to do is I'm going to put a pin in a
3 note for myself that that's a topic that, as we talk
4 about the definition of eligible client and we think
5 about our representation of associations, is something
6 that might or might not be included in that provision.

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

9 CHAIRMAN KECKLER: Laurie?

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

13 MR. FLAGG: The answer is yes. We routinely
14 hear from grantees, certainly monthly if not more
15 often, about issues. Now, they don't call us and say,
16 please change Part 1614.7.5. They ask a question about
17 it, and we try to answer their questions very promptly.

18 But if two or three grantees ask a question about the
19 same provision, that causes us to say, is it them or is
20 it us? And so that is one way we get input.

21 NLADA gets the same sorts of questions, and
22 they again will come to us and either ask the questions

1 in the form of a question about an existing regulation
2 or may say, gee. We've gotten 16 questions about this.
3 You might want to think about clarifying it.

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

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

16 MS. DAVIS: Advance notice of proposed
17 rulemaking.

18 MR. FLAGG: Advanced notice of proposed
19 rulemaking, which in essence says, here's some ideas.
20 What do you think about them? And then even once we
21 get to the notice of proposed rulemaking, we solicit
22 public opinion. And I think this committee and the

1 board and staff have been very -- the fact that we put
2 something in an NPRM does not mean it's final. And
3 we've been very good about changing things where we get
4 public comment that causes --

5 DEAN MINOW: Absolutely.

6 MS. DAVIS: If I could just add on to Ron's
7 comment, although we're not bound by the APA, the
8 Administrative Procedure Act does authorize the public
9 to petition an agency for rulemaking. And we've
10 adopted a similar procedure in our rulemaking protocol.

11 So the public can -- even though they don't, as Ron
12 noted -- the public certainly can write to LSC and say,
13 hey, we think it would be great if you did an overhaul
14 of 1635. So that option is also there.

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

20 MR. FLAGG: I don't think there's a need. I
21 think people understand that operators are on duty
22 24/7, and if they want to call us -- I mean, we

1 literally get calls multiple times a month about our
2 rules. Again, they usually don't take the form of a
3 suggestion that we change our rules. They usually have
4 a question. But that leads us to think about it. And
5 certainly NLADA and some grantees do think in terms of,
6 why don't you change this rule in one way or another?
7 So I don't think there's any lack of knowledge about
8 that.

MR. F or anotEEDMAN:Tj 12 ift te3pbs EDMAN: also,tak

1 is talk to people and gather more information. So that
2 would be a great vehicle. Thank you.

3 CHAIRMAN KECKLER: Harry?

4 MR. KORRELL: Thank you. Two quick thoughts.

5 One, the idea that we make sure that people have an
6 opportunity to weigh in on our agenda, I think, is
7 going to be served by having this annual discussion
8 about our rulemaking agenda.

9 I do think that the grantee and client
10 community -- or grantee community, anyway -- pays
11 attention to what we're doing at these things, and I
12 think doing this annually gives them that opportunity.

13 I think it may be an unintended consequence, but an
14 important one.

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

18 (Laughter.)

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

21 MR. FLAGG: The other thing is, you might look
22 at this and say, well, here are 12 more regulations.

1 But most of these are not -- our goal here is not more
2 regulation but better regulation. So a lot of these --
3 for example, if you look at what we're proposing in the
4 1627, 1610 domain, it's not more regulation. It is, we
5 hope, better-thought-out regulation, which in some
6 instances is a reorientation and hopefully an
7 improvement in the way we do things. But we're not
8 looking to expand. We're looking to improve.

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

18 (Laughter.)

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

21 MR. FLAGG: You could even have the Harry
22 Korrell Rescission Act of 2017.

1 CHAIRMAN KECKLER: Yes. That's very good.

2 Are there any other questions about it?

3 (No response.)

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

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

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

13 So I think it's possible if we had a
14 particular initiative, the effect of which we were
15 uncertain about. I could see, with regard to that sort
16 of thing -- I mean, as just a completely hypothetical
17 illustration, if we were interested in permitting more
18 than nominal fees to be charged -- and again,
19 management has reaching no conclusion or has even given
20 it a great deal of thought -- but that sort of thing,
21 if we were uncertain about what the effect would be, I
22 could see that would be the kind of regulation or

1 initiative where we would say, gee. Let's make sure we
2 come back to this in three years or four years or five
3 years, not necessarily to sunset it, but at least to
4 force ourselves to consider the effect of this
5 regulation.

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

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

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

21 Anything else?

22 (No response.)

1 CHAIRMAN KECKLER: Well, with that, thank you
 2 for this excellent memo and for this. I think it's
 3 pretty clear that tier 1, in my view, the things we're
 4 working on, we need to get them squared away. And as
 5 we proceed further along, we can provide input on an
 6 ongoing basis. This is something that we're already
 7 looking forward into 2017 about the work.

8 So we'll have some further thoughts, I'm sure,
 9 as we go along, and we'll also have a greater sense of
 10 what our resources are when we see where we finished
 11 we will be able to further along, working on right now in park 615a
 12 the issue of the PAMM and 1630. It's a big one. We
 12 94.2 orking on, ha6 12 94.2 463.44 Tm (9)Tj ()TjT are when

1 (No response.)

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

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

10 MS. DAVIS: Correct. That will be here, from
11 1:30 to 4:30 in the afternoon.

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

15 Julie?

16 MS. REISKIN: Those are webinars. Correct?

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

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

22 MS. DAVIS: We will be recording it, yes.

1 MS. REISKIN: Yes. If you could send that.
2 I'm very interested, but I'll be on the Hill. So
3 thanks.

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

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

10 Yes?

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

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

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

 PROFESSOR VALENCIA-

1 challenge, that people are at ABA Day. But we'll have
2 that available for the committee and the board to view.

3 MR. LEVI: We can review it.

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

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

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

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

20 CHAIRMAN KECKLER: Let me pause, Stefanie. I
21 think we might have some people on the phone that might
22 need to mute their phone. That's coming through.

1 We're all here, but that would be very kind if you'd do
2 that.

3

4

5 ventriloquism. I'm thrilled to see that it's working.

6

7

8 worksh/Bufo Wednesday with the inter->ufabetween

9 LSC's requirements Bufo our grants Band what other fun/Tys

10 require from our grant recipients. Many of our grant

11 recipients receive fun/s not only from us but also

12 several other fun/ing sources, up to as many as 936

13 other fun/ing sources. So we want to respect/Aand

un/Ty stand all of the obligations that our recipients

1 Bureau of Justice Assistance and the Office of Violence
2 Against Women, both at DOJ. We spoke with the
3 Corporation for National and Community Service, and
4 thanks to Julie for the introduction, we spoke with
5 Caring for Colorado as a private funder, and got an
6 idea from them about what they require from their
7 grantees, particularly in areas of prior approval for
8 purchases of goods and services and for the treatment
9 of intellectual property developed with other grantees'
10 funds, or other grantors' funds.

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

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

22 CHAIRMAN KECKLER: Are there any questions

1 about it? I hope that thinking again about what we're
2 doing in these rulemaking workshops, it's an early
3 stage information-gathering effort. And so nothing's
4 going to be decided there, but hopefully much will be
5 learned.

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

9 MR. FLAGG: Thank you. We have, as Stefanie
10 will describe, gone through quite a collaborative
11 process within LSC, working with our colleagues in
12 other offices and with other parts of our senior
13 management. And Stefanie will describe where we're at.
14 There's material at page 69, starting at page 69 of
15 the board book. And Stefanie, why don't you take it
16 from there.

17 MS. DAVIS: Sure. Thank you, Ron. There is a
18 draft of the notice of proposed rulemaking, the further
19 notice of proposed rulemaking, beginning at page 69.
20 And if you're interested in the redlined version of the
21 rule text itself, that can be found beginning at page
22 93.

1 We have spoken about the history of this
2 rulemaking quite a bit at previous meetings, so I won't
3 rehash that. I will only say that we received several
4 comments about various parts of the proposal, and there
5 were four in particular that we decided we needed to
6 seek additional comment on. Those are reflected in
7 this NPRM -- I'm sorry, this FNPRM. Sorry, Jim. And
8 there's one additional proposal that we at LSC included
9 as part of our working through these issues.

10 The further notice of proposed rulemaking is
11 limited to comment on these five items, so nothing else
12 in the rulemaking has been reopened for comment. All
13 of the committees that we received in response in the
14 original NPRM remain live and valid and will be
15 considered when we are ready to publish the final rule.

16 So I just wanted to make that clear.

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

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

22 MR. FREEDMAN: It sounds like somebody who has

1 called in has a crying child or other loud, shrieking
2 object. If that is you, please mute your phone. Thank
3 you.

4 (Laughter.)

5 MR. FLAGG: Well put.

6 CHAIRMAN KECKLER: Thank you, Mark. Go ahead.

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

8 (Laughter.)

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

15 We received significant pushback from the
16 field on that. We thought about it. We tried more to
17 figure out whether there was a way to define the term
18 programmatic that didn't either capture too much or
19 leave out too much. And after many, many discussions,
20 we determined that there was probably a better way to
21 capture what we were looking at than to define a term
22 with what we knew was significant imprecision to it.

1 So we propose to remove the term programmatic
2 from the further notice of proposed rulemaking. We
3 propose instead to introduce a definition of
4 "procurement contract" in a way to highlight that is
5 like, procurement contracts are for services/goods that
6 you need in order to carry out the grant, and that
7 subgrants are really for those things that involve
8 delivery of legal assistance.

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

1 system. That's really what we are talking about.

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

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

20 We heard that. We thought about it some more.
21 And we agreed that that should not be a limitation that
22 we would place on our recipients. So we are revising

1 the subgrant rule to make it clear that recipients may
2 use goods or services to support a subgrant, but that
3 if they are funded in whole or in part with LSC funds,
4 we expect them to be valued in a certain way and we
5 expect them to be accounted for responsibly.

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

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

19 And as we were talking about that, we were
20 like, that doesn't really make a whole lot of sense.
21 It's a lot of bean-counting. It's a lot of specifics
22 for not a lot of information.

1 So we determined that it made sense that LSC
2 should have prior approval over those agreement if they
3 reached a value of \$15,000. We then decided that that
4 actually made sense with regard to cash subgrants as
5 well.

6 You can see in the chart that Lora Rath
7 produced -- at page 103, there's a memo and a chart
8 that describes all of LSC's subgrants over the past
p arj 13 Tm12 which .44 Tmrj f3.2 mou90.4

1 So we are for the first time introducing here
2 a threshold of \$15,000. So \$15,000 or above, a
3 recipient has to seek prior approval of the subgrant.
4 \$14,999 or below, they do not. But that does not mean
5 that they are not subgrants. They are still subgrants.
6 They are still subject to the subgrant rules. They
7 are still subject to the restrictions as they are
8 described. But it just means that recipients don't
9 have to seek prior approval for those subgrants.

10 FATHER PIUS: Could they if they wanted to?

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

16 CHAIRMAN KECKLER: Julie?

17 MS. REISKIN: I'm really glad. I really
18 appreciate that you reconsidered the space issue. We
19 have that problem in Colorado, and now what the word on
20 the street is -- and I'm really glad that I'll be able
21 to say when I'm in the visits, because I'm sure I'm
22 going to hear about it, is LSC evicted the veterans in

1 Colorado Springs, which of course isn't what happened
2 and we're trying to -- people are very upset about it
3 because of that space thing.

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

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

1 have to screen and you would still have to show -- the
2 recipient would still have to show that -- if this was
3 done as part of the recipient's PAI project, the bar
4 association would have to screen and the recipient
5 would still have to show that there was a screening
6 process in place.

7 MS. REISKIN: Sure. Yes.

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

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

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

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

1 versus a number more like 50 or --

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

8 \$15,000 was the level of comfort that the
9 Office of Compliance and Enforcement and management
10 felt was appropriate for including in the rule, that it
11 would prevent us from having to look at the very small
12 subgrants for prior approval, but it was a level at
13 which we said, that's enough of an investment of LSC
14 resources that the burden of having to look at those
15 subgrant approval requests is less than the benefits of
16 catching something up front and having the prior
17 approval of it.

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

22 MR. FLAGG: I don't think so. I think the

1 better course is for us to look at this -- because
2 moving at the \$15,280 --

1 subgrants are we still reviewing? What is our
2 experience? What is our experience after the fact?
3 We're no longer doing pre-reviews of these --

4 MR. LEVI: Well, what I'd like to do is --
5 we'll put this rule into place at what point, do we
6 think?

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

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

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

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

20 MR. FLAGG: Here's the -- whether it's
21 working, I think, will be best evidenced by what do we
22 see not within the next 12 months, but in a year or two

1 years when we go back and look at these smaller than
2 \$15,000 subgrants. Were there all sorts of problems
3 that didn't previously occur because of the prior
4 review? So it's probably going to take more than a
5 year for that to surface.

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

8 (Laughter.)

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

16 Presumably there'll be one more, at least one
17 more, regulatory agenda from this current committee,
18 and that is going to be a great document for a new
19 board and a new Operations and Regulations Committee to
20 see what it is that this group thought was important,
21 and including coming back to look at the \$15,000
22 threshold.

1 CHAIRMAN KECKLER: John, you raise a good
2 point generally, I think, about thresholds and about
3 numerical thresholds. This is sort of a perennial bug
4 in the regulatory system that we have these monetary
5 and regulatory thresholds. It's not specific to LSC.

1 I do think looking at them regularly and perhaps
2 indexing some of them, again, in effect, our financial
3 eligibility guidelines, those are a specific number.


4 They need to be indexed. Where you're just
5 picking a number because in your judgment it's about
6 the right number, \$15,000, that just doesn't strike me
7 as the right vehicle for indexing.

8 MS. DAVIS: Right. And just to tie both of
9 those points together before moving on, I will note
10^{C1} that there are some regulations that anticipate what
Charles indicated, which is the rookie back at threshold

- 1 more changes that we are seeking comment on. One was
- 2 regarding the decisions on prior approval requests.

1 decision or to tell the recipient when we will make a
2 decision. We think that balances the need to notice
3 and to hold ourselves accountable as well as to make

1 that we heard often when I worked for the federal
2 government, that the government simply doesn't respond
3 quickly.

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

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

1 standard across at least two of our regulations.

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

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

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

19 We still need this information. Someone needs
20 to make it accessible to LSC. But we're no longer
21 saying, you have to do it, and here's how you have to
22 do it.

1 So we are happy to take questions. And the
2 ask we're making today is for the committee to
3 authorize publication of this FNPRM for 45 days, a
4 45-day public comment period.

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

7 (No response.)

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

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

13 M O T I O N

14 MR. KORRELL: So moved.

15 MS. MIKVA: Second.

16 CHAIRMAN KECKLER: All in favor?

17 (A chorus of ayes.)

18 CHAIRMAN KECKLER: Opposed?

19 (No response.)

20 CHAIRMAN KECKLER: The publication is
21 approved, and I look forward to the comments that we
22 will receive on it.

1 MR. FLAGG: Thank you. Thank you to the
2 committee.

3 MS. DAVIS: Thank you.

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

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

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

18 And of the 81 staff members who were here in
19 2015 to be evaluated, all 81 received their written
20 assessment and met with their management to discuss it.

21 And this includes some employees who joined us in 2015
22 who weren't here for a very long period of time, so

1 they received either a six-month check-in or a 90-day
2 evaluation. But all 81 folks were assessed.

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

10 2016 performance management is already
11 underway, and we've finalized our office performance
12 plans which, as you recall, link our work to the
13 strategic plan of LSC and to the other work of the
14 offices, and our employee performance plans, which link
15 the work of the employee to the office plan, which
16 links to the strategic plan. Approximately 80, 85
17 percent of those have been completed.

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

1 process of seeking proposals for that work.

2 Lessons learned: We need to be a little more
3 timely. Although we largely hit our March 31st
4 deadline, so all employees were assessed by that time,
5 there were some who hadn't met with their manager by
6 that time. Everyone met with their manager by April
7 15th, so we're over by about two weeks. And travel
8 plans and vacations complicated that.

9 But still next year -- or this year; we're
10 already in it -- we should do better. And because this
11 was the first year, we ruled out all of the components.

12 It was a heavy lift. So we're anticipating that this
13 year it'll be a smoother implementation now that all
14 the managers have it under their belt and they
15 understand what is required to get it done.

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

22 Because of the dollar amount involved, we had

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

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

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

17 As I said, providing professional development
18 and training is the number one priority of the Office
19 of Human Resources. And we are partnering with Maru
20 Willson, who is our training and implementation
21 specialist. She joined us in January, and she's been a
22 great value add already.

1 Our plan is that after our Word training, Maru
2 will be in a good position to help us identify discrete
3 areas that we need to drill down further and provide
4 in-house training to staff to further strengthen their
5 skills.

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

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

21 Last year we hired 16 new employees. This
22 year we've hired five. I'm hoping that we don't match

1 last year's number; that's a lot of time and effort.
2 But we've made some really great new hires. I'd like
3 to make mention of a few.

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

13 Then finally, in the Office of Program
14 Performance, we have two openings for program counsel,
15 program counsel for Pro Bono Innovation Fund and then a
16 program counsel for Pro Bono Innovation Fund, disaster
17 relief and recovery, and veterans great administration.

18 That's a mouthful. We've received over 60 applicants
19 for those positions, and they're being reviewed, and
20 we're going to be starting those interviews shortly.

21 So again, not to beat a dead horse, but
22 professional development and training is where we're

1 putting a lot of our energy and attention this year.

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

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

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

15 I think that's one of the things that we've
16 looked forward to from the performance management plan.

17 And so at some high level of aggregation, and maybe
18 ultimately the most useful thing from my perspective is
19 maybe not even the raw numbers in the offices but the
20 year-over-year change, the trends within the offices.
21 Something like that would be useful from my
22 perspective, but I'm not sure what others think.

1

MS. HIGGINS: Yes.

CHAIRMAN KECKLER: It dMANeggd

1 regularly. Their system doesn't look like our system.

2 CHAIRMAN KECKLER: Martha?

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

9 MS. HIGGINS: Thank you. Thank you.

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

14 Welcome.

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

19 But before starting, I also want to thank my
20 new colleagues. I've received a very warm welcome
21 here, and really a very professional on-boarding
22 process by OHR, and countless meetings with my

1 colleagues have really made this the best on-boarding
2 process I've been in in my 20 years of professional
3 policy research experience.

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

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

17 They include design of the collection at the
18 top, and they include providing tools and guidance for
19 data providers, the second to the right; monitoring the
20 collection process, literally collecting metadata on
21 the collection process; and then post-collection, which
22 are the dark circles on the left; post-collection

1 analysis; release of public findings; and sharing and
2 preservation of data.

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

7 I'll tell you a bit about the status of the FY
8 '15 post-collection review. And I make a distinction
9 here between substantive and subject-neutral data
10 edits. And then I'll talk a bit about the
11 post-collection analysis and data enhancement. This is
12 a step process, as the slide implies. And I'll start
13 just a bit talking about the subject-neutral edits.

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

20 I'm talking about multi-item trend analysis.
21 So presumably a decrease in staff will not result in an
22 increase in case closures. So the data that people are

providing, does it co-

1 Looking at those over time, whether they've
2 diminished over time or whether there was a nonresponse
3 ten years ago and a response in that cell today, that's
4 all important information to look at over time.

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

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

22 Also, the number of people that are logging in

1 And then efficiency, of course. Are we making
2 efficient use of the collection? Are we collecting
3 things that are gathered elsewhere? That's an
4 important question. Are we asking for things in
5 multiple ways, perhaps in our application and the grant
6 activity report? These are all things that we're
7 reviewing.

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

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

20 And so I think that -- I mean, obviously you
21 probably don't have this at this point, but I think
22 going forward, along the lines of what you're saying,

1 is a compendium or an understanding of the universe of
2 data that the grantees have that they might not give to
3 us but yet they have.

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

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

15 CHAIRMAN KECKLER: Martha?

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1 we make changes, but also how complicated would it be
2 to add more sensitive measures of performance.

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

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

19 Those subgroupings could be based on staff
20 size. They could be based on internal/external
21 funding. They could be based on rurality. They could
22 be based on case closure type. So one of the first

1 orders of business is that sort of cluster analysis.
2 And then I think that'll tell us a lot more about also
3 what to look for in the future.

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

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

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

22 We also have information in the green area,

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

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

14 And then of course at the bottom, the red is
15 the branch-level data. As an urban planner, I'm
16 interested not just in the organizational structure,
17 but where these institutions sit, what kinds of
18 communities they sit in. So we've geocoded every
19 office. There's a longitude and latitude for every
20 office. And that can place the office within a
21 neighborhood, and neighborhood attributes can be
22 associated with a specific office.

1 CHAIRMAN KECKLER: I think that's great, and I
2 think that going forward, I think one of the
3 overarching things that we've always talked about is

1 number from you.

2 (Laughter.)

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

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

18 That is information that's submitted on an
19 annual basis now, much more consistently than ever
20 before since IRS rule changes. That data obviously
21 focuses on staffing, but financial investments or
22 receipts. And so that's another source of information

1 that up there as a way to suggest that there are
2 proactive things we can with our data collection, our
3 public data collection, to show where potential risk
4 areas are within our service areas. HMDA data is just
5 one example of that.

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

12 That data is not always contiguous with the
13 service areas, so we're going to have to make some
14 rules about how we incorporate that data in the service
data. But it does provide opportunitiel2 ()Tj

1 back is everything, and how hard is that to reconcile
2 the different times that you're talking about?

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

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

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

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

22 FATHER PIUS: It's not really a question, but

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

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

14 And so thank you for the work. Keep on going.

15 And we look forward to the future.

16 MR. MANJARREZ: Thank you. Excellent. Thank
17 you.

18 CHAIRMAN KECKLER: Gloria?

19 PROFESSOR VALENCIA-WEBER: I was wondering, as
20 you were looking at the IRS 990 nonprofits, where the
21 prototypical use would be -- we have grantees who want
22 some help on locating potential donors, potential

1 non-LSC sources of money in their area, and if that
2 information would be helpful, to be able to tell them
3 what they have and the strengths of given nonprofits so
4 that perhaps they can focus their own efforts better on
5 more likely to be the organizations that can respond to
6 their appeals.

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

14 What a lot of people don't realize is that
15 they make their data available at the grant level. So
16 a data purchase from the Foundation Center would allow
17 us to see, over a ten-year period, all of the grants
18 that have been made for legal services by those top
19 1,000 foundations, right down to the organization
20 level.

21 What it is is a very, very rich network
22 database that links private foundations to individual

1 nonprofit organizations. And looking at that, we can
2 see not only if they've invested in legal services, but
3 what other human service organizations the same
4 grantees have given to.

5 I've worked with this data for over ten years.

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

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

e -0 the local level as well. fo44 Tm (al)Tj 12 -0 0 12 87 301.44 Tm0al

1 MR. KORRELL: Second.

2 CHAIRMAN KECKLER: All in favor?

3 (A chorus of ayes.)

4 CHAIRMAN KECKLER: The meeting stands
5 adjourned.

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

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