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LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
OPERATIONS & REGULATIONS COMMITTEE

Friday, April 25, 2008

3:45 p.m.

The Marriott Hotel
3233 Northwest Expressway
Oklahoma City, Oklahoma

- COMMITTEE MEMBERS PRESENT:
Thomas R. Meites, Chairman
Lillian R. BeVier, Vice Chairman
Jonann C. Chiles
David Hall
Michael D. McKay
Bernice Phillips
Frank B. Strickland, ex officio
- OTHER BOARD MEMBERS PRESENT:
Herbert S. Garten
Sarah M. Singleton

1 STAFF AND PUBLIC PRESENT:

2 Helaine M. Barnett, President

Victor M. Fortuno, Vice President for Legal Affairs,

3 General Counsel, and Corporate Secretary

David L. Richardson, Treasurer and Comptroller,

4 Office of Financial and Administrative Services

Patricia D. Batie, Manager of Board Operations

5 Mattie Cohan, Senior Assistant General Counsel

Jeffrey E. Schanz, Inspector General

6 Ronald "Dutch" Merryman, Assistant Inspector General

for Audit, Office of the Inspector General

7

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

8 Don Saunders, National Legal Aid and Defenders

Association (NLADA)

9 Colline Meek, Executive Director, Oklahoma Indian

Legal Services

10 Levon Henry, Chairman, Native American Indian

Legal Services (NAILS) and Executive Director,

11 DNA-People's Legal Services, Inc.

Steve Hager, Litigation Director, Oklahoma Indian

12 Legal Services

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

2 (3:45 p.m.)

3 CHAIRMAN MEITES: I'm going to call the
4 meeting of the ops and regs committee to order. Tom,
5 are you with us?

6 (No response.)

7 CHAIRMAN MEITES: No. All right. We have a
8 quorum. The first matter before the committee is
9 approval of the agenda. Do I hear a motion to that
10 effect?

11 M O T I O N

12 MS. PHILLIPS: So moved.

13 CHAIRMAN MEITES: Second?

14 MR. MCKAY: Second.

15 CHAIRMAN MEITES: All right. It is passed
16 unanimously.

17 Then we have items 2 and 3, approval of the
18 minutes of the January 25 and January 26, 2008 meeting.
19 First I'd like to thank Lillian for chairing the
20 meetings in my absence.

21 Do I have a motion to approve the two sets of
22 minutes?

1 M O T I O N

2 MS. BeVIER: So moved.

3 CHAIRMAN MEITES: And seconded?

4 MR. McKAY: Second.

5 CHAIRMAN MEITES: Any discussion? I will take
6 the minutes --

7 MR. HALL: Yes. One correction. Though I
8 would love to have been there, I wasn't. So the
9 minutes indicate that I was present.

10 CHAIRMAN MEITES: We will strike your name
11 from the minutes.

12 MR. McKAY: Actually, I move to amend that he
13 was there in spirit.

14 (Laughter.)

15 CHAIRMAN MEITES: All right. Item 4 is next,
16 consider and act on initiation of rulemaking to adopt
17 "lesser sanctions." Mattie will make, I believe, the
18 staff report. Go ahead.

19 MS. COHAN: All right. Good afternoon. Let
20 me just get myself a little organized here.

21 You have in your packets, and hopefully in
22 front of you, a draft notice of proposed rulemaking

1 prepared by management for your consideration today.
2 As you remember, the committee has been looking into
3 the issue of potentially adopting a lesser sanctions
4 rulemaking for a while at the -- was it the July
5 meeting? There was a rulemaking options paper
6 presented to you.

7 The committee asked for a presentation from
8 the Office of Compliance and Enforcement prior to
9 following up on that issue. That report was provided
10 at the January meeting. And at the end of that meeting
11 cycle, during the committee report, a draft proposed
12 rule was requested to be brought in front of you. And
13 so that's where we are procedurally. That's how we've
14 gotten to today.

15 CHAIRMAN MEITES: Just as a point of
16 information, we have received the report given at the
17 January meeting. It has been written up and has been
18 distributed to the board.

19 Continue.

20 MS. COHAN: Okay. So I'm just going to kind
21 of go ahead. The draft notice of proposed rulemaking
22 is proposing two major changes and some then conforming

1 changes. First, I'll start with the simple one.

2 Management is proposing to amend 45 CFR Part
3 1623, which is the suspension rule, to increase the
4 time limit of suspensions from 30 days to 180 days --
5 that would be from one month to six months -- as the
6 maximum length of a suspension.

7 That is a fairly straightforward change in the
8 regulation, the rationale for that being that the 30-
9 day suspension period when it was originally adopted
10 was anticipated as being sufficient to essentially
11 scare any grantee who needed to be so motivated to do
12 whatever it is they needed to do within that 30 days.

13 In the intervening time, our grantees' funding
14 sources have diversified significantly, and for a lot
15 of our grantees, a maximum 30-day suspension period
16 after which the money is required to be returned to the
17 grantee is not sufficient to make the penalty a
18 particularly useful one to use by itself.

19 And management believes that a maximum six-
20 month period will afford the Corporation a lot more
21 flexibility in being able to use the suspension
22 procedure where appropriate to be able to induce

1 compliance in those rare instances in which it's going
2 to be necessary.

3 CHAIRMAN MEITES: Okay. Stop right there.

4 MS. COHAN: Sure.

5 CHAIRMAN MEITES: I am not sure I understand
6 what suspension means. You suggested four sentences
7 ago that at the end of a suspension, the money is
8 returned to the grantee. But "returned" is not the
9 right word because they never got it in the first
10 place. Or did they get it?

11 MS. COHAN: Well, the money is returned to the
12 grantee -- a suspension in a temporary withholding of
13 money. But at the end of the suspension period, the
14 money withheld is in fact provided to the grantee.
15 It's not like -- they don't lose it forever. They just
16 get it late.

17 MR. FORTUNO: You can think of it as kind of a
18 withholding and a release. It's withheld temporarily
19 and then released.

20 CHAIRMAN MEITES: Okay. Thank you. All
21 right, why don't we -- questions of the committee about
22 the suspension provision?

1 MR. FORTUNO: One other point, if I might make
2 it, is that the six-month period also accomplishes
3 something else, which is there may be instances in
4 which what is desired is the taking of certain
5 corrective action by the grantee. And 30 days is not
6 always sufficient to allow for the specific action to
7 be taken.

8 Some things are sufficiently discrete that
9 they can take it in a matter of hours or days. There
10 are other steps that take a while to implement. And
11 providing that additional flexibility, that is, up to
12 six months, would allow for those kinds of things to
13 play out.

14 MS. COHAN: And of course, if the Corporation
15 proposed, say, a four-month suspension pending some
16 sort of action and the grantee completed the action
17 within two months, the Corporation could end the
18 suspension upon the completion of the corrective
19 action.

20 CHAIRMAN MEITES: Bernice?

21 MS. PHILLIPS: The money that's withheld, do
22 they get the back money or -- like, say, they were

1 getting money for January and you didn't give it to
2 them. Do they get January's money, February's, sent to
3 them if they --

4 MS. COHAN: Yes. That's how it works. The
5 Corporation withholds the money, and then at the end of
6 the suspension period, the withheld money is
7 transmitted.

8 CHAIRMAN MEITES: Now, I understood there to
9 be a fairly elaborate challenge and appeals process on
10 the 5 percent side, which you haven't talked about. Is
11 there any kind of mechanisms for challenging a
12 suspension?

13 MS. COHAN: Well, the suspension procedure
14 is -- and in fact, a lot of what's in the proposed rule
15 for temporary -- for limited reductions in funding is
16 based on the procedures in the suspension rule. There
17 is a written -- the suspension procedure is,
18 essentially, written notice is given to the grantee
19 stating the grounds and the basis therefor, what if any
20 corrective actions they can take, and the prospective
21 date of the suspension.

22 The grantee then has five working days within

1 which to request an informal conference, if they wish,
2 with the Corporation, and ten working days, I believe
3 it is, to submit any materials that they wish to submit
4 in writing.

5 And so there's not a second appeals process
6 after that, but the process for a suspension is a
7 notice, an opportunity for the grantee to submit
8 materials in writing, to meet informally, to do both.
9 One does not preclude the other. And then the
10 Corporation takes all of that into account and moves on
11 to a determination.

12 And that's how the process works on paper.
13 I'm sure, in the way of these things, if you had a
14 grantee who we'd move to a notice of suspension and
15 they're working to get their corrective action in
16 place, I would not say that the procedure then says the
17 parties don't talk to each other in between time.

18 But once that exchange of paper and that
19 discussion is made, the Corporation has within its
20 rights to move to a final determination of whether to
21 move forward with the suspension or not to move forward
22 with the suspension, depending on if the grantee says,

1 actually, we've already gone ahead and given you
2 access, or finished our corrective action plan. We're
3 going to have it done next week. The Corporation could
4 then say, okay, fine. We proposed to suspend you, but
5 we're not going to. I mean, that's all very fact-
6 specific.

7 CHAIRMAN MEITES: All right. Committee
8 members, more questions on the change proposed in the
9 suspension procedure and the length of the suspension?

10 (No response.)

11 CHAIRMAN MEITES: All right. Then let's move
12 to the 5 percent.

13 MS. COHAN: Sure. The other major change is
14 to actually adopt procedures for reductions in funding
15 of less than 5 percent. As you know, the current
16 termination rule at 45 CFR Part 1606 provides a lengthy
17 procedure for terminations. And terminations are
18 defined in the regulation as reductions in funding of
19 5 percent or greater. So it's a termination in whole
20 or part of the grant.

21 And the regulation says that even though a
22 reduction of less than 5 percent is not defined as a

1 termination, the Corporation shall not impose that
2 without further process. So right now if the
3 Corporation wished to impose a 1 percent termination of
4 someone's grant, we would have no recourse except to
5 use the full termination process.

6 The full termination process has a basic --
7 starts out very similar to the suspension procedure
8 with a written notice of the grounds and the proposed
9 penalty as well as the proposed time frame in which
10 it's going to be implemented. The grantee has an
11 opportunity to informally consult, but the grantee has
12 an opportunity to request a hearing.

13 And those hearings are formal hearings with
14 kind of the full panoply of what you might think of
15 that goes into a hearing, with examination and cross-
16 examination of witnesses, discovery. It's like a small
17 trial.

18 And then there is, after that hearing, one
19 last opportunity for an appeal to either the president,
20 if the president has not been involved in the hearing
21 procedure up to that point, or someone else. Because
22 the way the hearing procedure works, an independent

1 person is appointed to be the hearing officer. So then
2 the president can be involved in the final appeal if
3 necessary. So that's the termination procedure. It's
4 long. It's involved.

5 For smaller reductions in funding, the
6 previous board that adopted that regulation had in
7 mind, and it just hadn't happened until now, that there
8 would be a shorter, smoother, more streamlined
9 procedure more commensurate with smaller reductions in
10 funding.

11 So kind of the philosophical approach that was
12 taken was, well, there should be at least as much
13 process for a termination -- not a termination, a
14 limited reduction in funding -- as there is for a
15 suspension, which is just a temporary withholding. But
16 there should probably be more process than that because
17 it is a reduction in funding, but some process less
18 than exists for the termination rules. That was kind
19 of the construct behind that.

20 So the basic first step of the process is
21 essentially the same as the suspension process, where
22 there's a written notice detailing what the problem is,

1 what the grounds are, the proposed date of the
2 termination, the proposed amount of the termination,
3 which is sent to both the executive director and the
4 board chair; an opportunity to request an informal
5 hearing and an opportunity to reply in writing and
6 submit any materials.

7 The Corporation then provides a written
8 determination on the basis of considering all of that
9 information of what it wants to do. And then the
10 additional procedure being proposed is, similar to the
11 final appeal in the termination hearing, an opportunity
12 to appeal to the president or, if the president has
13 been involved up to that point, a designee of the
14 president, someone who has not been involved so that
15 there is an independent review of all of the materials
16 and the record up to that point.

17 That's a very summary version of what's being
18 proposed, since the rule is in front of you. If you've
19 got kind of detailed questions about it, I'm more than
20 happy to go into more detail, if you'd like, or to
21 answer questions. And then there are some conforming
22 proposed changes to other parts of 1606 to make it

1 conform to what we're proposing on the limited
2 reductions in funding.

3 CHAIRMAN MEITES: Questions from the
4 committee? Lillian?

5 MS. BEVIER: I've got a couple questions. And
6 one is: When this is described as "lesser sanctions,"
7 lesser as compared not to suspension but lesser as
8 compared to termination?

9 MS. COHAN: Essentially, yes. But the term
10 "lesser sanctions," it's colloquial phrases that grew
11 up over the years. That's not necessarily the most
12 accurate phrase, especially considering in some
13 instances it's not just the amount, the finances
14 involved in the sanction, but different sanctions have
15 different times where they are going to be more or less
16 useful and appropriate and applicable.

17 There are some situations in which a
18 suspension might or might not be applicable or be
19 really appropriate, where a limited reduction in
20 funding might be; or vice versa, there might be an
21 instance where a limited reduction in funding isn't
22 really the best tool to use to obtain the result you

1 want, but a suspension might be.

2 MS. BeVIER: Well, I understand that. I'm
3 wondering if "alternative" wouldn't be a better word
4 than "lesser," in particular where we have more
5 procedures here than we do for a suspension. And I
6 understand that one's only a temporary withholding, but
7 it's more process for a lesser sanction I'm uncertain
8 about. But I understand what you were saying. I just
9 suggest that maybe another word might work.

10 But I have a more fundamental problem here,
11 and I don't know that it can be resolved, and I'm not
12 even certain that it is a problem, but that is the
13 extent of discretion that is insisted upon here with
14 respect to when one sanction versus another sanction
15 versus another sanction is to be applied. And quite
16 deliberately, as I understand it, the discretion is
17 almost unlimited so that there aren't criteria for
18 determining what sanction is appropriate.

19 And that's troublesome to me for a couple of
20 reasons. I always think that you need, when you're
21 applying any sort of sanction, to have some sort of
22 criterion that tells both the person who's applying the

1 sanction and the person to whom the sanction is to be
2 applied why this sanction for this conduct.

3 And I think it creates a real potential for
4 gaming the system on the part of a grantee who is in
5 that mood, right, who wants to raise an issue that may
6 be peripheral, but you can get a lot of mileage about
7 raising an issue about why this one and not another one
8 and so on and so forth.

9 And not to say that that necessarily would be
10 done. But I just think, fundamentally, the amount of
11 discretion is unlimited. And I guess I'd like to know
12 a little bit further the rationale for why it has to be
13 complete and utter, which is what I sort of -- I mean,
14 one's more serious, one's less serious, one's --

15 MS. COHAN: Let me just -- to address your
16 first point quickly, I hear you and I agree that being
17 a little more careful about the phraseology we use is
18 useful here. You'll notice in the draft proposed rule,
19 both in the reg text and in the preamble, the phrase --
20 I don't believe, except perhaps in passing, the phrase
21 "lesser sanction" is used.

22 In fact, the more technically accurate

1 "limited reduction in funding" is what is used
2 throughout the draft regulatory text and I believe also
3 consistently throughout the draft preamble that would
4 accompany it in its proposed form and the final form,
5 just exactly for that reason.

6 With respect to your larger, more
7 philosophical question, I think the answer is that
8 because the imposition of any sanction is going of
9 necessity to require the collective wisdom of what is
10 going on at that particular time -- there are basic
11 grounds and criteria set forth which do in fact guide
12 both the Corporation and grantees about what are the
13 factors that the Corporation is going to be looking at
14 in making a determination.

15 MS. BeVIER: Like the grant assurances, for
16 example, and have they not been complying with their
17 grant assurances?

18 MS. COHAN: Right. And the determinations are
19 based on the number of restrictions or requirements
20 violated: whether the violation represents an instance
21 of noncompliance with a substantive, statutory,
22 regulatory restriction or requirement rather than a

1 technical one; the extent to which the violation is
2 part of a pattern of noncompliance; the extent to which
3 the recipient failed to take action to cure the
4 violation; and whether the violation was knowing and
5 willful. I mean, those are the criteria for it.

6 MS. BeVIER: Right. Can I just do a
7 parenthetical, very trivial point?

8 MS. COHAN: Yes.

9 MS. BeVIER: One, it talks about the number of
10 restrictions, and after that, it talks about "the
11 violation." Are you talking about the violation or the
12 violations? So that's --

13 MS. COHAN: Well, it could be "violation(s)."

14 MS. BeVIER: Well, I think you might do that
15 then because it makes it a little just more
16 grammatically --

17 MS. COHAN: Yes. That's correct.

18 Grammatically correct. You're absolutely right.

19 MS. BeVIER: But that's a trivial point.

20 CHAIRMAN MEITES: Lillian has raised a point
21 that really haunts any entity that's trying to write a
22 law or regulation. For a potential litigant

1 challenging the action, it can be too tall or too
2 short. It can have too many standards, which the
3 decision does not track, or it can be standardless.

4 So as a plaintiff's lawyer, you can always see
5 room for growth. But wearing the other hat, factors
6 are spelled out and they aren't exclusive. I don't
7 understand them to be exclusive. I don't understand
8 that you have to score 11 on each factor.

9 But I think, as I read it, the idea is that
10 the judgment of management, not just this management
11 but accumulated over the years, is what's going to
12 guide the decision. And these are the kinds of things
13 that management will look to, not exclusively or only,
14 but by reading this list a grantee will have some idea
15 of where the sanctions are coming from.

16 MR. FORTUNO: Now, if I may, I thought that
17 the question was more along the lines of what guidance
18 is there for when a suspension versus a termination.
19 That, I think, is a different question from --

20 CHAIRMAN MEITES: That is a different
21 question.

22 MR. FORTUNO: -- if it's going to be a

1 termination or a lesser reduction, are there criteria
2 to determine the amount of the reduction.

3 CHAIRMAN MEITES: Right.

4 MS. BeVIER: Well, why that sanction and what
5 the amount of it is.

6 MS. COHAN: Right. I just hadn't gotten a
7 chance to speak to that yet, although essentially it's
8 very -- while I have to say it's very much the same
9 sort of answer, is that it's almost impossible to
10 discuss in the abstract whether a 4 percent reduction
11 in funding versus a 10 percent reduction in funding, or
12 4 percent versus 6 percent, is really the most
13 appropriate thing, taking everything into account.

14 And to write that into the regulation would
15 require so much forward guessing that I think the
16 regulation would quickly become unusable, as opposed to
17 the Corporation exercising the discretion that has been
18 granted to it by Congress.

19 I mean, even before you get to these
20 particular sanctions and this proposed sanction, the
21 Corporation's general enforcement regulation at Part
22 1618 and the general enforcement authority it's given

1 in the statute gives the Corporation a considerable
2 wide, wide, wide discretion to fashion remedies in such
3 a way as to ensure that grantees come into and stay
4 into compliance.

5 And among the things that the Corporation is
6 concerned about is not just checking the box of
7 compliance, but checking the box of compliance while
8 ensuring that the grantee is still able to provide high
9 quality legal services.

10 So I think, although I understand your point,
11 I think the response to that is because enforcement
12 actions are so necessarily case by case, that amount of
13 discretion needs to be there for the Corporation to
14 fashion an appropriate remedy in each case.

15 I will note that one of the proposed changes
16 to the remainder of 1606, 1606 currently, if we're
17 just talking about terminations, 5 percent or more
18 reductions in funding, the regulation has never
19 specified any criteria as to what the Corporation will
20 look at in determining whether it's going to be
21 5 percent, 15 percent, 60 percent, or termination
22 in whole. There's never been any regulatory criteria

1 for that. It's always been essentially on a paper
2 basis, a legal basis, completely within the discretion
3 of the Corporation.

4 In looking at the issue for limited reductions
5 of funding, management decided that it made sense to
6 actually address that particular issue, the amount of
7 the penalty, and so in wanting to address that but not
8 wanting to be over-prescriptive in a way that was not
9 going to be useful, is proposing adopting essentially
10 the same criteria, that we're applying -- these are the
11 factors we're looking at in determining whether or not
12 to apply on each of these sanctions to you at all.

13 We're also going to be considering that and
14 weighing those things in the balance in determining
15 whether the Corporation wants to propose -- how large
16 of a limited reduction in funding. And once that was
17 in the draft for limited reductions in funding, it made
18 sense to also include that as a proposed change to the
19 termination reg.

20 So management is actually proposing to include
21 for the termination portion of the regulation a set of
22 criteria about how much of a termination -- when the

1 Corporation is looking to terminate you, how much of
2 the grant are we looking to terminate; is actually
3 looking to add those criteria to the regulation where
4 previously none existed.

5 Substantively, we're proposing what the
6 Corporation would be looking at anyway. But in fact,
7 management is proposing to set forth more criteria with
8 respect to the amount of the sanction proposed than
9 currently exists. So some of that, addressing your
10 point, is in fact reflected in what's proposed here.

11 MS. BeVIER: So basically, it's more criteria
12 than you've ever had before, but -- and I take the
13 point. I mean, I completely agree that there's got to
14 be a ton of discretion, and that if you start trying to
15 specify, you're just going to screw everybody because
16 you will forget and not include everything.

17 I think part of my problem -- I'm sorry to
18 take so much time -- but part of my problem goes even
19 deeper, which is that the sanction of less money or no
20 money for us to impose is always so fraught with
21 consequences for the people that the grantees serve,
22 and that that's -- I wish that we could figure out a

1 way to find sanctions that didn't have to do with how
2 our grantees are able to serve the people that they're
3 supposed to serve. And I think that's the real problem
4 here. That's why you never use sanctions, my guess
5 would be.

6 MS. COHAN: Well, I think the Corporation does
7 have a lot of tools currently at its disposal and that
8 it uses that are non-monetary sanctions. They may not
9 be sanctions, but they are enforcement tools. The
10 imposition of special grant conditions when you're
11 going from one grant year to the next; the imposition
12 of corrective action plans and reporting
13 requirements -- there are a wide variety of tools that
14 the Corporation currently uses.

15 And I think it's important -- we start to
16 discuss the nitty-gritty of these proposals, and it's
17 easy to lose the forest for the trees. And I think the
18 forest here is that, by and large, our grantees are in
19 compliance. By and large, when our grantees are not
20 in compliance, they work cooperatively with the
21 Corporation to come into compliance through the use of
22 the other tools that are available to the Corporation.

1 And what we're talking about -- I don't want
2 to use the phrase "on the margins," but that's kind of
3 a little where I'm aiming at, that these are tools to
4 be used when everything else isn't working. And I
5 think part of the reason that termination has generally
6 not been used is it's kind of like we've got all of
7 these tools that are short of monetary sanctions, and
8 then we have the big, big guillotine. It's not even an
9 axe. We have a guillotine.

10 MS. BeVIER: The atom bomb.

11 MS. COHAN: Yes. And this kind of gulf in
12 between. And I think extending the maximum suspension
13 period and having a procedure for limited reductions in
14 funding is a way of having a bigger mallet when it's
15 necessary without having to invoke the atom bomb.

16 And I think there's also -- part of the value
17 is not even in the ultimate application of that
18 sanction, although sometimes that might have to happen,
19 but I think the deterrent effect of having the sanction
20 available. Right now, grantees know we don't have a
21 procedure for a limited reduction in funding. They
22 know that if somebody really wants to be recalcitrant,

1 they're going to hold out unless and up until we want
2 to terminate them; or they finally come up in the
3 competition cycle, and then they don't win another
4 competition.

5 But I think that the expectation is that the
6 ability to say, look, we can go down that road. If you
7 want to go down that road, we've got a road to go down
8 now. And hopefully, we wouldn't even have to go that
9 far down that road because it's there.

10 So I think that's kind of a little bit of the
11 forest in which these trees grow.

12 MS. BeVIER: Thank you, Mattie. Both of those
13 points are very helpful to me, in particular just to be
14 reminded of all the other ways that are not -- that
15 enforcement, if you will, proceeds. Thanks.

16 CHAIRMAN MEITES: Bernice?

17 MS. PHILLIPS: Mattie, I was thinking about is
18 there a prevention measure before you get to the
19 sanction?

20 MS. COHAN: Oh, well, certainly. Again, aside
21 from the 1618 enforcement process whereby grantees
22 are -- CSR reviews or complaint investigations. The

1 team goes out and they make findings, and there are
2 reports and corrective action plans. And I don't want
3 to say that's informal because it's not informal. It's
4 a formal process. But certainly -- hopefully most
5 problems that are found are found and corrected prior
6 to the need to impose a sanction.

7 In addition, and I'm sure Karen can speak to
8 this a lot more than I can, there's training that goes
9 on. The Corporation provides technical assistance. So
10 if grantees have questions, they can ask questions and
11 they can receive training prior to them in fact going
12 down the road and committing violations.

13 So the hope is that they can be provided with
14 the technical assistance they need and the knowledge
15 that they need so that they don't commit violations, so
16 that they don't violate the requirements. But if they
17 do, then there are a variety of informal mechanisms,
18 formal and informal mechanisms, that the Corporation
19 uses to try to get grantees to come into compliance.
20 And most grantees avail themselves of those
21 opportunities.

22 CHAIRMAN MEITES: Any other questions from the

1 committee?

2 (No response.)

3 CHAIRMAN MEITES: All right. Oh, does the
4 Inspector General have comments?

5 MR. SCHANZ: Yes, sir.

6 MS. COHAN: As Jeff is making his way to the
7 table, I just want to make sure that nobody had any
8 other questions or wanted me to discuss any of the
9 other conforming amendments. Or if they come up, I
10 mean, I'm happy to. I just want to --

11 CHAIRMAN MEITES: Well, my thinking is I
12 expect that public comments will raise a number of
13 other points or reinforce some points already made.

14 Sir, your name and position, please.

15 MR. SCHANZ: Jeff Schanz. I'm the Inspector
16 General of the Legal Services Corporation.

17 CHAIRMAN MEITES: I believe this is the first
18 time you've testified before our committee. Is that
19 correct?

20 MR. SCHANZ: Yes, sir.

21 CHAIRMAN MEITES: Well, we welcome you to the
22 table.

1 MR. SCHANZ: Thank you. Just for the record,
2 I'd like to note that the IG surfaced this issue almost
3 exactly one year ago to the board and to this committee
4 on April 24, 2007. We felt a need that there should be
5 something for more compliance, and especially for a
6 deterrent effect, for the recalcitrant, to use Mattie's
7 term, grantees that were not playing by the rules, so
8 to speak.

9 In reviewing this draft, I haven't had my two
10 legal counsel, who are most familiar with the subject
11 matter, so I would like to withhold official comments
12 on this other than the fact that in general and in
13 theory, it gets to the core issues that we were
14 surfacing, that there needs to be some additional
15 enforcement mechanism.

16 CHAIRMAN MEITES: Does the IG support the
17 initiation of a rulemaking along the lines of the text
18 proposed?

19 MR. SCHANZ: Yes, we do.

20 CHAIRMAN MEITES: Thank you. All right. Any
21 public comment?

22 MS. PERLE: Hi. I'm Linda Perle from the

1 Center for Law and Social Policy, and I'm here
2 representing the National Legal Aid and Defenders
3 Association and its civil members.

4 This is being presented as a notice of
5 proposed rulemaking, and my first comment is really
6 just a process question. And I am really asking why
7 this is being presented without even so much as a
8 rulemaking workshop to get input from --

9 CHAIRMAN MEITES: I'm sorry, I didn't hear the
10 noun. Rulemaking --

11 MS. PERLE: Rulemaking workshop.

12 CHAIRMAN MEITES: Workshop.

13 MS. PERLE: Without even so much as a
14 rulemaking workshop to get input from programs that are
15 going to be severely impacted, potentially, by these
16 rules.

17 The rulemaking protocol says -- that this
18 board adopted some time ago -- says that, "The protocol
19 will enable LSC board members and staff to meet with
20 stakeholders prior to the development of a draft notice
21 of proposed rulemaking to discuss, but not negotiate,
22 LSC rules and regulations. LSC believes the notice and

1 comment process, including rulemaking workshops, will
2 allow for an effective dialogue between LSC and its
3 recipients and other interested parties in those
4 instances in which negotiated rulemaking was not used."

5 This is a rule that's potentially going to
6 have a huge impact on recipients. It's essential for
7 LSC to hear about how a reduction in funding of
8 5 percent or a huge, enormous sixfold expansion of the
9 period of suspension will have on recipients.

10 And I'm upset that there really isn't any
11 opportunity for recipients to give that kind of impact.
12 And I think they really should listen and hear from
13 recipients before proceeding with this rulemaking.

14 And it's not -- I know that Mattie talked
15 about what kinds of additional arsenal of tools this
16 will provide. LSC has a very large arsenal now.
17 Nobody's mentioned 1630, which allows LSC to recover
18 the costs of activities that were done in violation.

19 You know, the 5 percent reduction is really a
20 punishment. It's not an enforcement tool. LSC has
21 said in its written materials that these things would
22 be helpful. It hasn't really suggested that they're in

1 any way necessary.

2 In my view, they're really only tools to
3 punish and intimidate programs to do what LSC wants
4 them to do, and to do it without having an opportunity,
5 a real opportunity, to challenge LSC's interpretations
6 of what is and what isn't a violation.

7 They remove from LSC an incentive that they
8 now have to work things out with programs, especially
9 if they just can suspend funding until the program
10 gives in to LSC's demands. It puts all the incentive
11 on the program and takes it away from LSC. It gives
12 LSC really total flexibility to determine when there's
13 been a violation, and very little opportunity for the
14 program to challenge that determination.

15 There's no justification given really for why
16 it's important to extend the suspension provisions by
17 sixfold, and no reason why a shorter period wouldn't do
18 the same thing. It simply says, I think on page 17 of
19 the notice of proposed rulemaking, that a 30-day
20 maximum suspension are "no longer as compelling as they
21 were when the rule was adopted. Rather, the current
22 operating environment for many recipients suggests that

1 a longer maximum suspension period is now merited."

2 And the only reason that's given is that many
3 recipients have significantly increased the variety and
4 sources of their funding, although it acknowledges that
5 there are some recipients with little or funding from
6 other non-LSC sources. That's it. I mean, nothing
7 more. as we've been hearing a lot with regard to IOLTA
8 funding, that's going down dramatically in many places
9 where that may be the primary source of non-LSC
10 funding.

11 I think in the last OCE presentation, OCE only
12 identified nine instances in the last six years where
13 they suggested that the use of these tools might have
14 been appropriate. And as I recall, most of these were
15 not major and were resolved between LSC and the
16 program.

17 LSC gave some other hypothetical situations,
18 but they were not situations that had actually
19 occurred. And I think that they really need to talk
20 about situations where they can show that the current
21 tools have been inadequate.

22 I think the level of compliance is actually

1 very high, and most instances of noncompliance are
2 minor. And I think that the notice of proposed
3 rulemaking suggests in a public document that there's a
4 significant number of programs, although less than a
5 majority, that are in noncompliance.

6 And I'm really curious about what this is
7 about. If really the example is access to records,
8 which was given in the notice of proposed rulemaking,
9 then that's not simply a matter of programs being
10 uncooperative. It's a very complicated issue.

11 And if that's what it's about, we should
12 discuss that, but not try to resolve it by giving LSC
13 just another tool to intimidate programs into turning
14 over records that the programs believe, in good faith,
15 should not be turned over for fear of losing their
16 funding.

17 I don't think the GAO report suggested that
18 LSC didn't have the tools that it needed. It suggested
19 that it needed to improve its internal controls for
20 grant oversight procedures. But I don't think we
21 should use the GAO report as an excuse to develop tools
22 to punish and to intimidate programs.

1 The July 12, 2007 rulemaking options paper
2 talked about the fiscal impact that monetary sanctions
3 have. It says, "Monetary penalties run the risk of
4 being counterproductive because they would reduce
5 resources available for the delivery of client service,
6 which could then lead to fewer clients being served and
7 more people suffering the consequences of the lack of
8 legal assistance.

9 "In addition, the imposition of monetary
10 penalties would reduce resources necessary to implement
11 corrective action, which might require hiring of
12 consultants, developing compliance mechanisms for
13 conducting training. Management remains
14 unconvinced" -- excuse me -- "convinced that additional
15 monetary penalties are unnecessary."

16 Now, obviously something has happened between
17 then and now to make them change their minds.

18 CHAIRMAN MEITES: Excuse me. What were you
19 quoting from just now?

20 MS. PERLE: From the July 2007 -- July 12th
21 rulemaking options paper.

22 MS. COHAN: Which had been superseded by the

1 October rulemaking options paper you were provided with
2 at the October meeting.

3 MS. PERLE: Right. I understand that. But
4 there wasn't I don't think anything that really
5 suggested why that statement that I've read to you is
6 no longer true.

7 Five percent of a program's LSC grant is a
8 very large amount of money in absolute terms. LSC is
9 very cavalier about the impact of this kind of
10 reduction. But as a result of mergers and
11 consolidations that have taken place in the last decade
12 at LSC's insistence, 5 percent of the LSC grant is a
13 much larger amount than it was when these rules were
14 first adopted.

15 The economic damage would be very great for
16 most programs, particularly those that don't have
17 substantial non-LSC funds. But even for those that do
18 have substantial LSC funds, they could endanger a
19 program's other funding by calling into question the
20 program's operations.

21 And depending on the amount of the grant,
22 5 percent would be enough money to require a program to

1 fire numerous staff and substantially cut client
2 services. Here in Oklahoma, \$4.3 million is the LSC
3 grant. \$215,000 is 5 percent of that grant, which I
4 don't know exactly how much they pay their attorneys,
5 but at least five or six attorneys would be fired if
6 it's a 5 percent reduction.

7 In Alabama, a place that has very little
8 non-LSC funds, they get a \$5.8 million LSC grant.
9 \$290,000. Atlanta Legal Aid, \$2.5 million in LSC
10 funds. \$124,000 is 5 percent. Puerto Rico, which is
11 the largest, I think, LSC-funded program, which has
12 very little in the way of non-LSC funding, they have
13 \$15.5 million in LSC grant. Five percent is over
14 \$775,000. It's a lot of money.

15 For a small program like Central Virginia
16 Legal Services, which has a \$1.122 million,
17 approximately, LSC funding, 5 percent is \$56,000. That
18 would pay for more than a lawyer, which means that for
19 a 5 percent reduction, that would have a significant
20 impact on a small program that only has a few lawyers.

21 The six-month suspension is a very extreme
22 sanction. LSC says it's rarely gone to the trouble of

1 actually imposing a 30-day suspension, and that's how
2 it should be because a 30-day suspension is a major
3 problem.

4 In the preamble to the current 1606, which LSC
5 quotes, they say that the 30-day limit on suspension
6 was chosen to "reflect the presumption that a
7 suspension of too long a duration would likely endanger
8 a recipient's ability to continue service to its
9 clients. A suspension is intended to be used for
10 extraordinary circumstances when prompt intervention is
11 likely to bring about immediate corrective action."

12 It gives no reason why this is no longer true,
13 why 30 days isn't the appropriate amount. And while
14 this administration that we now have here at LSC might
15 in fact use this tool or either tool sparingly, there's
16 no guarantee what the next administration will do,
17 given the opportunity.

18 Programs, even those that have substantial
19 non-LSC funds, depend on their LSC funds to meet their
20 payroll and operating costs for their LSC programs.
21 Non-LSC funds are allocated most often to specific
22 expenses and often cannot be used to pay the costs that

1 are allocated to the LSC funds.

2 Again, other funders are likely to take action
3 to ensure that their funds are not used to make up for
4 LSC funds that are no longer available, and our fund
5 balance rules don't permit programs to keep large LSC-
6 funded balances to be used in case of a long-term
7 suspension.

8 LSC kind of suggests that longer suspensions
9 would be a relatively minor inconvenience to programs,
10 that a 30-day suspension, which is used now, might
11 represent nothing more than a short-term cash flow
12 challenge, if that. I think that's very cavalier, and
13 offensive to me, actually.

14 I think a six-month suspension would be a
15 death knell for many programs, even if it had
16 substantial non-LSC funding. And the only reason that
17 LSC gives is that it would give them -- flexibility to
18 apply a maximum six-month suspension would be helpful.

19 A six-month suspension is tantamount to
20 termination since very few programs can continue to
21 operate without their LSC funding for such a long
22 period of time. And it's a termination with less due

1 process, as noted in the earlier discussion.

2 It would require programs to dismantle their
3 LSC-funded operation for some indeterminate amount of
4 time up to six months, maybe -- I mean, if what Mattie
5 was saying was true -- and very difficult to put Humpty
6 Dumpty back together again even if LSC funding were
7 restored after that time.

8 I have some specific issues. I don't know
9 whether you want me to take the time to go through
10 those now.

11 CHAIRMAN MEITES: No. This is a good place to
12 stop. Let me ask a question of you, then a question of
13 Mattie.

14 I can't say I'm surprised at the position your
15 organization has taken on both of these proposals.
16 You've enunciated a number of what to me are powerful
17 arguments as to why no change should be made. Given
18 that position of the entities you represent, can you
19 tell us why you think a workshop approach would be
20 useful?

21 MS. PERLE: I think a workshop would at least
22 give LSC something to -- some input for programs that

1 are -- about what the impact of this would mean. I
2 mean, I can tell you what it looks like from my
3 position and from what I've talked to, things that I've
4 spoken to with a few programs and people that I know.

5 But I think that you need to hear from the
6 programs who are going to be impacted -- I don't like
7 that word because I don't think it's a verb -- but
8 impacted by this as to what a 5 percent reduction will
9 mean to them, as to what it means in terms of how many
10 staff they're going to have to fire, what reduction of
11 services to their client community will result.

12 And in terms of a six-month suspension, maybe
13 programs will be able to tell you, we can get by for
14 60 days. But if you tell us that there's potentially a
15 180-day suspension, that's it. We're packing our bags
16 and going home. We're either going to have to close
17 down -- for programs that have larger amounts of
18 non-LSC funds, maybe they'll say, it's not worth it.
19 We're just going to give up our LSC funding. We're not
20 going to be an LSC recipient any more.

21 I mean, I think that there are lots of
22 responses that programs could give you in terms of what

1 these actions would mean to them that you should hear
2 before you make a decision as to what you're going to
3 do.

4 CHAIRMAN MEITES: Well, we wouldn't hear a
5 workshop, but the staff would hear --

6 MS. PERLE: Well, the way the protocol is set
7 up, you potentially could hear. That's right, isn't it
8 Mattie?

9 MS. COHAN: A board member would be welcome to
10 attend a workshop, for certain.

11 CHAIRMAN MEITES: We could attend.

12 MS. PERLE: You could attend.

13 CHAIRMAN MEITES: But in any event, you would
14 have a chance to have a dialogue.

15 All right. Let me stop you there and ask
16 Mattie what -- you determined not to go the workshop
17 route. And why is that?

18 MS. COHAN: Well, a little bit of
19 philosophical background. The rulemaking protocol
20 certainly allows for a rulemaking workshop in
21 connection with a notice and comment rulemaking. There
22 is no presumption in the rulemaking protocol either for

1 or against having a rulemaking workshop. It's not
2 assumed that one would happen.

3 And the rulemaking workshops are generally
4 thought of within the LSC protocol and their model
5 throughout the federal government rulemaking when you
6 have instances where there's a lot of factual
7 information on the ground that may or may not be
8 particularly useful for the agency to know.

9 The Corporation has used rulemaking workshops,
10 for example, when we revised the client grievance
11 procedure rule because it was very helpful to
12 understand the wide variety of ways in which grantees
13 were currently implementing the client grievance
14 procedure rule.

15 In this particular case, the proposal here,
16 it's a process. I have no doubt that in any number of
17 cases, a reduction in funding -- and I will say that to
18 the extent that I'm sure Linda was just speaking kind
19 of globally, a 5 percent reduction in funding would in
20 fact trigger the termination procedure. The limited
21 reduction in funding would be lower.

22 MS. PERLE: I'm sorry. 4.999.

1 MS. COHAN: But whether or not a particular
2 limited reduction in funding would hurt a particular
3 grantee is not the point of whether enough process is
4 due. The Corporation would take that specific
5 information, I'm sure, into account in determining what
6 it felt it needed to do in a particular action. But
7 this is a process-oriented rule.

8 That said, I don't believe management has any
9 objection to holding a workshop. But it was
10 management's understanding that the committee wanted a
11 draft proposed rule in front of them, and I'm not sure
12 how much use a workshop would be. But again, as I
13 said, I don't believe management has any objection to
14 one.

15 I would like to raise the point so it doesn't
16 get lost, though, that whether or not there is a
17 rulemaking workshop, that's not the last opportunity
18 for the field to have an input. There's a proposed
19 60-day comment period during which the field could
20 provide as much comment as it wanted --

21 MS. PERLE: But the train's already left the
22 station.

1 CHAIRMAN MEITES: Wait for a second. I see
2 two benefits to a workshop, one a benefit to us and one
3 a benefit to you. The benefit to us would be the hope
4 that you could at least reach agreement on some points
5 of this so you're not as far apart as you are now.
6 That may be a vain hope.

7 But there's another point that I think a
8 workshop might contribute. The real issue I see is why
9 do our grantees get out of compliance in the first
10 place? Is it because of poor management? Is it
11 because of a board that isn't supervising? Is it
12 because of philosophical issues with our regulations?

13 And it may be that management would profit
14 from hearing from some of our grantees as to how they
15 actually respond to what they're hearing from the
16 Corporation. Is it the board of directors who hears
17 it? Is it the executive director? Does the executive
18 director work with its board?

19 I sat on an LSC board, and we held the
20 executive director accountable for what was happening.
21 And we would have expected, if there was any adverse
22 comment from LSC, that the board would be informed of

1 that.

2 Now, I don't know if the grantees generally do
3 that or not. But I think that if management is trying
4 to improve the tools it has to assure compliance, it
5 might be well informed to find out how grantees hear
6 you when you're saying something is out of kilter.

7 Now, I'm not saying that's going to change
8 what you're going to come up with. But my sense is it
9 may help not only you, but help us decide what
10 additional tools we think are needed. That's just
11 my -- the other members of the committee --

12 MR. HALL: Yes. I concur that I just don't
13 see a down side from having it. And one of the things
14 that I've been impressed with, and maybe somewhat
15 naively, is that most of the issues that we have had to
16 deal with, especially in ops and regs, that it's been
17 rare that the field has taken what I would label as
18 strong opposition as I heard here today.

19 And I don't know if that strong opposition is
20 because this is the most controversial thing we've had,
21 or because of some other reason. But I've picked up on
22 a very cooperative spirit between the field and

1 management. And I think anything we can do to continue
2 to foster that is a good thing.

3 And second, the difference -- and I'm sure
4 that people out in the field may know we're considering
5 this already. But I guess the other difference is that
6 if the field has an opportunity to talk to us before
7 there's an official rulemaking process, that it may
8 send a message that we are willing to hear from them
9 before it's official.

10 MS. COHAN: Professor Hall, just so you
11 understand, the rulemaking workshop is part of an
12 official rulemaking process. It's part of the process.
13 It may precede the development of a draft notice of
14 proposed rulemaking, but it is not outside of the
15 rulemaking process. The committee would recommend and
16 the board would still need to initiate a rulemaking.
17 So it is part of that process. That's just
18 technically.

19 MR. HALL: Yes. And I appreciate that
20 technical distinction. But I guess the difference from
21 my sense is that even though it's part of the official
22 process, it's not -- notice has gone out without us

1 having received that type of input. So it's a long-
2 winded way of saying I concur that we should go in that
3 direction.

4 CHAIRMAN MEITES: Other committee members?
5 Jonann?

6 MS. CHILES: If we have a rulemaking
7 conference or meeting -- workshop, thanks -- I really
8 would like to see added to the agenda a discussion of
9 why grantees get out of compliance and what can be done
10 to cut down on the number of instances where grantees
11 get out of compliance. Because as I'm sure the
12 grantees understand, we're getting some pressure from
13 above to deal with some instances of grantee
14 noncompliance.

15 MS. PERLE: I just think that the instances
16 where there's -- I mean, part of the problem is that
17 there's not really a lot of criteria about what is a
18 violation. And I think that most of the instances
19 where there is -- where programs are viewed by LSC as
20 out of compliance are situations where LSC is kind of
21 developing interpretations of rules, requirements that
22 were not clear to programs, at least, in the past.

1 You're going to find there are very few
2 instances of serious violations of the substantive
3 restrictions -- that programs are doing class actions,
4 for example. I mean, it's just not happening.

5 CHAIRMAN MEITES: Well, we appreciate that.
6 But a workshop also would allow that point to be made
7 in more intimate settings than you saying it and Mattie
8 saying it and so on.

9 But David has apparently mastered our rules
10 far more than I have in my lengthy tenure as chair. In
11 order to move this to a workshop stage, is the
12 procedure for us to recommend to the board that it
13 authorize the initiation of a rulemaking? So that is
14 the motion that this committee would need in order to
15 accomplish that. Is that correct?

16 MS. COHAN: Yes. That's correct.

17 CHAIRMAN MEITES: All right. Then to focus
18 us, if I could have a motion to that effect.

19 M O T I O N

20 MR. MCKAY: So moved.

21 CHAIRMAN MEITES: Is there a second?

22 MS. BEVIER: Second.

1 CHAIRMAN MEITES: Okay. So the motion is this
2 committee recommend to the board that initiate a
3 rulemaking with regard to alternative sanctions, and
4 with the strong recommendation that it begin with a
5 workshop. Is that where we're at? Sarah, please.

6 MS. SINGLETON: I have no objection to the
7 motion. I have a substantive comment or question for
8 Mattie based on what Linda was saying, I believe.

9 It sounded to me like part of what Linda was
10 saying is that these proposed penalties may be more
11 harsh than they appear on their face, and that there
12 would be instances in which a more lengthy suspension
13 of funding would in fact be the equivalent of
14 terminating a program, or that a 5 percent reduction
15 might make it impossible for a program to continue
16 providing services.

17 So I'm wondering why the criteria for when LSC
18 will impose these various levels of sanction don't
19 include an evaluation of the ability of the program to
20 withstand the sanction, or the impact of the sanction
21 on the program.

22 When you were talking before -- and I cannot

1 help but have all my biases from my practice come out
2 at these meetings -- but it sounded like you were
3 talking about punitive damages to me. And those things
4 have no -- and I don't like them. And those things
5 have no standards. And it sounds like that's what
6 we're talking about here.

7 So at least, in the punitive damage context,
8 you do usually look at the ability of the defendant to
9 withstand the punitive damage that you want to impose
10 on him. And the goal of them is not to drive somebody
11 out of business.

12 So why wouldn't that be a stated criteria in
13 your list here?

14 MS. COHAN: Well, I think management certainly
15 agrees that there's no desire to drive grantees out of
16 business. I respectfully disagree that a monetary
17 penalty is merely a punishment and not an enforcement
18 tool, which is, I believe, the phrase that Linda used.
19 I think sometimes punishment and the threat of
20 punishment is in fact -- has a salutary deterrent
21 effect in terms of getting or keeping people in
22 compliance.

1 From a substantive point of view, yes, I don't
2 think management minimizes the impact that some of
3 these penalties might have. And I think the fact that
4 management doesn't minimize the effect the penalty
5 might have is one reason why the termination rule
6 hasn't been used that much.

7 With respect to suspensions, yes. I don't
8 think the Corporation has any desire to impose a
9 maximum six-month suspension if it's not necessary. As
10 I said in my opening remarks, if the Corporation
11 proposed a suspension of four months, and then as the
12 situation was going on four months seemed no longer
13 necessary and appropriate, the Corporation doesn't have
14 to say, well, we said two months ago that we're going
15 to suspend you for four months so even though, gosh,
16 we'd like to give you the check, we can't now. That's
17 just not the way it happens.

18 With the federal government, I will tell
19 you -- with federal government grants, the suspensions
20 of the federal government, there is no maximum
21 suspension time. If you get a federal grant and --

22 MS. SINGLETON: Surely an institution we want

1 to emulate.

2 (Laughter.)

3 MS. COHAN: For better or worse, we in this
4 position sit much in the position of a federal agency,
5 and we are distributing federal funds.

6 The point, though, I was making was that in
7 the federal arena, agencies have the ability to suspend
8 somebody pending completion of the enforcement action.
9 If the federal grantee chooses not to come into
10 compliance till such time as the suspension will kill
11 it, it's that grantee's choice. It's kind of a
12 contempt of court thing. If spending six weeks in
13 court is going to make you lose your job, well, then,
14 you don't have to spend six weeks in jail. But --

15 CHAIRMAN MEITES: Mattie. Let me kind of
16 limit this. Sarah's point is something that could be
17 considered. You don't have to debate it. You can
18 consider it at the workshop. If there is no more
19 comment, I'd like --

20 MS. BeVIER: Tom, I just have --

21 CHAIRMAN MEITES: Go ahead.

22 MS. BeVIER: I think that this is brief.

1 Linda made one comment that is very troubling to me,
2 and that is that, oh, the regulations are so vague, and
3 they're changing all the time, and the grantees --
4 well, and all I want to do is invite that to be made
5 more specific and more clear. Because if that's true,
6 we need to fix it. And I'm not saying it is or isn't.
7 I just need to know about it. I think this committee
8 needs to know about it. So that should be part of
9 this.

10 MS. COHAN: I'm sure we will take that up.
11 For my part, I respectfully disagree with that
12 characterization.

13 MS. BeVIER: Thanks.

14 MS. PERLE: That wasn't really exactly what I
15 said. What I said was that there are interpretations
16 of things that are new, that programs were not aware of
17 before --

18 MS. BeVIER: That's fine. If it could just be
19 clarified at this meeting, that's all I would like to
20 do.

21 CHAIRMAN MEITES: All right. If there are no
22 other comments, can we have a vote on the pending

1 motion? All in favor?

2 (A chorus of ayes.)

3 CHAIRMAN MEITES: Opposed?

4 (No response.)

5 CHAIRMAN MEITES: Okay. We are short of time
6 today, so I'm going to make a number of suggestions.

7 MS. BeVIER: Tom's comparative advantage comes
8 to the fore.

9 (Laughter.)

10 CHAIRMAN MEITES: Items 6, 7, and 8 are all
11 staff reports. I'm going to ask that those be
12 submitted in writing and considered at our next
13 meeting, which is taking place where?

14 MR. STRICKLAND: Wilmington, Delaware.

15 CHAIRMAN MEITES: Wilmington, Delaware.

16 Then the action item that's left is consider
17 and act on ops and regs charter. Why don't we take a
18 look at that, at least begin considering it. There are
19 really, I think, a big question and some smaller
20 questions. And Jonann has raised a few issues with me,
21 so perhaps she can start the discussion.

22 MS. CHILES: Lillian, you may not like this as

1 chairman of the performance review committee. But it
2 seems to me that in the --

3 MS. BeVIER: By the way, we don't have a
4 proposed charter. So are you about to propose one for
5 us?

6 MS. CHILES: I'm about to propose one for you,
7 yes. You might want to look at page 123 of the charter
8 that's proposed for the ops and regs committee. It
9 seems to me that items (11), (12), (13), and (15) might
10 more properly be within the realm of the authority of
11 the performance review committee.

12 And item 14, it seems to me, should be with
13 the board as opposed to being part of this committee's
14 responsibility. It seems to be a larger responsibility
15 than what this committee should be addressing. Those
16 are just some --

17 MS. SINGLETON: What were your numbers again?

18 MS. BeVIER: You said (11), (12) --

19 MS. CHILES: (11), (12), (13), and (15).

20 MS. BeVIER: I don't have any particular
21 objection, speaking -- can I do this now -- as the
22 chair of the performance reviews committee. But I'm

1 sure that if we undertake to consider this, we will be
2 happy to undertake to consider it. I'm not sure what
3 we'll decide.

4 But it makes sense to me for us to think about
5 that because all we do now is the performance review of
6 the chairman and the IG. And we have a kind of limited
7 agenda. And so if we're going to do this self-
8 evaluation by the board and so forth of our own
9 behavior, perhaps we're the best place to do it.

10 MS. CHILES: I thought that item (15) would
11 belong with your committee because it deals with
12 performance reviews. Items (11) and (12) deal with
13 education, education with an eye towards complying with
14 rules and regs and duties. And item (13) deals with
15 conflicts of interest on the board, and that could
16 arguably fall within the realm of board directors'
17 performance of their duties.

18 CHAIRMAN MEITES: Frank, please.

19 MR. STRICKLAND: Mr. Chairman, I have a couple
20 of other comments. With respect to your proposal,
21 Jonann, I'm in agreement with it. And it could be that
22 we in a bold step might want to change the name of the

1 performance reviews committee -- and this is not set in
2 stone -- but perhaps as performance reviews and
3 governance.

4 I think there were at least some suggestions
5 in one of the GAO reports about governance as a
6 concept, and it seems to me that these things you just
7 suggested could be lodged in a committee of that type
8 that covers both those issues, not only performance
9 review but some of our governance issues.

10 And it might be that items (7), (8), and (9)
11 could -- how do you like that, Lillian?

12 MS. BeVIER: Tom, did you set this up?

13 (Laughter.)

14 CHAIRMAN MEITES: Not a word. Not a word.

15 MR. STRICKLAND: But probably Nos. (10) and
16 (14) are more appropriate for the board. But I would
17 suggest that we at least consider items (7), (8), and
18 (9) in addition to the ones you suggested, Jonann, as
19 possibly being lodged in the performance reviews
20 committee as it might be revised and renamed.

21 CHAIRMAN MEITES: Well, the performance
22 reviews committee is meeting tomorrow. And perhaps

1 they could think about this overnight and take a look
2 at which ones they think make sense for them to accept.

3 MS. BeVIER: The thing about that is it really
4 is a reconfiguration of what that committee's
5 responsibilities are. So I think it's much more
6 appropriate to be -- I'm happy to recommend to the
7 board that the board consider it. But I don't think
8 that --

9 CHAIRMAN MEITES: No.

10 MS. BeVIER: It's basically, are you willing
11 to do it? And of course, you --

12 CHAIRMAN MEITES: Yes. But what I would ask
13 is that your committee, Lillian, looks at everything
14 under the governance section and see if there's -- what
15 you'd be comfortable within the committee's province if
16 it were also a governance committee.

17 As for the remainder, there are a number of
18 niggling points which I have with Vic's drafting. I
19 only have three minutes to niggle, so I'm going to ask
20 Jonann to join me in a subcommittee of two to go over
21 word for word what's left with Vic before the next
22 meeting.

1 MS. CHILES: I would gladly join you in that
2 niggling effort, yes.

3 MS. BeVIER: Would you please do something
4 about resources?

5 CHAIRMAN MEITES: Resource is not a word that
6 we love much.

7 MS. BeVIER: Well, no. It's just my comment
8 before. So you guys can recommend something about that
9 unless you don't want to.

10 CHAIRMAN MEITES: So with that, if it is the
11 committee's pleasure and despite the hoots I'm going to
12 get, I propose we defer further consideration of our
13 charter until the next meeting.

14 MR. McKAY: So we create a committee of
15 niggers to report back at our next meeting.

16 CHAIRMAN MEITES: All right. We'll do that.

17 MS. SINGLETON: Whose charter is to niggle?

18 MR. McKAY: Just adopting a term that's been
19 previously --

20 MR. HALL: I propose that you find a better
21 term to describe this process, whatever it is you're
22 engaging in. It doesn't make me feel comfortable.

1 (Laughter.)

2 MS. BeVIER: That's right. I have a
3 suggestion that you include in this reconfiguration of
4 what you guys are going to do with the committee is
5 that we have something in there about postponing
6 everything possible until the next meeting.

7 CHAIRMAN MEITES: That is a chairman's
8 prerogative, Lillian, which I do not plan to yield on.

9 Okay. Any public comment?

10 (No response.)

11 CHAIRMAN MEITES: New business? Vic, there is
12 one item that I think you want to raise on new
13 business.

14 MR. FORTUNO: It was simply a report that has
15 to do with some FOIA legislation that was enacted at
16 the very end of last year. It will require some
17 rulemaking by the Corporation in order to conform the
18 Corporation's FOIA reg to the amendments.

19 And what we were doing was simply providing --
20 and we did so in writing -- an outline of what the
21 legislation requires the Corporation to do. And we
22 expressed an intention to come back to the committee at

1 the next meeting with a draft of what the rulemaking
2 would make to the changes in law so that the committee
3 can take it up at that point.

4 CHAIRMAN MEITES: Fine. Why don't you do
5 that.

6 All right. It is now two minutes to 5:00. I
7 will entertain a motion that we adjourn.

8 M O T I O N

9 MR. MCKAY: So move.

10 CHAIRMAN MEITES: Second?

11 MS. CHILES: Second.

12 CHAIRMAN MEITES: We are in adjournment.

13 (Whereupon, at 4:58 p.m., the committee was
14 adjourned.)

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