

1 LEGAL SERVICES CORPORATION
2 BOARD OF DIRECTORS
3 OPERATIONS & REGULATIONS COMMITTEE

4 Friday, July 28, 2006

5 The Westin Hotel

6 One West Exchange Street

7 Providence, Rhode Island

8 Committee Members Present:

9 Thomas R. Meites, Chair

10 Lillian R. BeVier

11 Jonann C. Chiles

12 David Hall

13 Michael D. McKay

14 Bernice Phillips

15 Other Members Present:

16 Frank B. Strickland, ex officio

17 Thomas A. Fuentes

18 Herbert S. Garten

19 Sarah Singleton

20 Others Present:

21 Helaine M. Barnett, President

22 Victor M. Fortuno, Vice President

 David L. Richardson, Treasurer & Comptroller

 Patricia D. Batie, Manager of Board Operations

 Karen M. Dozier, Executive Assistant to the President

 Mattie Cohan-Condray, Senior Assistant General Counsel

 Thomas Polgar, Govt. Relations & Public Affairs

 Karen Sarjeant, Vice President, Programs and Compliance

 Richard (Kirt) West, Inspector General

 Joel Gallay, Special Assistant to the IG

 Laurie Tarrantowicz, Assistant Inspector General

 David Maddox, Assistant Inspector General

 Ronald Merryman, Office of Inspector General

 Linda Perle, Center for Law & Social Policy (CLASP)

 Don Saunders, NLADA

 Cindy Adcock, Equal Justice Works

 James V. Rowan, Northeastern University School of Law

 Ronald W. Staudt, Chicago-Kent College of Law

 Liz Tobin Tyler, Roger Williams School of Law

 Ken MacIver, Merrimack Valler Legal Services

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P R O C E E D I N G S

(3:45 p.m.)

MR. MEITES: I would ask everyone to sit down so we can begin the somewhat delayed meeting of the Operations and Regulations Committee, which I will now call to order.

The first item of business is approval of the agenda. Do I hear a motion to that effect?

M O T I O N

MR. MCKAY: So moved.

MR. MEITES: Second?

MS. BEVIER: Second.

MR. MEITES: And the agenda is approved.

The next item is the consideration of the minutes, and I understand that a change is in order. Sarah Singleton is identified as a member of this committee in the meeting, and she is not.

With that change, can I have a motion to approve the minutes?

MS. BEVIER: So moved.

MR. MEITES: Seconded.

MS. PHILLIPS: Second.

1 MR. MEITES: Okay.

2 MR. MCKAY: The record should reflect how
3 anxious Ms. Singleton was to not be reflected as member
4 of this committee.

5 MR. MEITES: And by a vote of three to two,
6 with seven people not voting, she was allowed to remove
7 herself. All right. The next is consider and act on
8 draft notice of proposed rulemaking to revise 45 CFR
9 Part 1621, the client grievance procedure, and Mattie
10 is already at ringside.

11 MS. COHAN-CONDRAV: Trying to keep us moving.

12 MR. MEITES: At our last meeting, we
13 recommended to the board, I believe, and the board
14 authorized publication of a notice.

15 Is that correct?

16 MS. COHAN-CONDRAV: At the last meeting for
17 this rulemaking, we were -- management was directed to
18 draft a notice of proposed rulemaking.

19 MR. MEITES: And that's where we're at.

20 MS. COHAN-CONDRAV: Right.

21 MR. MEITES: And you have drafted the notice,
22 and that is what we have before us today.

1 MS. COHAN-CONDRAV: That's correct.

2 MR. MEITES: Are there any changes in the text
3 from what we considered the last time we considered
4 this proposal?

5 MS. COHAN-CONDRAV: This is the first time
6 you've had a draft to look at.

7 MR. MEITES: Last time, you were going to
8 confer with the group again, and this is the first time
9 we've actually viewed the rule as written.

10 Okay. So, why don't you walk us through it?
11 Thank you.

12 MS. COHAN-CONDRAV: Sure.

13 For the record, my name is Mattie
14 Cohan-Condray.

15 I am senior assistant general counsel with the
16 Office of Legal Affairs, Legal Services Corporation.

17 This draft notice of proposed rulemaking came
18 after two rulemaking workshops, and I will summarize by
19 saying I think two messages really emerged from those
20 workshops. One was how important an effective
21 grievance process is, and the other message is that the
22 current regulation is generally effective, generally

1 works well, but there is room for minor improvement
2 that would benefit applicants, clients, programs, and
3 LSC.

4 With that in mind, the draft NPRM that has
5 been presented to you for your review and consideration
6 was drafted.

7 Because it's a short NPRM, a short notice of
8 proposed rulemaking, a short regulation, I'm just going
9 to walk briefly through section by section.

10 MR. MEITES: That's fine.

11 MS. COHAN-CONDRAV: Section 1621.1, purpose.
12 The proposed changes are intended to clarify the focus
13 of the regulation, to clarify that the process is for
14 applicants and for clients of programs and not for
15 third parties to make complaints on other people's
16 behalves -- you know, my neighbor didn't -- I don't like
17 the service my neighbor got -- and it is proposed that
18 we delete the reference to an effective remedy, because
19 the grievance process is a process, it's not a
20 guarantor of a particular outcome, and in many cases,
21 you know, for example, denials of service to
22 applicants, they're still not going to be given

1 service, but they feel that they have been vindicated
2 and heard through the grievance process and understand
3 better why they were denied service.

4 Section 1621.2, the grievance committee.
5 Management is not proposing any changes to the current
6 language on this section.

7 The workshops -- there was some discussion in
8 the workshops regarding whether this section needed to
9 be changed or not.

10 Ultimately, management, after hearing those
11 concerns, decided that the current regulation provides
12 sufficient flexibility to grantees to compose their
13 grievance committees and deal with local conditions,
14 and that there was no real warrant for the corporation
15 to specify anything different.

16 With section -- the current sections on
17 complaints by applicants -- complaints about denial of
18 assistance and complaints about the manner of quality
19 of assistance, one of the first things I want to point
20 out is that management is proposing reorganizing the
21 regulations to just flip those sections. Part of the
22 reason is that we heard the vast majority of complaints

1 that programs get are about denial of service by
2 applicants. So, it seemed more logical to put that
3 section first in the regulation.

4 Also, it -- I think it helps clarify that
5 there are different processes required by the -- or
6 that the -- that the regulation permits recipients to
7 have different processes for applicants, a more
8 streamlined, simpler process for applicants who are
9 denied service than that which is required for clients
10 who have complaints about the manner or quality of the
11 assistance provided.

12 There is addition of language to clarify focus
13 on the availability of the complaint process to
14 applicants. This is similar to the purpose language
15 clarifications that I mentioned earlier, applicants as
16 opposed to third parties.

17 Among the substantive -- more substantive
18 changes being proposed, which are all pretty minor,
19 management is proposing to delete language limiting the
20 complaint process to certain decisions to deny a
21 service.

22 Under the current regulation, the process is

1 required to be available only for people who have been
2 denied service for one of the few explicit reasons.
3 One of the things that came out in the workshop is
4 that, from the applicant's point of view, they don't
5 really -- it's really immaterial why they are being
6 denied service, and the -- programs themselves were
7 telling us that this is not a distinction that they
8 make. Whatever process they have, they allow anyone
9 who is complaining about a denial of assistance to
10 process their complaint that way. So, management
11 agreed that there was no good reason for the regulation
12 to make some people -- give some people access to a
13 process and not others.

14 So -- and since programs are already doing
15 this, there should be no added burdens by this
16 particular proposal on the recipients.

17 The proposal -- the draft rule also proposes
18 to clarify that adequate notice means notice of the
19 complaint procedures. I think that's implicit from the
20 current language, but it would be better, since we're
21 working -- since we're revising the regulations, to
22 make it explicit.

1 We're also proposing to include the phrase "as
2 practicable" after "adequate notice of the complaint
3 procedures."

4 This is to improve the flexibility of the
5 regulation for programs and applicants who may not
6 interact in person.

7 I think when the regulation was written, there
8 was a lot higher incidence of clients and applicants
9 actually coming into the office, applying for service,
10 and now an awful lot of that is done over the phone.
11 So, adequate notice -- there are programs providing
12 notice in any number of different ways.

13 We heard some do it in their -- while you're
14 sitting on the -- in the phone queue, it's part of
15 their initial spiel, but other programs don't like
16 doing it that way, because they feel it's off-putting
17 to the client to be hearing about that while they're on
18 hold.

19 So, they provide notice in more informal ways
20 or when they're -- when they actually have somebody
21 talking in person.

22 So -- all of which seemed to be providing the

1 adequate notice that's current required, but we thought
2 adding the phrase "as practicable" will improve the
3 flexibility of the regulation and make it a little
4 clearer.

5 Management also proposes to add a statement
6 that the procedures must be designed to treat
7 applicants with dignity and to foster effective
8 communications between the recipient and its
9 applicants.

10 Management has every belief that the current
11 procedures that our grantees are using, in fact, do
12 this. So, we don't see this as adding any burden to
13 them, but rather, clarifying and emphasizing in the
14 regulation -- the theme that we heard throughout the
15 workshops is how important the complaint procedures are
16 for affording applicants that sort of dignity and
17 treating them well and fostering effective
18 communications.

19 So, we think this is already happening, but
20 because of the importance of the theme that we heard,
21 it was deemed that it was important to put this into
22 the regulation.

1 Finally, section 1621.4, complaints by clients
2 about the manner or quality of legal assistance.
3 Again, as I discussed earlier, there is just this
4 reorganization to flip, substantively, these two
5 sections.

6 Similar to the section on complaints by
7 applicants, there is some new language to clarify that
8 the focus in this section is on the availability of the
9 complaint process to clients of legal services
10 programs, and again, as with the other section, the
11 addition of a statement that the procedures for clients
12 to make complaints about the manner or quality of legal
13 assistance must be designed to treat complaining
14 clients with dignity and to foster effective
15 communications, same rationale as with the other
16 sections.

17 One of the substantive changes being proposed
18 here is -- the current regulation requires that clients
19 be given notice of the procedure available to clients
20 at the time of the initial visit.

21 There has been some concern that we heard that
22 "visit" somehow implies an in-person meeting, which,

1 again, as I noted earlier, happens with less frequency
2 than it used to, and clearly, clients who are served,
3 never actually come into the office, and don't come in
4 for their initial visit, have to be provided notice of
5 the complaint procedures available to them in a manner
6 that's appropriate and gives them the information they
7 need but yet is also flexible enough for the programs
8 to be able to accomplish in an appropriate manner.

9 So, management is proposing to change that
10 phrase of "at the time of the initial visit" to "at the
11 time when the applicant is accepted as a client,"
12 because it may be that the applicant speaks to somebody
13 by phone, has notice of the complaint procedures, if
14 they're unhappy that they have been denied service, but
15 they never get accepted as a client, and maybe it's not
16 necessary for them to have notice of the entire
17 procedure that's available to clients when they're
18 never going to be accepted as a client.

19 Some programs would have the flexibility to
20 provide all of that information up front, but they
21 don't necessarily have to, and so, at the time that the
22 applicant is accepted as a client seems to provide

1 additional flexibility in the system for recipients to
2 provide the required information in a timely enough
3 manner for a client to be able to use it if they
4 so -- if they felt that was necessary, but yet allowed
5 a more appropriate attorney-client relationship, if one
6 was going to be developed, it would be developed when
7 the client does not come into the office.

8 Finally, the last proposed addition of
9 language is to require programs to have some process
10 for complaints by clients who are served by private
11 attorneys pursuant to a recipient's PAI programs. LSC
12 has not previously applied this reg in the PAI context,
13 although I note that programs have an oversight
14 responsibility under the PAI rule itself, and one of
15 the things -- again, one of the things we've heard is
16 that, from the client perspective, it's really
17 immaterial whether they are being served by a private
18 attorney to whom they have been referred through that
19 private attorney program of the recipient, or whether
20 they're being served by a recipient staff attorney.

21 So, management felt it was important to
22 include those people under the PAI reg. However, it's

1 important to note that LSC is not -- that management is
2 not proposing that recipients provide the same process
3 to those clients as to the clients that they serve
4 directly.

5 Rather, because most recipients who have PAI
6 programs already have some sort of mechanism for
7 processing complaints about the manner or service
8 provided by private attorneys, it is management's
9 intention that those processes which satisfy the PAI
10 oversight requirement would also satisfy the
11 requirement being proposed in 1621.

12 So, again, not proposing any new burdens on
13 the recipients other than what they're already doing
14 but making -- kind of making more explicit a
15 relationship between the client grievance procedure
16 rule and the PAI rule in this particular case.

17 That's a very quick summary of the proposed
18 changes, and then management is recommending that the
19 committee recommend that the board approve the draft
20 notice of proposed rulemaking for publication for
21 public comment.

22 So, that's the end of my formal presentation.

1 MR. MEITES: All right. Before I ask for
2 public comments, I have one question.

3 MS. COHAN-CONDRAV: Yes.

4 MR. MEITES: Under your proposed
5 1621.4C -- that is, the procedure for private attorney
6 involvement -- has management considered suggesting a
7 model or models of such procedures in the guidance it's
8 going to provide the grantees?

9 MS. COHAN-CONDRAV: I don't think that was
10 particularly considered, mainly because part of the
11 focus of this rulemaking has been to provide grantees
12 with as much flexibility as possible, and we heard a
13 number of different -- when we were talking about this,
14 from the recipients themselves, we heard a number of
15 different ways that recipients provide the necessary
16 oversight under the PAI rule and handle complaints.

17 MR. MEITES: Well, that's what I had in mind,
18 not to prescribe what the procedure should be but to
19 give grantees some idea of what kind of procedures
20 people are using.

21 MS. COHAN-CONDRAV: We can certainly go
22 back --

1 MR. MEITES: That would not be in the
2 regulation or --

3 MS. COHAN-CONDRAV: No.

4 I would see that as something in the preamble,
5 and I mean if -- we could either put something in the
6 preamble before publication, or that's something we
7 could make sure, if the committee was interested, that
8 was included in the preamble to whatever final rule is
9 presented.

10 MR. MEITES: Just a thought.

11 Comments from the committee? Questions?

12 Lillian, you first.

13 MS. BeVIER: I just have a -- this is -- I
14 actually sort of lost my focus when you were asking, so
15 you might have just asked this question. I'm of two
16 minds about asking this question, but it has to do with
17 the dignity and respect part being put into the
18 regulation.

19 It seems to me so plain and so obvious and so
20 clear that not only do we want our grantees to treat
21 applicants with dignity and respect but that we expect
22 that they will, that I really have a problem putting it

1 in the regulation.

2 I mean it's basically to say you need to
3 be -- you need to be basically a good and humane
4 person, you need to -- so -- and to regulate that just
5 bothers me a bit.

6 So, I'm wondering, if we have a preamble,
7 maybe we could put that in the preamble, that that's
8 what we're -- we know that this will happen, and we
9 anticipate that it will, but I just have a hard time
10 ordering or regulating that sort of behavior into
11 being, and I don't know whether anybody else has that
12 view at all. I just felt I had to say something about
13 it. I understand its importance

14 MR. MEITES: David, did you have a comment?

15 MR. HALL: I had a different question related
16 to the --

17 MR. MEITES: Well, responding to Lillian's,
18 I'm somewhat in sympathy that that's like you shouldn't
19 beat your wife.

20 It's an admonitory for a problem that we are
21 not aware that our grantees have.

22 As far as we know, our grantees, as a regular

1 operating procedure, treat recipients of services with
2 dignity and appropriately.

3 MS. COHAN-CONDRAY: And management would
4 certainly agree.

5 MR. MEITES: So, I guess I'd side with Lillian
6 that it kind of puts something in that, I guess, goes
7 without saying?

8 MS. BeVIER: Yeah. Some things just do go
9 without saying.

10 MR. MEITES: David?

11 MR. HALL: On point number 3, under 1621.4,
12 where you're proposing changing the language from "at
13 the time of the initial visit" to "at the time the
14 person is accepted as a client," my only concern -- and
15 it's more a question as to whether there are some
16 protections for individuals who are never accepted as a
17 client but yet who have interfaced with us in some way
18 to the point where they would have a grievance and
19 what -- what's there for that individual?

20 MS. COHAN-CONDRAY: What's there for that
21 individual is section 1621.3, complaints by applicants
22 about denial of legal assistance. There's a procedure

1 specifically covering people who have been denied
2 services --

3 MR. HALL: Okay.

4 MS. COHAN-CONDRAV: -- who never get to be
5 clients, so that they have -- they have an opportunity
6 to -- to complain, and from what we heard from our
7 programs, that's the vast majority of the complaints
8 they get, that they get very few complaints about
9 manner or quality of legal assistance provided, that
10 people -- people are unhappy when they tell them
11 they're not going to be served, rather than about the
12 actual service that they get.

13 MR. HALL: And when are people provided with
14 notice about those procedures? When they visit or --

15 MS. COHAN-CONDRAV: It happens in a number of
16 different ways.

17 For people who come into the office,
18 generally, a lot of times, there are -- the complaint
19 procedures are posted, or there are pamphlets.

20 Other times, when they're on the phone, it's
21 part of the -- a lot of programs now are doing phone
22 intake, where they've got kind of a little script

1 giving the office hours, the direction, the this, the
2 that, you know, and sometimes they will include it in
3 there, you know, if you -- if you are denied service or
4 you are accepted for service and you feel you are
5 not -- your service is inadequate, you -- there is a
6 way for you to complain, blah, blah, blah.

7 MR. HALL: Okay.

8 MS. COHAN-CONDRAV: Other times, it's more
9 informal.

10 What we heard from a number of recipients was
11 they talk to the client, they provide notice,
12 they -- they tell the client, I'm sorry, it sounds like
13 we're not going to be able to serve you, if you would
14 like to make a complaint about it, this is how you go
15 about it.

16 Some of them just said, after years of
17 experience, you hear it in their voice that they want
18 to complain, and that those people are usually then
19 moved over to somebody else to talk to.

20 The programs feel it's very much in their
21 interest, obviously, to resolve these sorts of -- I'll
22 call them customer service issues, in an efficient and

1 quick manner, and that, by and large, those complaints
2 are, in fact, resolved that way.

3 So, they are provided with notice in a variety
4 of different ways, and the current regulation and what
5 we've proposed, what management has proposed, intends
6 to retain the flexibility that is there under the
7 current regulation for programs to find the best way
8 for themselves to provide that notice.

9 MR. MEITES: Bernice?

10 MS. PHILLIPS: Mattie, can you help me
11 understand -- clients are people who are provided
12 services, and applicants are people who applying for
13 services?

14 MS. COHAN-CONDRAV: That's correct.

15 MS. PHILLIPS: So, clients -- you wouldn't
16 deny clients services, if they have been accepted.

17 MS. COHAN-CONDRAV: Generally, that's correct.

18 I mean I will tell you -- some of the
19 discussion we got into, you get into these
20 interesting -- eventually, you get into these
21 interesting questions -- you've accepted the client,
22 you've given them service, and then they're complaining

1 because they want more service, they want to take an
2 appeal, and you don't want to give it to -- you know,
3 they don't have a good enough case.

4 You know, ultimately, I think that still falls
5 under the -- they're a client but complaining about the
6 manner or quality of service, you know, because they're
7 saying I'm not getting enough service. They're not
8 really an applicant at that point.

9 An applicant is someone who comes in and
10 there's an interface, but they're never accepted as a
11 client. They have -- you know, that creation of that
12 relationship isn't there. They don't have a client
13 name, a number in the system.

14 MS. PHILLIPS: Thank you.

15 MR. MEITES: Other questions, comments?

16 Let me open it for public comments.

17 Mattie, you can stay there. You can respond.

18 MS. PERLE: I don't have any detailed comments
19 that I'm going to share at this time.

20 I did send to -- once I saw this, a few days
21 ago, I did send some comments that are, I think,
22 basically non-substantive to Mattie to share with the

1 staff, and I would hope that you would give the staff
2 the authority, if there are some relatively
3 non-substantive things, in my comments or others that
4 are shared with them, that they could make those
5 comments before they -- that they could make those
6 modest changes before they publish it.

7 Obviously, that's --

8 MR. MEITES: You have to identify yourself for
9 the record.

10 MS. PERLE: I'm sorry.

11 For the record, Linda Perle from the Center
12 for Law & Social Policy.

13 MR. MEITES: Linda, we have done that in the
14 past, when we have gotten minor suggestions, that we
15 give the staff latitude to include them, if need be.

16 MS. BeVIER: So long as they tell us what they
17 are when we come back with -- you know, with the final
18 one.

19 MR. MEITES: Yes. As long as they bring us up
20 to speed. All right, any other public comments?

21 I think the first thing we should address is
22 the point Lillian made about whether the statement

1 about dignity and foster effective -- well, actually,
2 Lillian's remarks, under 1621.3 -- I think they're only
3 directed towards treating applicants with dignity. I
4 don't think you have problems with foster --

5 MS. BEVIER: No, I don't.

6 I just think that, if you take out "with
7 dignity," that language in both that one and 1621.4, I
8 would certainly be content.

9 It would meet my objection to putting the
10 language in.

11 MR. MEITES: David, are you in sympathy with
12 dropping that?

13 MR. HALL: I am. I don't know if it was
14 Lillian or Mattie who proposed putting it in the
15 preamble as a way of capturing the spirit behind how we
16 need to go about that.

17 MR. MEITES: I think that's a very good --

18 MR. HALL: I think if that's included as a
19 part of it --

20 M O T I O N

21 MR. MEITES: I think that's a very good
22 solution.

1 All right. With that change, if there's no
2 other comments, I will accept a motion that we
3 recommend to the board that it authorize publication of
4 the notice, subject to the non-substantive changes that
5 we discussed.

6 MS. BeVIER: So moved.

7 MR. HALL: Second.

8 MR. MEITES: Are we all in agreement? Good.

9 Okay. Let's move to the next item, which is
10 the staff -- which is the staff report on 1624, a
11 somewhat more complicated matter.

12 Mattie, why don't you bring us up to date as
13 to how far we got at our last meeting and what's
14 happened since then.

15 MS. COHAN-CONDRAV: I'll say it's perhaps a
16 more complicated matter, but it will be a shorter, more
17 simplified report.

18 MR. MEITES: Okay.

19 MS. COHAN-CONDRAV: LSC published a notice of
20 proposed rulemaking for public comment on May 12, 2006.
21 The NPRM proposed modest changes to, among other
22 things, clarify and update the language of the rule to

1 acknowledge the existence of the Americans With
2 Disabilities Act and its potential effects in this
3 area, to explicitly state LSC's enforcement policy with
4 respect to complaints of discrimination on the basis of
5 disability, and to eliminate an outdated and now
6 arguably obsolete self-evaluation requirement.

7 The comment period closed on June 26, 2006.
8 LSC received a total of six comments on the proposed
9 rule from the Wayne State University Disability Law
10 Clinic on behalf of itself, the National Disability Law
11 Center, and several -- the National Disability Rights
12 Network -- sorry -- the Disability Rights Legal Center,
13 the Judge David L. Bazelon Center for Mental Health
14 Law, and the Center for Law and Education, and four law
15 professors who supervise law school clinics that
16 represent low-income persons with disabilities.

17 That's one comment.

18 We also received comments from the United
19 States Equal Employment Opportunity Commission, the
20 Center for Law and Social Policy on behalf of the
21 National Legal Aid and Defenders Association, Mark
22 Dubin, who is the director of advocacy for the Broward

1 County Center for Independent Living -- as far as I can
2 tell from his comments, he was commenting in his
3 personal capacity -- comments from Olegario Cantos, the
4 associate director for domestic policy from the White
5 House, and from the Paralyzed Veterans of America.

6 Copies of the comments have been provided to
7 you.

8 Management has taken these comments under
9 advisement but has not yet had a chance to focus on the
10 substance of all the comments and develop specific -- a
11 draft final rule and specific recommendations on them.
12 Rather, management anticipates presenting a draft NPRM
13 to the committee, which will take into account the
14 comments at the October meeting.

15 Therefore, management's recommendation is that
16 the committee take no action at this time.

17 MR. MEITES: All right.

18 One thing I would note, that Mr. Dubin,
19 although I think he submitted his comments in his
20 personal capacity, notes that, from 1993 to 2005, he
21 served as senior trial attorney at the United States
22 Department of Justice in the disability rights section.

1 I wanted to make clear that he is someone who
2 has considerable experience in the area, as do the
3 other commentators.

4 Before we act or even inquire about your
5 recommendation, let me see if there's any public
6 comment on this regulation, this proposal, at this
7 time.

8 (No response.)

9 MR. MEITES: All right.

10 Our practice in the past has been to
11 defer -- I'm sorry.

12 MS. BARNETT: If I might, Chairman Meites,
13 pursuant to a phone conversation between board chairman
14 Frank Strickland and Olegario Cantos that Mattie
15 Condray referred to, who is the associate director for
16 domestic policy at the White House, Mr. Cantos
17 contacted me to get together to discuss how LSC
18 programs represent clients with disabilities, and ways
19 in which his office and LSC could maximize partnership
20 opportunities in assisting the disability community.

21 Karen Sarjeant and I met with Mr. Cantos on
22 June 7th in LSC, and during the meeting, we briefed Mr.

1 Cantos on our regulatory workshop on the amendment,
2 Part 1624, regulation on prohibition against
3 discrimination on the basis of disability.

4 Following the meeting, Mr. Cantos -- and this
5 is what I wanted to share with the committee -- offered
6 to distribute the Federal Register notice of proposed
7 rulemaking on Part 1624 to a wider network of
8 individuals and organizations in the disability
9 community to help maximize the opportunity for comments
10 on the NPRM, which he did, and so, we feel very good in
11 the sense that the draft notice, widespread
12 distribution to the disability community, and I just
13 wanted to share that with the committee.

14 MR. MEITES: I'm pleased to hear that.

15 The comments which I reviewed were obviously
16 written by people who know what they're talking about.
17 So, we have reached the right people with the proposed
18 notice.

19 Well, as I said, our practice has been, when
20 staff indicates they need more time to refine their
21 thoughts, we have given it to them. Are we inclined to
22 do it on this occasion?

1 MS. BeVIER: Absolutely.

2 MR. MEITES: So, we will.

3 We will defer action until our next meeting,
4 which is where and when?

5 MS. COHAN-CONDRAV: Charleston, West Virginia,
6 on October 27th and 28th.

7 MS. BARNETT: The last weekend in October.

8 MR. MEITES: Halloween weekend. We'll be
9 there. Okay. Good.

10 All right. Next item on the agenda -- the
11 next item on the agenda actually is something that we
12 are going to have to spend a little time on, not only
13 because we have some new members of our committee, but
14 some of the old members never understood this in the
15 first place. This has to do with our grant assurances.

16 Karen Sarjeant has come forward, apparently
17 prepared to answer the question.

18 Karen, why don't you start out by telling us
19 what a grant assurance is, what it is used for, and why
20 the Legal Services Corporation believes it needs a
21 grant assurance?

22 MS. SARJEANT: Okay.

1 I'm Karen Sarjeant, vice president for
2 programs and compliance at the Legal Services
3 Corporation.

4 The grant assurances are -- it's guidance that
5 we use with our competitive grants program, and any
6 time we give a grant of our Federal funds to a grantee,
7 and it sets out appropriate guidance for them in the
8 use of LSC funds.

9 I'm sorry. What was your other question?

10 MR. MEITES: Where did this one come from?
11 How long have we used this --

12 MS. SARJEANT: Okay.

13 MR. MEITES: Because our committee inherited
14 this.

15 MS. SARJEANT: Yes.

16 LSC has used grant assurances for years, many
17 years.

18 Each year, we go through a process of
19 reviewing them and revising and tinkering around the
20 edges, and making some changes that are appropriate at
21 the time.

22 We actually -- one of the things I wanted to

1 share with the committee today was that, in the process
2 of looking at grant assurances this year, we had a very
3 lengthy process in which the Office of Compliance and
4 Enforcement, the Office of Program Performance, the
5 Office of Information Management, Office of Legal
6 Affairs, the Office of Inspector General were all
7 involved in looking at the grant assurances, making
8 comments and recommendations, and then we also received
9 comments from the Center for Law and Social Policy,
10 although those are not reflected in this document.

11 But one of the things we decided this year, in
12 looking at them -- and we started a very brief process
13 of looking at other Federal agencies, and the grant
14 assurances and certifications that they use, and it
15 just seemed to us that -- and we were too far along in
16 the process this year to do this, but what we would
17 like to do with the 2008 grant assurances is basically
18 do -- to kind of capture a word -- a phrase that's been
19 used within the corporation -- do a bottoms-up review
20 of our grant assurances, and basically start from
21 scratch and take a look at whether we are setting out
22 the kind of guidance in a way that we want to do it,

1 whether, related to how other grant-making
2 agencies -- whether our grant assurances have grown
3 over the years to a point where they are too expensive.

4 As you will see and hear us talk about, there
5 are some duplications.

6 So, we want to do that process, and we're
7 starting it in the fall, so we'll be ready for the 2008
8 grant year, where the grant assurances need to be in a
9 good place by the middle of next year.

10 MR. MEITES: Stop there.

11 Grant assurances, unlike our regulations, are
12 not published in the Federal Register.

13 MS. SARJEANT: That's right.

14 MR. MEITES: So, there is not the formal
15 comment opportunity that there is with our proposed
16 regulations.

17 MS. SARJEANT: That's right.

18 MR. MEITES: Are you contemplating, however,
19 giving a chance for the public to comment, a limited
20 public, to comment on -- in this revision process? I
21 hope you do, because otherwise, it's going to come to
22 us without really a chance to have -- you've had a

1 chance to solicit views from our grantees and others
2 who may have an interest in this.

3 MS. SARJEANT: Certainly, just as we have
4 received comment from the Center on Law and Social
5 Policy on behalf of our field programs, we certainly
6 contemplate getting input into this -- the whole
7 process when we start looking at it from scratch. I
8 would defer to the Office of Legal Affairs to make a
9 determination whether this is something we would do by,
10 you know, notice and comment, or if we do it some other
11 way, since it is not a regulation, but we do intend to
12 be very open in taking a look at this, including
13 probably meeting and talking with some other Federal
14 agencies that are grant-making agencies.

15 MR. MEITES: One other thing that I saw -- the
16 Inspector General has some ideas of items that he would
17 like to see included.

18 MS. SARJEANT: Uh-huh.

19 MR. MEITES: And I think, by a bottoms-up
20 review, that will give the Inspector General a chance
21 to work his thoughts into the process, as well as the
22 public generally.

1 MS. SARJEANT: Absolutely. And they had the
2 opportunity to do that this year. We just had the
3 obligation of making a recommendation to you.

4 MR. MEITES: As I remember when we've done
5 this in the past, there's some kind of a time factor.
6 This is not like a regulation process, where we can
7 mosey along as necessary.

8 Do you have to have these grant assurances out
9 by sometime in the grant process?

10 MS. SARJEANT: Yes, we do, and this
11 version -- well, we need these grant assurances to be
12 in place after this meeting, because we're in the
13 middle of our competitive grants process, and decisions
14 will be made, and programs need to know --

15 MR. MEITES: We can't defer acting on this
16 while you do the -- we have to act now for this year --

17 MS. SARJEANT: Yes.

18 MR. MEITES: -- you have a year to come up
19 with --

20 MS. SARJEANT: That's right.

21 MR. MEITES: -- your bottoms-up review.

22 MS. SARJEANT: That's right. And we think we

1 need that time to do a full review, because we do want
2 to, as I said, go outside the corporation and get the
3 best thinking that we can on these.

4 MR. MEITES: Do you want to walk us through
5 the changes you propose?

6 MS. SARJEANT: I would be happy to do that.

7 Now, I'm going to work from the color version
8 you have that starts on page 71.

9 MR. MEITES: Go ahead.

10 MS. TARRANTOWICZ: My name is Laurie
11 Tarrantowicz, counsel to OIG, and since you mentioned
12 the bottoms-up review that Karen plans to undertake
13 next year, and whether we could, in that process,
14 discuss the recommendations we had this year more
15 thoroughly and see if we could get them in rather than
16 going through them in detail this time.

17 We would be willing to defer that till next
18 year, if the committee would prefer that, and to work
19 in partnership with management to try to work those
20 issues out.

21 MR. MEITES: That's fine.

22 So, what we'll do -- we just -- we'll skip

1 over the comments that you -- this year -- we'll just
2 defer that until the whole process --

3 MS. TARRANTOWICZ: Okay. That would will be
4 fine.

5 MR. MEITES: Okay.

6 MS. TARRANTOWICZ: Thank you.

7 MR. MEITES: Thank you.

8 MS. SARJEANT: Okay.

9 Let me start with grant assurance one, minor
10 changes, and the change there is we went to an
11 upper-case "A" in "Applicant" throughout the document.

12 Two, there is no change.

13 Grant assurance three, we deleted the entire
14 grant assurance, because the substance of it is covered
15 in grant assurance one.

16 So, the new three, on page 71, there was no
17 change in that one.

18 No change in four.

19 In five, we added a reference to applicable
20 appropriations or other laws to make sure that the list
21 of authorities was complete.

22 In six and seven, there was no change.

1 In eight, we added the phrase "without undue
2 delay," and actually, this was done because the
3 Inspector General's office had made a suggestion of
4 "promptly."

5 Previously, there was nothing there, and so,
6 if we are going to -- when we look at this next year, I
7 think what we would propose is just going with the
8 language as is, which would not have any time-frame on
9 it in terms of "without undue delay."

10 MS. TARRANTOWICZ: When I had mentioned
11 deferring, I was referring to the ones where we had --

12 MS. SARJEANT: 10, 11, and 16.

13 MS. TARRANTOWICZ: Right. The ones that we
14 had agreed --

15 MS. SARJEANT: Okay.

16 So, we added "without undue delay."

17 Now, the Center for Law and Social Policy has
18 brought to our attention that "without due delay,"
19 "promptly," "reasonable" -- these are all rather vague
20 standards, but we felt that there was a need to give
21 some guidance when LSC or the Office of Inspector
22 General made a document request that was voluminous or

1 took additional time to assemble, that "without undue
2 delay" was a better standard to use.

3 We also added the sentence, for those reports
4 or records subject to the attorney-client privilege, it
5 will, without undue delay, identify in writing the
6 records now being provided, and the legal justification
7 for not providing the record, it is essentially a
8 privilege log.

9 This was a change suggested by the Inspector
10 General's office, and we agreed to put that in.

11 In number nine, there were minor changes,
12 again the upper-case "A" for "Applicant."

13 We also changed the reference from grant
14 assurance nine to eight in the middle of that.

15 In grant assurance 10, we added the concept of
16 threatening to take action, so it says it will not take
17 or threaten to take.

18 In 11, we added a reference to the IG Act, for
19 clarity, after the reference to the statute, and we
20 added that -- the language, "It agrees to cooperate
21 with the OIG and without undue delay to respond to OIG
22 requests for information or records," and this was a

1 sentence that was suggested by the Inspector General's
2 office to emphasize our expectation that grantees would
3 cooperate, and we put that in.

4 In number 12, there is no change. However,
5 let me just share with you that the Center for Law and
6 Social Policy brought to our attention that they have
7 heard from some grantees that are not that familiar
8 with our program letter on LSC record-keeping
9 requirements that a reference in here -- well, the
10 program letter isn't referenced, but the record-keeping
11 requirements are, and so, they suggested that we might
12 want to re-issue that guidance, which we will consider
13 doing. So, there is no change in the language of the
14 grant assurance.

15 In 13, there is no change in the language.

16 In 14, we added a reference to the LSC Office
17 of Program Performance to clarify which office would
18 receive the information.

19 Now, in 15, this was a lengthy grant assurance
20 that was put in place several years ago, when there
21 were a series of program mergers and consolidations
22 underway.

1 This is a little used grant assurance now, at
2 this time.

3 So, what we did is we basically summarized the
4 three pages into a much shorter version, and put into
5 the grant assurance a summary of what the plan should
6 contain if it's necessary, and then we propose to put
7 the full text of the grant assurance that was there,
8 that was previously there, in a separate document, and
9 put it on our recipient information network on the web,
10 so that it will be there for access if it's needed.

11 MS. SARJEANT: So, that was the change to 15.

12 MR. MEITES: But you're not proposing any
13 substantive changes in the -- in what will be on the
14 web.

15 That will be the same as you have here.

16 MS. SARJEANT: What will be on the web is all
17 of the -- it will be what this grant assurance used to
18 be, in total, the full three pages. What we have in
19 this version is only the summary version that will go
20 in the grant assurances. In 16, there was no change,
21 and 17 through 27, there was no change.

22 In 28, we deleted a phrase that talked about

1 using up old stocks of paper, and in the very last
2 paragraph, we changed the date to be correct for this
3 year's grant assurances, and again, those were the
4 changes that we're proposing for this year, with the
5 understanding that we're going to go through a much
6 more detailed review in the next few months.

7 MR. MEITES: Questions?

8 (No response.)

9 MR. MEITES: Public comment?

10 MS. PERLE: I'm Linda Perle again. I just
11 wanted to say that we had a number of additional
12 suggested comments, suggested changes in these, but we
13 are also happy to work with LSC management on the
14 bottoms-up review, and we can incorporate -- hopefully
15 incorporate those changes in next year's grant
16 assurance.

17 MR. MEITES: Okay. Thank you. All right.

18 Any questions or comments from anyone on the
19 committee or the board?

20 (No response.)

21 M O T I O N

22 MR. MEITES: If not, I will accept a motion

1 that we recommend to the board approval of this 2007
2 grant assurance as --

3 MR. HALL: So moved. So moved that we accept
4 it.

5 MS. BeVIER: Second.

6 MR. MEITES: All in favor?

7 (Chorus of ayes.)

8 MR. MEITES: All right. Thank you, Karen.

9 Consider and act on other business?

10 (No response.)

11 MR. MEITES: Other public comment?

12 (No response.)

13 M O T I O N

14 MR. MEITES: I will accept a motion to

15 adjourn.

16 MR. McKAY: So moved.

17 MR. MEITES: Second?

18 MS. BeVIER: Second.

19 MR. MEITES: We are adjourned.

20 (Whereupon, at 4:34 p.m., the committee was

21 adjourned.)

22 * * * * *