

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS

MEETING OF THE  
OPERATIONS AND REGULATIONS COMMITTEE  
OPEN SESSION

Friday, January 28, 2011

10:43 a.m.

Legal Services Corporation  
3333 K Street, N.W.  
Washington, D.C.

COMMITTEE MEMBERS PRESENT:

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

OTHER BOARD MEMBERS PRESENT:

Sharon L. Browne  
Victor B. Maddox  
Martha L. Minow  
The Reverend Joseph Pius Pietrzyk, O.P.  
Julie A. Reiskin  
Gloria Valencia-Weber

## STAFF AND PUBLIC PRESENT AT THE CORPORATION'S OFFICES:

Victor M. Fortuno, Interim President and General Counsel  
Katherine Ward, Executive Assistant, Office of Legal Affairs  
Jeffrey E. Schanz, Inspector General  
Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs  
Elizabeth Arledge, Analyst/Coordinator, Legal Services Corporation  
Linda Perle, Center for Law and Social Policy (CLASP)  
Stephen Barr, Director, Media Relations  
John Meyer, Director, Office of Information Management (OIM)  
John Carmichael, American Bar Association  
Terry Brooks, American Bar Association Standing Committee on Legal Aid and Indigent Defendants  
David Maddox, Assistant Inspector General for Management and Evaluation  
Cynthia Schneider, Deputy Director, OPP  
Laurie Tarantowicz, Assistant Inspector General and Legal Counsel  
Joel Gallay, Special Assistant to the Inspector General  
Tom Coogan, Assistant Inspector General for Investigations  
Christy Fisher, OPP  
Stephanie Edelstein, Program Counsel III, OPP  
Eric R. Jones, Network/Systems Engineer, OIT  
Lavon Smith, Network/Systems Engineer, OIT  
Rebecca Weir, Special Counsel to the President  
James ("Jim") Sandman, Incoming LSC President  
Janet LaBella, Director OPP  
Mark Freedman, Senior Assistant General Counsel, Office of Legal Affairs (OLA)  
Atitaya Pratoomtong, Staff Attorney, Office of Legal Affairs (OLA)  
Patricia D. Batie, Corporate Secretary, Office of Legal Affairs (OLA)  
Dan Sheahan, Program Evaluation Analyst, Office of Inspector General

## C O N T E N T S

OPEN SESSION	PAGE
1. Approval of Agenda	4
2. Approval of minutes of the Committee's meetings of:	4
October 19, 2010	
December 15, 2010	
3. Consider and act on strategic planning activities	5
Presentation by Mattie Cohan, Senior Assistant General Counsel	
4. Staff report on Development of a Regulatory Agenda	22
Presentation by Mattie Cohan	
5. Consider and act on Draft Notice of Potential Rulemaking on 45 CFR Parts 1609 to clarify scope of fee-generating case restrictions to non-LSC fund supported cases	29
Presentation by Mattie Cohan	
6. Staff Report on Potential Rulemakings as a Result of TIG Audit Response	34
Presentation by Mattie Cohan	
7. Public Comment	39
8. Consider and act on other business	39
9. Consider and act on adjournment of meeting	39

Motions: 4, 5, 20, 32, 40

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

2 (10:43 a.m.)

3 CHAIRPERSON KECKLER: All right. At this  
4 time, I'll call to order the duly noticed meeting of  
5 the Operations and Regulations Committee, noting the  
6 presence of a quorum.

7 And we can move to the first item of the  
8 agenda, which is the approval of the agenda for today.  
9 I'll entertain a motion on that.

## 10 M O T I O N

11 MR. KORRELL: Move to approve the agenda for  
12 the -- yes. Move to approve the agenda for today.

13 CHAIRPERSON KECKLER: Is there a second?

14 MS. MIKVA: Second.

15 CHAIRPERSON KECKLER: Thank you. All in  
16 favor?

17 (Chorus of ayes.)

18 CHAIRPERSON KECKLER: Hearing no objection, I  
19 move to the second item of the agenda, which is the  
20 approval of the minutes from the Committee's prior  
21 meetings of October 19th of last year and December 15th  
22 of last year.

1 M O T I O N

2 MS. MIKVA: So move.

3 MR. KORRELL: Second.

4 CHAIRPERSON KECKLER: All in favor?

5 (Chorus of ayes.)

6 CHAIRPERSON KECKLER: And we can now turn to  
7 the third item, which is the first substantive item,  
8 Consider and Act on Strategic Planning Activities.  
9 This is a carryover from our prior meetings on the  
10 subject, and we're here to consider next steps.

11 I should note, before turning it over to Ms.  
12 Cohan, we, at the last meeting, approved the issuance  
13 of a Federal Register notice indicating the  
14 Corporation's interest in developing a strategic  
15 planning document for the upcoming period of time. And  
16 that has now been published. And we are now to  
17 consider what response that has elicited and our next  
18 steps. I'll turn it over.

19 MS. COHAN: Thank you. As you have the report  
20 in your materials, I can update you that the -- an  
21 e-mail noticing the availability of the notice with a  
22 link has gone out to all of our grantees and to a large

1 non-grantee stakeholder list representing CLASP, NLADA,  
2 ABA, the ABA Committee on Pro Bono, Access to Justice  
3 Commission, State Courts and IOLTA organizations. I've  
4 gotten at least one comment from a state court asking  
5 who we were. So somebody is reading it. And I believe  
6 there will also be a notice in Monday's LSC updates  
7 with the link to it. So that will distribute -- kind  
8 of bring it to the attention of an even wider list of  
9 folks. So that's my update.

10           At this point, as I did last time, I'm  
11 essentially going to bounce this back to you because I  
12 have really nothing else to do with this here. As  
13 noted in the memo, there was at least a suggestion that  
14 you may wish to consider having some sort of  
15 training/visioning session. You know, a good model for  
16 strategic planning kind of starts at the top with  
17 visioning and then goes down for the actual  
18 construction of the strategic plan and then comes back  
19 up.

20           So we kind of -- you know, that starting point  
21 is up there. And if you do choose to hold something  
22 like that, it may be useful to do it after the comments

1 have finished coming in, but, you know, the date is up  
2 to your respective calendars. The due date for  
3 comments on that Federal Register notice were March  
4 15th. So I pretty much expect to get comments March  
5 15th. That has been my experience.

6           And so if you wanted to hold a dedicated  
7 session sometime between March 15th and the April board  
8 meeting, that might be useful. You could get the  
9 report of what comments came in and get yourselves  
10 positioned for the April meeting, plus that will give  
11 you a little -- give Jim a little time to kind of get  
12 his feet wet on this. And after that, talk amongst  
13 yourselves.

14           CHAIRPERSON KECKLER: Okay. Thank you,  
15 Mattie.

16           In terms of management's suggestion regarding  
17 the training, and I guess I would say it's a -- the  
18 contemplation is, a training with a purpose.

19           MS. COHAN: Correct.

20           CHAIRPERSON KECKLER: Namely, that, you know,  
21 as we train in this, we indeed develop our own sort of  
22 top level sort of visions or initial sort of draft

1 materials on strategic points. How long would you --  
2 you just, as you mentioned in your memo, did some  
3 training of this kind. How long would you expect such  
4 a training session to --

5 MS. COHAN: Well, the class I took was three  
6 days. I know nobody has three days to devote to it.

7 CHAIRPERSON KECKLER: Okay.

8 MS. COHAN: But I would think you would want  
9 to set aside at least a good half day. It gives you a  
10 little bit of not only a chance to kind of get oriented  
11 to the material, but really actually have a good  
12 discussion.

13 You know, everything that they taught us in  
14 the class that the importance of the visioning session,  
15 it really starts from the top down. And that's where  
16 you -- it's worth the investment of time on that day to  
17 really put into a back and forth and the development of  
18 a consensus vision and direction for -- that's an  
19 investment that will set the tone for the entire rest  
20 of the process that follows. And if you shortchange --  
21 I know everybody is very, very busy, but if you  
22 shortchange that part of the process, you're not really

1 doing yourself any favor in the long run.

2 So I would suggest if you could do a half day,  
3 that would be the suggestion that I -- the sense I got  
4 also from talking to the folks who ran the class. That  
5 was their suggestion.

6 CHAIRPERSON KECKLER: Doing that, though, it  
7 doesn't seem as though that's a -- I mean, I think  
8 there is a couple of aspects of that. One, you can  
9 also put on one of your other hats in legal counsel  
10 office. You know, it seems to me that's very much a  
11 deliberative kind of meeting. It's essentially, if  
12 we're going to do more than simply be trained, if we're  
13 going to talk about the vision of the organization,  
14 this seems to me to have a deliberative aspect to it,  
15 undoubtedly, and therefore might qualify as a Board  
16 meeting. Am I --

17 MS. COHAN: That would be true if you had a  
18 quorum of Board members.

19 MR. FORTUNO: Yeah, if I may, I think this --  
20 what is being discussed is a different approach from  
21 what occurred last time --

22 MS. COHAN: Last time. That's right.

1           MR. FORTUNO:  -- which was the strategic  
2 directions were, in some sense, developed by management  
3 and then brought to the Board for consideration and  
4 whatever requirements the Board wished to make.  What  
5 is being proposed now is for the Board to not develop a  
6 full-blown plan, but to provide some guidance to settle  
7 on a vision to then communicate to staff for staff to  
8 do some work and bring back to you.  But that kind of  
9 deliberation, if it involves a quorum of the Board,  
10 would be subject to Sunshine.

11           MS. MINOW:  The report from the  
12 self-evaluation that the Board members did, you'll be  
13 happy to know, puts strategic planning as the number  
14 one thing that people want to do.  So whether it's this  
15 prep work or otherwise, we're in good shape.  Everybody  
16 is eager to do this.

17           I do think, and as the memo in the Committee  
18 indicates, now that we have an incoming president, it  
19 is sensible to plan whatever the procedure steps are,  
20 timing, when there should be a half day meeting, if  
21 there should be a half day meeting, whether it's a  
22 board meeting or not, with the president.  And so

1 that's my recommendation.

2 I know many people on the Board have  
3 participated in strategic planning processes and will  
4 have lots of things to say about this, but I think  
5 that's the best process to use going forward.

6 MR. KORRELL: This is Harry. Is there a  
7 reason that we couldn't either have a training session  
8 that doesn't trigger Sunshine requirements or  
9 alternatively, have the kind of training you appear to  
10 be envisioning, which is both training and substantive  
11 development of ideas, and just make it a public  
12 meeting?

13 MS. COHAN: Sure. If you had just a briefing,  
14 a training session, that wouldn't trigger Sunshine. If  
15 you didn't actually then sit and talk about anything  
16 for LSC, sure. And then, and if so if you wanted to  
17 have that separately and then have a visioning session  
18 that was separate, and that would be a publicly noticed  
19 meeting, sure you could do both of those. The only  
20 reason for the suggestion of holding them both was  
21 really kind of a knowing how pressed people are for  
22 time, to try to kind of, you know, combine them for a

1 logistical purpose, rather than any substantive  
2 purpose.

3           Also, the other thought about doing them  
4 together is that you do the visioning while the  
5 training is still really fresh. I mean, that is  
6 another thought, but again, that is entirely up to, you  
7 know, what works for the collective.

8           MS. REISKIN: Well, I have two questions. One  
9 is, is there something about having it under Sunshine  
10 that's a problem? And my second question is more  
11 process, which is this notice went out and people can  
12 -- stakeholders can comment. Is that the only time in  
13 the process when stakeholders can comment or is there  
14 going to be another time after there is a plan for them  
15 to comment?

16           MS. COHAN: There will definitely be  
17 additional opportunity for stakeholders to comment.  
18 The notice itself, I thought, I hoped it made that  
19 clear, that there will be additional, you know,  
20 opportunity for input, both in writing, and depending  
21 on how the Committee and the Board wishes to proceed,  
22 there could also be opportunities for in-person

1 stakeholder process, stakeholder input. And that's a  
2 little further down the road, but that opportunity is  
3 there.

4           CHAIRPERSON KECKLER: Well, I think we should  
5 focus -- I definitely think we should limit on what we  
6 can do, as we talked about at the prior meeting, before  
7 the president is firmly in place, and so on, and leave  
8 some of these, the issues raised in the memorandum to  
9 management's discretion; in particular, the issue of  
10 how the training should be conducted in terms of  
11 whether somebody should be brought in from the outside  
12 to do that. I think that's a management decision.

13           But one of the focuses on the next steps prior  
14 to the next meeting, I mean, we want to be able to move  
15 this process along as best we can before the next  
16 meeting. We are already in a year, 2011, for which we  
17 don't have a strategic plan. Is there -- I seem to  
18 remember there is a potential area of stakeholder  
19 involvement coming up in the spring. Is that correct?  
20 There is a large-scale meeting of grantees?

21           MS. COHAN: I believe you're referring to the  
22 I guess it's the ABA Equal Justice Conference I believe

1 is in the spring.

2 CHAIRPERSON KECKLER: Okay.

3 MS. COHAN: And there will be a lot of  
4 grantees there. And so that might be an opportunity if  
5 there is room -- you know, if the logistics can be  
6 worked out to get us, like, a day before or a day after  
7 if we wanted to do a stakeholder input session, that  
8 might be a place where there are going to be a lot of  
9 people anyway.

10 This is something we haven't -- I'm at risk of  
11 jumping on the folks who -- from the ABA and NLADA who  
12 we haven't spoken to about this, but, you know, that  
13 might be an opportunity to talk to them, to see if  
14 there is an opportunity at the hotel, if there is a  
15 room, kind of ahead of time so that we're not sitting  
16 on top of their sessions. But take advantage of the  
17 fact that that is where people will be.

18 CHAIRPERSON KECKLER: I think that's -- what  
19 day is that?

20 MS. COHAN: I don't know.

21 MR. SAUNDERS: I think it would be the middle  
22 part of May.

1           CHAIRPERSON KECKLER: Middle of May.

2           MR. SAUNDERS: 16, 17. If we did a  
3 pre-conference, it would be something like the 17th.

4           MS. BROWNE: Where is it?

5           MR. SAUNDERS: It's in Nevada.

6           CHAIRPERSON KECKLER: So I'm just pointing  
7 out, again for discussion of the Board of the  
8 Committee, that if something could be concluded about  
9 possible strategic directions and we have some sort of  
10 content against which they can comment in -- by the end  
11 of the spring meeting, in April, then we can present  
12 not a draft, but a set of ideas to which people can  
13 react in May. I feel like that would be moving the  
14 process forward.

15           So are there other elements of the memo that I  
16 haven't --

17           MS. COHAN: Not that I'm aware of, no.

18           CHAIRPERSON KECKLER: So I think at this time,  
19 in terms of a recommendation, if we need one about the  
20 half day session, I'm not sure precisely what we should  
21 recommend. It seems that there is a consensus that  
22 this -- that some form of a training/visioning, as

1 suggested by management, would be valuable, but we  
2 don't want to leave that to management's discretion in  
3 terms of how to organize. Yes?

4 MS. MINOW: Well, one suggestion is that this  
5 committee recommend to the chair and to the president  
6 that they confer about this with the recommendation  
7 that a substantial time, on the order of a half a day,  
8 be allowed for this activity and leave it to them to  
9 work that out.

10 CHAIRPERSON KECKLER: All right. That sounds  
11 like a sensible one. Yes?

12 MR. KORRELL: The half day, I understand a  
13 half day for a formal training session might make some  
14 sense and beyond that might be too much, but if we're  
15 going to be flying from all around the country to sit  
16 down, we could suggest that somebody consider, in  
17 addition to some training, spend some time actually  
18 doing some work. And it may mean that it's subject to  
19 Sunshine, but I guess from my perspective, if we're  
20 going to fly from the west coast from D.C., I would  
21 rather do it for more than a half day.

22 CHAIRPERSON KECKLER: Well, let me pause. I

1 agree with that, and I think that's sensible. What  
2 about, I mean, could this session be done with  
3 videoconferencing technology?

4 MR. FORTUNO: Yes.

5 CHAIRPERSON KECKLER: I mean, I think it may  
6 not be necessary for that to occur. And it may -- this  
7 may be an opportunity, whether it's a training or it's  
8 a visioning board meeting, for us to really sort of  
9 pilot and try out this capacity for us. I agree that a  
10 phone call would be absolutely insufficient for us, but  
11 I think that it's -- again, that's something that  
12 management could think about and talk to the -- see if  
13 the technical capabilities are there and then make that  
14 choice, which has a budgetary implication as well.

15 MR. FORTUNO: We could arrange it so no one  
16 would have to travel. You could each do it from home.  
17 We've got the capacity to do 11 remote and 1 here at  
18 headquarters.

19 MR. GREY: Mr. Chair, all the chairs, I think  
20 we've got a lot of ideas on the table about how to do  
21 this. I think it would be appropriate for the  
22 Committee to consult with the chairman and president to

1 think about it a little bit, for us to do that with the  
2 leadership of the Corporation for this purpose.

3           We don't want to spin our wheels doing  
4 strategic planning, and we want to get it right. And I  
5 think if we're going to have a meeting, I'm a little  
6 bit on the Harry camp, that if we're going to do  
7 something, that we ought to try to do it in person. I  
8 mean, it's important, I think, for visioning that we  
9 are talking to each other and that we have this kind of  
10 opportunity.

11           If you can't come, then the backup is the  
12 conference phone, the conferencing that we had, which  
13 is very -- but in the first instance, this is too  
14 important to not get right the first time. And I think  
15 we've -- let's take a little bit of time. And even  
16 though I think we would like to be a little further  
17 ahead than we are at the present time, once we get  
18 going I think we could go.

19           I mean, it's a sort of planning for the  
20 strategic conversation to take place. And I agree with  
21 the comment that we get trained and we can go into  
22 substantive discussions as well because we can plan for

1 both.

2 MS. VALENCIA-WEBER: I would like to join  
3 Robert Grey on that. Having been through strategic  
4 planning, that's necessary, for five-year plans for law  
5 school, and this is a pivotal time. Generally, we've  
6 been lucky that we do it at the time we get a new dean,  
7 and we do it in five years.

8 And so you've got a new head of the  
9 organization, you're working out whole new  
10 relationships because of people that have come onboard  
11 since the last time you devised the plan. And I think  
12 I would add Harry's suggestion that because it involves  
13 travel and expense, that we program working time to  
14 make the best use of that.

15 But I don't see that the kind of conversation  
16 that needs to happen, as we are learning to be a  
17 working board, learning to be a working board with a  
18 new president and new executives who don't really have  
19 that time, can happen other than in that face-to-face  
20 conversation so that you even know what you are all  
21 going to laugh at. And it's important. And just  
22 having gone through that process any number of times, I

1 really believe it's necessary however much we have to  
2 work around the Sunshine law and other restrictions.

3 CHAIRPERSON KECKLER: Well, I take that --  
4 these comments, you know, seriously. I think that the  
5 -- when -- I think what -- the indication that I'm  
6 getting is that to the extent that we're going to be  
7 doing visioning, we should do it as a board. It's  
8 going to be a board meeting because it will be  
9 deliberative. It will be an in-person board meeting.  
10 Whether as part of the spring meeting or as a separate  
11 board meeting, or what have you, that's something  
12 that's going to have to be in person.

13 The issue of training might -- that might be  
14 something that could be done by videoconferencing. All  
15 right. So with those considerations in mind, I think  
16 we can follow Dean Minow's suggestion and put a motion  
17 out there to recommend that the new president and the  
18 chair confer about developing training and visioning  
19 sessions for the Board during the upcoming quarter. Is  
20 that satisfactory?

21 M O T I O N

22 MR. KORRELL: I would be happy to make that

1 motion.

2 CHAIRPERSON KECKLER: Okay.

3 MR. GREY: I would be happy to second the  
4 motion.

5 CHAIRPERSON KECKLER: Okay. All in favor of  
6 that motion?

7 (Chorus of ayes.)

8 CHAIRPERSON KECKLER: Opposed?

9 (No response.)

10 CHAIRPERSON KECKLER: Motion carries, and we  
11 will bring that recommendation to the Board along those  
12 lines.

13 MS. COHAN: If I may?

14 CHAIRPERSON KECKLER: Yes.

15 MS. COHAN: I've been told that the Equal  
16 Justice Conference is May 19th to the 21st.

17 CHAIRPERSON KECKLER: Okay. Thank you, and  
18 thank you for that information.

19 MS. COHAN: In Las Vegas.

20 CHAIRPERSON KECKLER: In Las Vegas. Well --

21 MS. MINOW: Maybe people want to go for  
22 several days.

1 MR. LEVI: I guess it's a roll of the dice.

2 CHAIRPERSON KECKLER: All right.

3 (Laughter.)

4 CHAIRPERSON KECKLER: Let's move onto the  
5 fourth item on the agenda today, which is a  
6 presentation on a development of a regulatory agenda  
7 that Ms. Cohen will also present. And I should mention  
8 that we've had some discussions about this, very  
9 preliminary discussions, sometimes about this. And so  
10 it's here after strategic planning for a reason because  
11 one of the issues is the extent to which the  
12 development regulatory agenda should be part of our  
13 strategic planning process.

14 MS. COHAN: All right. Again, you have the  
15 report in your materials. And I think what comes out  
16 of that is that doing a regulatory review and the  
17 development of a regulatory agenda can be very helpful.  
18 You know, besides just the big picture, we're aware  
19 that various issues that might be addressed in  
20 rulemakings have been raised recently, whether as a  
21 result of the TIG audit or recent enforcement activity.

22 And considering those issues, along with other

1 regulations, in a very strategic way, can be a useful  
2 adjunct to the strategic planning process that you've  
3 been discussing. You know, that can kind of come out  
4 as either -- that rulemaking suggests itself as an  
5 activity to help implement your strategic plan, or kind  
6 of as an adjunct piece going hand in hand with the  
7 strategic planning to help you develop the strategic  
8 plan by having information, background information, on  
9 what -- where the state of our regulations are and  
10 where some changes might or might not be considered.

11           So it can work itself in both -- I suspect it  
12 kind of needs to be in both places, but that's at your  
13 discretion, obviously. The only other point I really  
14 want to raise, kind of just for general background, is  
15 that there has been a recent executive order -- you may  
16 have heard about this in the news -- issued by  
17 President Obama, directing all agencies to conduct a  
18 review of all regulations.

19           Now the E.O. does not apply to LSC. So we are  
20 not legally required to follow its requirements. We  
21 are not legally required to submit a plan to OMB as  
22 other agencies are required to do. But I am raising it

1 so that you're aware of it because often LSC looks to  
2 what is happening in the federal sector to guide it.

3           And, you know, that happened very much with  
4 the GPRA, the Government Performance and Results Act, I  
5 believe is the -- which is, you know, kind of what was  
6 the big push for strategic planning in the federal  
7 government. And LSC was not subject to GPRA. But at  
8 the time LSC said, "Hey, this is a good idea and we  
9 want to go with the spirit of it even if we're not  
10 following all of the specific requirements of it."

11           And so I'm putting that out there just for  
12 your background, that this is something that is going  
13 on elsewhere in the federal government generally. And  
14 it may be that given where you guys are in strategic  
15 planning, we are going to end up following the spirit  
16 of it just naturally, without having to really do  
17 anything.

18           All of that said, and with Jim about to come  
19 onboard, we don't have any specific recommendations for  
20 the Committee at this time on the development of  
21 regulatory agenda, but if you have questions, I am  
22 available to answer them.

1           CHAIRPERSON KECKLER: I have one brief  
2 question, which is, is there any kind of staff  
3 infrastructure in terms of the committee, and so on,  
4 that in the past has conducted this review or that's  
5 currently constituted to do such a review?

6           MS. COHAN: There is nothing currently  
7 constituted to do such a review. The last time we did  
8 kind of a bottoms up, there was a staff appointed work  
9 force. The president appointed -- there were folks  
10 from each of the offices within LSC. I organized it  
11 and ran that task force at the time as the kind of the  
12 chief liaison with the Committee and as reg writer.  
13 And we kind of -- everybody worked through. We had  
14 several meetings just within staff. We had a liaison  
15 with the Office of the Inspector General.

16           Eventually, we got to the point where we had a  
17 draft report that was actually published in the Federal  
18 Register. So then we got public comment on it before  
19 the staff report was presented, eventually presented,  
20 in kind of a finalized draft final version to the  
21 Board. And the Board adopted the report of the staff  
22 task force. I would suggest doing that same process.

1 I thought it worked actually quite well.

2 CHAIRPERSON KECKLER: But that was a separate  
3 process from strategic planning.

4 MS. COHAN: Yes. Right.

5 CHAIRPERSON KECKLER: Okay.

6 MR. LEVI: When was that?

7 MS. COHAN: That was done throughout 2001 with  
8 the final report presented at the January board meeting  
9 of 2002, and it was consistent with the information in  
10 the strategic directions, part of the strategic  
11 directions that have been adopted for -- in 2000 for  
12 2001 to 2005.

13 MR. LEVI: So it was not done in connection  
14 with the last strategic direction.

15 MS. COHAN: No-no. The last time we did this  
16 was prior to the last strategic direction.

17 MR. LEVI: So it's been a decade since we've  
18 done a regulatory review.

19 MS. COHAN: A big one like that, yes. The  
20 strategic directions that just expired, one of the  
21 goals was to have an annual review. And the Committee  
22 and the Board, more or less, kept to that kind of doing

1 a little annual agenda, thinking about, well, what do  
2 we have on our plate, you know, this year. They took a  
3 more incremental approach, rather than doing a here is  
4 the big prioritization.

5 That was part of the reg review, was also we  
6 kind of came up with a high priorities, low priorities.  
7 And I would say most of the things that were high  
8 priority items at that time did, over the next several  
9 years, did get taken care of.

10 CHAIRPERSON KECKLER: I mean, it just seemed  
11 to me, you know, upon hearing about both of these  
12 things, that they both have -- they have an intrinsic  
13 connection. And it may just be, you know, the fact  
14 that we have a coincidence in time here, but that it  
15 seemed to make sense to me that these processes could  
16 support each other in a way that they maybe have not  
17 done in the past.

18 MS. REISKIN: Does the Executive Order have a  
19 specific -- sometimes that have a directive like to  
20 make it easier on small business or to eliminate like  
21 -- does it have any specific directive or is it just a  
22 very broad --

1           MS. COHAN: The directive is pretty broad.  
2     It's pretty much look at all your regulations. Where  
3     they're getting in the way of people and they're not  
4     serving your purpose, get rid of them. If you need to  
5     change your regulations or do more regulation to better  
6     serve your purpose and the American public, do that. I  
7     don't think the reg -- the Executive Order comes in  
8     with a presumption of either more or less regulation.  
9     It comes in with a presumption of we can get to better  
10    regulation, which is very much the kind of --

11           MR. LEVI: A healthy regulatory review would  
12    encompass that.

13           CHAIRPERSON KECKLER: Yes. And I think that  
14    that's just all the more along the point that, you  
15    know, regulations should serve the purpose there of the  
16    Agency, which is exactly what one of the things we're  
17    going to talk about in strategic planning, is talking  
18    about what the purpose is and what the subpurposes are,  
19    and then that helps focus the idea of a regulatory  
20    review, I would think.

21           MS. COHAN: Correct. I believe so.

22           CHAIRPERSON KECKLER: All right. If there is

1 -- I don't think there is any immediate recommendations  
2 we need to do on that.

3           So we can now turn to item number five, which  
4 is the Draft notice of Potential Rulemaking on changing  
5 the, or clarifying, I should say, the scope of fee  
6 generating case restrictions to corporation funds only.

7           MS. COHAN: Right. I will try to summarize  
8 this because I know the committee is running into the  
9 next time. So I'm going to try to be very brief. You  
10 have the draft NPRM. This continues the rulemaking  
11 that was initiated at the October meeting. And so we  
12 have a draft NPRM that we are asking the Committee to  
13 recommend that the Board approve for publication.

14           The sole issue here is a proposed fix of the  
15 language of the regulation to clarify that the  
16 substantive and procedural restrictions on recipients  
17 taking a fee generating cases applies only to those  
18 cases supported in whole or part with LSC or private  
19 funds, and that those restrictions do not apply to  
20 cases supported in whole with non-LSC public funds  
21 available for that purpose.

22           As noted in the draft NPRM, the current

1 language of the regulation appears to have resulted  
2 from a mistake in drafting in the last 1997 -- in the  
3 1997 revision of the rule because prior to that, the  
4 rule was clear that it applied only to the LSC and  
5 grantees of private funds. And since the revision of  
6 the rule, it has continued to be understood and applied  
7 that way in the field and at LSC, notwithstanding the  
8 change in the language.

9           So as such, the change we are proposing should  
10 have no substantive effect on policy or practice, but  
11 it will resolve a significant anomaly in the regulatory  
12 language and resolve a conflict between that regulation  
13 at Part 1609, and LSC's regulation at Part 1610 on the  
14 use of non-LSC funds.

15           CHAIRPERSON KECKLER: Any discussion or  
16 comment about that?

17           My only question is the end -- the statutory  
18 language of the Corporation funds is -- in the last,  
19 that's the operative phrase there?

20           MS. COHAN: Yeah.

21           CHAIRPERSON KECKLER: And that would also,  
22 that's interpreted to apply to these private funds as

1 well or --

2 MS. COHAN: That's correct. The LSC Act  
3 applies the LSC Act reg restrictions also to private  
4 funds and then Part 1610 makes clear that where the use  
5 of the word "Corporation Funds" is used throughout the  
6 regulations, it applies also to private funds.

7 CHAIRPERSON KECKLER: Okay.

8 MR. KORRELL: I went through and read the  
9 proposal, the proposed notice, and I just have  
10 completely non-substantive editorial, typographical  
11 correct nits. Should I just give those to Ms. Cohen  
12 aside? I don't think I need to go through --

13 CHAIRPERSON KECKLER: Yeah. Unless they  
14 change anything substantively.

15 MR. KORRELL: No.

16 CHAIRPERSON KECKLER: Thank you.

17 MR. KORRELL: Thank you. I'll do that.

18 MS. COHAN: Thank you very much. You get to a  
19 point you cannot possibly proofread your own material  
20 enough.

21 MR. KORRELL: Yeah. I can't imagine writing  
22 these things.

1 (Laughter.)

2 MR. KORRELL: It's hard enough to read them  
3 once.

4 MS. COHAN: It's what I do for a living.

5 MR. KORRELL: I know.

6 CHAIRPERSON KECKLER: Is there, are there  
7 other discussions regarding this? We covered some of  
8 this, I know, at the last meeting when we discussed it.

9 Therefore, is it now due to recommend the, to  
10 the Board, the --

11 MS. COHAN: Publication for comments.

12 CHAIRPERSON KECKLER: -- publication for  
13 comment of this Notice of Proposed Rule?

14 MR. LEVI: I think with his --

15 CHAIRPERSON KECKLER: With appropriate  
16 corrections of typographical errors.

17 MS. COHAN: Yes.

18 CHAIRPERSON KECKLER: Clerical errors. Is  
19 there a motion?

20 M O T I O N

21 MR. GREY: Moved.

22 CHAIRPERSON KECKLER: Okay. A second?

1 MR. LEVI: Second.

2 CHAIRPERSON KECKLER: Okay. All in favor?

3 (Chorus of ayes.)

4 CHAIRPERSON KECKLER: Opposed?

5 (No response.)

6 MR. LEVI: Okay.

7 CHAIRPERSON KECKLER: Well, before we approve  
8 it, is there -- was there a public comment or comment  
9 from the IG? I have that on the agenda.

10 (No response.)

11 CHAIRPERSON KECKLER: No? Okay. All right.  
12 We'll do that. With that, I consider the ayes to have  
13 it and we will recommend that this draft notice be  
14 turned into a notice of proposed rulemaking and  
15 published to receive the comments thereon.

16 With that, we can now turn to our last  
17 substantive item, a staff report on any potential  
18 rulemakings, or business of this committee, as a result  
19 of the TIG audit. This is the Technology Grants, the  
20 audit conducted by the Office of Inspector General,  
21 which is now on their website. And it contains some  
22 numerous recommendations.

1           Some of these are going to be discussed later  
2 in the audit committee, I think, but there are a few of  
3 them in particular that suggest that we will have some  
4 rulemaking business here, and I would like to hear a  
5 little bit more about that and any responsibilities we  
6 might have here as a result of that audit.

7           MS. COHAN: All right. Well, I'm going to  
8 start by framing this by referring to the two  
9 discussions you've just had on strategic planning and  
10 development of a regulatory agenda.

11           That while, you know, we're cognizant that  
12 although some of these issues -- some suggestions of  
13 rulemaking have perhaps come up in the course of being  
14 raised by the TIG audit, you may also -- you know,  
15 management at this point is not making any  
16 recommendations regarding rulemaking arising out of the  
17 TIG audit, and kind of noting that to the extent that  
18 there may be, at some point, might be some -- it's  
19 probably really best taken up in the course of whatever  
20 bigger discussion, whether it's a regulatory review,  
21 and/or the development of an agenda, so that any items  
22 are thought out and prioritized and bounced off against

1 everything else, or anything else the Committee and the  
2 Board may wish to do.

3           In the management response to the draft audit  
4 -- so all that said, that's my framing for this. We  
5 noticed four of the recommendations could potentially  
6 result in eventual rulemaking if I could use enough,  
7 you know, just declamatory language there, with respect  
8 to three of them, which was contracting processes for  
9 TIG grantees, vis-à-vis the third party vendors,  
10 contracting processes beyond what already exists for  
11 all LSC grantees, but something specific for the TIG  
12 process.

13           Termination procedures specific to the TIG  
14 grantees and conflict of interest of policies regarding  
15 the selection of third party vendors, which is kind of  
16 a -- it's a different issue than contracting in  
17 competition procedures, but they're really kind of  
18 related.

19           In the reconciliation request that management  
20 submitted earlier this week to the OIG, management  
21 noted that, you know, we think we -- management has  
22 done a lot towards fulfilling the recommendations of

1 the OIG within the current confines of LSC statutory  
2 authority without having to come back to the Board for  
3 rulemaking to be able to make progress on those issues.

4           And then the last one with respect to  
5 potential questions regarding the subgrant rule, you  
6 know, we've reviewed the regulation and again, at this  
7 point, have no recommendations for amendment of the  
8 rule. Clearly we have been -- I think you heard during  
9 the briefing that we've been focusing on ensuring that  
10 the existing rule is being applied properly to  
11 individual TIG grants, and that work is going on.

12           So within that context, you know, I will say,  
13 though, we do continue to have these matters under  
14 advisement as we continue to review data and gather,  
15 engage our experience moving forward with the  
16 implementation of all the changes that we've made to  
17 the oversight administration of the TIG program. If at  
18 some later date, that data and experience suggest that  
19 rulemaking is appropriate, you know, we would raise it  
20 for your consideration. At this point, we don't have  
21 any specific recommendations that we're looking at.

22           CHAIRPERSON KECKLER: Okay. So do you -- to

1 follow up, do you anticipate the production of a  
2 rulemaking options paper -- first part of the  
3 question -- in the foreseeable future, and is such a  
4 document going to be necessary -- and the IG can  
5 comment on this if you want, if you already haven't --  
6 would it be necessary, in order to be responsive, to  
7 the rulemaking related suggestions that are in that  
8 audit that suggest various rules or could be incomplete  
9 or should be reviewed? Do we need a rulemaking options  
10 paper in order to be responsive to that discussion of  
11 our regulations?

12 MS. COHAN: Well, I can't speak to what the  
13 OIG considers responsive or not. I believe that we --  
14 with the reconciliation request, I believe the  
15 reconciliation request stated that management believes  
16 that everything we have done to date has been  
17 responsive. Even if there are still recommendations  
18 that will be open, we believe that everything that has  
19 been done to date without rulemaking as at least  
20 responsive to all of the recommendations and waiting to  
21 hear from the OIG with the response on that. And so  
22 with that said, I am not aware of any expectation of

1 creating a rulemaking options paper on any of these  
2 issues in the short term.

3 CHAIRPERSON KECKLER: Okay. I recognize the  
4 Inspector General, Mr. Schanz.

5 MR. SCHANZ: Thank you. As counsel indicated,  
6 we received the reconciliation, which we would call an  
7 audit follow-up. It's a matter of terms, a distinction  
8 without a difference, but we just received it this week  
9 and haven't assessed it yet. So it's still in the  
10 resolution process. And the answer to your immediate  
11 question is, we'll find out. We don't know at this  
12 point.

13 CHAIRPERSON KECKLER: Okay.

14 MR. SCHANZ: But we have worked very closely  
15 with management on the resolution of some of the issues  
16 that have surfaced in the TIG audit.

17 CHAIRPERSON KECKLER: Okay. So at this point,  
18 we're holding the necessity of a rulemaking options  
19 paper in abeyance --

20 MS. COHAN: Yes, I believe that's correct.

21 CHAIRPERSON KECKLER: -- pending the review of  
22 -- your review of the regulation, our current existing

1 regulations and our adequacy.

2 MS. COHAN: That's correct.

3 CHAIRPERSON KECKLER: Okay.

4 MS. COHAN: That's correct.

5 CHAIRPERSON KECKLER: All right. Thank you.

6 Are there discussions or further questions of  
7 the Committee of the Board?

8 (No response.)

9 CHAIRPERSON KECKLER: All right. In that  
10 case, I will move onto the next -- seeing no particular  
11 recommendations arising out of this item, I will move  
12 onto item number seven, public comment, and open it up  
13 at this time.

14 (No response.)

15 CHAIRPERSON KECKLER: Seeing no public  
16 comment, I will turn to item number eight and ask if  
17 members of the Committee, or the Board members, wish to  
18 consider and act on other business and wish to bring it  
19 before this committee?

20 (No response.)

21 CHAIRPERSON KECKLER: I do not see that.

22 Therefore, I will now turn to item number nine and

1 entertain a motion for the adjournment of the meeting.

2 M O T I O N

3 MS. MIKVA: So moved.

4 MR. GREY: Second.

5 CHAIRPERSON KECKLER: All in favor?

6 (Chorus of ayes.)

7 CHAIRPERSON KECKLER: Okay. The committee is  
8 now concluded.

9 (Whereupon, at 11:25 a.m., the committee was  
10 adjourned.)

11 \* \* \* \* \*

12

13

14

15

16

17

18

19

20

21

22