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LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS

MEETING OF THE  
OPERATIONS & REGULATIONS COMMITTEE

Friday, August 1, 2008  
2:40 p.m.

Sheraton Suites Hotel  
3233 Delaware Avenue  
Wilmington, Delaware

COMMITTEE MEMBERS PRESENT:

- Thomas R. Meites, Chairman
- Lillian R. BeVier
- Jonann C. Chiles (by telephone)
- David Hall
- Bernice Phillips-Jackson
- Frank B. Strickland, ex officio

OTHER BOARD MEMBERS PRESENT:

- Herbert S. Garten
- Michael D. McKay
- Thomas A. Fuentes (by telephone)

Diversified Reporting Services, Inc.  
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1 STAFF AND PUBLIC PRESENT:

2 Helaine M. Barnett, President

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

5 Mattie Cohan, Senior Assistant General Counsel

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

8 Patricia D. Batie, Manager of Board Operations

9 Charles Jeffress, Chief Administrative Officer

10 Karen J. Sarjeant, Vice President for Programs and  
11 Compliance

12 Jeffrey Schanz, Inspector General

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

15 Ronald "Dutch" Merryman, Assistant Inspector General  
16 for Audit, Office of the Inspector General

17 Thomas Coogan, Assistant Inspector General for  
18 Investigations, Office of the Inspector General

19 David Maddox, Assistant Inspector General for  
20 Management and Evaluation, Office of the Inspector  
21 General

22 John Constance, Director, Government Relations and  
Public Affairs Office

Stephen Barr, Media Relations Director, Government  
Relations and Public Affairs Office

Douglas B. Canfield, Executive Director, Legal Services  
Corporation of Delaware

James J. Woods, Jr., Chairman of the Board, Legal  
Services Corporation of Delaware

Charles J. Greenfield, Executive Director, Legal Aid  
Society of Hawaii (via telephone)

Linda Perle, Center for Law & Social Policy (CLASP)  
Charles A. Wynder, Jr., Vice President for Programs,  
National Legal Aid and Defenders Association  
(NLADA)

Hillary Evans, Civil Associate, National Legal Aid  
and Defenders Association (NLADA)

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

2 (2:40 p.m.)

3 CHAIRMAN MEITES: I call to order the meeting  
4 of the operations and regulations committee. As usual,  
5 we have a great many things to cover. I think we'll  
6 get through some but not all of them. But we will move  
7 quickly.

8 First, a motion to approve the agenda.

9 M O T I O N

10 MS. CHILES: I'll move.

11 CHAIRMAN MEITES: Is it seconded?

12 MR. HALL: Seconded.

13 CHAIRMAN MEITES: The agenda is approved.

14 I would also receive a motion to approve the  
15 minutes of our April 26, 2008 meeting.

16 M O T I O N

17 MR. HALL: So moved.

18 CHAIRMAN MEITES: Is there a second?

19 MS. PHILLIPS-JACKSON: Second.

20 CHAIRMAN MEITES: And the minutes are  
21 approved.

22 The first substantive item is consider and act

1 on alternative sanctions rulemaking. Who's going to  
2 report on that?

3 MS. COHAN: That would be me. Good afternoon.  
4 For the record, I am Mattie Cohan, senior assistant  
5 general counsel for Legal Services. Get myself a  
6 little organized. If there's anybody participating on  
7 the phone, I hope they can hear me, and if they will  
8 speak up if they can't.

9 CHAIRMAN MEITES: All right. Since our last  
10 meeting, I understand that you, or the staff, conducted  
11 a workshop, rulemaking workshop. Is that correct?

12 MS. COHAN: That is correct. We convened a  
13 rulemaking workshop on June 25th.

14 CHAIRMAN MEITES: And on page 40, there's a  
15 list of the participants.

16 MS. COHAN: Yes.

17 CHAIRMAN MEITES: Quite an impressive list.  
18 But I gather, from reviewing the materials, that a  
19 consensus was not reached. Is that correct?

20 MS. COHAN: Well, the purpose of the workshop  
21 was not to reach consensus on the particular  
22 rulemaking, on the draft that had been presented to

1       you.  Rather, the rulemaking workshop was intended as a  
2       brainstorming session, as a fact-gathering session,  
3       where the participants -- it was mostly the  
4       participants providing feedback to management and to  
5       OIG staff on enforcement issues.

6               The participation of the LSC staff was largely  
7       limited to kind of asking questions and seeking  
8       clarification.  It wasn't a negotiation.  It was  
9       designed that way, and it wasn't held that way.  It was  
10      really -- the discussion was centered around  
11      suggestions and the comments of the external  
12      participants.

13              And the information that was provided to you  
14      in the staff report should be understood as  
15      representing management's report to you of what  
16      happened, but not necessarily as any statement of  
17      agreement with or reaction to the comments and  
18      suggestions that were adduced at the meeting.

19              CHAIRMAN MEITES:  Now, you included materials  
20      in a draft rulemaking.

21              MS. COHAN:  That's correct.  That's the same  
22      draft that was in front of the committee at the last

1 meeting.

2 CHAIRMAN MEITES: I see that we also have on  
3 our agenda today the grant assurances.

4 MS. COHAN: That's correct.

5 CHAIRMAN MEITES: Why? Do the grant  
6 assurances not contain an agreement by our grantees to  
7 accept the possibility of certain sanctions?

8 MS. COHAN: Yes.

9 CHAIRMAN MEITES: So why don't just put this  
10 in the grant assurances rather than a rulemaking?

11 MS. COHAN: Well, because one of -- the  
12 proposed rule changes some of the regulations. To the  
13 extent we have current regulations on suspension and on  
14 what's currently on our regulation on termination,  
15 which includes reductions in funding of anything over  
16 5 percent, we can't change those except by regulation  
17 because we have them by regulation. We can't change  
18 them not by regulation. Regulation trumps.

19 CHAIRMAN MEITES: I asked it poorly. Rather  
20 than change the regulations, if we were so minded, can  
21 we simply add this as an additional term to the grant  
22 assurances?

1 MS. COHAN: No.

2 CHAIRMAN MEITES: What I'm getting at is I  
3 understand the relationship between the conditions in  
4 the grant assurances and our regulation. In addition  
5 to our regulations, are they merely a restatement of  
6 our regulations?

7 MS. COHAN: The grant assurances are basically  
8 contractual terms to which the grantee agrees as a  
9 condition of receiving the grant. The regulations  
10 implement statutory requirements as well as other  
11 things. Every regulation has statutory authority. The  
12 Corporation has to have statutory authority for every  
13 regulation it adopts.

14 Some of them adopt specific statutory  
15 requirements. Some of them use our general regulatory  
16 authority to implement something by statute and  
17 regulation. Once we had adopted something in  
18 regulation, that's gone through that public comment  
19 process. We can't change the regulations through grant  
20 assurances.

21 CHAIRMAN MEITES: Oh, I understand. But the  
22 rulemaking would add an additional sanction.



1           MS. COHAN: Well, the rulemaking right now,  
2 with the -- the current draft of the notice of proposed  
3 rulemaking does two things. The proposed change to --  
4 there's a proposed change to the suspension regulation,  
5 and to the extent that that's a proposed change to the  
6 suspension regulation, we can only change the  
7 suspension regulation by changing the suspension  
8 regulation, if you forgive the rather tautological  
9 phrase I just used.

10           The other proposal on limited reductions in  
11 funding, the current regulation makes clear that the  
12 Corporation can only impose the reduction in funding of  
13 a grantee's grant of less than 5 percent in accordance  
14 with duly documented regulations.

15           CHAIRMAN MEITES: I understand all that. But  
16 are we not free to add in additional conditions to the  
17 grant assurances to the effect that the grantee agrees  
18 that up to 5 percent of its funding can be withhold  
19 under certain conditions, and skip the whole regulation  
20 process?

21           MS. COHAN: No.

22           CHAIRMAN MEITES: Why not?

1 MS. COHAN: The Corporation, to the extent  
2 that there's a regulation that says something to the  
3 contrary, we cannot get --

4 CHAIRMAN MEITES: But it doesn't.

5 MS. COHAN: Actually, it does.

6 CHAIRMAN MEITES: What is contrary in the  
7 present regulation to what is --

8 MS. COHAN: The regulation specifies that the  
9 Corporation cannot reduce a grantee's funding by less  
10 than 5 percent absent a regulation duly adopted setting  
11 forth procedures to do that.

12 CHAIRMAN MEITES: Now I understand. Okay.  
13 That was kind of a sidetrack because I had some  
14 questions about grant assurances, and I thought I'd ask  
15 you and then the next speaker.

16 All right. You want to summarize what the  
17 staff learned from the rulemaking?

18 MS. COHAN: Absolutely. I'm going to follow  
19 the organizations of the comments as they're in the  
20 staff report for you.

21 I will say first and foremost, and perhaps not  
22 surprisingly, the general consensus among the grantee

1 representatives with respect to monetary-based  
2 sanctions, the adoption of additional monetary-based  
3 sanctions, was that the imposition of monetary  
4 sanctions would be much more harmful than helpful to  
5 the underlying situation.

6           With respect to the draft NPRM, though we did  
7 not discuss it in detail, the recipient participants  
8 considered it to have a punitive feel and strongly  
9 suggested that LSC not adopt any additional monetary-  
10 based enforcement tools. At the same time, it was  
11 agreed and understood that significant program  
12 noncompliance, even if not widespread, does jeopardize  
13 congressional support for and funding of the program  
14 and cannot be tolerated.

15           It was ultimately suggested that if -- and  
16 only if, I will clarify that -- LSC ultimately deems  
17 additional monetary penalties to be necessary, the  
18 field representatives suggested that they should be  
19 more limited than in the scope of the current NPRM.  
20 Such things were suggested as a shorter maximum  
21 suspension period or a smaller reduction in funding,  
22 and that the criteria be more clearly delineated.

1 And here I'm just kind of hitting highlights since you  
2 have a more detailed draft report.

3 With respect to the comments we received on  
4 non-monetary tools -- because we spent a lot of time  
5 talking about other types of tools -- a large focal  
6 point of the discussion was the role of the governing  
7 body when grantees are in significant and/or repeated  
8 noncompliance.

9 There were suggestions that LSC should focus  
10 its compliance efforts at increasing governing body  
11 involvement in program management and oversight. A  
12 whole variety of forms were suggested that this could  
13 take, such as the imposition of an external control  
14 agent or the mandatory engagement of experts to provide  
15 advice and guidance, both kind of consultants, outside  
16 consultants, and peer groups. And I think those  
17 discussions came up more in the context of when LSC is  
18 faced with a noncompliance issue, you know, things  
19 that -- corrective actions that can be taken.

20 But there was also a discussion about trying  
21 to avoid compliance issues coming up by supporting the  
22 idea of mandatory training for both governing body

1 members and program staffs. And that was suggested  
2 would be a very useful mechanism to help ensure that  
3 grantees remain in compliance and don't find themselves  
4 noncompliant.

5           It was suggested that appropriate mechanisms  
6 for imposing some of these ideas that I've just set out  
7 would be through greater authority for LSC to impose  
8 special grant conditions during the grant year, and  
9 that the main difference between a special grant  
10 condition and, say, a corrective action plan which  
11 would often have the same sort of things is that the  
12 special grant condition requires the local board  
13 approval and signature. It's a way of again  
14 incorporating and bringing in the governing body into  
15 compliance and oversight matters at the grantees.

16           There were some questions about sanctions that  
17 are available to other funders. What sanctions do our  
18 grantees face from other funders? And most of the  
19 participants noted that the sanctions attached to other  
20 funding sources are in fact monetary, particularly the  
21 federal government ones, and that the federal -- oh,  
22 I'll talk about that in a minute.

1           There was a question raised and discussed  
2           about grantee oversight of subgrantees. What happens  
3           when the grantees are in the position of being the  
4           grantor? Only one participant at that particular  
5           meeting had relevant experience to share, and told us  
6           about that it was made clear to them as the grant  
7           recipient that their subgrantee's performance was  
8           subpar and it was jeopardizing their, the grant  
9           recipient's, ability to get further funding.

10           And they basically informally passed that  
11           along, that if the subgrantee's performance didn't  
12           improve, they, the grantee, were perfectly willing and  
13           set to find another subgrantee. And apparently that  
14           informal situation resolved itself.

15           There was also a considerable amount of  
16           discussion about LSC's existing enforcement tools. It  
17           was suggested from some of the grantees that LSC's  
18           existing enforcement toolkit is in fact sufficient,  
19           that LSC, using the tools we have more efficiently or  
20           effectively, really don't need any more tools.

21           We didn't have a -- there weren't a lot of  
22           very specific suggestions about how to make better use

1 of the existing tools, although two specific ideas were  
2 put forth, one that instances of noncompliance could be  
3 avoided if LSC provided greater clarity and consistency  
4 in the interpretation of its rules and regulations, and  
5 that LSC could provide grantees with more detailed  
6 information regarding which enforcement tools are  
7 better suited or more likely to be used in what type of  
8 enforcement situations.

9           The only other thing that I'll go back to is  
10 other funders, since that did come up a little bit.  
11 Again, as I mentioned, other funders' tools tended to  
12 be monetary. The federal government uses suspension  
13 and limited reductions in funding as well as requiring  
14 funding on a reimbursement basis.

15           Of course, the federal government also has  
16 non-monetary enforcement tools which are very similar  
17 to the ones that LSC currently has -- a lot of  
18 monitoring; they use monitoring of enforcement and  
19 reporting requirements, and the like.

20           So that's the report on -- that's the very  
21 quick summary of what happened at the regulatory  
22 workshop. There were a couple of other issues covered

1 in the staff report. If you want, I can just plow into  
2 them, or I can hold off for now.

3 CHAIRMAN MEITES: Stop there. I found the  
4 report very interesting, and I'm glad that the  
5 rulemaking workshop was held. But where I end up  
6 personally -- I certainly would like to hear from my  
7 fellow committee members -- is I need more information  
8 in two areas.

9 One, I'd like some numbers on, say, the last X  
10 years of how many instances each type of existing  
11 sanction was used. I don't have a clue if we use it  
12 every day or use it once every ten years. And there  
13 was a suggestion, as I understood your remarks, that  
14 the grantees want more clarity with regard to sanctions  
15 and some idea of what conduct elicits what sanction. I  
16 think that would be helpful to me, at least, in making  
17 the case for an additional sanction.

18 The second area where I'm very interested is  
19 other tools. I for one think that the first line of  
20 defense is the governing board of our grantees, not us.  
21 And we have an existing regulation like 1607 which in  
22 very kind of soft fashion tells our grantees to pay



1 attention.

2 I think we can impose a substantially greater  
3 obligation on the boards of our grantees in that  
4 regard. And what I would like to do, and this is where  
5 I am, and I'll stop talking here, is to put the  
6 sanction issue into a broader context, the broader  
7 context being: What controls are there in existence,  
8 number one, which is the other sanctions, which I've  
9 asked for some numbers on. And two, I would find it  
10 helpful if we could get some ideas from staff or from  
11 our grantees and other parties as to what is realistic  
12 to expect from our grantee's board as first line  
13 monitors.

14 For example, should we require our grantee  
15 boards to have an audit committee? Should we require  
16 our grantee boards to be trained in our restrictions?  
17 There's lots of ideas. And of course, you can't ask  
18 volunteer boards and not-for-profits to do too much.

19 But I believe, from all of our traveling  
20 around the country and all the people we've met, that  
21 we have very committed and capable people on our  
22 grantees' boards. And if we explain to them why we

1 need their help, I think they'll rise to the occasion.

2 But I for one don't know enough about what  
3 we've asked them to do and what they're doing now to do  
4 more at this time. So my suggestion to our committee  
5 is, once again -- I know I'm going to hear -- once  
6 again, we defer action until we get at least the  
7 information that I've asked for.

8 Let me open it to the committee. Lillian?

9 MS. BeVIER: I completely agree that the piece  
10 of this report that is the most promising in terms of  
11 the alternative is the grantee boards. But in addition  
12 to what Tom has suggested, it seems to me there have  
13 got to be some resource issues here with respect to  
14 what we can expect them to do, how we would go about  
15 training them, and so forth.

16 And I would like, in fact, to have a real  
17 careful look done very staff at the opportunities and  
18 options that might be available there, and the resource  
19 implications. That's a big chunk. But, I mean, we  
20 know as board members that we have struggled to come up  
21 to speed with respect to what it is that is expected of  
22 us from time to time. And those expectations have

1 changed and become more stringent, I believe, in our  
2 tenure.

3           And I think that the governing boards of our  
4 grantees are probably experiencing the same thing.  
5 It's going on sort of all over the country with respect  
6 to nonprofits and profits as well. But it's a really  
7 important thing because you get the leaders who are  
8 helping and involved. I don't want them micromanaging,  
9 but I want them attentive. And I think it's a  
10 really -- it was an interesting aspect that came out of  
11 these meetings, I think.

12           CHAIRMAN MEITES: Bernice?

13           MS. PHILLIPS-JACKSON: It's funny that you  
14 mentioning training because I think, across the board  
15 at the meeting, they mentioned training, training,  
16 training. So I think training the board would be  
17 helpful.

18           Also, Mattie, did we get a chance to send the  
19 summaries to the participants that were at the meeting?

20           MS. COHAN: No. Unfortunately, time  
21 constraints ran out to get all of the materials  
22 together before that happened.

1 MS. PHILLIPS-JACKSON: When will we do that?

2 MS. COHAN: I'm sure we can do that when we  
3 get home.

4 CHAIRMAN MEITES: You certainly should send  
5 your report here to everyone who was at the meeting.

6 MS. PHILLIPS-JACKSON: Right. I mean, this  
7 is -- is this the report? No?

8 MS. COHAN: Well, this is the summary of  
9 what's in the report, yes.

10 MS. PHILLIPS-JACKSON: Right. And the  
11 participants did not get this?

12 MS. COHAN: No, they did not.

13 MS. MAHONEY: Well, we can send that as soon  
14 as possible.

15 MS. COHAN: Oh, absolutely.

16 MS. PHILLIPS-JACKSON: Also, the notification,  
17 is that -- the draft, is that what management is  
18 recommending that we do?

19 MS. COHAN: Well, management came to this  
20 meeting with the kind of starting base that --  
21 understanding that what the committee wanted was a  
22 report if the committee wanted to move forward on the

1 draft NPRM. But it seems to me that what I'm hearing  
2 actually is more of a consensus not to pick this draft  
3 NPRM up yet at this meeting because there's more  
4 information and more preparatory information work to be  
5 done before the committee will find this timely to act  
6 on. I didn't touch on that part, though.

7 MR. HALL: I guess, and this is looking at it  
8 from management's perspective, and I know you said it  
9 at the last meeting, but maybe also when you come back  
10 if you could crystallize how management feels it is  
11 limited by the existing rules.

12 Because clearly the reason you're here is  
13 because you feel that there's some things you can't do.  
14 And though that was articulated in the past, I think  
15 that even though the movement seems to be looking at  
16 other alternative ways of achieving this, I still would  
17 like to make sure, before I make a decision, that I'm  
18 not denying management of something that it really  
19 needs in order to go forward.

20 MS. COHAN: I hear you.

21 CHAIRMAN MEITES: Mattie, if there's no other  
22 comments, I think you got a sense of what our committee

1 believes it needs to proceed further. So if you could  
2 have that together. And it also might be helpful if  
3 you could ask -- where are we meeting next? Salt Lake  
4 City? -- perhaps some board members of our grantee in  
5 Salt Lake City to attend so we can essentially pick a  
6 random grantee board and see if they break under the  
7 strain or they say, we can do it. Or anybody else, any  
8 other board members you want.

9 MS. COHAN: Absolutely.

10 CHAIRMAN MEITES: And that's where we're at.  
11 Why don't we move on to the next --

12 MS. COHAN: I will just say one other thing  
13 about 1607. The current governing body regulation is  
14 that it -- I just want to provide a little context that  
15 it's not so much that I think that governing body  
16 regulation was ever really intended as the locus of  
17 governing body responsibility as much as it if you look  
18 at the whole regulation, it's really focused on how the  
19 boards are appointed.

20 I'm not saying that that might not be in fact  
21 be a vehicle as board responsibilities have changed.  
22 I'm just trying to at least private a little context

1 about why the current regulation looks the way it does.

2 CHAIRMAN MEITES: Understood. Thank you.

3 All right. The next item is grant assurances,  
4 yes, which some people have predicted will be a very  
5 short discussion and other people said, not so fast.  
6 So we'll see how we do.

7 Please state your name.

8 MS. SARJEANT: Karen Sarjeant.

9 CHAIRMAN MEITES: And Ms. Sarjeant, you're  
10 going to enlighten us on the proposed changes between  
11 the current grant assurance and next year's that you  
12 propose. Is that right?

13 MS. SARJEANT: Yes. Grant assurances, as you  
14 all are aware, are used when LSC makes a grant for the  
15 delivery of legal services. and the purpose of the  
16 grant assurances is to establish appropriate guidance  
17 for recipient programs. Each year, the board reviews  
18 and approves the grant assurances to be used in the  
19 coming year as part of its oversight function.

20 Last year we engaged in a bottoms-up review of  
21 the grant assurances, with participation from several  
22 LSC offices, including the Office of the Inspector

1 General. And we also included the Center for Law and  
2 Social Policy representing field programs.

3 We did a comprehensive review. We developed a  
4 statement of purpose that guided our development of the  
5 grant assurances and guided our revisions this year.  
6 Because we did a thorough review in 2008, we're now  
7 able to present to you the 2009 proposed grant  
8 assurances with very few changes.

9 And so if I could call your attention to the  
10 three main substantive changes. And those are, in  
11 grant assurance 5 --

12 CHAIRMAN MEITES: This is page 77 of the board  
13 book, for all the board members.

14 Go ahead.

15 MS. SARJEANT: Grant assurance 5, in which we  
16 added some language to this grant assurance to just  
17 clarify that in addition to those sanctions that are  
18 available and required by statute, if there is not an  
19 acceptable audit, that LSC also has the ability to use  
20 other sanctions. So that's the only change to that  
21 grant assurance.

22 The other substantive change is in grant



1 assurance 8. And in that one, we have added  
2 language -- because last year the grant assurances  
3 required programs to have a case management system by  
4 the end of the year that would provide contemporaneous  
5 conflicts checks.

6 This year what we've done is we've said that  
7 if you're doing intake outreach away from your office,  
8 and your program has -- your case management system has  
9 the ability for remote access, then you should do  
10 contemporaneous conflicts checks using that.

11 The other is grant assurance 15. This is the  
12 other substantive change, which requires that programs  
13 notify the Office of the Inspector General if it  
14 believes it has been the victim of any crime with  
15 damages of \$200 or more, or any time that the program  
16 contacts local, state, or federal law enforcement  
17 officials about a crime.

18 So those are the three substantive changes we  
19 made. And the other changes are primarily  
20 nonsubstantive ones.

21 CHAIRMAN MEITES: Before we ask questions,  
22 perhaps we'll ask Ms. Perle or anyone else in the

1 audience who has any comments to make on this.

2 MS. PERLE: I'm Linda Perle from the Center  
3 for Law and Social Policy.

4 CHAIRMAN MEITES: Linda --

5 MS. PERLE: Is that better? Linda Perle from  
6 the Center for Law and Social Policy. I did have an  
7 opportunity to review these changes, and as Karen  
8 rightly says, most of them are nonsubstantive.

9 And in terms of the three that she suggested  
10 were substantive, there was only one that we had any  
11 real comment on, which was the one dealing with  
12 conflicts when you're doing intake out of your office.  
13 And we had some conversations back and forth, and you  
14 did change the rule in response to the concerns that  
15 we -- excuse me, the grant assurance in response to the  
16 concerns that we expressed.

17 I think that the language that's there now  
18 gives me a little concern, not in terms of what they're  
19 suggesting, what they asking, but in terms of the  
20 clarity of it. Karen and I talked about that a little  
21 earlier. I think that I'm a little concerned that  
22 programs will look at what's there and think, oh, my

1 God, I have to go out and get laptops and those -- you  
2 know, the -- I don't know what they call them, the  
3 little things that hook on so that you can get access  
4 through your cell phone.

5 And I want it to be clear that programs are  
6 not -- this is not a new requirement for programs to  
7 get additional technology, that simply -- that if the  
8 technology is technology that they have, they should  
9 use. So that's my concern.

10 The other concern that I have that I don't  
11 know if it needs to be addressed here, but that in the  
12 new ABA rules, rule 6.5, when there is a -- when you  
13 are dealing with limited assistance, from the ABA point  
14 of view, you don't have to do a conflicts check unless  
15 you're aware there's a conflict. So this goes further  
16 than at least the ABA rules would require dealing with  
17 limited assistance as provided in these outreach types.

18 I think LSC can go further than is required by  
19 the rules. I'm not suggesting that it can't. But it  
20 is a concern.

21 CHAIRMAN MEITES: Karen, you heard Linda's  
22 concern about the new provision in 8(a). Do you agree

1 with her reading of it that it does not impose  
2 additional technological requirements on the grantees,  
3 but is it as she said, as Linda said?

4 MS. SARJEANT: It does not impose anything  
5 new. It just says basically, if available, if that is  
6 part of the system they have, remote access is a part  
7 of that system, we expect that it is used for conflicts  
8 checks.

9 CHAIRMAN MEITES: All right. Is there any  
10 more comment? My colleagues on the board?

11 (No response.)

12 CHAIRMAN MEITES: If not, I'll accept a motion  
13 that we recommend the grant assurances for approval by  
14 the board.

15 M O T I O N

16 MS. BeVIER: So moved.

17 CHAIRMAN MEITES: Is there a second?

18 MR. HALL: Second.

19 CHAIRMAN MEITES: All in favor?

20 (A chorus of ayes.)

21 CHAIRMAN MEITES: Anybody opposed?

22 (No response.)

1           CHAIRMAN MEITES: Good. Thank you.

2           All right. Next item on our agenda --

3           MS. BeVIER: Mr. Chairman?

4           CHAIRMAN MEITES: Yes, ma'am?

5           MS. BeVIER: I hate to interrupt, and this may

6 not be the right time to do it, but it just occurred to

7 me that there's another aspect of the alternative

8 sanctions that I would like to have that I thought --

9           CHAIRMAN MEITES: Let's go back to that.

10          MS. BeVIER: -- Mattie could help us out with

11 for the next meeting. And this may not be possible in

12 three months. I apologize.

13          Mattie, what is of concern to me is the

14 problem that our grantees have with the clarity of the

15 regulations and so forth. And that is that it's

16 there -- it's asserted there in the report, and I read

17 it and I'm concerned about it; it's not the first time

18 I heard that -- but I need examples of what in the

19 grantees' views are unclear aspects of the regulations.

20          If that's possible for you to help us out with

21 for next time, I would be really edified by that

22 because I know it's a concern. But I don't know

1 specifically with respect to what regs.

2 CHAIRMAN MEITES: Well, if it won't open the  
3 floodgates, when Mattie mails out her report on the  
4 rulemaking, if she dares, she can ask our grantees, the  
5 people who were at the rulemaking, if they have  
6 examples of our rules that they believe lack clarity.

7 MS. BeVIER: Right. Something of that nature.  
8 I'd certainly appreciate that.

9 CHAIRMAN MEITES: Would that --

10 MS. BeVIER: Thank you, Tom. Thank you.

11 CHAIRMAN MEITES: Next is our revised charter.  
12 This is it. We're going to actually adopt the charter.

13 MR. FORTUNO: Good afternoon.

14 CHAIRMAN MEITES: Your name?

15 MR. FORTUNO: Victor Fortunato, LSC's GC.

16 CHAIRMAN MEITES: All right. We have our  
17 board books at 90, the Nth generation of proposed  
18 charter for our committee. And I think we're getting  
19 close to actually adopting it. We're the second to  
20 last committee to adopt a charter. We have fought  
21 every inch of the way, but I think our spirit is now  
22 broken and we are going to do it.

1           But not quite yet. I have a couple comments  
2 to make before, and I'm sure my colleagues have some  
3 comments as well. Let us start with page 92, Self-  
4 Evaluation.

5           Now, I know there's been talk in other  
6 committees about the self-evaluation. And I understand  
7 (1) is we are supposed to evaluate our selves. Are you  
8 with me, Vic?

9           MR. FORTUNO: Yes.

10          CHAIRMAN MEITES: But in (2), it looks like  
11 we're evaluating ourselves again. I do not understand  
12 the difference between (1) and (2). And that's  
13 question 1.

14          Question 2 is: Are all the other committees  
15 burdened with two self-evaluation tasks?

16          MR. FORTUNO: Well, actually, if you look at  
17 the charter for the governance -- that is, the  
18 performance reviews committee, there is a provision  
19 there in the proposed charter that speaks to "annually  
20 coordinating and overseeing" -- I'm sorry -- "annually  
21 leading reviews of the role and performance of the  
22 board, its members, and its committees."

1           CHAIRMAN MEITES: Hold on. What page are you  
2 looking at, now?

3           MS. BeVIER: It's on the -- it's not in the  
4 board book. It's the revised on that was sent out  
5 by --

6           CHAIRMAN MEITES: All right. This is the  
7 proposed charter for the performance --

8           MR. FORTUNO: I'm sorry. It should be what  
9 you substituted for page -- at page 147 was the  
10 original draft.

11          CHAIRMAN MEITES: Got it.

12          MR. FORTUNO: Which was revised, and hopefully  
13 the one that you received more recently was  
14 substituting for that, starting at page 147.

15          CHAIRMAN MEITES: Okay. And that has -- and  
16 you pointed us to the proposed evaluation provisions of  
17 governance and performance reviews because it shed some  
18 light on my question?

19          MR. FORTUNO: Yes.

20          CHAIRMAN MEITES: What light does it shed on  
21 my question?

22          MR. FORTUNO: If section VI(5) of the proposed



1 governance and performance reviews committee charter is  
2 adopted and passed, then you would have that committee  
3 leading the annual reviews, and probably have no need  
4 for the provision in each individual committee  
5 charters.

6 CHAIRMAN MEITES: So that if Lillian's  
7 committee adopts the proposed, or at least that portion  
8 of the proposed charter, we can X out No. 1 and 2 under  
9 Evaluation in our charter?

10 MR. FORTUNO: You may be able to because the  
11 function for leading those reviews would be placed with  
12 the governance committee.

13 CHAIRMAN MEITES: Good. All right. So we'll  
14 keep that in suspense for the time being.

15 Question 2: This is an organizational point.  
16 Page 92, paragraph 5, which goes to "review with  
17 management and OIG," and so on. I had suggested to you  
18 that this doesn't really belong in the Regulations  
19 provision. It probably is better in the Operations  
20 subsection.

21 MR. FORTUNO: Yes.

22 CHAIRMAN MEITES: So we'll make that

1 paragraph (4), paragraph under Regulations No. 5.

2 All right. That is my tinkering as of today.

3 I'll open it to my committee members. Lillian?

4 MS. BeVIER: Just one tinker. It's VI(1). I  
5 just don't much care for the way that's phrased. It  
6 says, "shall address questions regarding." I guess I  
7 would prefer language that says, shall consider the  
8 Corporation's organizational structure, shall be  
9 charged with oversight of, or words to that effect  
10 rather than "shall address questions" because I don't  
11 know where the questions come up and I don't know -- I  
12 mean, it's a grammatical thing, I think.

13 CHAIRMAN MEITES: All right. You've done some  
14 tinkering. And can you do some language you want to  
15 suggest?

16 MS. BeVIER: "Shall oversee issues." "Shall  
17 oversee the Corporation's organizational structure."  
18 How about, "oversee the Corporation's organizational  
19 structure"?

20 CHAIRMAN MEITES: Well, "oversee" is more than  
21 we want to undertake.

22 MS. BeVIER: Okay.

1           CHAIRMAN MEITES: "Shall review and consider"?

2           MS. BeVIER: "Review and consider." "Shall  
3 periodically review and consider."

4           CHAIRMAN MEITES: Okay. That actually is more  
5 or less consistent with No. 2.

6           Is that acceptable to the --

7           MR. HALL: Sure.

8           CHAIRMAN MEITES: All right. Then do that as  
9 your marching orders. And David?

10          MR. HALL: Going back to the self-evaluation  
11 section that you were going to eliminate altogether, I  
12 think even if we eliminated (2) because the performance  
13 reviews committee is going to assume that committee, it  
14 seems like (1) is something that every committee would  
15 always want to do, which is to assess how we're doing  
16 in regard to our charter, and just so that we --  
17 because there may be a time where we feel the charter  
18 doesn't permit us to do something that we really feel  
19 we need to do. So to me, (1) seems like something that  
20 should stay.

21          CHAIRMAN MEITES: I agree with that. Lillian?  
22 Lillian, do you agree?

1 MS. BeVIER: Yes.

2 CHAIRMAN MEITES: All right. Other comments?  
3 Questions?

4 (No response.)

5 CHAIRMAN MEITES: The public? Ms. Perle has  
6 something to say about our obligations. That's good.

7 MS. PERLE: I'm not going to say anything  
8 about this. But I just note in the agenda that the  
9 next -- I don't know if it's the next item, but later  
10 in the agenda for this committee you're going to be  
11 reviewing a petition for rulemaking.

12 I don't think that's in this, and I was  
13 wondering whether on page 91 in No. (4) you might just  
14 want to add a reference to -- because it talks about  
15 regulatory policy or published regulations and  
16 priorities for rulemaking. You might want to add  
17 petitions for rulemaking in that list.

18 CHAIRMAN MEITES: Good idea.

19 All right. Vic, you'll have a revised draft  
20 for us before the board meeting?

21 MR. FORTUNO: Certainly. I'll have a -- I'll  
22 take care of this tonight and we'll have a revised

1 draft. I'll leave it for each of you at the front  
2 desk. So the board meeting is tomorrow morning. You  
3 can pick it up either tonight or tomorrow morning.

4 CHAIRMAN MEITES: Good. Well, I think we know  
5 enough now to have a motion subject to Vic capturing  
6 all of our thoughts. Is there a motion that we  
7 recommend to the board our charter, as revised, for  
8 adoption?

9 M O T I O N

10 MR. HALL: So moved.

11 CHAIRMAN MEITES: Is there a second?

12 MS. BeVIER: Second.

13 CHAIRMAN MEITES: All right. All in favor?

14 (A chorus of ayes.)

15 CHAIRMAN MEITES: Any opposed?

16 (No response.)

17 CHAIRMAN MEITES: All right. Thank you.

18 MR. FORTUNO: Thank you very much.

19 CHAIRMAN MEITES: Okay. The next item on the  
20 agenda, Freedom of Information Act. Who is that?

21 MS. COHAN: That's also me.

22 All right. At the last committee meeting, you

1 received a staff report that in December of 2007,  
2 President Bush signed the OPEN Government Act, which  
3 created a bunch of changes to the Freedom of  
4 Information Act, and reported, and the committee asked  
5 for a draft notice of proposed rulemaking to be brought  
6 before it at the next committee meeting. And that's  
7 what we're doing.

8 CHAIRMAN MEITES: All right. I believe that  
9 you have provided us with a redlined version of this?

10 Yes, page 113.

11 MS. COHAN: Right.

12 CHAIRMAN MEITES: It looks like it's a lot of  
13 text. But if I understood your report, there's not  
14 much. Probably the easiest thing to do is read it off  
15 for each section on 113. Just tell us why you're  
16 making the change and what substantive effect it will  
17 have.

18 MS. COHAN: Sure. Not a problem.

19 There are a couple of changes, proposed  
20 changes, to the definitions that are in the FOIA rule.  
21 Section 1602.2(g), the definition of records.  
22 Section 9 of the OPEN Government Act expands the

1 statutory definition of record to include any  
2 information that's maintained for an agency by an  
3 entity under contract for the purpose of records  
4 management. So management is proposing to change the  
5 definition of record to reflect that.

6 CHAIRMAN MEITES: I have to ask this. I know  
7 I shouldn't. But did some lawyer for the government  
8 argue that because they lodged records with a third  
9 party, that it was beyond the Freedom of Information  
10 Act? Did someone actually make that silly argument?

11 MS. COHAN: I believe they did.

12 CHAIRMAN MEITES: Okay. Go ahead on it.

13 MS. COHAN: Representative of the news media.  
14 The Freedom of Information Act provides that  
15 representatives of the news media may not be charged  
16 fees for search and review time associated with  
17 responding to their FOIA requests.

18 FOIA does not -- has not heretofore contained  
19 a definition of representative of the news media. But  
20 the Office of Management and Budget have put forth  
21 guidance with a definition of that term, and the  
22 regulation, our regulation, defines representative of

1 the news media based on the OMB definition.

2 The OPEN Government Act provides a new  
3 definition of representative of the news media for the  
4 purposes of the fee structure. And so the draft NPRM  
5 proposes to amend the existing definition to  
6 incorporate the new statutory definition.

7 CHAIRMAN MEITES: Okay. Continue. I'm sorry.  
8 Lillian?

9 MS. BeVIER: Bloggers, are they included in  
10 this new definition, do you think, Mattie?

11 MS. COHAN: Yes. I believe they are.

12 MS. BeVIER: Because they disseminate to the  
13 general public?

14 MS. COHAN: That's correct. And that was --

15 MS. BeVIER: That was the purpose of it?

16 MS. COHAN: Yes. I mean, obviously what we  
17 were doing was not what was pushing this legislation.  
18 But there was -- with the kind of change in how  
19 information is being disseminated, and there are  
20 bloggers and freelance journalists working through the  
21 net who were being denied materials with research  
22 costs. And Congress said, no, you really need to



1 consider them news media. The news media is changing,  
2 and we have to keep up with the times.

3 Under section 1602.5, the public reading room,  
4 the last time LSC changed the regulations, we were in  
5 the process of moving from 759 First Street to 3333 K  
6 Street. So both addresses were included in the reading  
7 room section. And since 750 First Street is now  
8 obsolete, we're looking to just fix that. A technical  
9 correction.

10 Section 1602.8, Request for records. Under  
11 FOIA, agencies are required to make determinations on  
12 whether to comply with FOIA requests within 20 business  
13 days of the receipt of the request. I would point out,  
14 just for background knowledge, that doesn't mean that  
15 the entire request has to have been -- all of the  
16 answers have to have been provided within 20 days. But  
17 that initial determination of whether or not to comply  
18 has to be done within 20 business days.

19 The OPEN Government Act provides additional  
20 instruction to clarify when the time limit begins to  
21 run. So the draft NPRM proposes to incorporate that  
22 clarification into the regulations. What the OPEN

1 Government Act did here was say that if -- there are a  
2 lot of agencies that have multiple FOIA offices. So  
3 it's 20 days from the date that the Correct office gets  
4 it, or not later than -- that 20 days gets to run not  
5 later than ten days after any FOIA office at the agency  
6 gets it.

7           So if the FBI -- you know, if one office  
8 within the Justice Department that's got a FOIA office  
9 gets a FOIA request that's actually for another FOIA  
10 office, they have basically ten days to get it to the  
11 other FOIA office before the 20-day clock starts to  
12 tick.

13           So one of the things that that -- kind of as a  
14 practical result that management is proposing, that's  
15 not required by the OPEN Government Act but is  
16 occasioned by this particular change, is under the  
17 current regulation, all FOIA requests come into the  
18 Office of Legal Affairs. Requests for records that are  
19 maintained by the Office of the Inspector General have  
20 heretofore basically -- those requests come in to us,  
21 and then OLA forwards it to the Office of the Inspector  
22 General.

1           In most agencies, the Office of the Inspector  
2       General is its own FOIA center. So management is  
3       proposing to designate the Office of the Inspector  
4       General as its own FOIA office for its own records. In  
5       that same section, there's a technical change to update  
6       the e-mail address requestors are required to use to  
7       submit FOIA requests.

8           Section 1602.9, Exemptions for withholding of  
9       records. Under FOIA currently, entire documents or  
10      portions thereof may be withheld from disclosure if one  
11      or more exemptions apply. If a particular document  
12      contains information that could be withheld from  
13      disclosure and could be reasonably segregated, that  
14      information needs to be redacted. And when the record  
15      is released, the amount of information that has been  
16      deleted needs to be recorded by the agency and that  
17      information provided to the requestor.

18           CHAIRMAN MEITES: Is this in the new statute?

19           MS. COHAN: That's the existing statute. The  
20      OPEN Government Act kind of goes one step further and  
21      says that in addition to denoting the amount of  
22      information redacted, the agency has to note what

1 exemption the information was redacted under. And the  
2 draft NPRM proposes to incorporate that requirement  
3 into the regulations.

4 Section 1602.13, Fees. Currently, the FOIA  
5 provides for the assessment of fees on requestors  
6 associated with the processing of their requests.  
7 Prior to the adoption of the OPEN Government Act,  
8 applicable fees could be assessed whenever authorized,  
9 regardless of the timeliness of the response to the  
10 requestor.

11 In response to many agencies in the government  
12 taking way too long -- I mean years -- to respond to  
13 FOIA requests, the OPEN Government Act now says if you  
14 don't get your initial request out in that -- sorry,  
15 your initial response out in a timely manner, the  
16 agency cannot charge fees except in cases involving  
17 unusual or exceptional circumstances.

18 And in the case of the representatives of news  
19 media, since they're already not subject to search  
20 charges, the OPEN Government Act specifies that late  
21 responses, the agency can't charge duplication fees.  
22 And the draft NPRM proposes to implement that statutory

1 change.

2 So almost all of the changes proposed are  
3 directly related to just straightforward implementation  
4 of the OPEN Government Act. And the other changes are a  
5 couple of technical changes regarding our e-mail and  
6 hard addresses, snail mail addresses, and then finally  
7 the specification of the Office of the Inspector  
8 General as a separate unit designated to accept its own  
9 FOIA requests.

10 CHAIRMAN MEITES: All right. The next step is  
11 for us to recommend to the board that it authorize  
12 publication of this for comment. Is that correct?

13 MS. COHAN: That's correct.

14 CHAIRMAN MEITES: Any questions or comments  
15 from the board?

16 (No response.)

17 CHAIRMAN MEITES: I will accept a motion to  
18 that effect.

19 M O T I O N

20 MS. BeVIER: So moved.

21 CHAIRMAN MEITES: Is there a second?

22 MR. HALL: Second.

1           CHAIRMAN MEITES: All in favor?

2           (A chorus of ayes.)

3           CHAIRMAN MEITES: Any opposition?

4           (No response.)

5           CHAIRMAN MEITES: We will make that  
6 recommendation to the board.

7           MS. COHAN: Excellent. Thank you very much.

8           CHAIRMAN MEITES: All right. The next item --

9           MS. COHAN: Oh, I'm sorry. I have to do this.  
10 There is one thing I did forget that I wanted to bring  
11 up.

12           In talking to the counsel to the inspector  
13 general, she had raised one other technical change  
14 related -- that we missed in our draft that currently  
15 says the counsel -- the regulation 1602.10 says the  
16 counsel to the inspector general or designee shall  
17 consult with the Office of General Counsel prior to  
18 granting or denying any requests for records. And that  
19 was relating to when all the requests came through us.

20           So if it's okay with the board, I would think  
21 that we would incorporate making that change,  
22 additionally that technical change when it goes out for

1 publication.

2 CHAIRMAN MEITES: All right. And I should  
3 have asked -- I will now -- does the inspector general  
4 have any additional comments on the proposed  
5 regulation?

6 MS. TARANTOWICZ: Thank you, Mr. Meites.  
7 Laurie Tarantowicz, counsel to the OIG.

8 No. Management consulted us during the  
9 drafting of the regulation and we're fine with it.  
10 Thank you.

11 CHAIRMAN MEITES: Thank you very much.

12 Okay. Next, and the last substantive item, is  
13 consider and act on rulemaking petition regarding  
14 financial eligibility requirements in disaster areas.  
15 Who is that?

16 Now, I received an e-mail that the proposer of  
17 this -- the author of this petition, who I believe is  
18 the executive director of our grantee in Hawaii, asked  
19 to be on the phone for this presentation. Is he  
20 present?

21 MR. GREENFIELD: Yes. Chuck Greenfield, the  
22 executive director of Legal Aid Society of Hawaii.

1 Good afternoon.

2 CHAIRMAN MEITES: Good afternoon. All right.  
3 Please go ahead.

4 MR. FORTUNO: I think that you have at  
5 page 117 of the board book a copy of Chuck's petition.  
6 The petition requests that our financial eligibility  
7 regulations at Part 1611 be amended to authorize  
8 grantees to waive income ceilings in those instances  
9 where disaster victims are in serious need of legal  
10 assistance, notwithstanding that they have incomes in  
11 excess of the 200 percent of federal poverty  
12 guidelines.

13 LSC already has a regulation -- well, the  
14 regulation in effect right now, the financial  
15 eligibility reg, already has a provision that would  
16 allow, when significant factors affect an applicant's  
17 ability to afford it, will allow the grantee to provide  
18 services to individuals who have income up to  
19 200 percent of the federal poverty guidelines.

20 Chuck has expressed the view that confining  
21 grantees to 200 percent of the federal poverty level  
22 deprives grantees of needed flexibility to help victims



1 of major disasters.

2 LSC does have the authority, I think, to adopt  
3 the change along the lines proposed by the petition.  
4 The question is really the policy. Management did  
5 seriously and carefully consider the petition, and  
6 while sympathetic to the recommendation in the  
7 petition, would remediate against the petition at  
8 this time.

9 In short, the feeling was that resources are  
10 not generally available at this time to represent -- to  
11 serve all these existing eligible applicant pools.  
12 We've seen that in the Justice Gap report and other  
13 sources.

14 And in the face of disasters, that applicant  
15 pool, especially in light of the provision in 1611 that  
16 allows for representation of persons up to 200 percent  
17 of the poverty guidelines, it's felt that this would be  
18 straining an already overly taxed system, and the  
19 resources at this time just don't exist.

20 And the focus really should be on those who  
21 are at 125 percent or below of poverty, and that only  
22 during exceptional circumstances would the group in the

1 range of 125 to 200 percent of poverty be eligible.  
2 And the feeling was that it's best not to, while we  
3 still have a large -- a portion of the population  
4 unrepresented because we don't have the resources for  
5 it, to expand that eligibility.

6 Another point to keep in mind, of course, is  
7 that persons who do not qualify under the eligibility  
8 regulation may nonetheless -- financial eligibility  
9 regulation may nonetheless be represented but not with  
10 LSC funds.

11 CHAIRMAN MEITES: Before we hear from  
12 Mr. Greenfield, I have just a modest question. His  
13 petition at some points talks about economic  
14 eligibility and other points talks about asset limits.  
15 Do we have both economic eligibility limits and asset  
16 limits?

17 MR. FORTUNO: Yes.

18 CHAIRMAN MEITES: We do?

19 MR. FORTUNO: Yes.

20 CHAIRMAN MEITES: All right. And our existing  
21 regulations allow waivers of both of those or just one  
22 off those?

1           MS. COHAN: The regulations allow a waiver of  
2 the asset -- allow grantees to have policies to waive  
3 the asset ceiling limits on the authority of the  
4 executive director or that person's designee.

5           The way the regulation is set up on income  
6 limits is that if someone is within -- basically,  
7 125 percent of the federal poverty guidelines is  
8 considered over income. That's over income. However,  
9 the regulation allows grantees to have policies to  
10 serve people who are over income between 125 and  
11 200 percent of the federal poverty guidelines amounts  
12 if they are affected by one of a set of enumerated  
13 exceptions.

14           There are a very few, very limited exceptions  
15 to that policy, which if you want the detail I can give  
16 you. But I don't know that you want it.

17           CHAIRMAN MEITES: So to summarize, our  
18 existing regulations allow a waiver of the asset  
19 limitation. But at most, a person to qualify,  
20 regardless of the disaster circumstances, is not  
21 eligible if their income is in excess of 200 percent.  
22 Is that correct?

1 MS. COHAN: That's correct.

2 CHAIRMAN MEITES: The exceptions I'll skip.

3 And what Mr. Greenfield proposes is that the income  
4 limitation also be waivable. Is that right?

5 MS. COHAN: Yes.

6 CHAIRMAN MEITES: Mr. Greenfield, you can  
7 discuss your own proposal at this point.

8 MR. GREENFIELD: Sure. I'd be glad to. Good  
9 afternoon. Thanks for the opportunity. I'll just be  
10 brief.

11 I think the last point is critical, that the  
12 regulations do allow, in unusual circumstances, for the  
13 asset limit to be waived and not for the income limit  
14 to be waived. Our thinking process was the executive  
15 director in Northern Virginia, following 9/11, as you  
16 know, when the plane hit the Pentagon, and so we formed  
17 a 9/11 legal team of legal aid lawyers.

18 And I requested the Legal Services Corporation  
19 allow the income limits to be waivable because we were  
20 staying -- we were at the disaster centers. We were  
21 representing a number of the economic victims,  
22 particularly a lot of the hotel workers and the cabbies

1 that had been laid off as a result of the terrorist  
2 attack. And we were seeing people that were over the  
3 income -- that 200 percent limit.

4           And while we did have federal money, we were  
5 able to use some of the other monies. We sought a  
6 waiver from LSC to be able to represent those  
7 individuals. It was difficult for us as people were  
8 lining up to see us to say yes, we can help you, no we  
9 can't help you, even though there were the same issues  
10 but the latter family was over the 200 percent  
11 limitation.

12           So the LSC position then, you know, one was  
13 that they didn't have the authority to allow me as a  
14 project director or a local grantee to waive those  
15 income requirements although we could waive, as pointed  
16 out earlier, the asset limitations.

17           So I've seen it as the director in Hawaii,  
18 too. With several disasters here, we've been faced  
19 with the same situation. We're a key player with the  
20 state disaster relief team, and we go into the  
21 different disaster centers and we set up tables -- and,  
22 by the way, we cooperate with the Young Lawyers

1 Division of the ABA as well.

2 And at those tables, we have to tell people  
3 that we can't help them, which to me is a very, very  
4 difficult situation when you're a community  
5 organization trying to help people.

6 I'm talking about individuals who are unable  
7 to afford legal assistance, which comes within the  
8 purview of the LSC statute. So I'm not talking about  
9 people with significant assets; I'm just talking about  
10 people who can't afford legal services but for one  
11 reason or another are above the 200 percent limitation.

12 So what I'm seeking with this petition is that  
13 LSC allow that flexibility for local programs. It's  
14 not a requirement -- just like the waiver of asset is  
15 not required; it's allowed within the purview of the  
16 local grantee -- but that LSC allow the authority,  
17 allow the flexibility, to local grantees to do that if  
18 the local grantees determine that they cannot serve the  
19 individual individuals, it's not their position to  
20 make.

21 But I think as a vibrant organization that  
22 seeks to assist people, we want to be known as

1 providing critical legal services in crisis situations.  
2 So we represent people who are losing their homes, who  
3 are losing their income, who are losing their family,  
4 who have domestic abuse. And so it's not much of a  
5 step to say we're helping individuals who are suffering  
6 as a result of a disaster as well.

7           And I think there's one analogy that can be  
8 drawn from history. When Pearl Harbor was attacked in  
9 1941, there was an attempt by a number of soldiers to  
10 obtain weapons from a small armory. And some of you  
11 may know this story. And the person in charge of the  
12 armory at the time, while the bombers were above Pearl  
13 Harbor, was explaining that the proper paperwork hadn't  
14 been filled out so they couldn't release the weapons.

15           Well, eventually they got in and they got the  
16 weapons. But by analogy, it's not that far off because  
17 what we have is we have these 100 -- 125, excuse me,  
18 and 200 percent boxes that we're caught in. And yet  
19 when a disaster happens, we can't -- we have to move  
20 outside of those boxes. We have to respond as an  
21 appropriate community agency would respond in  
22 cooperation with disaster officials and the ABA Young

1 Lawyers Division.

2 And this will allow us that flexibility. And  
3 also I think, frankly, it fits well within LSC's  
4 emerging effort -- and of course, there's been a number  
5 of terrible disasters, Katrina and others, that have  
6 played into this -- but an emerging effort to represent  
7 disaster victims. We say that now in our news  
8 releases, that we represent disaster victims.

9 I think this gives us a great opportunity  
10 because no one else besides the ABA Young Lawyers  
11 Division and legal services offices are really helping  
12 poor folks following a disaster. And to say that LSC  
13 programs help people following disasters and go to  
14 Congress and say, can you give us some additional funds  
15 to help support this because this is what we're going  
16 to do, I think is a great opportunity for us.

17 It ties in with the mission of crisis legal  
18 services and assisting poor folks and poor communities.  
19 And I think it helps local programs integrate better.  
20 It's one of those issues I think that would allow a  
21 program like mine to obtain greater public visibility,  
22 greater public respect. People really like it when you



1 help disaster victims. Not only government officials  
2 and funders but a lot in the community that don't  
3 really know about legal aid finds out about us at a  
4 disaster center. And I certainly want to help those  
5 people that are unable to pay.

6 So that's a summary position.

7 CHAIRMAN MEITES: Thank you. I thank you for  
8 your petition and for your comments. And you've  
9 actually put your finger on something that I have been  
10 unenlightened about for years, what the relation is  
11 between the ABA Young Lawyer Division, FEMA, and us.

12 I don't know what it is, but apparently the  
13 Young Lawyers Division got there first. And I've never  
14 understood why it is between us and FEMA, if it is  
15 between us and FEMA, and should it be between us and  
16 FEMA, because the staff's comment, as I understand it,  
17 is the money's not there.

18 But we all know that FEMA has all the money in  
19 the universe, some of it spent wisely, apparently some  
20 of it maybe not. But it's not getting to us directly.  
21 And I don't know why it's not, if there is a need. And  
22 Mr. Greenfield has made out a case for the need.

1           So what I would like to do, just for my own  
2           edification, is to have an explanation of what our  
3           relationship is with the ABA Young Lawyers Division and  
4           what its relationship is with FEMA because if the issue  
5           is money, I want to be assured that the money is not  
6           presently or readily available.

7           The second question I had is whether in fact  
8           we by regulation can authorize the waiver of the income  
9           limitation, or whether new legislation is required.  
10          And I see that Mr. Greenfield argues in his petition  
11          that we can do it now. But I'd like to hear from Vic  
12          and Mattie whether they believe we can do it, or  
13          whether new legislation is required.

14                 MR. FORTUNO: I think we can do it.

15                 MS. COHAN: Yes.

16                 MR. FORTUNO: I think we can do it.

17                 MS. COHAN: We have the legal authority for  
18          it. And we have the legal authority to do it the way  
19          Chuck has proposed. We would have the legal authority.  
20          There are other ways to get to what he's proposing  
21          other than the specific regulatory proposal that he's  
22          making that are also --

1           CHAIRMAN MEITES: Unless someone else on this  
2 committee has the slightest bit of interest in this  
3 proposal, you shouldn't do anything. So let me open  
4 the door and see if there is anyone.

5           MR. HALL: Well, there's certainly an interest  
6 on my part. I'd just like to ask Chuck a specific  
7 question.

8           Vic raised on management's behalf that part of  
9 the opposition or concern is that there's limited  
10 resources, and when a program is strapped for resources  
11 already, it is -- and in a disaster situation, you're  
12 basically devoting those resources to individuals who  
13 traditionally would not be eligible.

14           You shared with us at least a couple of  
15 different experiences where you, as an executive  
16 director or a project director, have been involved in a  
17 situation where there was a disaster going on.

18           And so my question would be: In situations,  
19 based on your experience, were these brief cases or  
20 short interventions, where the amount of resources that  
21 the agency was providing was in a limited basis and  
22 thus not having a long-term impact on existing clients

1 or eligible clients? Or were these the type of  
2 cases -- because though the disaster may be temporary,  
3 the legal problem may be that lasts for quite some  
4 time?

5 So just based on experience, are these  
6 situations where it might do what Vic is suggesting,  
7 and that is take resources away from eligible clients?

8 MR. GREENFIELD: Two responses. One is,  
9 actually -- well, my experience in Hawaii is that a  
10 number were brief service type of cases that weren't  
11 involving a lot of additional work.

12 My experience in Northern Virginia was a  
13 little different. There was brief service cases, but  
14 there were also some extended representation cases that  
15 involved quite a bit of work. In Virginia, I went to  
16 the IOLTA funder, and they did waive their income  
17 requirements to help us with those cases.

18 But it, that the concern that Vic had  
19 mentioned and you repeated, that we would be taking  
20 resources, or potentially taking resources away from  
21 people that are underneath 200 percent of poverty, I  
22 think is one that the local program would look at in

1 making that decision.

2 For example, in my program, I would say that  
3 we serve the poorest of the poor first, and then we  
4 look at what else we can do or how else we can help the  
5 community. And there are others who can't afford legal  
6 services that are just above there, and they're  
7 struggling. They're just above 200. They're  
8 struggling.

9 And we would prefer not to say no because we'd  
10 like to be able to have our doors open. But that  
11 doesn't mean that we're going to reject people that are  
12 underneath the 125 or 200 figure.

13 CHAIRMAN MEITES: Lillian?

14 MS. BeVIER: My question has to do with the  
15 fact that there's no ceiling on the waiver. I mean, I  
16 completely understand that you do not intend to be just  
17 handing out legal aid to anybody who comes along and  
18 wants it.

19 But the waiver does not apply to everyone, but  
20 it seems to me that if we go forward with this, we  
21 might want to consider limiting the authority to  
22 another percentage. I wouldn't know what it would be.

1 But I'm uncomfortable just having it be an unlimited  
2 number.

3 Is that something to which you can respond,  
4 Chuck?

5 MR. GREENFIELD: Well, I think -- yes. I  
6 think there's one way of doing that. The statutory  
7 language of "financial inability to afford legal  
8 assistance," I suppose could be defined further by  
9 incorporation in the regulation. And that might  
10 involve something else, either factors or something  
11 else that would be beyond 200 percent. Yes.

12 I think once rulemaking could be opened, those  
13 things could be looked at. And I know that would be as  
14 well.

15 CHAIRMAN MEITES: To go back to David's point,  
16 maybe a way to help us, she's reported from time to  
17 time that a group that came into existence with regard  
18 to Katrina is still operating, which suggests that some  
19 of the cases that -- or matters that arose out of that  
20 disaster, that turned into long term.

21 Do we know at all about what our grantees in  
22 that area have been doing that are still in the Katrina

1 business?

2 MS. BARNETT: Well, if you're referring to our  
3 biweekly calls, they are still in existence. And they  
4 are not limited to Katrina. And of course, they're  
5 open to any disaster that occurs throughout the  
6 country. So those calls have had the Iowa programs on  
7 with the flooding. They have had the California  
8 programs on with the wildfires. And they continue.

9 We are also in the process of looking to  
10 convert our Katrina website into a disaster assistance  
11 website, a more general website. So we are both having  
12 the biweekly telephone calls, the national calls that  
13 we sponsor, as well as our joint website which we do  
14 with NLADA, the ABA, and probono.net, converting that  
15 into a full disaster assistance website as well.

16 CHAIRMAN MEITES: Well, let me make a  
17 suggestion that Chuck has kind of led us into something  
18 we've never discussed before. Maybe for the next  
19 meeting, Helaine, it would be helpful if you could  
20 really tell us what you just told us in some detail,  
21 what many of our grantees are doing now in the disaster  
22 area. And in that context, Chuck's petition I think

1 will make more sense to us.

2 Also, for myself, I really want to get to the  
3 bottom of this FEMA/Young Lawyers agreement.

4 So does that make sense to the committee, that  
5 we put it in the context of what we're presently doing,  
6 not just what we've mentioned we're doing but in all  
7 areas of disaster response.

8 MR. FORTUNO: As long as it keeps this  
9 proposal alive.

10 CHAIRMAN MEITES: Yes. Let's continue it to  
11 the next meeting for further information.

12 MS. BeVIER: But that's including an effort to  
13 tell us about this relationship that you had asked  
14 about?

15 CHAIRMAN MEITES: Yes.

16 MS. BeVIER: Oh, yes. I think that's a very  
17 good idea.

18 CHAIRMAN MEITES: All right. So if that makes  
19 sense, we'll just continue this to our next meeting.

20 All right. That gets us almost to the end of  
21 the agenda. Any other business?

22 (No response.)



1           CHAIRMAN MEITES:  Anyone else want to be heard  
2   by our committee before we move to adjourn?

3           (No response.)

4           CHAIRMAN MEITES:  Our time is over at 4:00 or  
5   4:15?  4:00, but we are a bit early, but I think no one  
6   is going to complain.  Do I have a motion we adjourn?

7                           M O T I O N

8           MR. HALL:  So moved.

9           CHAIRMAN MEITES:  Seconded?

10          MS. BeVIER:  Second.

11          CHAIRMAN MEITES:  We are adjourned.  Thank you  
12   very much.

13          (Whereupon, at 3:50 p.m., the committee was  
14   adjourned.)

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