

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS

OPERATIONS AND REGULATIONS COMMITTEE

Wednesday, July 20, 2011

Davis Wright Tremaine, LLP  
1201 Third Avenue, Suite 2200  
Seattle, Washington 98101

Committee present:

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

Other Board present:

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

Staff present:

James J. Sandman, LSC president  
Kathleen Connors, Executive Assistant to the President  
Victor Fortuno, Vice President for Legal Affairs,  
General Counsel, and Corporate Secretary  
Katherine Ward, Executive Assistant, Office of Legal  
Affairs  
Mattie Cohan, Senior Assistant General Counsel, Office  
of Legal Affairs  
David L. Richardson, Treasurer and Comptroller  
John Constance, Director, Office of Government  
Relations and Public Affairs  
Jeffrey Schanz, Inspector General  
Laurie Tarantowicz, Assistant Inspector General and  
Legal Counsel, Office of the Inspector General  
Ronald "Dutch" Merryman, Assistant Inspector General  
for Audit, Office of the Inspector General  
Thomas Coogan, Assistant Inspector General for  
Investigations, Office of the Inspector General  
David Maddox, Assistant Inspector General for  
Management and Evaluation, Office of the Inspector  
General  
Joel Gallay, Special Counsel to the Inspector General,  
Office of the Inspector General  
Lora Rath, Acting Director, Office of Compliance and  
Enforcement  
Janet LaBella, Director, Office of Program Performance  
Reginald Haley, Office of Program Performance  
Bristow Hardin, Program Analyst III, Office of Program  
Performance  
Don Saunders, National Legal Aid and Defenders  
Association (NLADA)  
Camille Wood, NLADA  
Rosita Stanley, NLADA  
Linda Perle, Center for Law & Social Policy (CLASP)  
Terry Brooks, American Bar Association Standing  
Committee on Legal Aid and Indigent Defenders (SCLAID)

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

2 CHAIRMAN KECKLER: Well, I note the presence  
3 of a quorum of the committee members. There is a  
4 concurrent committee meeting going on. So one of the  
5 members is absent, as well as some board members.

## 6 M O T I O N

7 CHAIRMAN KECKLER: Nevertheless, I will call  
8 to order the duly noticed meeting of the Operations and  
9 Regulations Committee, and ask for a motion to approve  
10 the agenda for today.

11 PARTICIPANT: So moved.

12 PARTICIPANT: Second.

13 CHAIRMAN KECKLER: Hearing the motion and a  
14 second, all in favor?

15 (Chorus of ayes.)

16 CHAIRMAN KECKLER: The ayes carry it, and the  
17 agenda is approved. The next order of business is to  
18 consider the meeting of April 15th and its minutes.

## 19 M O T I O N

20 CHAIRMAN KECKLER: And can I ask for a motion  
21 to approve the minutes of the April 15th meeting? You  
22 can see those in your book.

1 PARTICIPANT: So moved.

2 PARTICIPANT: Second.

3 CHAIRMAN KECKLER: All in favor?

4 (Chorus of ayes.)

5 CHAIRMAN KECKLER: The ayes carry it, and the  
6 minutes are approved. This moves us to our first item  
7 of substantive business, which is to consider and act  
8 on 2010 census and formula distribution issues. And we  
9 are going to have a couple of witnesses. I don't see  
10 them at present.

11 PARTICIPANT: They're next door.

12 CHAIRMAN KECKLER: They're next door? I can  
13 -- if there is no objection, I can table that  
14 momentarily, and move to item number four, which is to  
15 consider and act on potential initiation of rulemaking  
16 enforcement mechanisms. Is there any objection to me  
17 switching the order, four and three?

18 PARTICIPANT: No.

19 CHAIRMAN KECKLER: Okay. With that noted, I  
20 then note the presence of Mattie Cohan, from the Office  
21 of Legal Affairs, and Laurie Tarantowicz, of the Office  
22 of Inspector General, to discuss the beginnings, at

1 least, of our regulatory consideration of whether we  
2 should enlarge or alter LSC's enforcement authority and  
3 mechanisms.

4           You have in your board book a memorandum that  
5 covers ideas that have occurred over the last several  
6 years to do that. I note that it is not what we  
7 normally consider to be a formal rulemaking options  
8 paper at this point yet. That is something that the  
9 committee may wish to consider.

10           So, with that, I will turn it over to Mattie  
11 Cohan.

12           MS. COHAN: Sure. For the record, Mattie  
13 Cohan, with the Office of Legal Affairs.

14           As noted, there is a background memo in the  
15 board book. At this point it is not -- in fact, there  
16 is not a recommendation. It is not a rulemaking  
17 options paper. It was really intended to kind of make  
18 sure you all were aware of where the starting point was  
19 for your conversations.

20           Instead of rehashing the information in the  
21 memo, I will do so to the extent that I am requested to  
22 do so. I am happy to go through what's in there, or

1 just open it up -- if you have any questions about what  
2 was in there before you start talking amongst  
3 yourselves.

4 CHAIRMAN KECKLER: Unless the other members of  
5 the committee have a question, one of the things that  
6 was noted in there has to do with one of the options,  
7 which I think that you referred to as the limited  
8 reductions in funding.

9 And there is a couple of things. One is it  
10 indicates a little bit of a regulatory history about  
11 this that are -- it's kind of carried in the footnotes  
12 a couple -- at a couple points, indicating that there  
13 was a recent draft notice of proposed rulemaking  
14 involving limited reductions in funding, as a  
15 consequence of a sanction.

16 And then also it was mentioned that during one  
17 of the main sort of regulatory periods there, when we  
18 created our termination regulation -- this is footnote  
19 four, the memo -- it says, "When the termination  
20 regulation was amended in" -- was anticipated, that  
21 such procedures would be promptly established. But,  
22 for a variety of reasons, that rulemaking did not

1 occur.

2 I wonder if you could talk a little bit about  
3 these basically previous -- before we considering  
4 engaging in this again, I would like to know if we are  
5 sort of on our third strike, as far as this rulemaking  
6 might go.

7 MS. COHAN: Sure. The termination rule was  
8 amended in the mid-1990s, in connection with all of the  
9 1996 restrictions. Prior to that, there had been  
10 presumptive refunding, and that was gotten rid of,  
11 statutorily, so that no one had a -- there was no  
12 presumptive right to refunding.

13 And -- but -- so, instead of a -- if you  
14 didn't get refunded you had a hearing about why you  
15 were not being presumptively refunded, that was kind of  
16 replaced with the competition system, and then with a  
17 termination hearing if your funding was going to be  
18 yanked.

19 In the preamble, which -- the supplementary  
20 information published in the Federal Register with that  
21 notice, termination in that notice is defined as a  
22 reduction in funding of five percent or more. We use



1 the word "termination," but it's really termination in  
2 whole or part. And the board, at the time, decided  
3 anything over five percent really required this big due  
4 process -- I will call it that, as a catch phrase.

5           And it says in the preamble that reductions of  
6 funding for less than five percent can't be undertaken,  
7 except pursuant to procedures to be adopted. So it was  
8 clear that there was an anticipation at the time that  
9 some sort of smaller, but yet providing-due-process  
10 mechanism would be created for smaller reductions in  
11 funding. And that didn't happen. And so, we have had  
12 no mechanism for a reduction in funding of less than  
13 five percent.

14           So if we were going to reduce somebody's  
15 funding by less than five percent, we would really only  
16 have recourse to the full process of the termination  
17 hearing, which is disproportionate in terms of resource  
18 allocation for the amount of the penalty.

19           The issue kind of bubbled up and down over the  
20 years. In 2008, the Board initiated -- the Board then  
21 initiated a rulemaking, and that's an initiation under  
22 Board's adopted rulemaking protocol saying, okay, we're

1 going to start a rulemaking, and the first public step  
2 of a notice of proposed rulemaking is the discussion of  
3 a draft notice of proposed rulemaking.

4           So that was never published for comment. It  
5 never got that far. There were several meetings.  
6 There were several public hearings, you know, meetings  
7 like this, where the Corporation personnel spoke from  
8 the field. And so while a draft notice of proposed  
9 rulemaking was prepared, it was never published for  
10 comment.

11           Subsequently, it was made clear that neither  
12 management nor the Board wished at the time to pursue  
13 that open rulemaking that's technically on the books.  
14 So we were more or less told, yes, this isn't going  
15 anywhere. We're not putting it back on another agenda.

16           It's not going anywhere. But they never took an  
17 action to formally, under the Board's own protocol, to  
18 close the rulemaking, which is why it's just sitting  
19 out there.

20           In a practical sense, it's dead. But as a  
21 lawyer, I feel obligated to note that it's --

22           MS. MIKVA: I'm sorry. Did you say there was

1 or wasn't public comment?

2 MS. COHAN: There was public comment on the  
3 draft of the notice of proposed rulemaking, which was  
4 put up on our website and distributed in the public  
5 board books. One of the things that's different about  
6 LSC compared to most agencies that do APA rulemaking is  
7 we actually publish, on a regular basis, a draft of our  
8 notice of proposed rulemaking that goes through a  
9 public discussion before it ever gets formally  
10 published in the Federal Register for comment.

11 So there's a whole layer that we provide of  
12 comment that doesn't happen at most agencies. Most of  
13 the time at an agency, if there's a notice of proposed  
14 rulemaking in the Federal Register, that's when you see  
15 it absent a rulemaking -- an advisory committee or a  
16 rulemaking workshop or a negotiated rulemaking.

17 MS. MIKVA: Can we get those comments, or are  
18 they buried with the proposed rule?

19 MS. COHAN: Oh, no. I believe they're  
20 all -- I believe the comments that we received --

21 MS. MIKVA: They're up on the website?

22 MS. COHAN: -- are up on the website. To the

1 extent we got them in writing, they're up on the  
2 website. And certainly all of the oral comments are in  
3 the transcripts.

4 CHAIRMAN KECKLER: So when it was tabled, was  
5 it tabled with some kind of commentary or directive to  
6 resolve some issue with it or --

7 MS. COHAN: No. No.

8 CHAIRMAN KECKLER: Okay. Just the whole idea  
9 was something that -- would it be fair to say that the  
10 whole idea was something they just didn't want to deal  
11 with at the time?

12 MS. COHAN: It was controversial and not  
13 popular with the field -- not surprisingly,  
14 perhaps -- and it just -- there were other fish to fry.

15 MS. MIKVA: Did something prompt it?

16 MS. COHAN: I'll say yes, but we'll let Laurie  
17 tell it.

18 CHAIRMAN KECKLER: Go ahead, Laurie.

19 MS. TARANTOWICZ: For the record, Laurie  
20 Tarantowicz, assistant IG and legal counsel to the  
21 Office of the Inspector General.

22 I think that that round that started that

1 ended in the 2008 draft notice of proposed rulemaking  
2 was prompted by -- in I believe it was 2007, the  
3 Operations & Regulations Committee called for comment  
4 on what rulemakings should the committee undertake for  
5 their sort of annual plan.

6 And the OIG issued a memorandum to the  
7 committee that listed, among other areas of potential  
8 rulemaking, a need for what we call or what has been  
9 called traditionally lesser sanctions rulemaking at  
10 LSC. And I think that's sort of what prompted that  
11 round.

12 MS. COHAN: On and off over the years, I mean,  
13 it has come up because it's sitting out there, and it's  
14 something that ends up generating a certain amount of  
15 discussion, even if not specifically about a rulemaking  
16 but occasionally we have larger compliance issues, that  
17 aren't necessarily something that we're really  
18 considering terminating somebody for, but  
19 something -- and kind of like, well, what can we do?  
20 What can we do? And the issue kind of bubbles.

21 And then the crisis du jour passes, and the  
22 rulemaking impetus happens. I think that's happened

1 several times.

2 CHAIRMAN KECKLER: Is it -- well, Laurie can  
3 put in a broader comment on the memorandum that is in  
4 there, if you'd like. But is it still the position of  
5 the Office of the Inspector General that a lesser  
6 sanctions rulemaking would be appropriate or useful for  
7 the organization?

8 MS. TARANTOWICZ: It is. I think that our  
9 position has consistently been that the Corporation  
10 should have flexibility and options available to it to  
11 deal with situations as they arise and not, as Mattie  
12 indicated, wait until a situation arises and then say,  
13 oh, what are we going to do now, and not have this sort  
14 of flexibility.

15 In terms of the particular options that the  
16 Corporation chooses to go with, we've had various  
17 rounds of comments internally between the OIG and  
18 management, and also at the Board level, about what  
19 those options should be. And so there are some that  
20 the OIG would favor that management may not favor, and  
21 that may have changed over time.

22 But in general, we are in favor of a

1 rulemaking in this area.

2 MS. MIKVA: Is this to say that corrective  
3 action plans have been less than completely  
4 satisfactory in those situations where they have been  
5 applied?

6 MS. COHAN: I think I would leave some of that  
7 to OCE. I think it's important globally to understand  
8 that. Most of our grantees, I think, are for the most  
9 part in compliance most of the time. And I think when  
10 they are not in compliance, it is not major,  
11 problematic things. And mostly they want to come into  
12 compliance. They want to understand the regulations  
13 better, and they do. They get their corrective action  
14 plans and they act on them.

15 But that's not everybody. That's not  
16 everybody. And there are some violations that take  
17 place that aren't in the realm of small things. You  
18 know, your paperwork is sloppy, and so here's a  
19 corrective action for you to get your paperwork in  
20 order.

21 We've had grantees that have fairly clearly  
22 violated some fairly significant rules. It happens.

1 And yes, you can have a corrective action plan to try  
2 to put structures in place to ensure that future  
3 violations of that type don't recur.

4 But if you had -- you know, back when we still  
5 had the attorneys' fees regulation, if you had a  
6 grantee that just went ahead and asked for attorney's  
7 fees, okay, we can have a correction action plan that  
8 says, you're going to give the money back and you're  
9 going to instruct all of your attorneys not to engage  
10 in this, and make sure you take this out of your  
11 pleadings.

12 A correction action plan can't make that  
13 violation not have occurred. And to the extent that  
14 it's a significant violation, or if it's -- you're kind  
15 of stuck with, well, now what do you do?

16 And then there are sometimes, I think, as  
17 Laura referred to, the corrective action plans/the CSR  
18 visits fix a lot of it. But there are followup  
19 reviews, and sometimes there are situations in which a  
20 corrective action plan isn't properly implemented. It  
21 happens.

22 CHAIRMAN KECKLER: Let me ask you a question



1 to which I know you don't have the answer. Okay?

2 MS. COHAN: Thank you. I appreciate that.

3 CHAIRMAN KECKLER: So not having the answers  
4 will be exactly -- but you list in terms of the  
5 enforcement tools and the number of times used. So you  
6 talk about that, about the enforcement tools that we  
7 have and the number of times used.

8 And the missing thing here, which is, we don't  
9 know the number of, would be if we had had these tools  
10 back in 1998 and for the last ten years plus, there's  
11 some number where we could have used them, where it  
12 would have been appropriate to use them. We could have  
13 used them. We don't know what that number is. But is  
14 it fair to say that number is not zero?

15 MS. COHAN: I think that's fair to say.

16 CHAIRMAN KECKLER: Okay. And I think that's,  
17 to me, the issue about this lesser sanctions, that  
18 there's a potential tool that could have been useful  
19 that we haven't had. And since you say these types of  
20 things recur and generating interest and then they go  
21 away, presumably we've now had enough experience to  
22 suggest that, statistically speaking, it's going to

1 occur and interest will recur again.

2 PROFESSOR KORRELL: I don't know if it's  
3 possible to answer this. But it looks like, from  
4 reading the description of the penalty authority  
5 available, it looks like the one with the most teeth in  
6 it is doing something to allow us to, in the middle of  
7 a grant period, withhold money. That's the leverage.

8 Right now we can only do it on a limited  
9 basis. Is that correct? I'm trying to make sure I  
10 understand the --

11 MS. COHAN: Well, if we're going to -- well,  
12 okay. I'm trying to figure out exactly -- there are a  
13 couple of --

14 PROFESSOR KORRELL: Well, it's basically the  
15 imposition of special grant conditions during the year.  
16 So we --

17 MS. COHAN: Okay. Well, special grant  
18 conditions are not taking anybody's money.

19 PROFESSOR KORRELL: But if they fail to  
20 comply, then they don't get the money?

21 MS. COHAN: If they continue to fail to  
22 comply, they might either not get a new grant at the

1 end of their grant cycle, or they could be subject to a  
2 termination procedure if we were going to yank their  
3 money.

4           Special grant conditions are usually reporting  
5 requirements above and beyond what they otherwise have  
6 to do. By X date, you will adopt an account -- you've  
7 never had an accounting manual. Your books are a  
8 shambles. You're going to report to us by the end of  
9 the month that you've adopted an accounting manual and  
10 your board has gotten some advice on this. That's a  
11 special grant condition.

12           PROFESSOR KORRELL: Is it possible to write  
13 the grants such that we have the authority to impose  
14 such conditions midstream if certain things happen?

15           MS. COHAN: Right now, we don't. So if we  
16 give out a grant in January and the grant is a  
17 three-year grant, okay, basically now they have a right  
18 to that money for three years. If we want to stop  
19 funding them short of the end of the three-year period,  
20 we have to do a termination procedure.

21           If we gave them three one-year grants, between  
22 years one and two the end of the grant would be they

1 just wouldn't -- they wouldn't have to do a  
2 termination. They just wouldn't get another grant.  
3 But if they get a three-year grant, we've got that  
4 termination thing.

5           At the beginning of the grant, we can give  
6 them special grant conditions, on January 1st. Between  
7 January 1st and December 31st, there are corrective  
8 action plans but not special grant conditions. So they  
9 apply the new grant year -- even though it's still  
10 within the grant term, the new grant year -- January of  
11 the second year we can impose additional grant  
12 conditions, special grant conditions.

13           So that's kind of adding -- it's adding  
14 additional contractual obligations as opposed to just  
15 corrective action plans. Oftentimes they're often the  
16 same things. We also use the special grant conditions  
17 especially in compliance situations because there are  
18 special grant conditions that have to do with quality  
19 issues, not compliance issues.

20           Sometimes that will also come with short  
21 funding. We're only going to give you a grant for the  
22 next three months, and you're going to fulfill these

1 special grant conditions by the end of those --

2 PROFESSOR KORRELL: The fact that we use them  
3 requires that we've identified a problem right before.

4 MS. COHAN: Right.

5 PROFESSOR KORRELL: Which we've done. Right?

6 We had --

7 MS. COHAN: We have.

8 PROFESSOR KORRELL: -- a big, big problem with  
9 a grantee, and it happens to be right around renewal  
10 time. We've got a lot of leverage, and guess what?  
11 Things happen fast.

12 MS. COHAN: Right.

13 PROFESSOR KORRELL: But if you get a grantee  
14 that's blowing us off and saying, I'm not interested,  
15 or I disagree with you, I don't agree with your  
16 assessment, our hands seem pretty tied. And I'm  
17 wondering, is there a way to craft the original grant  
18 so that it builds into it a provision that says, in  
19 essence, if we're not happy with the way you're doing  
20 the responding, we get to withhold your money?

21 MS. COHAN: Well --

22 PROFESSOR KORRELL: So these are not new grant

1 conditions. We're just acting -- I mean, you have  
2 contracts all the time that give a party an enforcement  
3 authority. If I don't like your delivery, I get to  
4 withhold payment until you fix --

5 MS. COHAN: Right. Not without rulemaking.

6 PROFESSOR KORRELL: Understood. But is  
7 there --

8 MS. COHAN: Yes.

9 CHAIRMAN KECKLER: Ms. Tarantowicz?

10 MS. TARANTOWICZ: Yes. I would just note,  
11 just for the record, while we're discussing the  
12 particulars here that there is a bit of a difference of  
13 opinion between the management and OIG with regard  
14 to -- not with regard to the funding and taking away  
15 the funding, but the special grant conditions and the  
16 ability of the Corporation to have certain conditions  
17 on the grant during the grant term.

18 I think that this is a grant that's not  
19 strictly -- it's not the same as a contract. They're  
20 similar, but it's not -- and I think the grantor  
21 retains the ability to put certain conditions, like  
22 reporting requirements, on the grantee during the term

1 of the grant, even if those conditions specifically  
2 were not on the grant at its initiation.

3 That's something that I think needs to be  
4 explored further, and I just wanted to note -- I mean,  
5 we don't have to have the debate here, but I just  
6 wanted to note for the record that there is a  
7 difference of opinion. Such is the opinion at this  
8 point in time.

9 MS. COHAN: And the special grant conditions  
10 are generally things to do or not do. A grant  
11 condition that says, contractually, if you don't  
12 comply, you're going to lose money, I don't believe  
13 legally we could do that without rulemaking authority  
14 to do it because they have -- because we have rules  
15 that say, you've got your money until we go through  
16 this due process to take it away.

17 PROFESSOR KORRELL: Is there any reason not to  
18 have that power?

19 MS. COHAN: I cannot speak for management  
20 because I do not think a management position has been  
21 taken on this.

22 I will speak for myself personally, and Vic

1 can feel free to contradict me, if he likes, for the  
2 Office of Legal Affairs. I think the Office of Legal  
3 Affairs has long thought that that sort of authority  
4 would be useful for the Corporation.

5 PROFESSOR KORRELL: Thank you.

6 CHAIRMAN KECKLER: Are there any further  
7 comments or questions about the memorandum from the  
8 committee or the Board? Julie?

9 MS. REISKIN: Yes. I was just curious. You  
10 listed 140 corrective action plans. Everything else  
11 was a much smaller number in terms of the -- and my  
12 question is, is that more most programs got a  
13 corrective action, or a few programs had a lot?  
14 Because we have 136 programs, and that number was  
15 striking.

16 MS. COHAN: Well, this is also over an  
17 eight-year period.

18 MS. REISKIN: I know. But that's still --

19 MS. COHAN: It's a mix. I think there were  
20 probably a lot of programs that got a few corrective  
21 actions. And Laurie --

22 MS. RATH: Actually, I think it was the number



1 of programs --

2 MS. COHAN: That had plans.

3 MS. RATH: -- that had corrective actions in  
4 their report, not the number of actual corrective  
5 actions. So if we visited 30 programs in a year, 15 of  
6 those programs might have had required corrective  
7 actions. Those 30 would have been included in this  
8 number. But within those, one program might have had  
9 ten required corrective actions, and one might have had  
10 two. So the 140 is 140 visits to a grantee --

11 MS. REISKIN: With corrective actions.

12 MS. RATH: Right.

13 MS. COHAN: And I think the takeaway from  
14 this --

15 MS. RATH: I know --

16 CHAIRMAN KECKLER: Let's pause for a second,  
17 just to make sure everybody is on the record. We are  
18 recording this, but there's not a court reporter. So I  
19 just want to note that Julie Reiskin asked a question  
20 and Ms. Rath from the Office of Compliance and  
21 Enforcement answered.

22 Go ahead, Mattie.

1           MS. COHAN:  And Laura and Janet both gave me  
2 updated numbers that I was not able to get into this  
3 chart.  So I have them; I don't have them at the top of  
4 my head.  I can provide them if you like them.  They  
5 don't really -- the updated numbers don't really  
6 suggest a trend or anything different than what you see  
7 here.

8           And I think the takeaway from this chart is  
9 that most of our enforcement mechanisms are through the  
10 use of corrective action plans, that we use the more  
11 stiff tools that we have at our disposal very  
12 infrequently.  I think that's kind of the takeaway for  
13 that.

14           And I think if you were going to ask me why  
15 that is, I think it's a mixture of the fact that most  
16 of our grantees are mostly in compliance, and the  
17 things that they do wrong aren't huge deals, mostly.  
18 And the more drastic tools that we have -- they're  
19 drastic.  They're time-intensive.  They have  
20 consequences of their own in using them.  And so the  
21 Corporation is reluctant to use them just, you know,  
22 casually.

1           CHAIRMAN KECKLER:  If there's nothing else  
2 immediately from the board, I'll go ahead and open it  
3 up for public comment because I know that this is a  
4 matter of concern to the public.  If anybody has any  
5 comments, could you come up and just induce yourself to  
6 the microphone or the tape recorder, wherever that is?

7           MS. PERLE:  I'm Linda Perle from the Center  
8 for Law and Social Policy, and I work with NLADA and  
9 represent its members.

10           This is an issue that I had a lot to say on  
11 when it came up several years ago, and I haven't really  
12 prepared a whole variety -- a whole set of comments.  
13 But as Mattie indicated, this is an area that's of  
14 great concern to the field programs, as well you might  
15 expect it to be.

16           I think that what strikes me is that LSC has  
17 been successful in getting programs to comply.  And it  
18 has at its disposal a whole variety of tools which it  
19 has used, both formal tools that are in the regulations  
20 and informal ways that it's gotten programs to do what  
21 ITT believes they should be doing, and that I don't  
22 think personally -- and I think most programs in the

1 field don't -- believe that they really -- that LSC  
2 hasn't been able to get programs to bring themselves  
3 into compliance.

4 My fear is, really, that just the term "lesser  
5 sanctions" suggests that, really, this is something  
6 that LSC would like to have the authority to really  
7 punish programs. And my sense is that that really  
8 shouldn't be the goal.

9 The goal should be to bring programs into  
10 compliance, and rather than to punish them for things  
11 that they may have done in the past, to take actions  
12 and to work with programs to ensure that they don't do  
13 them in the future. And I really think that they have  
14 the capacity to do that now.

15 My fear also is that there are some situations  
16 where there's a difference of view as to what  
17 compliance is and what it isn't. And if LSC has at its  
18 disposal a new set of tools that are easier for them to  
19 use to punish programs for things that LSC considers to  
20 be areas of noncompliance where the program just  
21 doesn't agree that this is noncompliance, that LSC will  
22 have those tools and will use them.

1           And we'll find ourselves in a situation where  
2 maybe not this LSC staff but a future LSC staff might  
3 feel that, okay, I have the capacity to sanction  
4 programs, to punish them for things that they've done  
5 in the past rather than really working with the  
6 programs to ensure that they're just not done in the  
7 future, that they'll just go and decide, okay. I have  
8 a much easier process where I can take away 4 percent  
9 of a program's funding, that I can do that.

10           And the other thing just to keep in mind, that  
11 I had some figures that I pulled together in 2008 about  
12 what five percent of a program's funding was. We now  
13 have large programs, statewide programs or large  
14 regional programs, which have large LSC grants,  
15 although they may be smaller in the future. But  
16 five percent of a large statewide program's funding is  
17 a very large amount of money.

18           And what we're really talking about is if we  
19 take that money away from the programs, that's money  
20 that doesn't go to serve clients. If the purpose is to  
21 punish a program, to take away 5 percent or 4.9 percent  
22 of their funding, that could be hundreds of thousands

1 of dollars for some large programs.

2           For Puerto Rico, I don't know what Puerto  
3 Rico's funding levels are, but that could be millions  
4 of dollars that would not go to serve clients. And I  
5 don't think that's the point. I think the point is to  
6 make sure that for areas where there is serious -- for  
7 serious instances of noncompliance, that the programs  
8 fix that in the future. And if they're not going to  
9 fix it, then they are no longer funded and we get  
10 somebody else to serve that program.

11           CHAIRMAN KECKLER: Do you want to add  
12 something, Ms. Cohan?

13           MS. COHAN: Yes. I will say I think to the  
14 extent that I agree that a five percent termination  
15 would in fact -- could be very painful for a lot of  
16 programs. I think that's exactly one of the reasons  
17 why the Corporation hasn't done it.

18           In this chart, the two termination  
19 procedures -- which turned out to be mutual; we didn't  
20 actually have to go through the whole formal  
21 termination procedure -- they were terminations in  
22 whole. The tool only got dragged out in potentiality

1 since we didn't have to go through the whole  
2 termination procedure for programs that were really  
3 on the brink of going under.

4           The Corporation, I don't believe,  
5 has -- certainly not in my tenure has not instituted a  
6 termination proceeding to take away 5 percent or  
7 10 percent of somebody's grant money because we know it  
8 has a distinct effect on client service. So that  
9 raises a question of the effectiveness of the tool,  
10 particularly as a deterrent.

11           But the other unfortunate thing here is we're  
12 a grant-making agency. That's the string we have, is  
13 money. You know, I included in the memo other federal  
14 grant programs, their enforcement sanctions. It's  
15 money because that's what they have. That's the hammer  
16 they have. Withholding it, taking away, is it  
17 really -- is it good? But it's what we have,  
18 unfortunately, because of our structure.

19           And of course, through every grant-making  
20 program, they have that same question: Do we impose a  
21 sanction for a particular reason, knowing that if we're  
22 taking money away from the people we gave the money to,

1 the people who are going to be benefitting from the  
2 money aren't going to receive that benefit? I mean,  
3 that's not unique to us. So, it --

4 MS. MIKVA: I have a question. Do you find  
5 it any less punitive, any less objectionable, to do  
6 something along the lines of what Mr. Korrell  
7 suggested, which is maintain the right to impose grant  
8 conditions during the course of a grant?

9 MS. PERLE: We haven't discussed this as a  
10 policy matter, and I don't really have a view. I mean,  
11 I think, in effect, by negotiating with programs now,  
12 that LSC in fact does -- by requiring it -- does  
13 require programs to do reports and things like that. I  
14 think that, in effect, it probably does do some of that  
15 now.

16 MS. COHAN: And the effectiveness of that  
17 depends on the cooperativeness of the recipient.

18 MS. PERLE: Yes.

19 MS. COHAN: And to the extent that most of  
20 them are cooperative --

21 MS. PERLE: Yeah.

22 MS. COHAN: -- it works.



1           MS. PERLE:  And in terms -- you're talking  
2 about -- Mattie, correct me if I'm wrong, but the  
3 imposition of special grant conditions can be done on  
4 an annual basis even if the grant is -- even if they  
5 have a three-year grant.

6           MS. COHAN:  Right.  It's between the years of  
7 the grant, not in the middle of the grant year.

8           MS. PERLE:  You know, first of all, a year is  
9 not a very long time.  And it's unlikely that these  
10 things are going to come out on January 2, and so  
11 you're not going to be able to impose a special grant  
12 condition for another year.

13           In fact, there's discussions about this during  
14 the course of a year.  And I don't think it really is  
15 such a big deal, to wait until the beginning of the  
16 next grant year to impose special grant conditions.  
17 There's been discussions with the program throughout  
18 that time, so I don't think it's such a big deal.

19           On the other hand, personally, my sense is  
20 that it wouldn't be such a -- but this is personal.  
21 This is not NLADA or the field in any sense.  It  
22 wouldn't be such a big deal if you've gotten to the

1 point where you're really -- you have all these  
2 discussions, and the programs have not complied to  
3 impose special grant conditions except in those  
4 situations where you're really talking about  
5 differences of view, of an interpretation of what the  
6 regulation requires.

7           And that's one of the areas that I have the  
8 most trouble with, that OCE comes and it says to a  
9 program, "You are doing something that's a violation of  
10 the regulation," and I look at the regulation and I  
11 read it and I say, "You know what? I don't think the  
12 regulation says that." And the program disagrees.

13           Or, you have a situation where there is no  
14 opportunity to really continue this discussion about  
15 what that regulation really means, and what it really  
16 requires, and LSC would then say, "Oh, I'm going to put  
17 a special condition and you must do this the way we  
18 say."

19           CHAIRMAN KECKLER: Ms. Tarantowicz?

20           MS. TARANTOWICZ: I would say that those  
21 concerns, I think -- LSC is the grantor. And I think  
22 placing the discretion with the grantor to ultimately

1 determine what the law is, what the regulation means,  
2 ultimately I think it is the grantor's role to do that.

3 And I am not saying that the grantee should be cut out  
4 from communications, and I don't think anybody is  
5 suggesting that through this rulemaking, that there  
6 would henceforth be no communications between the  
7 grantor or the grantee regarding what the regulation  
8 means or doesn't mean.

9 And I think that having that, the discretion  
10 to do something doesn't mean it's necessarily always  
11 going to be done. So, yes, it might be a harsh penalty  
12 to take five percent or four percent from a large  
13 grantee, and I think that's something that the board  
14 might best, in its management -- the discretion to do  
15 and consider, and think, okay, in this instance we are  
16 not going to do four percent because it would cause  
17 harm. In this case we're going to do something less,  
18 or we're not going to do something at all. I mean that  
19 discretion is retained. So I think --

20 CHAIRMAN KECKLER: Harry?

21 PROFESSOR KORRELL: Yeah, thank you. Two  
22 comments in response to Linda's observation.

1           One is I do think that a year can feel like a  
2 very, very long time. And I know what Mattie pointed  
3 out, that this issue comes up when there has been a big  
4 problem and everyone is interested again. I was new to  
5 the board, got a briefing on a big problem, and like a  
6 lot of the new board members, was sort of shocked at  
7 how long it would take to do anything if the grantee  
8 was dragging its feet, which it appeared to be, you  
9 know, in responding to requests and honoring our  
10 concerns.

11           And the idea that it could take a year or more  
12 to do something felt like a very long time. Especially  
13 when we are being -- under a very critical eye on  
14 Capitol Hill, and we're asking for money, and you've  
15 got these very public black eyes, the inability to move  
16 quickly feels like a burden for the corporation, from  
17 where I sit.

18           And also, I just want to clarify for the  
19 record my questions about whether the corporation would  
20 like to have this power isn't really to suggest that  
21 this be used as a punitive measure, to punish someone,  
22 but rather as a mechanism to ensure compliance, you

1 know, so that if you say, "We need you to do these  
2 things quickly," and the answer is, "Well, I am not  
3 sure we agree," or, "I don't want to do these things."

4 Okay, great. But if you don't do these things, then  
5 you put some of your money at risk, and you can choose.

6 And right now, it seems like that is not a vehicle  
7 that is available to the corporation on anything like a  
8 prompt basis.

9           So, I want to make clear my thoughts are not  
10 to punish a grantee with this, but really as a tool for  
11 the corporation to ensure swift action in correcting  
12 problems.

13           CHAIRMAN KECKLER: I think that's a good  
14 comment. You know, I don't think that the appetite  
15 certainly is to punish. There is a feeling of  
16 deterrence, a concern about deterrence, and there is a  
17 concern about accountability.

18           PROFESSOR KORRELL: Correct.

19           CHAIRMAN KECKLER: And -- but anyway, we don't  
20 have to resolve this today.

21           MS. PERLE: Well, I just have a statement and  
22 a question. My statement is I don't know what five

1 percent is, but I can tell you what four percent was in  
2 Colorado, a statewide program, and that was two  
3 attorneys and a paralegal. And that leaves half of our  
4 state -- and one of the attorneys was -- we have huge  
5 chunks now that aren't covered. So this is what it  
6 would look like in Colorado.

7 My question is that -- and I don't know if  
8 there is an answer -- but is the issue of a dispute  
9 over the -- and I agree that LSC, as the grantor, can  
10 say this is what -- this is the interpretation. But  
11 when there is a question or dispute, is there a process  
12 now for someone to, like -- I'm almost thinking like an  
13 administrative law judge, or like how --

14 MS. COHAN: The Office of Legal Affairs --

15 MS. PERLE: Is -- so there is a process right  
16 now for someone to say, "If I don't agree with this  
17 opinion, and this is why," and like -- to  
18 end -- to -- I don't agree, you have your argument,  
19 someone decides, and it's over? Is --

20 MS. COHAN: Both the grantees, members of the  
21 public, and staff can ask the Office of Legal Affairs  
22 for interpretive opinions on the meaning and

1 application of the regulations. And OLA does that on a  
2 regular basis.

3 CHAIRMAN KECKLER: I will recognize Ms. Rath,  
4 if you want to add something.

5 MS. RATH: Thank you. I just wanted to  
6 say -- to add on to that. Like Linda was saying, that  
7 if OCE goes and finds that somebody is in  
8 non-compliance, then the program says, "We disagree,"  
9 that is why I discussed in my presentation in another  
10 committee that we allow for program's comments before a  
11 report becomes final.

12 So, if the program writes back and says, "We  
13 don't agree with it," we will look at it. And if OCE  
14 agrees with the argument, we will change the report  
15 right then. And if we don't agree with it, like Mattie  
16 said, we will go to the Office of Legal Affairs and  
17 say, "This is the situation. This is what we got, this  
18 is what the program got," and then we let the Office of  
19 Legal Affairs make a determination before we issue a  
20 final report.

21 So it's not like OCE would be going out there,  
22 issuing sanctions on its own. We do allow the program

1 the opportunity to make an argument if they think we're  
2 wrong about something, and then we do bring it to a  
3 higher level.

4 CHAIRMAN KECKLER: Thanks.

5 MS. COHAN: And, just so you know, OLA  
6 opinions get asked -- advisory opinions are asked for  
7 in non-compliance situations. They don't only get  
8 generated because there is a disagreement. A lot of  
9 times we get asked for opinions just because the  
10 program wants to know how to do something right, and we  
11 are more than happy to help them.

12 CHAIRMAN KECKLER: Well, you know, obviously,  
13 this is a serious issue with a lot of history behind  
14 it. I think today the real question is: Do we want to  
15 learn more, and ask for a rulemaking options paper on  
16 lesser sanctions?

17 PARTICIPANT: I guess I would be curious to  
18 know -- and maybe this -- I don't know if this jumps  
19 the gun -- whether this is something that management  
20 wants. But, I mean, the board has a feeling, I think,  
21 or at least some members of the board do. Is that  
22 something we want to --



1           CHAIRMAN KECKLER: Well, the rulemaking  
2 options paper can ask for a recommendation contained  
3 within it, and they can consider -- I mean that would  
4 be part of the options, would be which of the options  
5 does management recommend? And so, is -- what do  
6 people think? Yes? Rulemaking options paper?

7           PARTICIPANT: I might be in favor of deferring  
8 it when we're meeting and having more knowledge: what  
9 the comments were last time; what management's position  
10 is. I understand a rulemaking paper isn't the end, but  
11 it's still a big step.

12          CHAIRMAN KECKLER: Well, I mean the only thing  
13 I would say is that the rulemaking options paper, if we  
14 ask for one, should contain pro and con. And one of  
15 the options should be don't --

16          PARTICIPANT: Don't do anything.

17          CHAIRMAN KECKLER: You know? Let sleeping  
18 dogs lie as they have lain.

19                 And so, I am going to call the question. All  
20 in favor on the committee of asking for a rulemaking  
21 options paper under those conditions?

22                         (Chorus of ayes.)

1 (Inaudible voice from telephone participant.)

2 CHAIRMAN KECKLER: I'm sorry, was that a -- is  
3 there a comment from the phone?

4 (No response.)

5 CHAIRMAN KECKLER: And Laurie?

6 MS. TARANTOWICZ: Nay.

7 CHAIRMAN KECKLER: Nay? Okay. Ayes carry it,  
8 and a rulemaking options paper is requested, containing  
9 the arguments for and against moving forward. Thank  
10 you.

11 We can now turn back to our previous item of  
12 business that was held, which is the census. And I  
13 realize that time is short. And we have a complex  
14 issue here. Nevertheless, it's an extremely important  
15 one, and we need to make some attempt to address it.

16 You should have, in your board book, two items  
17 that are relevant to this, one of which is management's  
18 recommendation regarding the resolution of the funding  
19 reallocation based on the census. And then, in  
20 addition, in the back of the board book you should  
21 also -- or a memorandum from the Office of Legal  
22 Affairs regarding some of the history and statutory

1 context of this decision. But currently what's under  
2 consideration is this issue and management's  
3 recommendation.

4 I would consider this ultimately a question  
5 for the board. And so, this committee's role would be  
6 to, if it wishes, to comment on management's  
7 recommendation, and then bring its views to the board  
8 for a resolution of that legislative language.

9 I will recognize, sitting at the witness  
10 table, Mr. Bristow Hardin, Mr. John Constance, and the  
11 president of Legal Services Corporation, Mr. Jim  
12 Sandman. Who is going to start will be -- we can be  
13 very brief, I think, and -- if you have the memorandum.  
14 But I will turn it over to you, Jim, for your remarks  
15 on this.

16 MR. SANDMAN: This is Jim Sandman, president  
17 of LSC. The binder contains a memorandum reflecting  
18 management's recommendations. As the committee knows  
19 from prior meetings, current appropriations language  
20 requires that LSC allocate basic field grants, so as to  
21 provide an equal figure per individual in poverty for  
22 all geographic areas, as determined on the basis of the

1 most recent decennial census of the population.

2           The 2010 census, the most recent decennial  
3 census of the population, did not require about level  
4 of income and generate the poverty data that had been  
5 generated in previous censuses. So this language will  
6 no longer work for purposes of guiding LSC's  
7 allocations of basic field grants. The question is,  
8 what should we do about it?

9           We think the proper thing to do is for LSC, in  
10 the course of its budget request for fiscal year 2013,  
11 to make a recommendation as to what should be done in  
12 substitution for this decennial census language. Our  
13 recommendation is that the language be amended simply  
14 to refer to a determination of the number of  
15 individuals in poverty for all geographic areas, as  
16 determined by the Bureau of the Census, and delete the  
17 reference to the decennial census.

18           That would have the effect of leaving the  
19 determination to the agency that has the experience and  
20 the expertise to make determinations related to  
21 population of the United States. There are other data  
22 sets available to the Bureau of the Census,

1 specifically the American Community Survey and the  
2 small area income and poverty estimates that would  
3 allow them, currently, to come up with estimates of the  
4 numbers of individuals in poverty for each service area  
5 that LSC has identified.

6 We considered whether we should make a  
7 recommendation that the language provide for LSC to  
8 make that determination in consultation with the Bureau  
9 of the Census, or on the recommendation of the Bureau  
10 of the Census. Our recommendation is not to do that,  
11 for several reasons outlined in the memo.

12 We think that it is most consistent with the  
13 existing statutory scheme to leave the determination  
14 entirely to the Bureau of the Census. That is  
15 consistent with the language in the immediately  
16 preceding subparagraph of the relevant appropriations  
17 language. As I said, it would leave the determination  
18 to the agency that has special expertise in  
19 determinations of this nature.

20 We were mindful of the comment that Dean Minow  
21 made at the last meeting of the committee, that  
22 anything that vests LSC with discretion in this area is

1 likely to be controversial, and may raise concerns  
2 about exactly how the allocation would be done. So,  
3 that is our recommendation with regard to the statutory  
4 language.

5           There are two subsidiary issues that we think  
6 the committee should also consider, and that we will  
7 ask the board to consider.

8           First, because the Census Bureau will now be  
9 able to make a determination on the basis of data more  
10 frequently than every 10 years, that raises the  
11 question how frequently should reallocations be done.  
12 In recent years they have been only done every 10  
13 years. And there can be significant swings in the  
14 location of the poverty population over 10-year  
15 periods.

16           We think that because the reallocations can be  
17 done more frequently now, they should be done more  
18 frequently now. The statutory scheme seems to be very  
19 deliberately to align the allocation of LSC field  
20 grants to the location of the poverty population. So  
21 the more frequently we can make reallocations, the more  
22 we're coming into line with the basic purpose of

1 alignment.

2           And we considered whether -- we concluded that  
3 annual reallocations were simply too frequent. The  
4 administrative burdens of having to make reallocations  
5 annually would be significant. We considered two  
6 alternatives to that: every three years, every five  
7 years. Our recommendation is every three years. We  
8 think that is frequently enough to be consistent with  
9 the general statutory purpose of aligning allocations  
10 with the location of the poverty population, and avoids  
11 the likelihood of big swings in the location of the  
12 poverty population.

13           There is a reverse correlation between the  
14 frequency of reallocation and the magnitude of the  
15 effect of the redistribution. The more frequently you  
16 reallocate, the less likely it is that you're going to  
17 have major swings in the distribution of the poverty  
18 population, and therefore, major swings in the funding  
19 of any particular program.

20           Finally, we considered whether or not there  
21 should be some phase-in of this new reallocation. This  
22 reallocation, based on more recent data than the 2000

1 census, is going to result in some very significant  
2 changes in the funding of different programs around the  
3 United States. Some states in the last 10 years have  
4 seen increases in their pro rata share of the poverty  
5 population -- between 25 and 30 percent. And other  
6 states have seen decreases in their pro rata share of  
7 the poverty population of between 25 and 30 percent.

8           Those are big changes to absorb in a very  
9 short period of time, in both directions, for a program  
10 to have to weigh people off, or make decisions about  
11 closing offices, how they're going to cut back. They  
12 need time to think about that. For a program that is  
13 looking at an increase in funding, to make wise  
14 decisions about how to implement that increase, they  
15 should not be required to act overnight.

16           So, we would recommend that the first  
17 reallocation with this new census data be phased in  
18 over the course of two years, half in fiscal year 2013,  
19 half in fiscal year 2014. We don't think there should  
20 be a need for phase-in in future years, if we are doing  
21 reallocations every three years, because we don't think  
22 that the swings in the funding for any particular



1 program should be big enough to require a phase-in.

2 Those are our recommendations. Thank you.

3 CHAIRMAN KECKLER: And a little bit on the  
4 procedure by which -- and time line by which this might  
5 go about -- John, you can bring about -- my  
6 understanding is that this would be presented as part  
7 of our budget. If there is ultimately no budget, if we  
8 are funded via a continuing resolution, as we have been  
9 recently, would this recommendation simply be there for  
10 when they -- when a budget is ultimately passed, or  
11 would we have to go back and do this again?

12 MR. CONSTANCE: Again, for the record, John  
13 Constance, government relations. I would say that in  
14 order to be timely, obviously, we are going to need to  
15 proceed ourselves in regular order.

16 So, in other words, this would have to be  
17 submitted by the first week in September, along with  
18 our fiscal year 2013 budget request. That is  
19 traditionally when any kind of a legislative change  
20 is -- goes through the process.

21 I would say this, that clearly, there are,  
22 even in a CR, even in a continuing resolution, there

1 are anomalies that we are always asked about. In other  
2 words, is there anomalous language that would have to  
3 be connected to a CR?

4 For example, if they decided to fund 2013 on  
5 some kind of a continuing resolution, this language  
6 would have been through the Administration and through  
7 the process of their clearance with the Census Bureau,  
8 their clearance with the legislative career side of  
9 OMB, with the White House counsel's office. So they  
10 would be in a position to send that forward with the  
11 President's budget on the first week in February for  
12 consideration of the Congress. And it would be picked  
13 up, presumably, as either an anomaly on a CR, or the  
14 full year's appropriation.

15 CHAIRMAN KECKLER: Thank you. Okay. So,  
16 there are -- in essence, there are -- this can sort of  
17 be broken down into a set of sort of discreet  
18 recommendations.

19 We have heard about phase-in of the main  
20 reallocation, the one -- the data that we are currently  
21 using is from what year?

22 PARTICIPANT: 1999.

1 CHAIRMAN KECKLER: 1999. And, presumably --

2 PARTICIPANT: The 2000 census --

3 CHAIRMAN KECKLER: 2000, but 1999 data. And  
4 presumably, whatever data set that the Census might use  
5 would be from 2009 or we don't know --

6 MR. HARDIN: Depending upon the data  
7 set -- for the record, this is Bristow Hardin --

8 CHAIRMAN KECKLER: Thank you.

9 MR. HARDIN: -- of Office of Program  
10 Performance of LSC, for the record.

11 I mean, depending upon the data set, it could  
12 be data that would be over a period from January 1,  
13 2005 through December 15, 2010, or December 30, 2010,  
14 or else, depending upon the data set, it could be data  
15 from January 1, 2009 to December 31, 2010.

16 CHAIRMAN KECKLER: Okay.

17 MR. HARDIN: And a range in between. It just  
18 depends upon the type of data sets that are used to  
19 allocate funding, the issue being what are the best  
20 data sets to use to get data down to the county level,  
21 which are needed to allocate funds among LSC service  
22 areas.

1           CHAIRMAN KECKLER: Right. And just to remind  
2 everybody -- we've talked about this last time -- we  
3 have been -- management has been in regular  
4 communication with the Census about this, and they are  
5 ready to do it. There would be, presumably, some cost  
6 associated, but that cost would -- do we have a cost  
7 estimate on that?

8           PARTICIPANT: Depending upon the level of  
9 additional tabulations that we require them to do, the  
10 cost would vary. If we use the available data sets and  
11 tabulations from the existing data sets, it would be of  
12 a minimal level, of an order of less than \$10,000, is  
13 what we're told now.

14          CHAIRMAN KECKLER: Okay, thank you.

15          PARTICIPANT: And just for the -- just so  
16 we're clear, management's proposal is that the Census  
17 would decide what data sets to look at, and come up  
18 with the number.

19          PARTICIPANT: Yes, right.

20          PARTICIPANT: That's correct.

21          CHAIRMAN KECKLER: So, there is the phase-in  
22 of this main allocation that covers several years. And

1 whether there should be a phase-in, and how long that

2 should be a phase-in. Recommendation: two years.

3 There should be a phase-in, it should be two years.

4 There --

5 PARTICIPANT: Sorry, can I clarify?

6 CHAIRMAN KECKLER: Yes.

7 PARTICIPANT: Is there a recommendation for a  
8 phase-in that is separate from the recommendation to do  
9 a more frequent reallocation?

10 PARTICIPANT: Yes.

11 PARTICIPANT: Okay.

12 CHAIRMAN KECKLER: Right. And so that's the  
13 second -- the next issue is that, after we do this  
14 initial reallocation, how often should we then go back  
15 to the Census and get new numbers that will be the  
16 basis for further reallocations in the future?

17 I mean this assumes that this appropriations  
18 language will be carried over from year to year.

19 Really, you know, technically, it is about, you know,  
20 2013, right? But we are putting in -- the idea would  
21 be to put in there something about -- or, you know, at  
22 least as part of our recommendation, future

1 reallocations, assuming that that same language would  
2 carry over in future years.

3 PARTICIPANT: Right.

4 CHAIRMAN KECKLER: So, the frequency of  
5 redistributions, reallocations, how frequent should  
6 they be, could be any number, I guess. But the  
7 recommendation is every three years.

8 Then, the question: What data sets should be  
9 used? Recommendation? Whatever the Census deems best,  
10 right? I don't know if we want to be more specific  
11 than that. I think the actual language is an equal  
12 figure per individual in poverty, as determined by the  
13 Bureau of the Census. They will determine that however  
14 they are going to determine that.

15 We know that -- we have some good idea of what  
16 data sets they would use, talked to them --

17 PARTICIPANT: And the way they would do that  
18 -- sir, if I could --

19 CHAIRMAN KECKLER: Yes.

20 PARTICIPANT: -- is they would do it based on  
21 LSC's needs, in terms of we would specify what we  
22 needed, in terms of a per capita poverty population,

1 given our legislative requirements. Okay? In terms of  
2 down to service areas, and such like that.

3 So, we would specify what we wanted. And,  
4 based on that, they would come back and say, "Based on  
5 what you tell us, this is what would be the best data  
6 sets."

7 CHAIRMAN KECKLER: Right. Okay. All right.  
8 So those are the -- those are three issues.

9 PARTICIPANT: Excuse me. This would be our  
10 determination.

11 CHAIRMAN KECKLER: Right, right. This would  
12 be our -- this would be their determination.

13 PARTICIPANT: YES.

14 CHAIRMAN KECKLER: So, based on what we've  
15 asked them -- we're asking them, "How many of these  
16 people are there?"

17 PARTICIPANT: Right.

18 CHAIRMAN KECKLER: Right? And the Census is  
19 the entity -- it's in the Constitution -- to tell how  
20 many people there are.

21 Okay. And then there is a fourth issue, as  
22 you discussed in the memorandum you have, legal

1 memorandum. This is a formula that has arisen in 1996.

2 We are asking to have different language than we got  
3 in 1996. We have the theoretical capacity to ask for a  
4 different formula of some kind, if there is a problem  
5 with the formula.

6 The implicit recommendation -- and you can  
7 make it explicit in a moment -- is not to change that  
8 formula of -- and the formula being specifically  
9 discussed on pages 91 and 92 of the board book. And it  
10 is section 501(a)2(a) (phonetic), as described in that,  
11 changing the only part that we are asking to change, or  
12 that is being recommended as changing, is to say the  
13 Bureau of the Census will tell us, as opposed -- and I  
14 am paraphrasing -- replacing a specific reference to  
15 the decennial census. So it's now just the Bureau of  
16 the Census that tells us the materials for this  
17 formulaic reallocation, as opposed to the decennial  
18 census does so.

19 So, that's the fourth issue that is out there  
20 that is implicit. But you need to be aware that we are  
21 endorsing this formula, if we are carrying forward with  
22 management's recommendation.



1           PROFESSOR KORRELL:  And by "this  
2 formula" -- this is Harry, for the record --

3           CHAIRMAN KECKLER:  Yes.

4           PROFESSOR KORRELL:  -- you mean the equal  
5 figure per individual in poverty formula?

6           CHAIRMAN KECKLER:  I mean that, mainly, okay?  
7     There is two components to it, an equal figure per  
8 individual in poverty for all geographic areas, as  
9 determined by the Bureau of the Census.  And then the  
10 second clause, parenthetical clause, "Or, in the case  
11 of the Republic of Palau, the Federated States of  
12 Micronesia, the Republic of the Marshall Islands,  
13 Alaska, Hawaii, and the United States Virgin Islands,  
14 on the basis of the adjusted population counts  
15 historically used as the basis for such  
16 determinations."

17           Now, perhaps a little bit more explanation is  
18 required of that second clause.  Where does that come  
19 from, or what is it doing for us?

20           PARTICIPANT:  Well, historically, there were  
21 no census data for the Independent (sic) States, the  
22 Republic of Palau, Republic of the Marshall Islands.

1 So these sections of the Micronesia service area there  
2 are no census data for. There were no decennial census  
3 data for those areas.

4 In the case of Alaska and Hawaii, they were  
5 funded at 125 percent of poverty and 115 percent of  
6 poverty populations. Because in the poverty thresholds  
7 that have been in existence since the mid-1960s, in  
8 developing those poverty thresholds, Alaska has been at  
9 125 percent of poverty, and Hawaii has been at 115  
10 percent of poverty. So, essentially, the historical  
11 background for that, and the historical grounding for  
12 that wording for those two states, that is where that  
13 comes from.

14 With respect to the Virgin Islands, I suspect  
15 I'm unclear of the legislative history at that point.  
16 But the Virgin Islands, at that point, I don't think  
17 had as extensive Census Bureau data as they did later.

18 For now, they -- at this point they are covered by the  
19 U.S. Census, and there will, in fact, be decennial  
20 census data for the poverty population for the Virgin  
21 Islands, unlike the other -- for the 50 states and D.C.  
22 and Puerto Rico.

1           CHAIRMAN KECKLER: Great. And let me pause  
2 there and say when you go -- about Alaska and Hawaii,  
3 would it be fair to characterize the reason for that is  
4 that, based on the guidelines, poverty guidelines,  
5 there are a greater number of eligible -- you know,  
6 eligible clients, persons eligible in those service  
7 areas, and therefore the population -- the counts are,  
8 therefore, higher?

9           PARTICIPANT: Well, I would perhaps phrase it  
10 somewhat differently.

11          CHAIRMAN KECKLER: Okay.

12          PARTICIPANT: In that the poverty thresholds,  
13 which are roughly geared to determine who is "in  
14 poverty," which itself, of course, is a nebulous  
15 concept that has a lot of historical factors -- but in  
16 terms of in order to make comparisons to the mainland,  
17 it has been determined that the comparable poverty  
18 threshold for Alaska and Hawaii should be 115 percent  
19 and 125 percent, respectively, and meaning that it  
20 doesn't raise the number of -- disproportionately raise  
21 the number of poor people eligible for services, but  
22 rather equalize, or make it comparable, to those for

1 the mainland. So, its comparability is the factor  
2 involved.

3 CHAIRMAN KECKLER: Right. But to say that if  
4 they were -- if we counted the number of people -- the  
5 Census, rather, counts them -- if they counted them at  
6 the poverty level, the standard poverty level, as  
7 opposed to the way they actually are counted, there  
8 would be fewer persons counted.

9 PARTICIPANT: There would be fewer people that  
10 would be estimated in poverty. Yes, sir.

11 CHAIRMAN KECKLER: There would be fewer people  
12 that would be estimated in poverty. Okay.

13 So, it's adjusted because there is more that  
14 we consider to be in poverty, and, as a consequence,  
15 there is more that are eligible?

16 PARTICIPANT: Yes. Yes, sir.

17 CHAIRMAN KECKLER: All right. Okay. The  
18 other thing that I note about this clause is I note  
19 that it is -- there is a drafting ambiguity, not due to  
20 you, but in the original legislation. Or at least I  
21 read it as ambiguous. Maybe I am -- you know, I can be  
22 persuaded otherwise, but -- which is the word "or"

1 there.

2 I read it as determined by the Bureau of the  
3 Census, or in the case of these other territories, we  
4 use something else. And what I find ambiguous is  
5 whether we -- and it's still not sort of clear, from  
6 the legislative history that you've put in  
7 there -- whether we can use these things, these, as a  
8 fall-back, because the Census hasn't provided an  
9 estimate of poverty, we can use these -- this other  
10 data set, or whether we are required to not use  
11 the -- ignore what the Census has to say, and use these  
12 counts for these service areas.

13 So we would use something the Census would  
14 produce, but that there is two parallel procedures, or  
15 whether one is a fallback for the other.

16 It's an exclusive "or" or a non-exclusive  
17 "or," right? It's just a characteristic problem in  
18 drafting. And what is the interpretation that -- if  
19 you know -- that has been given to this in the past?  
20 And we should clear it up.

21 PARTICIPANT: Well, in practice it has  
22 been -- in practical terms, it has been that the

1 decennial census numbers for the 50 states and D.C. and  
2 Puerto Rico -- ultimately, the Virgin Islands was  
3 used -- the poverty population that came out of the  
4 Census department, the Census Bureau. Alaska and  
5 Hawaii used the numbers that I mentioned. And local  
6 numbers, local data sets sort of consistent with what  
7 the corporation had tried to gather over the years for  
8 the Federated States and the sections of Micronesia for  
9 which there were no U.S. census data.

10 CHAIRMAN KECKLER: Okay.

11 PARTICIPANT: So -- but it has not -- one of  
12 the purposes of the 1996 legislation, as you know, was  
13 the requirement to make sure that these historical  
14 factors were not used in the distribution of funds for  
15 the mainland states and the District of Columbia.

16 CHAIRMAN KECKLER: Right.

17 PARTICIPANT: That, instead, it was based  
18 purely on a per capita --

19 CHAIRMAN KECKLER: Right.

20 PARTICIPANT: -- poverty population.

21 CHAIRMAN KECKLER: Right. And I realize, for  
22 everybody else who is not mentioned, it's the census.

1 It was the decennial census, and now it's the census.  
2 It's for these areas -- I'm not sure whether we can use  
3 the census if we've got it, or we can't.

4 PARTICIPANT: It sounds like we are, though,  
5 right? It sounds like for the Virgin Islands, for  
6 example --

7 CHAIRMAN KECKLER: For the Virgin Islands we  
8 did, yes.

9 PARTICIPANT: We did use the census, even  
10 though here it says --

11 PARTICIPANT: I have that same question,  
12 though.

13 CHAIRMAN KECKLER: Yes, right. So there are  
14 some different drafting solutions to a situation like  
15 this, right? We can say -- or, you know, in the  
16 alternative, or it's -- let us say we can clear it up  
17 that it's a fall-back, or we can clear it up that it is  
18 mandatory, a mandatory parallel track. Or we can leave  
19 it as -- leave it ambiguous. But I prefer not to do  
20 that.

21 It seems like, as you say, that practice has  
22 been that we have held it as discretionary -- at least

1 with the case -- with the example of the Virgin  
2 Islands, we have held it as discretionary on our part  
3 to do it -- to use the census or to use  
4 alternative -- an alternative basis -- for the  
5 mentioned service areas.

6 So, that could be clarified, that that's what  
7 we want to do. Are there further thoughts on this  
8 formula?

9 PARTICIPANT: Our proposal was very  
10 deliberately to address only the issue raised by the  
11 absence --

12 CHAIRMAN KECKLER: Right.

13 PARTICIPANT: -- of poverty information in the  
14 2010 decennial census.

15 CHAIRMAN KECKLER: Yes. Right. I will leave  
16 that to the other committee members.

17 PARTICIPANT: I'm sorry, is the question do we  
18 want to --

19 CHAIRMAN KECKLER: Well --

20 PARTICIPANT: -- beyond what --

21 CHAIRMAN KECKLER: Well, really, there is four  
22 questions. There is four recommendations. I have just



1 pointed out the -- I have got a little bit of an issue,  
2 not really with the recommendation, but with the  
3 original language, which I think has a problem in it.  
4 A minor problem, perhaps, but a problem. I don't know  
5 if other people have any other issues.

6 But anyway, let's walk it back, and -- unless  
7 there is further comments immediately on that point or  
8 on the formula -- and open it up for the other three  
9 things: data sets, frequency of reallocation, and  
10 transition plan. Are there any thoughts about  
11 management's recommendation or alternative ideas on  
12 that?

13 PROFESSOR KORRELL: This is Harry. I  
14 generally think management's recommendations make  
15 sense, but I don't have a lot of personal experience to  
16 go on, in terms of how this is going to affect the  
17 grantees. But I think management's recommendation, as  
18 described in the memo, makes sense to me.

19 CHAIRMAN KECKLER: Laurie?

20 MS. TARANTOWICZ: I would agree. I guess I  
21 would like to hear from those that had some  
22 disagreements with it.

1           CHAIRMAN KECKLER: Okay, we will get to that.

2       I will go ahead and invite Mr. Saunders, who sent a  
3       letter that was mentioned in the memo, to offer public  
4       comment on those points or on the formula itself, to  
5       which also the member of the NLADA also did consider  
6       whether a change in the formula was appropriate or  
7       warranted.

8           MR. SAUNDERS: Thank you, Mr. Chairman and  
9       members of the committee. And we really appreciate  
10      your considering our recommendations. We worked -- I'm  
11      Don Saunders with the National Legal Aid and Defenders  
12      Association. We have appreciated the openness and  
13      transparency of working with your staff in discussing  
14      these issues. We have carried on an extensive  
15      conversation with the field, and that led to the  
16      recommendations that we submitted to you.

17           Just to cover the panoply of issues, we really  
18      only wanted to raise one concern. I mean we had a  
19      debate over the frequency -- our majority certainly  
20      felt five years was just better, for administrative  
21      purposes, but certainly there was a significant  
22      minority that would agree with your management

1 recommendation.

2           We feel pretty strongly about a two-year  
3 transition period. We -- not having picked up the  
4 language issue you raise, we do recommend that you  
5 continue to fund, on a per capita basis, based upon the  
6 poverty population.

7           And I guess the one issue that I would raise  
8 for you today -- and can really address it in much more  
9 detail -- is you follow management's recommendation in  
10 terms of publishing your thoughts for comment. It's a  
11 vague sense of unease, really, right now, because we  
12 have really not had conversations about LSC completely  
13 giving up its discretion, with respect to making the  
14 determinations about the data set.

15           I would agree with Mr. Sandman that certainly  
16 in the bill now there is -- the Census Bureau has the  
17 ability to do that, but it also ties it to the  
18 decennial census, so there was really no discretion to  
19 be exercised with regard to the distribution. So we  
20 have had no experience with regard to unfettered  
21 discretion -- if that's the right word -- with the  
22 Census Bureau, certainly don't know them the way

1 Bristow and others at LSC know.

2           And, you know, we have been spending a lot of  
3 time talking about the data sets that are now  
4 available, and the choices that are now available,  
5 which really haven't existed under existing schemes.  
6 There are concerns in the field about, for example,  
7 what data accurately counts small populations, rural  
8 areas, vulnerable populations. There are just -- there  
9 are issues there, and there are issues that discretion  
10 that discretion can be exercised on.

11           We believe that, in general, you are the  
12 experts, in terms of the delivery of legal services to  
13 poor people. The Census Bureau is not. They are the  
14 experts -- and we would completely agree -- on counting  
15 folks. But there are decisions to be made. Those  
16 decisions might -- might is all I can say -- play out  
17 differently, when it comes to delivering legal  
18 services.

19           I don't know enough about the other agencies  
20 that are cited in management's recommendation to you.  
21 And I would be curious as to why they feel discretion  
22 on the part of the agency is important. What value do

1 they get by maintaining some of that?

2 Now, I understand the management  
3 recommendation suggests that you would put report  
4 language in there. Our recommendation to you was in  
5 consultation with the Census Bureau. Certainly we  
6 would like to make sure that the Census Bureau has to  
7 do it in consultation with you, and that that goes in  
8 report language, or somewhere else.

9 So, we're really not raising a very informed  
10 objection. We have not had time, really, to discuss  
11 that issue, either with the staff or with the field  
12 more broadly. So, what we would suggest today is to  
13 have the opportunity, should you publish this for  
14 federal comment, to think about it further, discuss it,  
15 obviously, with your management, but also with the  
16 field, so we could give you more arguments, one way or  
17 the other.

18 In general, we think it's a strong proposal.  
19 We certainly support your moving forward in a timely  
20 fashion, and remain very interested in working with  
21 this committee and your staff, as you go forward.

22 CHAIRMAN KECKLER: Julie?

1           MS. REISKIN: Yeah. I wanted to ask you a  
2 question, if this has come up in the field. And there  
3 is a sociological term that I cannot remember, but it  
4 has to do with whenever there is a recession or  
5 whatever, but the benefit -- the whole thing with  
6 benefits. It's about an 18-month lag. So, like, the  
7 Medicaid -- I know, you know, like the Medicaid  
8 numbers, the recession ends and the Medicaid numbers  
9 keep rising for about 18 months, same with the food  
10 stamps.

11           Did that issue -- I think you know what  
12 I'm -- I hope you know what I'm talking about. Did  
13 that issue come up with the field at all?

14           MR. SAUNDERS: It has come up in our  
15 committee. Again, Bristow, his background and  
16 experience, he understands these issues a lot better  
17 than I do.

18           But there was certainly a concern raised about  
19 whether the impact of the recession would be reflected  
20 in -- we were the -- of the opinion, in talking to our  
21 experts and to your staff, that, as we went forward we  
22 could discuss some of the very complicated issues, in

1 terms of analyzing the data that's out there, and that  
2 LSC would -- there would be a dialogue, with regard to  
3 that.

4           Certainly the issues we have heard most are:  
5 are we capturing a real picture of the recession; are  
6 we really capturing small communities' vulnerable  
7 populations that are undercounted. Those are all  
8 questions related to the data sets, and you know, we  
9 really haven't answered the question. But it certainly  
10 has been one of the concerns raised about how we  
11 proceed, going forward.

12           PARTICIPANT: So, just as a follow-up, just to  
13 be clear, that -- I mean there is this recession, but  
14 my understanding -- and I'm not a statistician, but my  
15 understanding is that is a phenomenon that happens with  
16 any recession, or any financial downturn. And so,  
17 there is -- in terms of policy, anything we do should  
18 be generalized, not really about this particular thing.

19           But there is a very unique issue that is now  
20 and here -- and I don't know how to do policy this way,  
21 because you can't really do policy based on something  
22 like this, but -- and that issue was Louisiana, where

1    there was Katrina, a lot of poverty people left,  
2    because -- I mean because they had to, and then there  
3    was the spill.  And that just -- how do we deal with  
4    that?  I mean I don't know if there is a way to deal  
5    with it, but --

6                   CHAIRMAN KECKLER:  Well, I mean I definitely  
7    -- I hear what you're saying, and I think that -- I  
8    mean any kind of count is a time slice, you know?

9                   PARTICIPANT:  Yeah.

10                  CHAIRMAN KECKLER:  And then it's going to  
11    carry forward.  And we had this, you know, with the  
12    census.  You know, it's a picture of what America was  
13    like in 1999.  The previous census was a picture of  
14    what America was like in 1989, and so on.

15                  And so, you know, it's going to be difficult,  
16    except that I think, as I read the recommendation of  
17    management to the census, it is tell us what, you know,  
18    America looks like right now, when we're asking.  Give  
19    us your best, you know, estimate, based, you know, on  
20    your professional opinion, what America looks like now.

21    And, you know, with a certain time lag, whenever we  
22    ask is the time slice we're selecting.



1           And before, we were constrained to ask only,  
2 you know, in this sort of 10-year cycle, and now we are  
3 sort of voluntarily constraining ourselves to ask sort  
4 of on a three-year sort of cycle. It's not going to --

5           PARTICIPANT: Yeah.

6           CHAIRMAN KECKLER: It's going to change. I  
7 mean it's going to change in the time, in the years in  
8 between, too. Yeah?

9           MR. SAUNDERS: And if I could just add to  
10 that, I just want to be clear. Fundamentally, we think  
11 this is a great improvement over the decennial census.

12 I mean there is no question that the issues raised  
13 will be less impactful.

14           Now, between them, Louisiana might be a  
15 special situation, but for the most part this is a very  
16 good change, in terms of making the data that you use  
17 much more current within a --

18           PARTICIPANT: Right.

19           MR. SAUNDERS: We missed a couple recessions,  
20 in terms of the data we're using now.

21           PARTICIPANT: Thank you.

22           PARTICIPANT: Thank you.

1           CHAIRMAN KECKLER: Okay. Thank you. All  
2 right.

3           I have one more comment regarding the formula  
4 that I am just going to throw out there, and management  
5 can -- or others -- could respond to it, which is that,  
6 as Mr. Hardin noted, the issue of poverty, the term  
7 "poverty," is also -- has a certain level of ambiguity,  
8 and it also has a certain level of slippage between our  
9 regulations and general way of doing things, and the  
10 way that it's assessed -- namely that there is poverty,  
11 and there is people eligible for our services, and the  
12 question of whether you could replace an individual in  
13 poverty with individuals eligible for LSC, or something  
14 of that nature would be -- I'm not sure what a huge  
15 allocation change that would be. It would more closely  
16 match -- it's another example of something that goes  
17 beyond -- that attempts to improve the language, as  
18 opposed to repair the language for the absence of  
19 decennial census material. So --

20           PARTICIPANT: So we're talking about who would  
21 be ineligible before then wouldn't -- there would be a  
22 way to know who they are?

1           CHAIRMAN KECKLER: Well, that's -- I mean,  
2 first of all, eligibility is 125 percent of poverty, as  
3 opposed to 100 percent of poverty.

4           PARTICIPANT: Oh, okay. So you --

5           CHAIRMAN KECKLER: So that would be --

6           PARTICIPANT: Oh, I --

7           PARTICIPANT: So, you're addressing that, not  
8 like illegal immigrants --

9           CHAIRMAN KECKLER: Well, I mean, that would be  
10 an -- that could be an issue that would be part of the  
11 issue of eligibility, because, of course, the  
12 census -- correct me whenever I say anything wrong  
13 about it -- the census, of course, counts people,  
14 regardless of immigration status. And some of those  
15 people are poor. And so, a certain number of poor  
16 people are counted there.

17           The idea behind assessing it from the eligible  
18 standpoint is that, you know, we're just matching money  
19 with demand. There is a certain number of eligible  
20 clients, and in South Dakota we give them the same  
21 amount of money per eligible -- per potential case as  
22 we give in some other place, in Washington. That is an

1 issue of equity, in my -- that's my personal view -- if  
2 it is feasible, administratively, from the standpoint  
3 of the census and other things.

4 PARTICIPANT: Is the issue that the allocation  
5 wouldn't -- using the term here, which is just "in  
6 poverty," not qualified for eligibility, not qualified  
7 for -- which could include the 125 -- difference  
8 between poverty and 125 percent of poverty -- there  
9 could be some place that has lots of people in one  
10 category, but not the other, and we want to make sure  
11 the money more closely tracks results?

12 CHAIRMAN KECKLER: Yes.

13 PARTICIPANT: And, of course, for some things  
14 we go up to 150 percent.

15 CHAIRMAN KECKLER: Well --

16 PARTICIPANT: Maybe eligibility is a solution  
17 to that.

18 PARTICIPANT: Or 200, or whatever.

19 PARTICIPANT: That is a -- I don't know if  
20 anyone has ever talked about it, or thought about the  
21 discrepancy.

22 PARTICIPANT: I guess I had a question if

1 anybody up there knew whether there was -- whether this  
2 would result in some markedly different  
3 allocation -- would go up to 125 percent of poverty.

4 MR. HARDIN: This is Bristow Hardin again.  
5 From the -- once Professor Keckler raised it,  
6 I -- before that I had done some looks at some  
7 different state allocations. The significant  
8 variance -- or the variance would not be significant.  
9 Undoubtedly, statistically, by definition, there would  
10 be some variance. But, overall, there would not. The  
11 allocation of the poverty population among states would  
12 not vary significantly.

13 PARTICIPANT: That's with the 125 --

14 MR. HARDIN: Yes.

15 PARTICIPANT: If we used "eligible," as  
16 opposed to 125, which would include immigration status,  
17 which might be difficult to capture, because there are  
18 so many exceptions --

19 PARTICIPANT: Well, that -- yes, the --

20 PARTICIPANT: -- you might have a state that  
21 has -- the difference between 100 percent of poverty  
22 and 125 percent of poverty is going to be -- the

1 proportions aren't going to change much, but they might  
2 have a very large immigrant population another state  
3 doesn't have. If they are carved out, that would mean  
4 that state would not get those resources --

5 PARTICIPANT: Well, the -- ACS, for example,  
6 the American Community Survey, does not ask information  
7 about whether -- about people's documentation status.  
8 They don't ask for that. They ask for a whole lot of  
9 other information, but not about that.

10 So, in terms of trying to get the types of  
11 data that could make this type of calculation feasible,  
12 I don't know where it would be available, that would  
13 enable us to do it in an objective way that would  
14 enable us to ensure that we had the type of valid and  
15 fair data that might be available.

16 CHAIRMAN KECKLER: So what you're saying is  
17 that the Census doesn't normally collect that, because  
18 the Census wants people to answer, and so on.

19 All right. Yes, Jim?

20 MR. SANDMAN: I just want to emphasize that  
21 management is not recommending a change in the basic  
22 formula.

1           CHAIRMAN KECKLER:  Yes.

2           MR. SANDMAN:  It is a formula that has been in  
3 effect for 15 years, its consequences are well  
4 understood in the field.  The field is not recommending  
5 any change in the basis formula.  Our view is we have  
6 enough to cope with, with shifts of between 25 and 30  
7 percent, positive and negative.

8           CHAIRMAN KECKLER:  All right.  Well, the next  
9 step is, if this committee wishes, to -- I -- the only  
10 thing that I have myself pointed out is this ambiguity  
11 in the "or" clause.  I am not sure precisely how to  
12 address that, although it is something that, if other  
13 people feel relevant, it could be asked about, if  
14 anybody -- if there is objections within the Federal  
15 Register notice.

16           But beyond that, I think that this committee  
17 is asked to provide a -- so, basically, a transmittal  
18 to the board as to whether we endorse management's  
19 recommendations, as laid out in the memorandum.

20           PARTICIPANT:  We are not actually endorsing a  
21 rule change, or --

22           CHAIRMAN KECKLER:  No, no, we're not endorsing

1 a rule change. I am -- we are endorsing the  
2 memorandum, as a --

3 PARTICIPANT: Okay.

4 CHAIRMAN KECKLER: -- whole. I, myself, am  
5 caveating it by saying that there is an issue here that  
6 ought to be clarified, myself.

7 PARTICIPANT: I'm just saying I just -- I'm  
8 not sure what -- but we're just endorsing the  
9 memorandum, it's not -- I'm not quite sure what our  
10 action is. But you've explained it: endorse new  
11 memorandum.

12 PARTICIPANT: That means that we are  
13 recommending that the --

14 PARTICIPANT: The board.

15 PARTICIPANT: -- that the board directs  
16 management to take this action, which is to take the  
17 steps to start the process of revising the statute.

18 CHAIRMAN KECKLER: Which involve the next  
19 step, being the -- and correct me, again, if I'm  
20 wrong -- the next step being the publishing of this  
21 proposal in the Federal Register for a 30-day notice  
22 and comment period.



1           After which, what is intended? After that  
2 period, what will -- will this return to the board and  
3 the committee?

4           MR. SANDMAN: Yes. This is Jim Sandman.  
5 After the comments are received, we would consider  
6 them, make a further recommendation to the committee  
7 and to the board, as to what action to take, based on  
8 the --

9           CHAIRMAN KECKLER: And so that would require  
10 some form of interstitial meeting, if we want to get  
11 that before September --

12          MR. SANDMAN: Yes.

13          CHAIRMAN KECKLER: It would require this to do  
14 that. Okay. I think that could be arranged. But it's  
15 good to know that that's what the intention is here.

16          And -- okay. Is there a motion on the floor?

17                                   M O T I O N

18          PARTICIPANT: I would move to adopt, or to  
19 recommend to the board to approve management's -- I'm  
20 not sure -- memo position.

21          CHAIRMAN KECKLER: Is there a second?

22          PARTICIPANT: Second.

1           CHAIRMAN KECKLER: Okay. All in favor?

2           (Chorus of ayes.)

3           CHAIRMAN KECKLER: I will also vote in the  
4 affirmative, asking management to consider the issue  
5 that I have raised regarding the ambiguity in the  
6 language.

7           Okay. Well, in that case, that will be  
8 brought before the board at the board meeting tomorrow,  
9 with a positive recommendation. The -- we now have  
10 time for any further public comment. We had  
11 opportunities for public comment through, but I  
12 will -- no?

13           (No response.)

14           CHAIRMAN KECKLER: Seeing none, I will -- we  
15 now turn to item number six, consider and act on other  
16 business.

17           I will just note, for the record, that you  
18 have in your board book a set of grant assurances. I  
19 have not -- if -- this would be the time, if you have  
20 any concern about those new grant assurances, to raise  
21 that point.

22           (No response.)

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M O T I O N

CHAIRMAN KECKLER: Seeing no concerns, I will  
now entertain a motion to adjourn the meeting.

PARTICIPANT: So moved.

PARTICIPANT: Second.

CHAIRMAN KECKLER: All in favor?

(No audible response.)

CHAIRMAN KECKLER: The meeting of the  
Operations and Regulations Committee is now adjourned.

(Whereupon, the meeting was adjourned.)

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