

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

TELEPHONIC MEETING OF THE
OPERATIONS & REGULATIONS COMMITTEE

OPEN SESSION

Friday, September 16, 2011

1:10 p.m.

Legal Services Corporation
3333 K Street, N.W.
Washington, D.C. 20007

COMMITTEE MEMBERS PRESENT:

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

OTHER BOARD MEMBERS PRESENT:

Sharon L. Browne
Victor B. Maddox
Julie Reiskin

STAFF AND PUBLIC PRESENT AT THE CORPORATION'S OFFICES:

James J. Sandman, President

Kathleen Connors, Executive Assistant to the President

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

Mattie Cohan, Senior Assistant General Counsel, Office
of Legal Affairs

Mark Freedman, Senior Assistant General Counsel, Office
of Legal Affairs

Stephen Barr, Communications Director, Office of
Government Relations and Public Affairs

Treefa Aziz, Government Affairs Representative, Office
of Government Relations and Public Affairs

Jeffrey E. Schanz, Inspector General

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

Joel Gallay, Special Counsel to the Inspector General,
Office of the Inspector General

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

John C. Meyer, Director, Office of Information
Management

Bristow Hardin, Program Analyst III, Office of Program
Performance

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

Don Saunders, National Legal Aid and Defenders
Association (NLADA)

Phyllis Holmen, Georgia Legal Services

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1. Approval of agenda	4
2. Consider public comments received in response to the solicitation published in the Federal Register at 75 Fed. Reg. 48,904 (Aug. 9, 2011) regarding management's recommendation to propose to the White House and Congress statutory changes concerning replacement of decennial census poverty data in the statutory formula for per capita distribution of basic field funds because the 2010 census did not collect poverty data, phasing in the first redistribution over two years, and redistributing funds triennially thereafter	5
3. Consider Management's final recommendation, in light of those comments, and adopt a recommendation to make to the Board on the issue	32
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1 P R O C E E D I N G S

2 (1:10 p.m.)

3 CHAIRMAN KECKLER: I'm going to call to order
4 a duly noticed public meeting of the Operations &
5 Regulations Committee, reminding everybody that it's a
6 telephone meeting, so when you do have a question or
7 comment, to please identify yourself for the record.

8 For the record, it's Charles Keckler speaking.

9 And the first item of business is the approval of our
10 agenda today. Can I have a motion to approve the
11 agenda?

12 M O T I O N

13 MS. MIKVA: Motion to approve.

14 CHAIRMAN KECKLER: Second?

15 MR. KORRELL: Second.

16 CHAIRMAN KECKLER: Thank you very much. All
17 in favor of the agenda say aye.

18 (A chorus of ayes.)

19 CHAIRMAN KECKLER: Hearing none opposed, the
20 agenda is approved.

21 We can now move on to the substantive business
22 of today, which is to consider the public comments that

1 have been received in response to our notice in the
2 Federal Register regarding our proposal for resolving
3 this issue of determining the poverty population and
4 ultimately the formula for the distribution of field
5 grant funds.

6 How many comments have been received thus far?

7 PRESIDENT SANDMAN: We've received 19
8 comments.

9 CHAIRMAN KECKLER: And the comment period is
10 now closed. Is that correct?

11 PRESIDENT SANDMAN: Yes. The comment period
12 closed on September 8th.

13 CHAIRMAN KECKLER: Okay. So has everybody had
14 a chance to receive -- board members and committee
15 members -- receive a summary of those comments or have
16 access to those comments?

17 MS. MIKVA: Yes.

18 MS. REISKIN: Yes.

19 CHAIRMAN KECKLER: All right. So let's
20 continue off with the discussion that we had before we
21 called the meeting to order, which has to do
22 with -- there's three basic recommendations that are

1 there that were the subject of comments.

2 One has to do with maintaining the formula,
3 the per capita formula generally. Secondly, there is
4 the issue of the triennial or quintennial or whatever
5 period of time in between reassignments. And finally,
6 there's the question of whether or not to have a
7 phase-in over two years.

8 And we were just about to discuss something
9 that there's been considerable disagreement in the
10 comments about, whether to have a three-year period or
11 a five-year period. So I'll just open the discussion
12 up on that point.

13 PRESIDENT SANDMAN: Charles, this is Jim. If
14 I could just add one point to the points I made
15 previously, and that is that a three-year reallocation
16 cycle would actually enhance stability for grantees
17 compared to a five-year cycle because there are likely
18 to be less dramatic swings in the location of the
19 poverty population over a three-year adjustment period
20 than over a five-year adjustment period.

21 MS. MIKVA: This is Laurie Mikva. I guess I'm
22 a little troubled by the comments, which to me

1 seemed -- or at least as to the commentators that I'm
2 most concerned about, that it was so strongly in favor
3 of a five-year. I don't know if you can address that,
4 but -- can you?

5 PRESIDENT SANDMAN: Yes. As I indicated,
6 there are really three reasons why we came out in favor
7 of a three-year rather than a five-year reallocation
8 period. First, we're guided by the principle that what
9 Congress is trying to accomplish here is an alignment
10 of the distribution of the funds to the location of the
11 poverty population. And the more accurately we can do
12 that, the more consistent we are with the congressional
13 intent.

14 A three-year reallocation cycle accomplishes
15 that better than a five-year reallocation cycle. It
16 not only updates it more frequently, but it's going to
17 be based on more current information, as indicated at
18 pages 6 and 7 of the memorandum that I circulated.
19 Five-year data will include information in it that goes
20 back a longer period and is more outdated than the
21 information that would guide a three-year distribution.

22 Second, as I just said, a three-year

1 reallocation cycle would actually promote stability of
2 funding among grantees because shifts in the poverty
3 population are likely to be less dramatic over a
4 shorter period of time than they are over a longer
5 period of time.

6 MS. MIKVA: But I wonder if the grantees see
7 it that way, given that they have weighed in so heavily
8 in favor of a five-year period.

9 PRESIDENT SANDMAN: I don't know. I can't
10 speak for them. I don't think there's a lot of
11 familiarity or experience with the system that we're
12 compelled to go to because the decennial census will no
13 longer work.

14 So I think I understand people's fears and
15 concerns; but based on our dealings with the Census
16 Bureau and Bristow's analysis, our view is that the
17 three-year reallocation cycle is actually more
18 promotive of stability than a five-year.

19 And finally, this information will be
20 regularly available to grantees so they won't be
21 surprised by the results every three years. There will
22 be some predictability about what is likely happening

1 to the distribution of the poverty population among
2 service areas so that people will have advance warning
3 of what the magnitude of the triennial adjustment would
4 be.

5 MR. HARDIN: And it was hardly unanimous.

6 PRESIDENT SANDMAN: Yes. And Bristow points
7 out it was not a unanimous perspective among the
8 grantees -- among the commenters, I'm sorry.

9 CHAIRMAN KECKLER: I'm going to go ahead and
10 pause, and if any members of the public want to weigh
11 in on this point, I think it might be an appropriate
12 time to go ahead and do so.

13 MR. SAUNDERS: This is Don Saunders with
14 NLADA. We were one of the commenters of suggesting
15 that five-year reallocations were better than three.
16 And I will just say that in considering that, I think
17 the reasons are clear. Jim laid out, certainly, the
18 reasons for more frequent ones, and your comments
19 indicate the overwhelming desire that some programs
20 feel of having stability over the longer term.

21 We obviously debated this issue with a number
22 of programs, and by no means were they of one mind.

1 Certainly a strong majority of NLADA's governing body
2 felt that five years were what's appropriate.

3 We originally had suggested three to five
4 years and leaving some discretion with regard to LSC
5 determining down the road which was more appropriate.
6 But if one is going to be chosen, on balance, our group
7 decided that five years was more appropriate. But
8 certainly, the lack of familiarity that Jim mentioned
9 with regard to how this would work our was evidenced in
10 our processes as well.

11 MS. MIKVA: Thanks, Don.

12 CHAIRMAN KECKLER: All right. Any further
13 discussion or questions about that? I mean, it seems
14 like it's an issue. There's different forces going
15 there. The only thing I would add, and I'm not sure
16 how this cuts, is that we are on a three-year grant
17 cycle.

18 But approximately one-third of the grantees
19 come up every year. So there'll be one-third of the
20 grantees that are in synch with this, and then the
21 other ones will get changes within the term period of a
22 3-year grant.

1 I'm not sure how that cuts. I guess it might
2 argue in some way in favor of a three-year cycle. But
3 are there any thoughts or comments on that, on the
4 grant cycle and the reassessment, how that will work?

5 PRESIDENT SANDMAN: They're really separate
6 issues.

7 CHAIRMAN KECKLER: Yes.

8 PRESIDENT SANDMAN: I don't think that one
9 should drive the -- has a compelling effect on the
10 other.

11 I do want to point out something that I think
12 was implicit in the comments that I made previously but
13 wasn't explicit, and that is, this is obviously a zero
14 sum game. As the location of the poverty population
15 shifts, it causes some programs to lose money and it
16 causes some programs to gain money, at least relative
17 to the other programs.

18 The longer we delay in implementing changes as
19 a result of shifts in the location of the poverty
20 population, the more we're going to have programs that
21 have had an increase in their share of the poverty
22 population go underfunded. They're not going to be

1 getting the money that they should be to serve the
2 number of poor people in their service areas.

3 So for every negative effect there is in a
4 program that is concerned about putting off the day of
5 reckoning for a loss of funds, there's another program
6 out there, or programs, that aren't getting the funding
7 that they really need to serve the increased number of
8 poor people that they're seeing. So that's what we're
9 balancing here.

10 MS. HOLMEN: This is Phyllis Holmen. Is the
11 floor open?

12 CHAIRMAN KECKLER: Yes. Please go ahead and
13 comment.

14 MS. HOLMEN: I did submit some comments. And
15 on this particular point, we support the three-year
16 allocation for all the reasons that President Sandman
17 outlined, and particularly the last one because we tend
18 to be underfunded and are historically underfunded.

19 That's my comment.

20 CHAIRMAN KECKLER: Thank you.

21 By the way, I just want to pause here and note
22 officially on the record a thank you to all the people

1 that commented in response to our request for comments.

2 The comments were, by and large, very thoughtful.

3 They didn't always agree, but they were useful and I
4 think some of them are things that we're going to store
5 away and keep thinking about some of the comments. So
6 thank you to everybody who commented.

7 All right. Well, let's go ahead and consider
8 the other main recommendations and the comments
9 relevant to that. And then when we get to the third
10 item in the agenda, we will go ahead and have a vote on
11 where the committee is with regard to the
12 recommendations on each of these points.

13 But I want to have some discussion of the
14 comments as well on, first, the issue of the formula
15 itself. By and large, the comments seem to have
16 reflected a rough satisfaction with the per capita
17 distribution basis of the field grant formula. There
18 were some comments that suggested changes. What were
19 those, or what was said about that?

20 PRESIDENT SANDMAN: There were some
21 recommendations that -- there were some recommendations
22 to try to stabilize shifts over time. There was a

1 proposal, for example, that there be a limit of between
2 6 and 8 percent on funding cuts resulting from shifts
3 in the location of poverty population to avoid
4 disruption to programs that would be otherwise losing
5 significantly greater amounts of money.

6 Our view on that, as I said, was that there
7 are gainers and losers in all of this. And for every
8 program that's protected from a cut that would
9 otherwise be imposed because of a redistribution of the
10 population, there's another program that's not getting
11 money that they would need to serve an increased share
12 of the poverty population.

13 There was a suggestion about making
14 cost-of-living adjustments by service area to expand
15 what Congress has mandated for 16 years now as applied
16 to Alaska and Hawaii, which have a higher threshold for
17 determining what the poverty level is; to take that
18 approach and adopt it uniformly across the country.

19 But our preference here generally in
20 approaching this issue was to adhere to the settled
21 congressional scheme that's been in effect for 16 years
22 and which has yielded a distribution scheme that is

1 objective and well-understood and practical at this
2 point, and to deal only with the change that we're
3 required to address, that is, the change occasioned by
4 the fact that the decennial census in 2010 did not pick
5 up economic data.

6 MR. HARDIN: Jim, could I just also note that
7 this recommendation went an additional step than the
8 OMB adjustments for Alaska and Hawaii on those
9 thresholds, and instead recommended applying something
10 from the Office of Personnel Management and guidelines
11 like that that would have to do with changes in federal
12 salaries.

13 So this would be something that would be a
14 totally new thing that would be unrelated to anything
15 that the Congress has done in the past with respect to
16 LSC.

17 CHAIRMAN KECKLER: Right. I mean, I think
18 this is something that would have to be thought through
19 quite a bit. But I think it's a great example of an
20 idea that is certainly well-intentioned to try to match
21 our funding to the need, and whether that is the right
22 mechanism, the Office of Personnel Management, or not.

1 But I think it's -- and perhaps this isn't the
2 moment or the right vehicle to do that. But it is
3 something to think about, I think, in the future about
4 cost of living adjustments. But perhaps not for this.

5 I'll open the floor up to other board members
6 and committee members on this issue of the formula
7 itself, or members of the public, whoever -- okay. Go
8 ahead.

9 MR. SAUNDERS: Did you say the public, too?
10 This is Don Saunders again. We discussed this issue at
11 great length. There are a number of different
12 perspectives.

13 Some folks feel that the overall dollars per
14 poor person available should be a factor, which in our
15 view serves as a disincentive to raising state or local
16 funding. Others would argue that the cost of delivery
17 in rural areas is another factor that might offset some
18 of the cost of living considerations that some of your
19 commentators made.

20 So we discussed this at great length, and
21 fully support the management recommendation.

22 CHAIRMAN KECKLER: Thank you. I mean, that's

1 the issue. Once you go off the formula, there's a
2 number of different things. Cost of living is higher
3 in the cities, but perhaps cost of delivery is lower.
4 So I understand that, and that's maybe a reason not to
5 address it at this time.

6 All right. Unless there are further comments
7 on that, I want to turn to the third and final of the
8 main recommendations that were made by management and
9 on which comments were elicited, and that's the
10 phase-in. What were the comments generally regarding
11 the phase-in of the new formula -- or not the new
12 formula, the new figures that we're going to have the
13 Census get?

14 PRESIDENT SANDMAN: Nearly all of the comments
15 supported the recommendation to phase-in the next
16 funding reallocation during fiscal years 2013 and '14.

17 There were three comments supporting the
18 implementation of the reallocation in a single year.
19 One supported full implementation in 2013, the others
20 in 2012. But the overwhelming majority of the comments
21 supported a two-year phase-in in 2013 and '14.

22 CHAIRMAN KECKLER: Right. And I think that

1 one of the things that, understandably, comments maybe
2 didn't cover, but which the Board has been considering
3 over the last few weeks with this, is whether an
4 alternative to phasing in the aided poverty figures as
5 the basis for the formula would be an appropriation of
6 some money out of the field grant funds for 2013.

7 This crosses some of the discussions that the
8 Finance Committee has been having about the budget
9 request. And so it's something of an alternative to
10 say, okay, implement the formula immediately but put
11 in -- ask for transition money.

12 What's management's general take on that
13 alternative?

14 PRESIDENT SANDMAN: This is Jim Sandman. I'd
15 like to ask John Constance, who I believe is on the
16 phone, if he could give his perspective on that issue.

17 CHAIRMAN KECKLER: Thank you.

18 (No response.)

19 PRESIDENT SANDMAN: He may not be. I've
20 spoken to John about this, and I think his assessment
21 is that it is unlikely that the appropriation would be
22 increased to provide money to mitigate the impact of

1 reductions in funding among the programs; that if there
2 were to be any consideration given to this, it would be
3 in the form of what he has called an "of which"
4 solution, which would be that Congress would
5 appropriate X amount for basic field grants and specify
6 that of that amount, Y number of dollars should be used
7 to mitigate the impact of reductions in funding for
8 service areas that have lost their relative share of
9 the poverty population. And I think his judgment is
10 that it would be unwise to propose that as a
11 legislative solution.

12 CHAIRMAN KECKLER: Okay. Well, are there any
13 comments or questions about that or the phase-in more
14 generally?

15 MS. HOLMEN: This is Phyllis down in Georgia.
16 Just one of our comments. We argued for a phase-in
17 beginning in 2012 rather than 2013. And I have heard
18 the logistical arguments about how difficult that would
19 be, and I'm not sure -- well, if I assume that the data
20 that will be used to determine the allocation in 2010
21 data, what that means is that we will not actually be
22 at the 2010 level, equivalent to the 2010 population

1 figures, until 2014.

2 We are already years and years behind parity
3 with the funding that we should have based on Georgia's
4 poverty population. The recent data puts Georgia in
5 the top three in terms of poverty rate of our
6 population, along with Mississippi, another Southern
7 state.

8 And we just feel that having to wait until
9 2014 to get the appropriate distribution based on 2010
10 census data just puts us farther and farther behind.
11 And we would just urge the Corporation to take all the
12 steps that it can to logistically make parity a little
13 bit more likely to be in the picture, or near parity.

14 CHAIRMAN KECKLER: Any further comments
15 regarding the phase-in issue?

16 (No response.)

17 CHAIRMAN KECKLER: If not, I actually want to
18 consider one final point, at least from my reading of
19 the comments, that came up on which the comments
20 somewhat disagreed. And I noticed that a number of the
21 comments focused on and discussed our use of the Census
22 Bureau as the determination entity for the poverty

1 population. And I believe a number of the comments
2 suggested that LSC be somehow in one way or another
3 more involved in determining the relative poverty
4 population.

5 I'm going to ask management to talk about that
6 set of comments and management's response to them.

7 PRESIDENT SANDMAN: This is Jim Sandman.
8 There were two principles that guided us in approaching
9 this issue. The first was to try to adhere as closely
10 as possible to the congressional scheme of the last 16
11 years reflected in 16 separate appropriations laws
12 enacted as recently as 2011. And that is that the
13 Bureau of the Census should determine the location of
14 the poverty population, which will drive the
15 distribution of LSC funds.

16 That desire is expressed in two separate but
17 sequential sections of the appropriations bill over the
18 past 16 years, one of which mentions the decennial
19 census, the other of which does not. Second, we wanted
20 to address the decennial census problem that we have,
21 that is, that the 2010 decennial census did not capture
22 poverty data as narrowly and directly as possible, and

1 do no more than necessary to resolve the problem
2 resulting from the change in the 2010 census.

3 So we're trying to maintain the status quo as
4 near as we can, and we think the way to accomplish that
5 is simply to repeat that the determination of the
6 location of the poverty population should be made by
7 the Bureau of the Census, and simply delete the
8 reference to the particular data set they'll use to
9 make that determination, previously the decennial
10 census, and let them make the judgment as to what the
11 appropriate data set or sets are.

12 We're also mindful of what our expertise is
13 and what it is not. LSC has expertise in the delivery
14 of legal services to poor people. We don't have
15 expertise in counting poor people. Counting the
16 population, including counting the poverty population,
17 is the particular expertise of the Bureau of the
18 Census, and we think they are the administrative agency
19 best situated to make that call.

20 CHAIRMAN KECKLER: Right. And I think some of
21 the tenor of the -- thanks, Jim. I think some of the
22 tenor of the comments that we're concerned about have

1 to do with us trying to somehow cede authority over to
2 the Census and so on.

3 But what I'm assuming is that the Census are
4 our objective statistical partners, and that we'll be
5 in a conversation with them, an ongoing conversation
6 with them, about making sure we get the data that we
7 need and that they're going to -- as a statistician,
8 we'll ask, what's the poverty population, and they'll
9 say, well, what do you mean by the poverty population,
10 or so on.

11 Is that the kind of process of working with
12 the Census that we're anticipating?

13 PRESIDENT SANDMAN: Yes. We anticipate that
14 there will be a dialogue with the Bureau of the Census,
15 that we will advise them of what it is that Congress
16 has mandated they determine and for what we need it.
17 And based on our dealings with them to date on this
18 issue, we think that we'll be in conversation with them
19 as they make that determination.

20 CHAIRMAN KECKLER: Okay. I think that makes
21 sense. Are there any further comments or questions
22 about that, about the role of the Census vis-a-vis LSC,

1 which is something that was apparent in the comments, a
2 concern some commenters had?

3 MR. SAUNDERS: For everyone on the call, Mr.
4 Chairman?

5 CHAIRMAN KECKLER: Uh-huh.

6 MR. SAUNDERS: This is Don Saunders at NLADA.
7 We were one of the commentators to the proposal that
8 expressed a preference for discretion to be left at the
9 Corporation level. That being said, we understand
10 where the management recommendation is coming from.

11 To the extent that the question that you're
12 presenting to the Census Bureau retains and rebuts the
13 status quo to maintain the existing situation and
14 relationship that you have with the Census, that you're
15 really asking them to determine a particular data set
16 which illustrates a general distribution of poor people
17 throughout United States, then we understand where your
18 management recommendation is coming from, even though
19 we would prefer the discretion to be left with the
20 Corporation, because we're more used to and comfortable
21 in terms of having conversations with LSC than the
22 Census Bureau.

1 We understand the recommendation and don't
2 really have a strong problem with it.

3 CHAIRMAN KECKLER: Okay. Thank you.

4 Are there further comments?

5 MS. HOLMEN: Anything on that particular
6 topic, Mr. Chairman?

7 CHAIRMAN KECKLER: Well, let's go ahead. I
8 was thinking about that particular topic, but as long
9 as we're talking about the public comments, go ahead.
10 Let's talk -- let's continue talking about the public
11 comments. But anything is fair game.

12 MS. HOLMEN: Okay. Well, again, this is
13 Phyllis from Georgia, and we submitted some comments.
14 One of my remarks had to do with the reception of the
15 impact on states that's driven by the analysis of
16 impact related to percentage of the change between the
17 states' share of the national poverty in 2000 versus
18 2008, and the charts representing that Georgia's change
19 was 15.78 percent.

20 We actually got interested in how many people
21 those percentages actually represented, and did some
22 analysis of that, which are set out in my comments.

1 Examples are set out in my comments. And I think this
2 is important in view of President Sandman's commitment
3 to -- it's effectuating congressional intent that the
4 distribution of funds be based on the distribution of
5 poor people in the country.

6 The impact of poverty changes in Georgia, just
7 on the figures that you're working with that end in
8 2008, that don't go farther in 2009, there's 306,000
9 people more represented by that number. Whereas if you
10 look at the decrease in D.C., for example, that's 9,000
11 people fewer. We have 300,000 people more to serve.

12 And I think those numbers are stark, and
13 should be considered when you figure out how you're
14 going to figure out the formulas, as well as how you're
15 going to implement it. And I go back to the delay to
16 2013 delays longer the effectuation of congressional
17 intent that the money be based on where poor people
18 are.

19 So I would urge you to take a look at the
20 comments from Georgia Legal Services. I'm sure you
21 probably all have read them. But the impact on actual
22 numbers of people shouldn't be ignored. And the impact

1 of the delay as it impacts congressional intent in how
2 the money ought to be distributed also shouldn't be
3 ignored.

4 And I thank you for listening to my comments.

5 CHAIRMAN KECKLER: Well, thank you. And thank
6 you again for your written comments. And I have taken
7 a look at them, and I'm sure others have as well.

8 Are there any further comments on agenda item
9 2, on the comments themselves?

10 (No response.)

11 CHAIRMAN KECKLER: If not, I'm going to move
12 to agenda item 3, which is to consider management's
13 recommendation in light of the comments, and to then
14 make a committee recommendation to the Board regarding
15 them.

16 So let's go ahead, and I think that we can
17 just follow -- if committee members or Board members
18 want to opine on the data set issue, I think you
19 certainly can, or on any other issue. But what I was
20 anticipating is that we just then walk through
21 management's recommendation, which you all should have
22 a copy of there in its basic three parts, and indicate

1 whether we agree with these recommendations or whether
2 we have some modifications.

3 So if everybody has President Sandman's most
4 recent memorandum on this, you'll see the determination
5 of the poverty population, redistribution of funding,
6 and then the issue of the phase-in, what's labeled
7 first redistribution but is in effect the phase-in.

8 So I guess the determination of the poverty
9 population covers the data set issue as well. So with
10 regard to that first issue -- this is on page 2 of
11 President Sandman's memorandum -- is there discussion
12 of that LSC vis-a-vis Census role, the formula, that
13 kind of thing?

14 (No response.)

15 CHAIRMAN KECKLER: Hearing no
16 discussion -- and also, I'm going to open this up for
17 any further public discussion of -- the issue is
18 whether to have the Census Bureau determine the poverty
19 population, any changes in the per capita formula, the
20 things that we've just talked about in part.

21 MS. REISKIN: This is Julie Reiskin. I just
22 have a clarifying question.

1 CHAIRMAN KECKLER: Yes?

2 MS. REISKIN: We're only talking about having
3 the Census do the counting, not -- this doesn't affect
4 our rules in terms of like what may be exempted, or
5 that we're at 125 percent, or anything like that.
6 Right? This is just about the numbers, as defined by
7 the Census?

8 CHAIRMAN KECKLER: That would be my
9 understanding. I'll let management weigh in on that.

10 PRESIDENT SANDMAN: This is Jim Sandman.
11 That's correct.

12 CHAIRMAN KECKLER: All right. Well, now, with
13 this issue, we've talked about having productive
14 conversations. And this is a new process to talk about
15 with the Census.

16 And I wonder if it's possible that -- and I'm
17 not supposing this as part of the recommendation today,
18 but I just want to flag it for thought by people in
19 management and so on, and for people on the committee
20 and the Board, to have the Census make a determination
21 of the poverty population, but with due respect to our
22 funds and so on and what it costs to potentially ask

1 the Census for alternative calculations.

2 They sometimes like to do that over at the
3 Census, like to make alternative poverty calculations
4 and so on. Maybe they can do some alternatives for us,
5 potentially, if people are interested in that.

6 Is that something that people have thought
7 about at all, ask them to do alternative scenarios just
8 to see what the difference would be?

9 PRESIDENT SANDMAN: Bristow Hardin will
10 respond.

11 CHAIRMAN KECKLER: Okay. Thank you.

12 MR. HARDIN: Charles, are you speaking about
13 the supplemental poverty measures and the experimental
14 poverty measures that the Census Bureau does? Is that
15 what you're referring to?

16 CHAIRMAN KECKLER: Well, that would be one
17 thing. But I think just in general, the idea of
18 tasking them with this is what we need to do for our
19 formula. But then supposing -- because again, these
20 issues can potentially be -- can come up again in terms
21 of our appropriations language, calculated -- I
22 remember last meeting, I think Mr. Maddox -- Vic, Vic

1 Maddox is on the call. I discussed the issue of
2 eligible -- changing it from persons of poverty to
3 eligible clients.

4 There's just some different things that we
5 could ask them just to give us a calculation for even
6 if we don't use it or it's not part of our statutory
7 authorization. We could understand what the difference
8 would be to guide our future decisions.

9 PRESIDENT SANDMAN: This is Jim Sandman. Our
10 preference is to limit our inquiry to the Bureau of the
11 Census to what we need to comply with the
12 appropriations language as written and not to ask them
13 to do any more. The reason is, we are going to have to
14 pay them to do this.

15 CHAIRMAN KECKLER: Right.

16 PRESIDENT SANDMAN: Now, how much we have to
17 pay them is going to depend on what our ask is. But to
18 be using our appropriation to ask them to do research
19 beyond what is necessary to comply with the mandate of
20 Congress would not be our chosen course.

21 CHAIRMAN KECKLER: All right. Well, anyway,
22 that's just a side question.

1 If there's no further comment regarding this
2 or so on, I guess the idea on the table is to adopt as
3 the recommendation of the committee management's
4 recommendation on the determination of the poverty
5 population. Do I hear a motion for doing that?

6 M O T I O N

7 MS. MIKVA: I move that we recommend to the
8 Board to approve that portion of the management's
9 recommendation.

10 CHAIRMAN KECKLER: Thank you, Laurie.

11 Is there a second?

12 MR. LEVI: Second.

13 CHAIRMAN KECKLER: Thank you. All in favor?

14 (A chorus of ayes.)

15 CHAIRMAN KECKLER: Any opposed?

16 (No response.)

17 CHAIRMAN KECKLER: Hearing no opposition, the
18 committee recommends to the Board to adopt management's
19 recommendation regarding that issue.

20 Now let's turn to the second main
21 recommendation of management, which has to do with the
22 redistribution of funding and management's

1 recommendation that redistributions occur on a
2 three-year cycle, other alternatives being, I guess,
3 any type of cycle -- annual, biannual, and so on. But
4 mainly what has come up as a discussion is to do it a
5 little less frequently, somewhat less frequently, five
6 years instead of three years.

7 Are there further comments from the committee,
8 Board, or public regarding this?

9 MS. MIKVA: This is Laurie Mikva. So would
10 this just be a policy? Would this be a rule? How
11 would this actually be implemented?

12 CHAIRMAN KECKLER: That's a good question,
13 Laurie. Do we need to ask the authority of Congress
14 within this for a three-year cycle, or how does that
15 work?

16 PRESIDENT SANDMAN: Yes, we do. We need to
17 take this -- we'd take this up both with the Office of
18 Management and Budget and with Congress, and this would
19 be somehow reflected in the appropriations language.

20 CHAIRMAN KECKLER: I guess --

21 PRESIDENT SANDMAN: And/or the committee
22 report.

1 CHAIRMAN KECKLER: Right. And I guess the
2 question is, it's because of the way the appropriations
3 process works because I guess it seems intuitive that
4 we would only have to ask for this every three years in
5 the appropriations cycle. But it's management's
6 recommendation that we put this appropriations language
7 in there even in years when we're not going to do it.
8 Right?

9 That is to say, there'll be a reallocation
10 which will occur, under management's
11 recommendation -- there's a phase-in in 2013, and then
12 three years after that, 2016, would be when we would
13 use new figures. Is that right?

14 But nevertheless, we want to have it in the
15 2013 language, the 2014 language, 2015 appropriations
16 language?

17 PRESIDENT SANDMAN: Yes. The language would
18 be in the -- we're talking about presenting this as a
19 part of the package by which we'll request funding for
20 fiscal year '13, and would ask that this language be
21 reflected in the appropriate for '13 and then carried
22 over into subsequent years' appropriations as well.

1 CHAIRMAN KECKLER: I think I understand why
2 that is. But why does it need to be that what we're
3 going to do in 2016 be reflected in other years, in
4 earlier years?

5 PRESIDENT SANDMAN: I agree that it's odd.
6 But this is a function of having to use an annual
7 appropriation bill to accomplish something for future
8 years. This would not be an amendment to the LSC Act.
9 It would be something reflected in the appropriation
10 annually, and this is something we need to work with
11 Congress on, how best to do this.

12 So if the committee approves and then the
13 Board approves, we would pursue this with both OMB and
14 Congress to figure out how best to implement this. But
15 we don't want anyone surprised about what we have in
16 mind for subsequent years and for a three-year
17 reallocation cycle.

18 CHAIRMAN KECKLER: Right.

19 MS. MIKVA: This is Laurie Mikva. But
20 then -- I can't imagine what it would be, but if for
21 some reason we decide this is a huge mistake and three
22 years is the wrong number, we're only bound until the

1 next year's appropriation?

2 MR. LEVI: Apparently.

3 PRESIDENT SANDMAN: I think that's -- yes.
4 This issue would have to be -- Congress would have to
5 reenact every year. And we would have an opportunity
6 to revisit if we thought that we'd gotten it wrong.

7 MS. MIKVA: Okay. Thanks.

8 CHAIRMAN KECKLER: Right. So, I mean, in
9 effect, when we're making this choice, we're saying
10 that the next allocation after the 2013 budget year and
11 do a phase-in is either going to be in 2016 or in 2018.

12 And so I guess the reason to put it in here is
13 so we don't have to go necessarily back to Congress and
14 so everybody, including Congress and grantees, have
15 notice of what we're doing. But yes. I mean,
16 subsequent Congresses can't bind the past Congresses,
17 so I guess we could in principle revisit that issue.

18 Are there further questions or comments about
19 this aspect of management's recommendation?

20 (No response.)

21 CHAIRMAN KECKLER: Hearing none, is there a
22 motion to approve this aspect of -- approve the

1 projected three-year cycle of redistribution going
2 forward, as reflected in management's memo?

3 M O T I O N

4 MS. MIKVA: This is Laurie Mikva. I move that
5 we recommend to the Board a three-year cycle.

6 CHAIRMAN KECKLER: Thank you, Laurie.

7 Is there a second?

8 MR. KORRELL: Second.

9 CHAIRMAN KECKLER: All in favor?

10 (A chorus of ayes.)

11 CHAIRMAN KECKLER: Opposed?

12 (No response.)

13 CHAIRMAN KECKLER: Hearing no opposition, the
14 committee will adopt that aspect of management's
15 recommendation, that we have a three-year cycle, which
16 is, I should point out, one of the new aspects of this
17 from the decennial census, and recommend that the Board
18 adopt it.

19 Okay. And now we've got to the final major
20 recommendation that management has proposed, which is
21 the phase-in of the new numbers over a two-year period.

22 I believe that this is 50 percent in 2013 and 50

1 percent -- and then fully in 2014. Is that correct?

2 PRESIDENT SANDMAN: This is Jim Sandman.

3 That's correct.

4 CHAIRMAN KECKLER: Okay. Are there questions
5 and comments about that aspect of management's
6 recommendation?

7 (No response.)

8 CHAIRMAN KECKLER: Are there questions or
9 comments about the relative merits of doing this versus
10 a budget appropriation or a formula?

11 (No response.)

12 CHAIRMAN KECKLER: I have one question about
13 the -- has anybody at the Office of Management and
14 Budget or any other people expressed a preference of
15 how we would do this?

16 PRESIDENT SANDMAN: No, not yet. We haven't
17 gotten that far. We've surfaced the census issue
18 generally, but we haven't gotten down to that level of
19 detail and don't have any input on that.

20 CHAIRMAN KECKLER: Okay. Because I wonder
21 what's the -- I mean, I understand Mr. Constance's
22 communication that has a recommendation. I just wonder

1 what's simplest for them, simpler -- each of these
2 different options seems to have different kinds of
3 relative simplicity, I suppose, in certain ways.

4 To members of the public or people in the
5 field, is there any preference on that issue?

6 MR. SAUNDERS: This is Don Saunders at NLADA.

7 We would prefer and recommend that it be done in equal
8 50 percent portions.

9 CHAIRMAN KECKLER: Okay. Thank you, Don.

10 Are there further questions or comments
11 regarding the phase-in? On the one hand, you don't
12 have to have a phase-in. But I think the tenor of the
13 comments, although I understand that people would like
14 the -- some people certainly would like the
15 distribution to have them sooner and get to the full
16 formula funding, people that have had an increase in
17 poverty population -- most of the comments, I believe,
18 have supported some level of phase-in.

19 I think that -- I'm looking at the list of
20 comments here, which is -- generally, there has been
21 support for it. There's two comments, one 2012, one
22 2013 and '11 or more, recommending some form of a

1 phase-in.

2 What's management's thought of why a phase-in
3 and why a two-year phase?

4 PRESIDENT SANDMAN: It's basically to mitigate
5 the impact of the change, that this is going to have a
6 significant effect on programs both gaining and losing
7 their percentage share of LSC funding. The swings at
8 the extremes are up toward 30 percent in both
9 directions.

10 And we want to give programs that are going to
11 be losing a substantial amount of money fair notice of
12 what's going to happen, and give them an opportunity to
13 plan to implement the change; and for programs gaining,
14 to be able to do that prudently and with planning in
15 advance.

16 MR. LEVI: I assume, Jim, that those programs
17 that are having those wild swings know it?

18 PRESIDENT SANDMAN: Yes. We've been in
19 communication with programs about what the likely
20 impact of the changes is on them, yes.

21 CHAIRMAN KECKLER: And do we -- again, this is
22 a little bit of a side issue. But again, it's

1 something I want to maybe flag for management to think
2 about, which is, is there anything within LSC as best
3 practices or technical assistance or something like
4 that that can really help programs either scale up or
5 scale down?

6 I think that it's very appropriate, and I'm
7 very glad that we're providing notice. And I think
8 this phase-in is also -- personally also a good idea to
9 do this. But is there some way that we as an
10 organization can help out grantees through this
11 process, which for some of these programs is going to
12 be very dramatic and maybe even traumatic?

13 PRESIDENT SANDMAN: There are things we can
14 do. We're a clearinghouse of information here, and we
15 can identify programs that have experienced significant
16 fluctuations in their funding for a variety of
17 reasons -- changes in state appropriations, losses of
18 IOLTA funding -- and see what we can do to aggregate
19 their experience and communicate it to those that might
20 be facing similar changes as a result of this
21 phenomenon.

22 CHAIRMAN KECKLER: Yes. And I think that

1 would be -- whatever we can do along those lines is
2 something that seems to me to be an appropriate role.

3 All right. Well, are there any comments,
4 then, on the big issue of the phase-in? Further?

5 (No response.)

6 CHAIRMAN KECKLER: If not, is there a motion
7 to adopt management's recommendation with regard to
8 phasing in the new figures over the 2013 to 2014 budget
9 years?

10 M O T I O N

11 MS. MIKVA: This is Laurie Mikva. I so move.

12 CHAIRMAN KECKLER: Thank you, Laurie.

13 Is there a second?

14 MR. KORRELL: Second.

15 CHAIRMAN KECKLER: Thank you. All in favor?

16 (A chorus of ayes.)

17 CHAIRMAN KECKLER: Opposed?

18 (No response.)

19 CHAIRMAN KECKLER: Hearing no opposition, this
20 also -- the motion carries, and the committee
21 recommends the third primary recommendation of
22 management with regard to the census issue, having

1 adopted as a communication of the committee to the
2 Board management's final recommendation all its -- in
3 those main particulars.

4 Well, having done that --

5 MR. LEVI: We should say thank you to all who
6 worked so hard on these recommendations. It's been a
7 lot of work, I know, for a lot of people at LSC.

8 CHAIRMAN KECKLER: Yes. It certainly has.
9 And yes, thank you very much to President Sandman, to
10 Bristow, and to the Office of Legal Affairs and many
11 others that have been involved with that.

12 I know that it's something that has taken a
13 lot of work and actually will involve quite a bit of
14 work in the future. And I think it's notable,
15 particularly with the issue of triennial assessment, to
16 adapt our money and get it to where it's most needed on
17 a faster cycle, that LSC as an organization is putting
18 more work on itself in order to do that. And I think
19 it's notable that that's going on.

20 Let me move quickly to agenda item 4. Is
21 there any other business to bring before the committee
22 today?

1 (No response.)

2 CHAIRMAN KECKLER: If there is not, we will
3 move to consider adjournment of the meeting. I want to
4 thank everybody for their thoughtful comments today,
5 and coming in here on a Friday and working out this
6 issue. Chairman Levi's comment also applies to the
7 Board and members of the public who are coming in to
8 talk through these difficult issues.

9 Is there a motion to adjourn?

10 M O T I O N

11 MS. MIKVA: Motion to adjourn.

12 CHAIRMAN KECKLER: Second?

13 MR. KORRELL: Second.

14 CHAIRMAN KECKLER: All in favor?

15 (A chorus of ayes.)

16 CHAIRMAN KECKLER: Hearing no opposition, I
17 will now bring this meeting of the Operations &
18 Regulations Committee to a close.

19 (Whereupon, at 2:10 p.m., the committee was
20 adjourned.)

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