

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
OPERATIONS & REGULATIONS COMMITTEE
OPEN SESSION

Thursday, January 28, 2016

1:03 p.m.

The Mills House Wyndham Grand Hotel
115 Meeting Street
Charleston, South Carolina 29401

COMMITTEE MEMBERS PRESENT:

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

OTHER BOARD MEMBERS PRESENT:

Victor B. Maddox
Father Pius Pietrzyk, O.P.
Julie A. Reiskin

STAFF AND PUBLIC PRESENT:

James J. Sandman, President
Ronald S. Flagg, Vice President for Legal Affairs,
General Counsel and Corporate Secretary
Lynn Jennings, Vice President for Grants Management
Rebecca Fertig Cohen, Chief of Staff
Mayealie Adams, Special Assistant to the President
for the Board
Carol A. Bergman, Director, Office of Government
Relations and Public Affairs
Janet LaBella, Director, Office of Program
Performance
Lora M. Rath, Director, Office of Compliance
and Enforcement
Wendy Rhein, Chief Development Officer
David L. Richardson, Comptroller and Treasurer,
Office of Financial and Administrative Services
Stefanie Davis, Assistant General Counsel, Office
of Legal Affairs
Jeffrey E. Schanz, Inspector General
Joel Gallay, Special Counsel to the Inspector
General, Office of the Inspector General
John Seeba, Assistant Inspector General for Audit,
Office of the Inspector General
Daniel O'Rourke, Assistant Inspector General for
Investigations, Office of the Inspector General
David Maddox, Assistant Inspector General for
Management and Evaluation, Office of the Inspector
General
Ronké Hughes, Program Counsel, Office of Program
Performance
Herbert S. Garten, Non-Director Member, Institutional
Advancement Committee

STAFF AND PUBLIC PRESENT (Continued):

Frank B. Strickland, Non-Director Member,
Institutional Advancement Committee
Robert E. Henley, Jr., Non-Director Member, Finance
Committee
Allan J. Tanenbaum, Non-Director Member, Finance
Committee
Phyllis Holmen, Executive Director, Georgia Legal
Services
Ilene Jacobs, California Rural Legal Services
Andrea Loney, Executive Director, South Carolina
Legal Services
Leslie Fisk, South Carolina Legal Services
Adam Protheroe, South Carolina Legal Services
Gerald Jones, South Carolina Legal Services
Matthew Billingsley, South Carolina Legal Services
Rusty Infinger, South Carolina Legal Services
Rita Roache, South Carolina Legal Services
Stephanie van der Horst, South Carolina Legal
Services
Juanita F. Middleton, South Carolina Legal Services
Jamie L. Bell, South Carolina Legal Services
Angela Myers, South Carolina Legal Services
Kimaka Nichols Graham, South Carolina Legal Services
Mark Fessler, South Carolina Legal Services
Kirby Mitchell, South Carolina Legal Services

Don Saunders, National Legal Aid and Defenders
Association (NLADA)
Robin C. Murphy, National Legal Aid and Defender
Association (NLADA)
Terry Brooks, American Bar Association Standing
Committee on Legal Aid and Indigent Defendants
(SCLAID)

C O N T E N T S

OPEN SESSION	PAGE
1. Approval of agenda	6
2. Approval of minutes of the Committee's Open Session meeting on October 4, 2015	6
3. Discussion of Committee's evaluations for 2015 and goals for 2016	7
4. Update on rulemaking for 45 CFR Part 1610.7 - Transfers of LSC Funds, and 45 CFR Part 1627 - Subgrants and Membership Fees or Dues	9
Ron Flagg, General Counsel Stefanie Davis, Assistant General Counsel	
5. Consider and act on authorizing workshops for revisions to 45 CFR Part 1630 - Cost Standards, and the Property Acquisition and Management Manual based on comments received to the Part 1630 Advance Notice of Proposing Rulemaking	17
Ron Flagg, General Counsel Stefanie Davis, Assistant General Counsel Mark Freedman, Senior Associate General Counsel	
6. Consider and act on publication of a notice for comments regarding revisions to population data for grants to serve agricultural and migrant workers	37
Ron Flagg, General Counsel Bristow Hardin, Program Analyst Mark Freedman, Senior Associate General Counsel	
7. Consider and act on review of Management's report on implementation of the Strategic Plan 2012-2016 as provided by section VI(3) of the Committee Charter	75
Jim Sandman, President	

C O N T E N T S

	PAGE
OPEN SESSION (Continued)	
8. Other public comment	79
9. Consider and act on other business	81
10. Consider and act on motion to adjourn the meeting	81

Motions: Pages 6, 6, 35, 74, 81

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

2 (1:03 p.m.)

3 CHAIRMAN KECKLER: We now have a quorum and
4 are ready to begin the noticed meeting of the
5 Operations & Regulations Committee, assuming that the
6 phone system is working. Looking good?

7 With that, I will call the meeting to order
8 and ask for an approval of the agenda, which was found
9 in your board book.

10 M O T I O N

11 MR. KORRELL: So moved.

12 MS. MIKVA: Second.

13 CHAIRMAN KECKLER: All in favor?

14 (A chorus of ayes.)

15 CHAIRMAN KECKLER: Okay. The agenda is
16 approved.

17 May I also ask for approval of the minutes of
18 our meeting on October 4th?

19 M O T I O N

20 MR. KORRELL: So moved.

21 MS. MIKVA: Second.

22 CHAIRMAN KECKLER: All in favor?

1 (A chorus of ayes.)

2 CHAIRMAN KECKLER: The minutes are approved.

3 And we can now turn to our first item of substantive
4 business, which is a discussion of the committee's
5 evaluations for 2015 and our projected goals for 2016.

6 I want to thank the members of the committee for their
7 comments and for all filling out the evaluations.

8 You can find a discussion of the evaluations
9 beginning at page 14 of the board book. And generally,
10 I think I think we continue to get a lot of work done
11 in the committee, but there's a lot of work to do. And
12 so that's something that we're going to continue to
13 think about, how to plan our own work.

14 And I think sometimes my own feeling is that
15 we have such a backlog of things that carry forward,
16 it's hard to think about how you will layer on the next
17 goal rather than dealing with the backlog and the
18 different projects that we're dealing with from a
19 rulemaking standpoint.

20 But there's always an opportunity, as we need
21 to, to get some of the material done -- some of the
22 briefings in particular could be done telephonically,

1 as needed. That's something always to think about for
2 time management.

3 And goals, this is a good opportunity, and the
4 evaluation method itself is an opportunity, to consider
5 the goals for an upcoming year. But we also have now
6 the rulemaking agenda process. And the rulemaking
7 agenda is going to occur in Washington in April.

8 So as you're thinking about building up
9 projects for this committee, and in particular, new
10 rules, this is our fair notice opportunity that the
11 April meeting is a good time to bring out suggestions.

12 And this applies to the committee members as well as
13 to the other members of the board, that that's a good
14 time to think about that and get those in so that we
15 can consider them.

16 So that's the one thing that I mentioned in
17 terms of future focus. A lot of this year is going to
18 be, as we're going to see today, occupied with the
19 linked process of revising the PAMM and the related
20 rules. But we do need to build up other items and
21 think about those.

22 And certainly the idea of deregulating, the

1 idea of finding rules that are no longer useful, that
2 are creating problems for the grantees and without any
3 corresponding gain from the standpoint of oversight and
4 so on, is something that we definitely should think
5 about. That should definitely be a criteria for it.

6 And I'll reserve my comments. You can see
7 some thoughts about possible rules that I've put in
8 there. But we can reserve that for the rulemaking
9 agenda discussion.

10 Are there any other comments from the
11 committee about the evaluations or goals for the year?

12 Oh, thank you.

13 (No response.)

14 CHAIRMAN KECKLER: Any other comments from
15 members of the board, things this committee should be
16 up to or not up to?

17 (No response.)

18 CHAIRMAN KECKLER: Okay. With that, I'll go
19 ahead and turn over to OLA for an update on one of
20 these longstanding projects of this committee, the 45
21 CFR 1610.7, the subgrant rule.

22 MR. FLAGG: Thanks, Charles. Yes. We're

1 talking about two rules today, or two sets of rules,
2 1610.7 and 1627, which is the current agenda item. And
3 then we'll be talking about 1630 and the PAMM, which
4 are really quite significant core regulations for LSC
5 and its grantees. So these are both, we consider,
6 major undertakings. These are not just updates to
7 conform the regs to a prior statutory change.

8 The first set of rules we're talking about are
9 1610 and 1627. They deal with, among other issues, the
10 difference between a subgrant on one hand and a
11 contract on the other. And there are very different
12 requirements and rules that accompany each of those,
13 and so it's quite important for the distinction between
14 those two to be well-defined.

15 And with that, I will turn the microphone over
16 to Stefanie, who's been working on this with quite a
17 number of other people at LSC.

18 MS. DAVIS: Great. Thank you, Ron. I think
19 that's actually the most excitement I've ever heard
20 about 1627 before in my life.

21 (Laughter.)

22 CHAIRMAN KECKLER: Ironic.

1 MS. DAVIS: So as Ron mentioned, this has been
2 a fairly longstanding project that we continue to work
3 on. As you know, we submitted a proposed rule, which
4 the committee approved for publication last year. We
5 received comments from the field, many of which were
6 significant and prompted us to take a very close look
7 at the changes that we had proposed to Part 1627 and to
8 Part 1610.

9 Some of the biggest issues that had been
10 identified by commenters were a dispute with our
11 definition of the term "programmatic," which really is
12 the linchpin of what Ron was talking about, making sure
13 that subgrants cover awards made from recipients to
14 third parties to do the integral work of providing
15 legal services, legal assistance, to our eligible
16 client population, from things that are more like
17 procurements for services.

18 So we've been discussing internally how we can
19 make that discussion, that distinction, as clear as
20 possible. We're looking to the federal model to do
21 that, which is really fairly clear about when an
22 agreement between third parties has to do with the

1 essential purpose of the grant versus when you're just
2 trying to buy web servers or set up a website,
3 something that's very technical and for the benefit of
4 the grantee rather than for its client population.

5 So we've been working on that with our
6 colleagues from the Office of Program Performance and
7 the Office of Compliance and Enforcement. They have
8 significant responsibilities at the end of the year
9 with approving subgrants and making sure that everyone
10 is in good condition and ready to go at the beginning
11 of the next calendar year, which we just passed.

12 So the work group began work again at the
13 beginning of January, and will be meeting again
14 February 8th to discuss the proposed changes that we've
15 got to the rule. We're very close to having a further
16 notice of proposed rulemaking that incorporates some
17 changes that the field recommended, and that will
18 explain what we're seeking comments on moving forward.

19 We're doing a further notice of proposed
20 rulemaking because we are making some changes to the
21 rule in response to comments that we got from the
22 field. So we're not going straight to a final rule.

1 We expect to have that to you in April, and we
2 will at that time determine what we think the
3 appropriate length of the comment period is. And that
4 could be open for discussion at the committee meeting
5 as well.

6 And we're happy to take any questions.

7 CHAIRMAN KECKLER: Stefanie, so in terms of
8 the -- we'll see what people come up with in terms of
9 comments. So it's not definitive, but at least the
10 projected or the hope for completion rate in which we
11 put a final rule out is the summer meeting or --

12 MS. DAVIS: I think that's right. We would
13 hope to have a clear enough rule, an uncontroversial
14 enough rule, in April that we will receive the comments
15 we receive. We hope that they will not be too opposed
16 to the changes that we're making, and that we could
17 hopefully provide a final rule to the committee in
18 July. That would be our best hope.

19 CHAIRMAN KECKLER: Okay. Thank you.

20 Are there questions from the members of the
21 committee or the board about this? Julie?

22 MS. REISKIN: So when you were -- oh, we were

1 pressing the wrong button. I guess it's too
2 complicated for all of us.

3 (Laughter.)

4 MS. REISKIN: The comments all seem to be
5 similar in nature.

6 MS. DAVIS: That's correct.

7 MS. REISKIN: So does that mean when you said
8 you hope it'll be noncontroversial, that means that you
9 agree? Do you have to meet with people, or do you feel
10 like there's enough common ground to -- I think I'm
11 missing a step. Are there going to be other meetings,
12 or do you feel like the comments gave you what you
13 needed to make the changes?

14 MS. DAVIS: I think we feel like the comments
15 gave us what we needed to consider, in terms of what
16 the field either found problematic about the rule or
17 confusing about the rule. So I think that there was
18 enough common ground that we're not reaching into a
19 bunch of discrete areas to change the rule or to revise
20 the rule.

21 I hope, based on the information that we got
22 from the field and the areas that we're proposing to

1 make changes to, I hope we'll have made the
2 clarifications that the field requested or that we'll
3 have -- even if we didn't completely agree with what
4 they said, that they'll agree with the changes that we
5 made or understand why we made the changes that we
6 made, and not require a further round of in-depth
7 discussion or in-depth rulemaking.

8 We don't anticipate having any additional
9 meetings with stakeholders between now and April. All
10 of our discussions currently are internal.

11 MS. REISKIN: Just a followup to that. You
12 were asking what other funders do with this. And are
13 you differentiating between like foundation funders and
14 federal funders? Are they different? Because I just
15 know in my world, I've never seen like a private funder
16 go to anywhere near this length. And so I didn't know
17 if the federal funders just did it very, very
18 differently or --

19 MS. DAVIS: That's actually getting into the
20 substance of 1630 and the PAMM, which we're going to
21 discuss next. But to give a little preview, we are
22 thinking. We're thinking both about federal funders,

1 state funders to the extent that IOLTA funders place
2 requirements on their funding that may conflict with
3 ours or may be more efficient than ours.

4 So we really want to look at both government
5 and nongovernmental funding organizations to see what
6 they're doing, and where we can improve efficiencies
7 and where we can reduce conflicts when necessary.

8 CHAIRMAN KECKLER: Are there any other
9 questions for Stefanie?

10 (No response.)

11 CHAIRMAN KECKLER: If not, I just want to
12 thank again all the people that different comment on
13 this rule. It's complex. It simply couldn't be done
14 without comments from the people and organizations that
15 it's going to affect. And so appreciate that, and
16 appreciate the hard work of the people at LSC to carry
17 this forward and hopefully to a conclusion. Thank you.

18 So with that, let's turn to the next item,
19 which has been previewed, which is the progress on 45
20 CFR Part 1630 and the PAMM, and the current plans to
21 develop further information and feedback through the
22 use of workshops, rulemaking workshops.

1 MR. FLAGG: Well, give me seven or eight
2 chances, I'll figure out how to turn this on. So 1630
3 is another, obviously, core regulation for us that
4 deals with cost standards, which includes everything
5 from defining what a reasonable cost is to, along with
6 the property acquisition and management manual,
7 hereafter referred to as the PAMM; what items purchased
8 by grantees need to have some sort of pre-clearance, or
9 what procedures they have to follow in their own
10 property acquisition. It deals with questioned costs.

11 So it's quite a significant set of rules, both
12 again for LSC and for our grantees. We had identified
13 a number of areas in which we thought clarifications or
14 improvements might be made, and we also thought, before
15 we plunged further into this, it would be useful to get
16 the thoughts of various stakeholders, including our
17 grantees.

18 And we published an advanced notice of
19 proposed rulemaking, which this committee approved and
20 authorized us to do. I think that turned out to be a
21 good move. We got a lot of very provocative comments,
22 which confirmed that the issues we were dealing with

1 were both important and complicated.

2 And Stefanie will now elaborate on how we
3 propose to go forward from really the questions we
4 asked, which were posed in this advanced notice of
5 proposed rulemaking, and the variety of comments we
6 received back in response to that advanced notice.

7 MS. DAVIS: Great. Thank you again, Ron.

8 As Ron mentioned, we published an advanced
9 notice of proposed rulemaking last October. We had
10 that comment period open for 60 days. We received
11 three comments, which are at pages 24 through 50 of the
12 board book. So they are there for your reference.

13 There were seven general categories of
14 comments, which I'll just describe briefly. The
15 commenters were generally supportive of LSC's move to
16 improve and modernize these rules, which have not been
17 touched in quite a few years. The world of legal
18 services, again, has changed a lot. Federal grants
19 policy has also changed a lot in that time. So we are
20 interested in trying to make our rules more efficient
21 and more meaningful to ensuring our proper oversight
22 role.

1 The field did express some comments and some
2 concerns about our proposals. They were concerned that
3 our questions about whether we should be requiring
4 prior approval for more transactions than we currently
5 require prior approval for would create more
6 administrative burdens on grantees.

7 There were concerns that our proposed changes
8 may conflict with OMB's uniform guidance; many of our
9 grantees receive federal funding, and so there was a
10 concern there that the rules might conflict.

11 There was a concern that our question about
12 whether LSC should regulate services contracts was
13 appropriate, particularly if we were thinking about
14 requiring prior approval for those contracts, as we do
15 currently for purchases of real property or personal
16 property exceeding certain financial thresholds.

17 There was a concern about LSC's proposed time
18 to give notice of its intent to disallow funds when it
19 has a reasonable belief that the funds were misspent
20 rather than at the time we issue a questioned costs
21 notice.

22 And the issue is that because when we give

1 notice, that triggers our current five-year lookback
2 period in which we can recover funds, and I think the
3 field was concerned that it was unclear or we might
4 prematurely do it, that we might give notice as a
5 matter of course. And so they sought more guidance,
6 more clarity, from us on that issue.

7 There was objection to our extending the prior
8 approval requirement in Part 1630 and the PAMM to
9 include aggregate purchases of personal property that
10 exceed a particular threshold. Currently, as the rules
11 are written, that requirement only applies to purchases
12 of single items that exceed -- I think the threshold
13 right now is \$10,000. And the concern that was
14 expressed was that it's not clear what an aggregate
15 purchase is, and also is it truly necessary to ensure
16 the proper use of funds to request prior approval.

17 There was concern that LSC intends to assert
18 ownership of rights and materials that are developed
19 using LSC funds, and a suggestion that we look more
20 closely at what other funders do and think through some
21 more about how we want to treat intellectual property
22 that's developed in whole or in part using LSC funds.

1 And then there was a recommendation generally
2 that when LSC is looking at procurements, that maybe
3 instead of having a rule that says, your procurement
4 policy, you must get three bids, you must do this, you
5 must do that, that we instead have a rule that
6 generally says your policies must ensure maximum
7 competition. It must ensure certain other things to
8 demonstrate both that they're looking at the maximum
9 number of sources and that they're getting the best
10 value, and leave it to the grantees to determine how
11 their policies are going to meet those standards.

12 So those were the comments that we received,
13 or the constellation of comments that we received.
14 NLADA, supported by the other two commenters, Northwest
15 Justice Project and Colorado Legal Services,
16 recommended that LSC engage in additional fact-finding
17 to develop the proposals further and to get more
18 specific information from the field about what they see
19 the burdens being, what they see as potential conflicts
20 between our roles and those of other funders.

21 And we looked at the comments that had been
22 provided that were helpful, but we agreed that there

1 were areas in which we needed additional information
2 and in which we thought it was going to be useful to
3 have a dialogue with our grantees, possibly with other
4 funders.

5 And so we are proposing now, with the document
6 that is on page 17 of your board book, to conduct
7 rulemaking workshops. We think that workshops are the
8 best way to go about getting this kind of information
9 because they allow for an open dialogue. They allow
10 for free discussion between us and between the
11 interested stakeholders who are participating, without
12 having the burden, the expense, the kind of consensus
13 requirements that come along with a negotiated
14 rulemaking. So we think that the more informal
15 workshop process is the way to go here.

16 Based on the comments that we received and
17 where we believe more information is necessary, we
18 propose holding three workshops targeted at getting
19 information on four issues that were described in the
20 proposal which primarily have to do with how our roles
21 interact with those of other funders, what we need to
22 consider with regard to accountability for large-scale

1 purchases using our funds, and how to handle the
2 question of treatment of intellectual property
3 developed with our funding.

4 We have proposed that internally the work
5 group would involve members of the Office of Legal
6 Affairs, the Office of Program Performance, the Office
7 of Compliance and Enforcement, and the Office of
8 Inspector General.

9 Externally we would like to get participation
10 from grantees who have a wide mix of funding sources,
11 so grantees that get most of their money from us,
12 grantees that get some of their money from us and maybe
13 half from us and half from their IOLTA fund, down to
14 grantees that get a small amount of funding from us and
15 have a larger mix of other funding sources so we can
16 get a better idea of what our recipients' funding
17 streams look like, what their burdens are, and so we
18 can make our rules more efficient for them, less
19 burdensome for them, but also more efficient for us and
20 easier for us to administer without having to give up
21 any of our accountability. We figure that will take no
22 time at all.

1 (Laughter.)

2 MS. DAVIS: But we are proposing a series of
3 three workshops from the spring early into the summer.

4 We're checking with our information technology staff
5 to determine whether or not we can do any of that by
6 webinar, in the interest of keeping everyone's costs
7 down and maximizing our efficiencies at LSC.

8 So that is our proposal. The timeline, the
9 substance of the workshops, the composition is all
10 proposed. We're happy to get your input and your
11 thoughts on maybe how the schedule, the structure, the
12 substance of the weeks could be improved, could be
13 broadened, narrowed. Any of your thoughts are welcome.
14 And what we're asking for today is authority to conduct
15 the workshops and publish the notice in the Federal
16 Register seeking participation in the work groups.

17 CHAIRMAN KECKLER: Just a second, Father Pius.

18 I just wanted to note one thing for members of the
19 committee, that at one point in the memo -- it's
20 actually the second memo -- on page 22, for the format
21 it does suggest that members of the committee will
22 attend and may serve as a moderator at those workshops.

1 So that's a note there to members of the committee
2 especially.

3 Father Pius?

4 FATHER PIUS: Yes. There was just a little
5 point that I was a little confused about. There were
6 the two memos there, and one has four extensive
7 questions for discussion. The other one has three
8 brief questions for discussion. And I wasn't
9 sure -- and they didn't really explain why. So if you
10 could explain.

11 MS. DAVIS: Sure. I think one of the areas,
12 or two of the areas, got condensed into one bullet
13 point for the discussion of the rulemaking workshops
14 when we were talking about -- right. So the
15 intellectual property requirement got folded into the
16 general discussion about how our requirements interact
17 with those of other funders.

18 We pulled intellectual property into that
19 particular bullet point, not to say that it's any less
20 important but because it seems like that's a lot of the
21 point where we will be discussing it. Because other
22 funders may have requirements about what rights flow to

1 them and what rights remain in the grantee for any IP
2 developed with their funding.

3 FATHER PIUS: And the thought is, if we go
4 forward with this, that it would be those three brief
5 questions that would be published as the topics rather
6 than the four broader questions? Just so I'm sure.

7 MS. DAVIS: That's correct, unless we get
8 feedback suggesting that the questions should be framed
9 differently or structured differently.

10 CHAIRMAN KECKLER: And just as a
11 clarification, and correct me if I'm wrong, so with the
12 second memo, as you'll note by the item, it says,
13 "Consider and act." And what we would be acting upon
14 would be a general committee approval of the program
15 proposed in the second memorandum beginning on page 21
16 of the board book. Is that's what's asked here?

17 MS. DAVIS: That's correct.

18 CHAIRMAN KECKLER: Julie, you had a question?

19 MS. REISKIN: Yes. First of all, thank you.
20 I really like the approach, and I think it's a good
21 idea.

22 You said about ten to fifteen participants.

1 And are you thinking that that's going to be all
2 grantees? I know you said that the staff will be
3 involved. But my question is -- and I like having
4 diversity of grantees. I'm wondering if you want
5 to -- and I don't even know if this is legal or
6 possible.

7 But could we involve maybe some other funders,
8 or someone like NLADA or ABA, or someone that might be
9 able to give a broad -- I think having the grantees is
10 really important. But I want to make sure that we have
11 the broad perspective, and also maybe some outside
12 perspectives, of how do things work in the private
13 sector, if that's possible. So that's one question.

14 And I assume that the way this is -- all these
15 different rulemaking things, I get a little confused.
16 So they would be on a panel, but then anyone from the
17 public would be able to listen and submit questions or
18 comments?

19 MS. DAVIS: Right. That's correct. So to
20 answer your last question first, yes. There would be a
21 number of work group participants who would have
22 applied, who would have submitted expressions of

1 interest to LSC, and who LSC would have chosen to
2 participate in the workshops.

3 But the meetings would be open meetings.
4 They're required to be open by statute. So there would
5 be a public comment period at the end of the meeting.
6 So anyone can call in. Anyone can listen. Anyone can
7 comment.

8 To answer a different part of your question,
9 one of the things that we had considered doing and have
10 considered doing since the memo was prepared for you is
11 trying to involve other funders, particularly in the
12 first session, where we intend to focus on the
13 conflicts or the interactions of our rules with other
14 funders' rules.

15 We were thinking, as I'd said earlier, looking
16 at government officials, federal and state, as well as
17 other private funders if there are some who would be
18 interested in participating. We're happy to hear from
19 anyone who is a funder who would want to participate
20 and who would want to share their insights on how their
21 grantmaking works and compares with ours.

22 With regard to grantees, we were looking

1 primarily at grantees since they are the ones who are
2 doing this. They are the ones who have the
3 administrative staff who have to fill out the reports
4 and balance the numbers. But we would look at any
5 expressions of interest that meet what we're looking
6 for. And we have not yet drafted the notice.

7 We're still thinking through how we want to
8 make that ask to make sure that we're getting the best
9 range of participants that we can. That will be worked
10 on when we get back to Washington.

11 MS. REISKIN: You said you were looking at
12 doing one in either Denver or Chicago, and one city is
13 clearly superior to the other.

14 (Laughter.)

15 MS. DAVIS: As a westerner, I concur.

16 MS. REISKIN: Right. But I'm now in a place
17 where we could provide a free room that has parking and
18 pretty much anything else, if you wanted it.

19 MS. DAVIS: Excellent. Thank you, Julie.
20 That might be the tipping factor.

21 CHAIRMAN KECKLER: Thanks, Julie.

22 Yes. So with regard to this memo, when we

1 talk about selecting the group, I think that our
2 approval is going to be of a general nature,
3 understanding that details of the particular
4 composition and scheduling may be adjusted.

5 So the plan would be -- you talked about
6 preparing a notice. Assuming we were to approve it as
7 the committee, what would then be the schedule of
8 preparing a notice? And do we need to come back with a
9 meeting on that or a briefing on that?

10 MS. DAVIS: Yes. I think the answer to your
11 question is that we will be working on the notice as
12 soon as we get back to Washington. The proposed
13 timeline is for the notice to be published in the
14 Federal Register in middle or late February.

15 So we would need to have a committee meeting
16 at which the notice is approved before it gets
17 published. So that would hopefully happen within the
18 next few weeks. I don't think the notice should be a
19 very long notice. It's really soliciting interest in
20 participation and laying out the topics that we'll be
21 discussing.

22 In previous notices, when LSC has sought

1 members of workshops, we've had a very brief timeline
2 for which to submit expressions of interest, something
3 along the lines of 15 days from the date of
4 publication. I think we would be looking to proceed
5 along a similar timeline. We have proposed a
6 relatively ambitious schedule for this particular
7 rulemaking because we know that it is an important one,
8 and we would like to keep the process moving.

9 So in order to accommodate the workshop
10 process, which we think is very important and will be
11 very useful, we do want to keep the timelines fairly
12 brief and to get expressions of interest as quickly as
13 we can.

14 MR. LEVI: Can I --

15 CHAIRMAN KECKLER: John?

16 MR. LEVI: I think, having looked at the
17 materials that were presented, and I did come in a
18 little bit late on this, the comments were in my view
19 very serious comments. And I want to make sure we
20 don't look like we're rushing people. And I don't
21 think we did in the PAI workshops, either. But I want
22 to make sure we don't.

1 And I also want to point out two things about
2 the timing. The May workshop is just a couple days
3 before the Equal Justice Conference, which is in
4 Chicago. So I'm making a different proposal, that you
5 look at these dates and see whether you should have a
6 Chicago, either before or after. And then you can go
7 to Denver in June. That's fine with me.

8 But so many of the people that you might want
9 to have in the room are probably going to be in
10 Chicago. So I would suggest you take a look at that,
11 just because it's only a couple of days' difference
12 from the dates you've suggested here.

13 And then finally, because of the high degree
14 of interest, I think it would be -- in this day and age
15 I think it's possible to make even the live workshop
16 available to those who wish to either dial in or web in
17 or however. And I leave that to Peter Campbell and
18 others to figure out whether that's possible here.

19 CHAIRMAN KECKLER: Those are great
20 suggestions, John. And I think when we have our call
21 in February about it, I'd like if possible to hear some
22 more about what you hear back from IT about the

1 different IT possibilities. And if we can -- I don't
2 know what the phrase is -- lean in, stretch out a
3 little bit and see if we can do something, whatever is
4 feasible for that.

5 MR. FLAGG: Charles, if I could just make one
6 other comment. Just so we don't lose the point, this
7 fact-gathering process which we're doing is very
8 important. We want to reach out to as many people as
9 we can and get the input of as many people as we can.

10 At the end of the fact-gathering process, or
11 at the point at which these workshops have run their
12 course, we'll get together and, with your help and
13 approval, propose a rule. At that point we'll have
14 multiple rounds of public comment.

15 So there's going to be lots of opportunities
16 for people to come on this. And as this committee and
17 the board knows, just because we've put something on
18 paper and said, here's a proposed rule, that does not
19 mean we're wedded to this language, we're wedded to
20 this approach, if somebody says, hey, you guys forgot
21 something.

22 MR. LEVI: No. We're on the same page.

1 MR. FLAGG: Yes. So there'll be lots of
2 opportunities for people to be heard on this. It is an
3 important rule. It is a complicated rule. And that's
4 why I think we are taking our time, and there will be
5 plenty of process that is both due and available.

6 CHAIRMAN KECKLER: Gloria?

7 PROFESSOR VALENCIA-WEBER: I appreciate your
8 undertaking this. I think there's much that can be
9 clarified. I'd like to suggest that as you're looking
10 at non-LSC funding from the states, and that seems to
11 be -- even in these tough budget times some very poor
12 states are making allocations to legal services for the
13 poor.

14 They seem to me, just from my observation, two
15 paths -- that is, a direct legislative appropriation,
16 but then some of them, including in the state I'm in,
17 it comes from the legislature and then goes to the
18 access to justice commission. The existence of access
19 to justice commissions has also be used by the state as
20 an arm of how to best do a given kind of purpose for
21 legal aid.

22 So you may have two layers of requirements of

1 funders to deal with. And that's the only thing I'd
2 like you to be alert to because it isn't just direct
3 from the state in some instances.

4 MS. DAVIS: Thank you, Gloria. That's a
5 really helpful consideration to have.

6 CHAIRMAN KECKLER: Okay. Are there any other
7 immediate thoughts about the workshop? These are great
8 suggestions from the committee and the board.

9 (No response.)

10 CHAIRMAN KECKLER: If not, I will consider a
11 motion to approve rulemaking workshops for 1630 and the
12 PAMM.

13 M O T I O N

14 MS. MIKVA: So move.

15 MR. KORRELL: Second.

16 CHAIRMAN KECKLER: All in favor?

17 (A chorus of ayes.)

18 CHAIRMAN KECKLER: The rulemaking workshops
19 are approved, and we will circle back in February to
20 look at the notice and the details of what's proposed.

21 MS. DAVIS: Excellent. Thank you.

22 CHAIRMAN KECKLER: With that, let's now move

1 to the next item of business, which is the publication
2 of a notice for comment regarding the revisions to the
3 population data for grants, our migrant agricultural
4 worker grants.

5 MR. FLAGG: Thank you. For the record, we're
6 being joined here by Bristow Hardin, who actually is
7 now in our new Office of Data Governance and Analysis.

8 And I would add that Bristow and his office -- well,
9 Bristow before the creation of the office and, more
10 recently, since the creation of the office has been
11 involved in this, and it's quite timely since, as you
12 see, this involves both the gathering and analysis of
13 data.

14 Let me situate ourselves both in terms of the
15 board book and in terms of where we are in this
16 process. A year ago this committee and the board
17 authorized LSC to publish a notice in the Federal
18 Register requesting comment on a proposal to update the
19 agricultural worker population estimates used for
20 determining the amount of basic field funds that LSC
21 will distribute in the form of so-called migrant
22 grants. And we received eleven comments on those

1 proposals, and we'll talk a little bit about those
2 comments.

3 We're here today to consider a draft, which
4 you have before you. It starts at page 51 of your
5 board book, and then all of the pages subsequent to
6 page 51 that are part of this set of materials are
7 alphabetized, starting with letter A through letters
8 XX. So apologize for that convention, but this
9 document was put in after the rest of the book was
10 paginated. The draft --

11 FATHER PIUS: I'm sorry. Just real quick, can
12 you clarify, is this different than the board book?
13 Are there updates to this that make it different than
14 the board book, or is it just for our courtesy?

15 MR. FLAGG: No. What you have in hand should
16 be what was on the board book. The only additional
17 change was there was a formatting glitch on pages 14
18 and 15 of the notice, which was corrected with a
19 handout that Mayealie just provided.

20 So what you have in front of you at pages A
21 through O, which is a 15-page document, is the proposed
22 notice that would be published in the Federal Register.

1 And let me talk about the background of the notice,
2 the background of this issue, and what is contained in
3 the notice.

4 Congress appropriates every year funding for
5 our basic field grants, and these field grants are
6 distributed and allocated on a poverty population basis
7 across the country. And the count for that poverty
8 population is provided to us by the census. So this is
9 not -- LSC accepts the census data, and we use that.

10 In many states -- not all, but many
11 states -- those field grants are divided in the sense
12 that some of the field grants are allocated to a
13 migrant program. And so how is that division made?
14 Well, it's made by estimating the number of
15 agricultural workers in the state or in the service
16 area and apportioning a portion of that field grant for
17 that state to the migrant program.

18 So it's done on a state-by-state basis. What
19 happens in any one state doesn't affect any other
20 state. But it does affect the size of the field grant
21 in that state because some of it is sent to a
22 farmworker program.

1 Now, unfortunately, and the reason we've been
2 here for the better part of a year and a half
3 undertaking this exercise, is the census does not count
4 agricultural workers. So we had to find somebody else
5 who did because LSC doesn't count agricultural workers,
6 either.

7 And fortunately, there is an organization in
8 the government that does this. It's the United States
9 Department of Labor Employment Training Administration,
10 and notwithstanding Jim staring at me, we'll refer to
11 the Employment Training Administration as ETA.

12 ETA counts agricultural workers for many
13 purposes. But for federal grantmaking to agricultural
14 workers, for all sorts of purposes, ETA data are used,
15 and we want to use ETA data for that purpose as well.

16 So we've contracted with ETA. ETA population
17 estimates were the basis for our proposals a year ago.

18 And we received, as I said, eleven comments in
19 response to, in essence, three proposals.

20 Proposal one a year ago was that we use these
21 new ETA estimates for distribution of migrant grants.
22 Proposal two was to phase in the funding changes that

1 were associated with these new data and these new
2 estimates.

3 As you saw a year ago and you'll see in the
4 data we have today, the changes these new estimates
5 will make are quite substantial state by state.
6 Nationally they're not insignificant, but state by
7 state they're quite significant.

8 Some of the big states in terms of numbers of
9 agricultural workers, such as California, Texas,
10 Florida, South Carolina where we are today, that have
11 large numbers of farmworkers still have large numbers
12 of farmworkers, but not as large as was previously
13 estimated. Other states, particularly in the Midwest,
14 such as Ohio, Wisconsin, Minnesota, Iowa, went from
15 relatively few agricultural workers that were counted
16 originally to many more counted under the present
17 count.

18 As we talked about a year ago, the data on
19 which we are presently allocating money to these
20 migrant and agricultural worker programs go back to
21 1990. So they're 25 years old. And at the time those
22 data were developed, they were meant to count migrant

1 workers, hence the name migrant grants.

2 But these funds have never been devoted solely
3 to serving migrant workers. They've always been
4 devoted, for more than 40 years, to serving the needs
5 of agricultural workers. And what you typically see is
6 migrant workers and other non-migrant farmworkers
7 working hand in hand, living in the same often farm
8 owner-owned housing, facing the same labor issues.

9 And so the specialized needs that migrants
10 faced are also faced by other agricultural workers.
11 And no, it has never been LSC's policy that we should
12 have a program that goes in and, when it does its
13 eligibility analysis client by client, that it asks,
14 how much do you make? What is your citizenship status?
15 And are you a migrant?

16 Because that would mean, if somebody was
17 otherwise eligible but not a migrant, that somebody
18 from an office a thousand miles away would have to come
19 to instead provide the service, which doesn't make any
20 sense.

21 So as we set out to do these new estimates, we
22 were not going to just count migrants because that was

1 not the population being serviced, or not solely the
2 population being serviced. We were obviously going to
3 update the data.

4 So the second proposal last year, because of
5 the substantial nature of the changes that would be
6 wrought by the new data, was to phase in the effect of
7 the new data over two years, which is, I believe, the
8 same thing that was done when we had the census
9 adjustment a couple years ago.

10 And then the third proposal was not to wait 25
11 years to update these data, but to update these data
12 really in lockstep with the census adjustments every
13 three years.

14 We received eleven comments on those several
15 proposals. Those comments are summarized at
16 pages -- if you look at the internal pagination of this
17 draft notice, they're at pages 6 through 11 of the
18 draft notice. I won't go into great detail on the
19 comments.

20 Basically, people agreed, as LSC had
21 previously found in prior studies of the issue, that
22 the need for specialized services and separate grants

1 to support legal services for agricultural workers
2 continued. Not surprisingly, everybody agreed that
3 allocating money based on more current data was better
4 than allocating money based on two-decade-old data.

5 There were some issues regarding how we should
6 define the terms "agricultural workers." This is
7 described at pages 7 and 8 of our draft, and our
8 proposal is to rely on the definitions of agricultural
9 workers that were provided by the Department of Labor,
10 and to leave that issue as it was proposed last year.

11 There were several areas in which we did get
12 comments which we believe merit another round of
13 comments. And let me address those.

14 First, some comments maintained that they did
15 not have access to every last detail regarding the ETA
16 estimates and every last piece of data on which the
17 Department of Labor and ETA made its calculations.

18 We were sympathetic to that, and consistent
19 with that, attached to the notice and attached both in
20 your hard copy board books -- and to get a complete
21 set, you'd have to go online because some of the data
22 are so voluminous they literally cannot be printed.

1 But we are providing all of the data we can, or I
2 should say ETA has provided all of the data it can.

3 There are a few data that are confidential and
4 which cannot be released in this form publicly. But if
5 anybody is interested in seeing those data, they can,
6 as set forth in the notice, contact ETA and get access
7 to them.

8 So the first thing we will do, in addition to
9 releasing these data, is what we proposed in this
10 notice, is to permit people to give us any additional
11 comments now that they've seen these additional data.

12 Issue number two: A number of commenters
13 questioned the handling of unauthorized farmworkers.
14 Let me back up a moment. When we had these 1990 data
15 on migrant workers, there was no adjustment made to
16 account for the fact that a very high percentage of
17 migrant workers are not citizens and not eligible to
18 receive our services, that is, are not eligible to
19 receive LSC-funded services.

20 The ETA estimate is that roughly 50 percent of
21 the unauthorized farmworkers are not eligible to
22 receive LSC -- strike that. Fifty percent of the

1 agricultural workers are unauthorized, and therefore,
2 absent an exception, would not be authorized to receive
3 or would not be eligible to receive LSC-funded
4 services.

5 We thought that number was significant, 50
6 percent. We thought that money should not be allocated
7 on the premise that 100 percent of farmworkers are
8 eligible for services when, in fact, roughly half of
9 them, based on reputable government data, are not
10 eligible. And that was reflected in the data we
11 published last year.

12 Comments were made about the fact that while
13 it is true that roughly 50 percent of farmworkers are
14 not authorized, that a material percentage of those
15 workers were in fact eligible for services because they
16 were subject to violence or trafficking. Again, if the
17 percent of farmworkers who were subject to trafficking
18 or sexual or physical violence were small -- I don't
19 know what the dividing line would be -- one might be
20 able to ignore it.

21 Implicit in the data we published last year
22 was the assumption that zero percent of unauthorized

1 workers were subject to violence, subject to sexual
2 violence, subject to physical violence, subject to
3 trafficking. The government data that is available to
4 us shows that the assumption, implicit, that zero
5 percent of unauthorized workers are eligible is wrong.

6 And while there is a paucity of data, which
7 makes it challenging to come up with a precise number,
8 a precise percentage, the data do, I think, pretty
9 readily permit us to make an estimate which is far
10 superior to zero percent.

11 Now, let me make it clear. In making this
12 estimate, we're not making a determination that any
13 particular person is eligible for services. What we're
14 doing is determining how much money should be allocated
15 to the migrant programs based on the eligibility, what
16 number of people we believe are eligible for those
17 services.

18 Anybody who walks into any LSC program has to
19 establish their eligibility based on financial eligible
20 as well as citizenship, and so this has nothing to do
21 with any of those individual determinations.

22 Charles?

1 CHAIRMAN KECKLER: Ron, a quick thought; maybe
2 get back to that in a bit when you're finished. But I
3 was wondering if during the comments or in the process
4 of this -- and maybe we still have an opportunity to
5 get data on this in the further round of
6 comments -- whether the field has talked about legal
7 need.

8 Because you'd think, well, that's sort of the
9 back way to get at what's out there and how much the
10 grant should be. If the agricultural worker programs
11 in a particular state are extremely overworked, the
12 demand on them is tremendous, or in other places the
13 demand is less and that there's not that many cases
14 coming through.

15 Do we have a sense of how well this kind of
16 data matches up with that kind of market demand data
17 from the grantees and the migrant agricultural worker
18 programs?

19 MR. FLAGG: The short answer is, I don't know.

20 But I will say that both the allocation of the field
21 grants and the allocation and distribution of the
22 migrant grants is premised on a head count. And we

1 could, in allocating our field grants, if we were
2 Congress, I suppose could say exactly what you said
3 rather than do this on the basis of the poverty
4 population. We could do a more sophisticated demand
5 analysis.

6 So our understanding is Congress has
7 explicitly required that the field grant money be
8 allocated on a per-capita poverty count basis. And our
9 understanding is that to the extent that any money is
10 moved within the field grant category to the migrant
11 programs, that it should similarly be based on a per
12 capita basis. So that's the basis on which we're
13 proceeding.

14 CHAIRMAN KECKLER: Let me follow up with that
15 a little bit. So I know we operate on that assumption.

16 Are we explicitly required to do migrants per capita,
17 or is that just more of an inference on precedent?

18 MR. FLAGG: Well, the statute, I don't think,
19 says that explicitly. But I think, given the language
20 of the statute with regard to the allocation of federal
21 dollars to grantees through LSC, I would say that it's
22 required.

1 I'll try to get through this more quickly and
2 then we can get to your questions and comments. In any
3 event, we do have data, government data, which show
4 what the occurrence rate is, the annual occurrence
5 rate, of sexual violence, physical violence, and other
6 crimes which would qualify people for LSC
7 representation.

8 And we have both data and many other studies
9 which are not data-driven which suggest that the
10 percentage of farmworkers who are subject to violence,
11 sexual abuse, trafficking, is at least as high as that
12 of the general population. And based on the available
13 data, we are able to make estimates of the percentages,
14 which we believe are much more accurate than the zero
15 percent estimates that were assumed last year.

16 Those estimates are 26.2 percent of
17 unauthorized female farmworkers living in poverty
18 would, on average, qualify for LSC-funded services, and
19 16.3 percent of unauthorized male farmworkers would be
20 eligible. And the way in which those numbers are
21 developed are covered in detail at a memo -- it's
22 actually a 20-page memo -- which follows the notice.

1 And it's in your board book at pages P through II. And
2 so we're seeking public comment on that methodology.

3 And then the last issue as to which we're
4 proposing to you to approve seeking public comment is
5 the ETA data for some aspects of what they studied.
6 Some aspects of counting this agricultural population
7 is regionalized, and so there are clusters of states in
8 various regions.

9 And we did receive comments saying they
10 aggregated the states erroneously in the sense that
11 there are some states that would have been better
12 groups with other states in terms of commodities or
13 farmworker geographic proximity.

14 We did two things. First we asked ETA whether
15 they could re-aggregate the data differently, and we
16 received back the comment they could not.

17 The second thing we did, because some of the
18 comments suggested that there might be data other than
19 the ETA data that were state-specific that would, in an
20 individual state, provide a more accurate count of
21 agricultural workers than we have from ETA, we are open
22 to looking at those data if they exist. And again,

1 we're going to rely on ETA to help us analyze, if we
2 get any of those data.

3 But the third area in which we would seek
4 information from the public would be to provide us any
5 specific estimate of population workers in an
6 individual state that people believe were more accurate
7 than the ETA data we have.

8 We want to make it clear in this notice we're
9 not asking people to give us a general description of
10 where somebody might find these data or who might do
11 something in the future. If the data exist, we'd ask
12 them to provide the data.

13 We would publish the data for public comment.

14 And these would be data that would only be applicable
15 in a particular state, presumably. And we would get
16 comment on those as to whether they're better or worse
17 than the ETA data or more reliable than the ETA data,
18 and then move forward as appropriate.

19 So those are the three areas on which we're
20 seeking further public comment, again based on the full
21 array of data available; and second, on the estimate of
22 non-authorized farmworkers who are subject to sexual or

1 physical violence or trafficking; and third, provision
2 of new data that we and ETA have not previously had an
3 opportunity to review.

4 That's more than a mouthful. I'm available
5 for questions/comments.

6 CHAIRMAN KECKLER: Are there questions from
7 the committee and the board? Vic?

8 MR. MADDOX: Ron, can you give me the Cliff
9 Notes version of what kind of authorities we're talking
10 about for the 26.2 and 16.3? Are we talking about
11 people who are here under the Violence Against Women
12 Act, for instance, or similar type things?

13 MR. FLAGG: Yes. Yes. All of the authority
14 would be in 1626.4, which identify very specific
15 circumstances in which unauthorized people, whether
16 they're farmworkers or otherwise, are eligible for our
17 service. So Congress has affirmatively said, we want
18 LSC grantees to be able to represent people, whether
19 they're, again, farmworkers or not, who are subject to
20 violence or sexual violence or trafficking. So none of
21 this has been created for this purpose.

22 MR. MADDOX: Right. That's good. I just

1 wanted to make sure I was on the same wavelength.

2 And so none of these people are here under any
3 sort of agricultural visa or any other kind of visa?

4 MR. FLAGG: Well, and I'll defer to Bristow,
5 if they are here on an agricultural visa, then they
6 would in many instances be eligible for our services
7 even without these exceptions.

8 MR. MADDOX: Right. Without regard to the
9 violence or trafficking and the like.

10 MR. FLAGG: Right. Correct.

11 MR. MADDOX: Where in the online version of
12 the book can I find that methodological data you
13 referred to? Does anybody know where we come up with
14 those percentages and the way the methodology was --

15 MR. FLAGG: Yes. The first page of this whole
16 set is page 51.

17 MR. MADDOX: No. In the online.

18 MR. FLAGG: Yes. I believe it's paginated the
19 same way online.

20 MR. FREEDMAN: This is Mark. For finding it
21 online, Vic, if you're looking at the entire board
22 book, it's on page 72 of 588. Or if you go to the

1 website that's dedicated to this, which is on LSC's
2 website -- there's an agricultural data website which I
3 can send you a direct link to -- each document here,
4 including that memo, are separately laid out as
5 individual documents that are easier to navigate.

6 MR. MADDOX: So Mark, I'm looking at the
7 management report that's on the website. Is that going
8 to be at page 72 of that report?

9 MR. FREEDMAN: No. I'm pulling it up right in
10 front of me so I can give you the right things. If
11 you're looking at management's report, you want the
12 document that's labeled, "Estimate of the Population of
13 Agricultural Workers."

14 MR. MADDOX: Sorry, I couldn't hear you, Mark.
15 There's too much cross-talk going on.

16 MR. FREEDMAN: You want the document formatted
17 as a memo and labeled, "Estimate of the Population of
18 Agricultural Workers." And if you're looking at --

19 MR. MADDOX: All right. Mark, I'll talk to
20 you afterwards.

21 MR. FREEDMAN: We will.

22 MR. LEVI: My board book did not have the

1 insert that you're talking about.

2 MR. FLAGG: Yes. We --

3 MR. LEVI: Was it inserted in the --

4 MR. FLAGG: We've given you separate inserts
5 for that.

6 MR. LEVI: I know. But was it on the book
7 that was --

8 MR. FLAGG: Yes. It's on the electronic board
9 book. It following page 51, as I said, at letter P
10 through II.

11 MR. HARDIN: Vic, I could show you where it
12 is.

13 MR. MADDOX: That would be good. I'll just
14 talk to you afterwards.

15 MR. HARDIN: Yes.

16 MR. MADDOX: Thank you. Thank you, Ron.

17 CHAIRMAN KECKLER: Father Pius -- well, let me
18 follow up one point about that, Vic, and then I'll pass
19 it over to you.

20 Just as a thought, one interesting point about
21 1626.4 is that there's an (a) and a (b), and that in
22 terms of calculations, there's the -- I don't know

1 whether it's relevant; I was trying to think about this
2 when I was reading the methodology -- that for one
3 category of exceptions, we can provide related
4 services, and to the nature of their eligibility
5 trigger. And then for the trafficking at 1626.4(b),
6 it's not limited. It's including the trafficking
7 issues, but not limited to them.

8 And I wonder if that's the limited scope. The
9 limited scope of activities is relevant for counting in
10 any way, or that it's eligible for one circumstance but
11 not generally for their legal needs.

12 MR. FLAGG: I don't believe we distinguish
13 between those two. Again, this is clearly an area
14 where the perfect is the enemy of the good. Built into
15 the data last year was an assumption that nobody who is
16 unauthorized is eligible for services. We know to a
17 moral certainty that is wrong, and it's wrong by a wide
18 margin.

19 So we're coming up with numbers that are
20 better than zero percent. We base those numbers with
21 regard to violence, both physical violence, sexual
22 violence, national CDC, Centers for Disease Control,

1 data about violence against women, and made the
2 assumption, which is fully supported both by data and
3 other studies, that the incidence of physical and
4 sexual violence against female farmworkers, poor female
5 farmworkers, is at least as high if not higher than it
6 is among women in the general population.

7 With regard to trafficking, which was the
8 category of crimes that we used to count eligible men,
9 we had a government-funded study which showed what the
10 incidence was of trafficking among unauthorized male
11 farmworkers.

12 Again, we had other data which were
13 not -- these data were statistically significant. We
14 had other studies which had other data which were not
15 statistically significant but which suggested that the
16 numbers we had were at least -- that the actual number
17 would be at least as high as the number we are using,
18 if not higher.

19 All of these data collectively lead us to
20 believe strongly that the numbers we have are much more
21 accurate than zero percent. Can I say with confidence
22 that they are the precise right answer? No. We don't

1 have data that permit us. But that's true of the
2 census data, too.

3 So we're not able to make those sort of fine
4 distinctions. And the effort here is to come up with a
5 better approach to allocating these dollars than the
6 assumption we had embedded in the data last year or the
7 estimates last year, which was that nobody was eligible
8 within that population.

9 CHAIRMAN KECKLER: No. I think this is a
10 sophisticated approach. This is why I raised the issue
11 of the market demand earlier, is that in this area,
12 where you are gathering new and compiling new data, new
13 sets of information, not just relying on this, but
14 there's a consilience of induction that one can try to
15 do to find out, and specifically, in a sense, are the
16 people in the field getting these kinds of cases? Are
17 they getting a lot of these cases?

18 Because if they are, then it really tells us,
19 yes, get these people. In certain circumstances, in
20 the methodology, you talk about the CDC's definition of
21 course of control. Well, there's a lot of things
22 described in there, absolutely reprehensible behavior,

1 that's done to people there, but it doesn't match
2 necessarily the statutory definitions, where it's a
3 loose fit. And so some sort of cross-check from field
4 community might be useful in those kinds of
5 circumstances.

6 MR. FLAGG: Well, we would expect to
7 get -- well, let me say two things. One, I believe,
8 and I'd invite Bristow to chime in, that in fact our
9 agricultural worker programs do have these sorts of
10 cases. They do have physical violence, sexual
11 violence, trafficking, course of control, cases that
12 are based on those sorts of offenses.

13 Second, we would certainly welcome, in
14 response to this notice of public comment, comments
15 from the field as to whether or not in their experience
16 they're actually servicing people in these categories.

17 And I think you've accurately and fairly characterized
18 the congruence but not perfect match between the data
19 and the categories we have in our statute.

20 CHAIRMAN KECKLER: Gloria?

21 PROFESSOR VALENCIA-WEBER: I appreciate the
22 complexity of what you're trying to do because the

1 official reports for a long time have not been correct.

2 And I think we need to -- as you suggest, if we can
3 get data about specific states, that would be helpful.

4 And I know that the states, including the
5 border states or states like Washington state, may have
6 state government agencies. I know they have
7 nonprofits, not LSC-funded, that keep very close track,
8 as much as possible, on what is the migrant
9 agricultural population moving in their state. And
10 they do bring lawsuits.

11 Just I believe in the last two weeks, the New
12 York Times had an article about the sexual violence and
13 the problems that women agricultural workers face, and
14 in fact, cited from our California Rural Legal
15 Services, and I don't know if it a northern California.

16 But California Rural Legal Services executives were
17 quoted in there on the high incidence.

18 And I know that in my state, which is a border
19 state with heavy seasonal work from agricultural
20 workers, there have been significant lawsuits,
21 including those that we as an LSC-funded entity cannot
22 carry.

1 But for instance, it's now about two years
2 that the New Mexico Supreme Court held under New Mexico
3 law that agricultural workers who are injured while
4 performing the agricultural work, regardless of their
5 authorized or documented status, if injured while
6 performing are entitled to worker comp under the regime
7 of the state. And that was brought forth by the Center
8 for Law and Poverty.

9 And I'd be glad to give you a couple of names
10 of organizations like that that work together and track
11 in more precise terms the agricultural workers that
12 move seasonally in their state.

13 MR. FLAGG: Well, again, we're welcoming data
14 from whatever sources we can get. But we actually need
15 to move forward. We're right now allocating money
16 based on 25-year-old data that is both over-inclusive
17 and under-inclusive by wide margins.

18 And so the intent is to seek and ask for data
19 from whatever sources want to come forward; to review
20 those data promptly; and to allocate the 2017 grants
21 based on these new information. This will not be the
22 end of the process. I know you'll all be disappointed.

1 (Laughter.)

2 MR. FLAGG: We're planning to redo this after
3 three years. And three years may be up before we're
4 done with this proceeding. But I expect in future
5 years we will have better data, but if we wait for
6 perfect data or if we wait for new and improved data,
7 we'll still be relying on the 1990 data, which I don't
8 think is in anybody's best interest.

9 MR. LEVI: Well, in three years we can all
10 watch for the Federal Register notice and dial in.

11 (Laughter.)

12 CHAIRMAN KECKLER: Father Pius?

13 FATHER PIUS: Just a brief and two brief
14 questions. I'm just following up on Charles, which I
15 think Charles' idea is very good. That is way to the
16 market data, not as a way to create the methodology but
17 just kind of test the methodology.

18 And if we're finding that market data is
19 drastically different from our estimates, it tells us
20 one of two things. One, our methodology is poor; but
21 the other thing it might tell us is not that our
22 methodology is poor, but that our grantees aren't doing

1 enough to access these vulnerable populations. And
2 either way, I think this would pose a problem for us.

3 And so I think Charles' idea is a good way of
4 not just testing our methodology, but also making sure
5 that our grantees are actually going after these
6 populations which need the support and making sure that
7 they're aware of the services that we provide. So
8 that's something to think about. You don't have to
9 respond, but just something to think about.

10 Two other questions. One, obviously the
11 illegal alien numbers, the 26.2 and the 16.3 numbers,
12 obviously that in itself is based on estimates that
13 change periodically? We change those from year to
14 year?

15 MR. FLAGG: Yes.

16 FATHER PIUS: Is there a plan then to update
17 those numbers every three years as well?

18 MR. FLAGG: Yes. Oh, those would be -- yes.
19 Absolutely.

20 FATHER PIUS: Okay. I couldn't remember if I
21 had read that.

22 MR. FLAGG: Yes. Yes.

1 FATHER PIUS: And I wanted to make sure that
2 that is part of the updating process.

3 MR. FLAGG: No. In fact, I would hope that
4 two or three years from now, when this exercise is
5 repeated, that we'll have better data, particularly on
6 the trafficking side.

7 FATHER PIUS: And then obviously right now we
8 don't know of any other data, but we're relying heavily
9 on ETA for this. Are we pretty confident that they're
10 going to continue gathering this data for the long term
11 and we can rely that this will be a good source of data
12 for at least a good bit?

13 MR. FLAGG: Yes. They are the government
14 source. This is not just LSC. They are the
15 government-wide source of the count of agricultural
16 workers for all programs that need to count
17 agricultural workers to figure out how to allocate
18 their funds.

19 MR. HARDIN: They also provide the data for
20 CBO for analysis of the impact of pending legislation
21 and legislative proposals. So that's also where there
22 data goes.

1 FATHER PIUS: So we can be pretty confident
2 that it's going to be a good source of data for the
3 long-term? Which is another thing to think about when
4 we're looking at other data sources. Other data
5 sources, we're not going to have as much confidence in
6 their ability to provide this data if they're private
7 sources.

8 MR. MADDOX: Ron, when you're saying
9 government data, are you talking about -- is it the DOL
10 ETA data?

11 MR. FLAGG: Yes. Everything other than this
12 calculating the percentage of people who were subject
13 to violence of trafficking is DOL ETA data.

14 CHAIRMAN KECKLER: Laurie?

15 MS. MIKVA: I really commend you for a very
16 complex, thoughtful, responsive analysis here. So
17 table 7, that's with the new methodology, and that
18 considers the unauthorized?

19 MR. FLAGG: Yes. I'm glad you mentioned it,
20 but go ahead. Ask your question. Then I'll --

21 MS. MIKVA: My other question was, and I have
22 asked this before, but in dollar amounts, like big

1 losers and big gainers, what are we talking about?

2 MR. FLAGG: Well, we don't have the dollar
3 amounts because they're going to be a function, in
4 part, of how many dollars there are to allocate. But
5 you've picked out the right table, table 7, which is
6 the last two pages of this presentation. It's pages WW
7 and XX. And it's immediately before page 52 in your
8 paginated versions.

9 That shows, not in dollars but by population
10 count, what the effect of the new count is. And
11 between last year's proposal and this year's proposal,
12 because we've added a number of people who are subject
13 to violence or trafficking, the number of agricultural
14 workers went up. And you would have thought, oh, the
15 percentages and so forth would have gone up. But not
16 so, and here's why.

17 As I think you all know, we just had a census
18 increase, which was based on a nationwide increase in
19 the poverty population, of 5 million, approximately. I
20 mean 5 percent. Sorry. Which means that if you were
21 in a state where the poverty population increased by 4
22 percent, you have more people in need.

1 But because, relative to the average across
2 the country, your poverty population didn't increase by
3 as much, your slice of the LSC pie is smaller. And
4 conversely, if you increase by more than 5 percent,
5 your slice is bigger.

6 The assumption over the years has been that
7 the agricultural worker population moved in lockstep
8 with that increase in the general poverty population.
9 Frankly, there's no basis for that assumption, but
10 that's, out of necessity, the assumption we've made.

11 We're now proposing to count agricultural
12 workers separately from the census, which we think is a
13 better way to go. But it means when, as has happened
14 now, there's a 5 percent national increase in the
15 general poverty population, unless the agricultural
16 population also goes up at least 5 percent, the
17 percentage of grants going to the migrant farmworker
18 population is going to go down.

19 And that is what happened, and that's why you
20 see, for example, Laurie, at the bottom of table 7 that
21 the percentage change in the national average was down
22 7 percent. Now, again, the national numbers are of

1 interest, but they don't drive dollars. What drive
2 dollars in these calculations are the state dollars.

3 And you can see, in the last two columns of
4 table 7, the states where the new count leads to big
5 percentage changes. So the states, and I mentioned
6 them before, where there are big increases are states
7 like Iowa, Ohio, Wisconsin.

8 The states where there are big decreases would
9 include California, Florida, Georgia, Michigan -- and
10 I'm not purporting to name all of them -- Washington
11 state, Texas. These are all states with large
12 farmworker populations where the new counts will be
13 lower and the dollars going to those programs would be
14 correspondingly lower.

15 Yes?

16 MR. HARDIN: Yes. The money is not there, but
17 roughly, assuming that appropriation stays the same,
18 assuming a level appropriation, the percentage change
19 in the population roughly translates into the change in
20 the grant amount.

21 So if the share of the national total, the
22 degree to which the share of the national total

1 changes, the grant amount, again assuming level
2 funding, will change at the same amount, same
3 percentage, roughly.

4 And also, as Ron said, when you look at the
5 changes, you should make sure you focus on the size of
6 the population because there have been many, many large
7 changes, but they'll be very small state populations.

8 MS. MIKVA: I guess, backing up, so the ETA
9 data does not count poverty. It just counts
10 agricultural workers?

11 MR. FLAGG: No. It also has -- they also keep
12 track of poverty. So they give us a count not only of
13 agricultural workers, but agricultural workers who meet
14 our poverty guidelines.

15 MR. HARDIN: And also authorization status as
16 well.

17 MS. MIKVA: Okay. So those are the numbers
18 you're using.

19 CHAIRMAN KECKLER: Vic?

20 MR. MADDOX: Ron or Bristow, just to help me
21 again understand the methodology, in looking at table
22 7, under the Current Population column, is that a

1 reflection of the data that we think goes back to 1990?

2 MR. FLAGG: Yes.

3 MR. MADDOX: Okay. And then the updated ETA
4 estimate is whatever the DOL has done most recently.
5 Right?

6 MR. FLAGG: Right. And the point I was trying
7 to make was the old numbers, the current estimates were
8 just escalated by 5 percent because that's what the
9 poverty population increased under the latest census.
10 And the assumption's always been, well, if the poverty
11 population went up 5 percent, the farmworker poverty
12 population went up 5 percent.

13 MR. MADDOX: I don't mean to second-guess the
14 Department of Labor, but I'm just looking at
15 California, for instance. Is it conceivable that the
16 total population in California actually dropped over
17 the last 20 years by 50,000?

18 MR. FLAGG: No. I mean, I don't know. But
19 remember, the counts are completely different. Let me
20 tell you the ways in which they differ.

21 The current population estimate is based on
22 25-year-old data of migrant workers -- not all

1 farmworkers served by our programs, but just migrant
2 workers. So it's an under-count of the served
3 population in that respect.

4 It's over-inclusive in that there was no
5 deduction for the fact that a large percentage of
6 migrant workers are unauthorized and not eligible for
7 our services. So those current numbers, for better or
8 worse, very old, don't count everybody who's served,
9 and count a large number of people who are not
10 eligible.

11 The updated ETA estimate, new data, counts
12 migrant workers and other farmworkers who are not
13 migrant workers, and backs out of those numbers people
14 who are not authorized, and now adds a small number of
15 people who, while not authorized, would be subject to
16 violence or trafficking.

17 So they're just two completely different
18 approaches. If you say the current population estimate
19 was right and this new one's got to be wrong, no. I
20 would say they're just completely different
21 methodologies.

22 And for all of the reasons we've been talking

1 about, we think the updated ETA estimate is a much
2 better estimate of the people who are eligible and are
3 actually being served by our migrant program grantees.

4 MR. HARDIN: And also, in addition to those
5 several factors that Ron mentioned, the ETA
6 methodologies are far more sound, sophisticated, and
7 reliable than the methodologies used 25 years ago. So
8 the quality of the data are much better as well.

9 CHAIRMAN KECKLER: Thanks. So right now we've
10 been asked to approve a notice only to gather
11 information on the specific three items, specific three
12 areas, that you requested. Following that, what's the
13 current schedule for this project?

14 MR. FLAGG: I can't imagine why you'd want to
15 bring this to a close when this has been so much fun.

16 (Laughter.)

17 MR. FLAGG: The plan is to get comments after
18 45 days; reach closure hopefully on issue one and issue
19 two -- that is, any further comments on the ETA
20 methodology, look at those comments, come to a
21 recommendation for you as to how to resolve any of
22 those committees; issue two, on the methodology that

1 we've been talking about, again get whatever comments
2 anybody has and make a proposal to you as to how to
3 resolve those comments.

4 If we get data, if we get data that could
5 actually be used to estimate the eligible agricultural
6 population of a state, we would, almost as soon as we
7 get them, publish them and say, for states A, B, and C,
8 these data have been provided to us. We're providing
9 them to you. You have X days, depending on how
10 complicated the data are, probably 30, 45 days, to
11 comment on whether we should use these data or the ETA
12 data for the states of A, B, and C.

13 Our intent is to bring all of those issues in
14 a final proposal to this committee and the board in
15 July so that this methodology can be applied for
16 distributing and allocating the 2017 grants.

17 CHAIRMAN KECKLER: Okay. Very good. With
18 that, if there's no further discussion, I'll entertain
19 a motion to -- should we recommend publication of the
20 notice, or just publication?

21 MR. FLAGG: I would treat this the same way as
22 we are rules. So I'm trying to remember. I think the

1 committee can authorize.

2 CHAIRMAN KECKLER: Thank you. It's just a
3 fact-gathering method. So I'll entertain a motion to
4 approve publication of this notice and request for
5 further information.

6 M O T I O N

7 MS. MIKVA: So moved.

8 MR. KORRELL: Second.

9 CHAIRMAN KECKLER: All in favor?

10 (A chorus of ayes.)

11 CHAIRMAN KECKLER: Okay. With that, the
12 notice is approved.

13 MR. FLAGG: Thank you.

14 CHAIRMAN KECKLER: Now, the seventh item we
15 have here is, Jim, your report on the implementation of
16 the strategic plan. I was curious how extensively this
17 will overlap with the president's report to the board.

18 PRESIDENT SANDMAN: It will overlap a little,
19 but this is much more focused on the implementation of
20 the strategic plan than my president's report will be.

21 CHAIRMAN KECKLER: Okay. Well, thank you.

22 I'll leave it then to you.

1 PRESIDENT SANDMAN: I've prepared a 12-page
2 report that describes what we've done over the past
3 year to implement each of the three goals in the
4 various initiatives laid out in the strategic plan. I
5 won't repeat what's in the report. I just offer two
6 summary observations.

7 First, I think the report demonstrates that
8 we're making very good progress in implementing the
9 three goals and each of the initiatives identified in
10 the strategic plan.

11 Second, the nature of the goals and the
12 initiatives is such that we're never going to be able
13 to check a box and say, they're done. Over. Let's
14 move on. By their nature, they go to the very core of
15 what our mission is. They will always be things that
16 we need to be working on and improving. But in their
17 specificity, I think they lay out some short-term
18 objectives for us to achieve, and I think we're doing
19 well in achieving them.

20 CHAIRMAN KECKLER: Questions from
21 the -- Julie?

22 MS. REISKIN: Just a comment. I really hope

1 that you and the staff read this, just felt pride in
2 this.

3 PRESIDENT SANDMAN: Did you find some typos or
4 something?

5 (Laughter.)

6 MS. REISKIN: No. It's amazing. I mean,
7 reading it was really good. And I just hope all of the
8 staff at LSC can read this and feel good about it
9 because it really is a wonderful summary. And
10 sometimes when you're in the middle of the work, it's
11 hard to really see what you're doing and how much.

12 PRESIDENT SANDMAN: Thank you.

13 CHAIRMAN KECKLER: Gloria?

14 PROFESSOR VALENCIA-WEBER: I found the report
15 very impressive just as a statement of what LSC has
16 accomplished. But for those of us working on the
17 strategic plan, it is extremely helpful in lining out
18 how we draft where we are and where we hope to go.

19 CHAIRMAN KECKLER: One of the things that I
20 think it reveals, along with what you're saying,
21 Gloria, is that -- and I encourage everybody to look at
22 it, not just for a record of accomplishment that we can

1 be proud of, but a thought of which of these areas are
2 going to need to continue on to the next strategic plan
3 and be carried over.

4 One of the things we look at is we look
5 at -- particularly in the performance area, we're
6 beginning this rollout of outcomes measurement,
7 beginning in July of this year. We have internally at
8 LSC performance planning and records coming in in the
9 spring and information about the jobs as part of the
10 contract and performance management system.

11 So these are things that we have obviously
12 made very significant progress on. But to some extent
13 we're talking about prospective here, and we are in an
14 infrastructure-building phase, both in that area and I
15 think in some other areas, too.

16 A lot of the strategic plan and the strategic
17 plan implementation represents the organization's
18 investment in infrastructure of various kinds, broadly
19 conceived. And the extent to which we need to continue
20 that, obviously, to some extent versus targeting
21 particular broad-based moving the needle on particular
22 things is something to consider. Harry?

1 MR. KORRELL: Thank you. Jim, I would just
2 encourage you to share, having sat down and gone
3 through the strategic plan, the various goals and
4 projects identified in there, and gone to the trouble
5 of outlining the successes, if you have thoughts on
6 what was useful from the last strategic plan in terms
7 of guiding the organization, and what was more
8 aspirational but not useful.

9 I encourage you to share that with Father Pius
10 and everybody else who's working on the new strategic
11 plan because I know we thought a lot when we created
12 the strategic plan that you just worked against about
13 whether we were creating a document that was going to
14 be useful for management. It sounds like it was.

15 PRESIDENT SANDMAN: Yes.

16 MR. KORRELL: But if there were things about
17 it that were less useful, I think we'd all like to hear
18 about that because we don't want to create another
19 document. If there were things in it that had
20 problems, we should know that.

21 PRESIDENT SANDMAN: Yes. That's a very good
22 suggestion. I will say, as a general matter, it has

1 been a very useful strategic plan. It's been a very
2 helpful guide to management. It was not overly
3 ambitious. I think the fact that there were only three
4 goals that all of us can recite off the tops of our
5 heads is very useful. And I think the number of
6 initiatives was manageable as well.

7 I think it was concrete. But there were some
8 initiatives that I think were more on point than
9 others, and I'll discuss those with Gloria and with
10 Father Pius.

11 CHAIRMAN KECKLER: So this item is presented
12 as a consider and act. Is there any matter on which we
13 need to act other than to thank you for the fine work
14 that you've done? Which I think the committee can do.

15 I think, if not, then we can turn to any
16 public comment. Good afternoon. Please introduce
17 yourself.

18 MS. MURPHY: Good afternoon. Robin Murphy,
19 NLADA chief counsel. Well, I must say I'm pleased to
20 see that NLADA's written comments were so persuasive
21 that you really didn't need public comment to pass a
22 recommendation for rulemaking.

1 I just wanted to thank the committee for
2 developing the rulemaking protocol, which was very
3 thoughtful, and enabled us to make the recommendation
4 for the rulemaking workshops, which I think will be
5 very productive, particularly for, as Ron and Stephanie
6 have said, very complex and significant revisions to
7 fiscal policies that will have a very large impact on
8 our programs.

9 The one thing I would just ask, as I've
10 indicated in my comments, that we all keep in mind, LSC
11 and the committee, is that every administrative task,
12 policy, procedure, takes time. It takes staff
13 resources and it takes staff time.

14 And so that time translates to time that could
15 be used to deliver actual legal services to the field
16 to needy clients when resources are so scarce. So we
17 need to keep that in mind when we're looking at these
18 policies and procedures. Of course, fiscal
19 accountability is very important, but so is the key
20 mission of legal services.

21 So I'm going to conclude and skip the rest of
22 my comments I had prepared, and just thank you again.

1 And I look forward to a very productive process that's
2 going to move the core mission of LSC forward.

3 CHAIRMAN KECKLER: Thank you very much. And I
4 would just remind members of the public, and NLADA and
5 ABA in particular, that we do also have, as I mentioned
6 at the beginning of the session, our rulemaking agenda
7 coming up in April. And so any thoughts on that of
8 course are welcome, not just from us but from the field
9 and public. Is there any other business to bring
10 before the committee today?

11 (No response.)

12 CHAIRMAN KECKLER: If not, I will consider and
13 act on a motion to adjourn the meeting.

14 M O T I O N

15 MR. KORRELL: So moved.

16 MR. LEVI: Second.

17 CHAIRMAN KECKLER: All in favor?

18 (A chorus of ayes.)

19 CHAIRMAN KECKLER: The motion is carried and
20 the committee stands adjourned. Thank you.

21 (Whereupon, at 2:44 p.m., the committee was
22 adjourned.) * * * * *