

RETURN TO CORPORATION  
SECRETARY ARCHIVES FILE

MEETING OF THE  
COMMITTEE ON OPERATIONS AND REGULATIONS

July 20, 1983  
1:30 P.M. to 4:00 P.M.

HYATT REGENCY PHOENIX  
CIVIC PLAZA  
122 NORTH 2ND STREET  
PHOENIX, ARIZONA

PREPARED FOR:

REPORTED BY:

RONALD J. BARTELT



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MEETING OF THE COMMITTEE ON  
OPERATIONS AND REGULATIONS

The meeting of the Committee on Operations and Regulations of the Legal Services Corporation Board of Directors convened at 1:30 p.m., on July 20, 1983, at 122 North 2nd Street, Phoenix, Arizona, with Committee Chairman, Daniel Rathbun presiding. The following Committee members were present:

Donald E. Santarelli  
Milton M. Masson (*not member of committee*)  
Robert E. McCarthy

Also present were Donald P. Bogard, Corporation President; Dennis Daugherty, Vice President of Operations; LeaAnne Bernstein, Secretary; Gregg Hartley, Director of the Office of Field Services; John Meyer, Deputy General Counsel; and other members of the Corporation staff and members of the general public.

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PROCEEDINGS

Phoenix, Arizona  
July 20, 1983  
1:30 p.m.

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4 THE CHAIRMAN: I call to order the meeting of  
5 the Committee on Operations and Regulations.

6 I am the Chairman of this Committee. My name  
7 is Daniel Rathbun. We have, in attendance, two other  
8 Committee members, Mr. Donald Santarelli and the Board  
9 Chairman, Mr. Bob McCarthy. We have auditing this Com-  
10 mittee meeting, Mr. Milton Masson.

11 I call your attention to our agenda, which we  
12 have pursuant to the Notice of Federal Register. We have  
13 obviously moved the meeting up an hour. I hope it wasn't  
14 an inconvenience to anyone. I appreciate hearing from  
15 those of you who have made it here today.

16 If there is no discussion on the agenda, I  
17 would like to entertain a motion to adopt the agenda.

18 MR. McCARTHY: Aye.

19 MR. SANTARELLI: Second.

20 THE CHAIRMAN: The motion is passed.

21 The next item is the approval of the minutes  
22 from the Operations and Regulations Committee meeting  
23 of May 3, 1983, which was chaired by Frank Donatelli.  
24 I would entertain a motion for the approval of those  
25 minutes.

1 MR. MCCARTHY: I will move that the minutes be  
2 approved.

3 MR. SANTARELLI: Second.

4 THE CHAIRMAN: The motion is made and seconded.

5 All in favor?

6 MR. MCCARTHY: Aye.

7 MR. SANTARELLI: Aye.

8 THE CHAIRMAN: The motion is carried to approve  
9 the minutes of the May 3, 1983 Committee meeting.

10 The next item of business is a report from the  
11 president, Don Bogard.

12 MR. BOGARD: Thank you very much.

13 I have a few things I would like to mention  
14 to the Committee on the events that have taken place in  
15 the last few months.

16 In late June, there was a unionization notice  
17 submitted to me by a representative of the United Auto-  
18 mobile Workers, that the corporation employees and regional  
19 office employees were seeking authorization for an elec-  
20 tion. The hearing on that election is scheduled before  
21 the NLRB on July 26 through July 28 and there will be a  
22 decision made shortly thereafter, I assume.

23 I had the opportunity in early July, along with  
24 Gregg Hartley, of the Field Services and Tim Baker, who  
25 is his staff assistant, to attend a Board meeting of the

1 DNA Board on Saturday, the 9th of July, and visit the  
2 program there at Window Rock and Chinle on the 8th.

3 We found a very good program, we thought, well  
4 run and a lot of dedicated people, a number of people who  
5 spent a considerable amount of time in the program.  
6 People working in conditions that I am sure most of our  
7 people are not aware of and most of the people in the  
8 country aren't aware of. As a matter of fact, situations  
9 where you can stand up and look out through the wall of  
10 the building from the inside and see the outside, situa-  
11 tions where you have staff people living in offices because  
12 they don't have housing facilities. It was a very impres-  
13 sive experience for me. I found a lot of dedicated  
14 people and I think they should be commended for what they  
15 are doing.

16 We also attended a Board meeting on Saturday.  
17 It was an unusual Board meeting, in that, for the first  
18 time in the history, the Chairman of the Navajo Nation  
19 attended the Board meeting. Of course, even though he  
20 has had a past experience with the program, it made a  
21 shift in emphasis to things in the future and may very  
22 well receive assistance from the tribe in areas of  
23 funding for the construction of building or things like  
24 that. So I think it had a very positive impact.

25 We also have had the opportunity in the past

1 week to appear before the Senate on oversight hearings,  
2 oversight hearings in early May before the Senate.

3 At that time, Senator Hatch, has requested a  
4 significant amount of information from us. We sent out  
5 notices to the programs, trying to get feedback from  
6 them on that information that the Senator requested.

7 That was submitted to the Senate and another  
8 day of hearing was set. Former officials of the Corpora-  
9 tion had testified on Tuesday. They were questioned  
10 about various activities that occurred in the period 1980  
11 to 1982.

12 I was there on Friday talking about changes  
13 in the statute that we would recommend. There was some  
14 discussion about some of the events that had come up  
15 on Tuesday. There was a statement at that time, by  
16 Senator Denton, that he was going to request an investiga-  
17 tion of past activities of the Corporation. Mr. Hatch  
18 also said he was concerned about some of the disclosures  
19 on Tuesday.

20 We tried to tell them that we didn't want  
21 them to use those disclosures as an exclusion to do any-  
22 thing to harm the program, that we were convinced that we  
23 needed a strong corporate structure with a lot of con-  
24 trol over the program. We were committed to the extension  
25 of services, the direct delivery of services. We did not

1 feel the Corporation should be involved in other activi-  
2 ties, but we wanted to redirect as much as possible,  
3 the expenditures of for funds directed for services to  
4 the poor.

5 There has since been a press conference, I  
6 understand yesterday, by Mr. Denton and Mr. Hatch,  
7 further stating that they would like to see the Department  
8 of Justice inquire over some of the past activities.  
9 I am not fully aware of what he specifically asked for  
10 at that time, but I am sure that that is available.

11 There has been an agreement, by the Committee,  
12 as I understand it, to work on a bill by the 27th of  
13 this month. I don't know if that is still a hard and  
14 fast date. It was the 20th and it slipped from there.  
15 Perhaps Dennis Daugherty can explain more on that in his  
16 legislative update report.

17 The last thing I have before the Committee was  
18 that on July 18, which was a Monday, at approximately  
19 5:00, we were served with a motion for a Temporary  
20 Restraining Order and a complaint with affidavits and  
21 memorandums on points and authorities regarding an  
22 attempt to get a preliminary injunction and a TRO to  
23 prohibit the implementation of what is scheduled to go  
24 into effect today.

25 A hearing was held on the very next day at

1 10:00 in the morning. The District Court denied the  
2 request for the TRO and indicated that he thought the  
3 preliminary injunction would come on for hearing sometime  
4 in mid August. He indicated he was going to be out of  
5 town on vacation during August and it would be reassigned  
6 to a different judge. He didn't know who it would be,  
7 but he expected a hearing to be scheduled by mid August.  
8 That was handled by our General Counsel's office, and  
9 the regulations are proceeding.

10 That concludes my report.

11 THE CHAIRMAN: Thank you.

12 I will open it up. Are there any questions  
13 of Mr. Bogard?

14 The next item of business, is a report from  
15 the Vice President of Operations, Dennis Daugherty.

16 MR. DAUGHERTY: Thank you, Mr. Chairman.

17 Jim Streeter asked that I give a report in his  
18 absence today, with respect to progress on our appropria-  
19 tions and authorization bills.

20 The appropriations bill has been reported from  
21 the House on the Appropriations Committee. I think we  
22 reported that to you previously, recommending a funding  
23 level of 296 million, subject to the terms of H.R. 2909,  
24 as reported by the House Judiciary Committee. That bill  
25 has not come to the House of Representatives for a vote.



1 experience of legal services to the poor, would continue  
2 the provision with respect to class actions that is in  
3 the continuous regulation, would contain a provision  
4 which required that substantial funds be made available  
5 for legal services, would have provisions with respect  
6 to legislative advocacy considerably different from that  
7 which are now in our regulations, would permit the repre-  
8 sentation of eligible clients directly affected by pro-  
9 visions of particular legislation or in need of relief,  
10 which can best be provided by the Legislature and such  
11 specific interests of client would have to be documented.  
12 It would also require that if, at any time, we had less  
13 than six confirmed members of the Board, that funding of  
14 recipients be in proportion to their share of funding in  
15 FY82 and the previous fiscal year, and it would repeal  
16 the section of law which prohibits the use of non-legal  
17 services corporation funding under the act. The measure  
18 does not contain any provision with regard to recipient  
19 governing Boards. If this bill were to pass in it's  
20 present form at the conclusion of this year, there would  
21 no longer be a requirement that the attorney members of  
22 the Board of Directors be appointed by Bar Association's  
23 representing a majority of attorneys in the area, that it  
24 contains no provisions similar to the current appropria-  
25 tion, with regard to the representation. It does not

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have any provision with respect to limiting the compensation of this Board of Directors or severance pay of Corporation employees or recipient officers, and does not contain the present Neal Smith Provision that requires an equitable distribution of Corporation grants among recipients.

There were some indications at these hearings that there were amendments to offer on this, at such time as it would be taken up, but the Senators were not specific as to what they may be.

As Don mentioned, at the hearing last week, Senator Denton indicated his desire that the general accounting office investigate matters arising on questions that arose in connection with oversight hearings of the Committee. There were two of those that related to lobbying activities by the Corporation. There were questions regarding whether or not there were any political or ideological basis for staff layoffs, rather than merit or tenure, whether or not in connection with retrenchment in 1981, whether or not there was an appropriate corporation encouragement of the building the build-up of fund balances or there being hidden and a question with regard to Corporation encouragement of transfers to alternative corporations for the conduct of activities in the prohibited uses of legal services funds.



1 plan to read through them from beginning to end. What  
 2 I plan to do is cover the significant areas of change  
 3 between this new regulation and the effect of the present  
 4 1606.

5 The first area of change is in the definition  
 6 section, Section 1625.2. The first significant change  
 7 is the definition of denial of refunding, which is sim-  
 8 plified. It will cover only a denial of any funding or  
 9 reduction of ten percent or more in the annualized fund-  
 10 ing level. With reference to a specific numerical  
 11 denial of funding in 1606, \$20,000 is deleted and the  
 12 Section 1606.2 A3, does not appear. That concerns the  
 13 addition of a new condition or restriction on recipient's  
 14 grants not applicable to recipients in the same class.

15 So the denial of refunding would be defined  
 16 as ten percent or more reduction in funding.

17 Additionally, the proposed regulation excludes  
 18 changes in levels of annualized funding apportioned upon  
 19 all participants. This would be excluded from the defini-  
 20 tion of denial of refunding.

21 At present, the only thing that is excluded  
 22 is a uniform reduction based on a reduction of appropria-  
 23 tions. This would exclude something like, for example,  
 24 a re-allocation, where there is a uniform formula that  
 25 the Board decides to apply. There would not be need for

1 hearing in each individual case. The rationale behind  
2 this is that the purpose of the hearing is where, for  
3 one reason or another, a violation by recipient is had  
4 or the Corporation decides, in the case of a generally  
5 allocated funding formula change, there would be nothing  
6 concerning the recipient to give rise to it.

7 The second major area of change is in the  
8 grounds for denial of refunding, which is Section 1625.3.  
9 The first thing there is that another section be added  
10 to it, a new subsection d, which would allow denial of  
11 refunding when the Corporation finds that another organi-  
12 zation, whether a recipient or not, could better serve  
13 eligible clients in the recipient's service area.

14 I would point out that this is still under all  
15 the procedural protections of denial of refunding regu-  
16 lations. It would be a matter of what question would  
17 be heard, not of whether there would be a hearing.  
18 There was to be a hearing with all of the protections.

19 In addition, a failure by recipient to either  
20 abide by the protection of law or regulations or give  
21 affective legal assistance, would be significant.

22 Under subsection c, concerning failure to pro-  
23 vide economical and affective legal assistance of high  
24 quality, such prior warning would still be required.  
25 The logic behind that is essentially in the case of

1 violation of law or regulation, one should know that one  
2 is doing so. The other criterion is very broad and a  
3 warning and a chance to correct is required.

4 The third general area is in the area of pre-  
5 hearing procedures. The informal conference that exists  
6 in 1606 is no longer required. There is nothing prevent-  
7 ing one from being held, if such were appropriate.

8 Procedures for challenges to the hearing offi-  
9 cer have been streamlined from those set out in 1606.  
10 The recipient is no longer permitted to question a hear-  
11 ing officer, with regard to his or her qualifications  
12 at the present hearing conference. If the challenge is  
13 concerning bias, it must be shown that the hearing offi-  
14 cer has made statements or taken statements or actions  
15 indicating personal bias against the recipient. The  
16 procedure is that the president will review a written  
17 submission concerning this and make a prompt decision.

18 The time, in general, and you will see this  
19 across the regulation, has been tightened somewhat. The  
20 hearing should begin, now, 20 days after the issuance  
21 of preliminary determination, rather than not more than  
22 45 days, which was the previous formula. The hearing  
23 officer is urged to issue the recommended decision within  
24 ten days, rather than 20 days, within close of a hearing.  
25 Recipient now has five, rather than ten days after

1 receiving the recommended decision to read the questions  
2 review by the president of the Corporation. Many of  
3 these deadlines have been overrun in the past. The  
4 average length of the hearing tends to be about six  
5 months. It is an attempt to conclude these proceedings  
6 more expeditiously. In fact, the intention stated in  
7 regulation 1606 is to furnish them within 90 days, and  
8 that has been overrun. It is simply an attempt to  
9 conclude the proceeding somewhat more expeditiously.

10 There is no longer any provision for suspension  
11 of any party other than recipient. We decided that that  
12 was not really necessary and a recipient, could, of  
13 course, bring in other people as part of their case,  
14 anyhow. There is no specific requirement, as has been  
15 previously discussed, that the matter be submitted to  
16 the hearing officer on the written record. It is a pos-  
17 sible alternative and it is encouraged, but there is no  
18 specific provision to that affect.

19 These hearings will be as they traditionally  
20 have been. The recipient retains the usual due process  
21 rights to present oral documentary evidence and to examine  
22 and cross-examine witnesses.

23 Section 1625.8, subsection h, there has been  
24 an addition to that, h2, which specifically provides the  
25 validity of rules, regulations, guidelines and

1 instructions duly published under Section 1008e of the  
2 Act, shall not be challenged in a denial of refunding  
3 proceeding. That has happened at some time in the past  
4 and was not specifically authorized in 1606. The same  
5 authority for that has been implied from other sections  
6 of the regulation. The reason for this is that a regula-  
7 tion newly adopted by the Board through the process of  
8 publication of comment, should not reasonably be over-  
9 turned by a hearing examiner appointed by the Corporation,  
10 anyhow, and the proper form, if such regulation guideline  
11 is actually contrary to law, is the court system. That  
12 is the only place it can really be overturned. So that  
13 is not a question that should come up at a hearing.

14 The Burden of Proof Section, Section 1625.9,  
15 has a change in requirements. The Corporation is still  
16 required to provide by a preponderance of the evidence  
17 as to any disputed fact as to the justification for  
18 denial of refunding. Section 1606 required it to show  
19 it has a substantial basis for denial of refunding.

20 Part 1625.9, which is any part of that, con-  
21 tains, as I said, the burden of the Corporation to esta-  
22 blish facts, but shifts the burden to other issues,  
23 requiring recipient to show that the Corporation lacked  
24 a substantial basis for denying refunding.

25 At the end, part 1625.14, changes that rule

1 concerning reimbursement of expenses. The present exist-  
2 ing section, 1606.17, requires reimbursement of expenses  
3 to a recipient. The proposed regulation would limit  
4 such, in which a recipient prevails and the hearing  
5 officer finds the Corporation's position to have been  
6 substantially without merit, which is similar to a number  
7 of other types of provisions for such reimbursement.

8 Now, at this point, I will turn this back  
9 over to the Chairman.

10 THE CHAIRMAN: Thank you, Mr. Meyer.

11 Is there any Board member that has a question  
12 at this time?

13 MR. SANTARELLI: No.

14 THE CHAIRMAN: I would, at this time, welcome  
15 public comment on the proposed denial of refunding regula-  
16 tions.

17 If anyone would like to comment, I would ask  
18 you to please come to the front and identify yourself.  
19 If there are many that want to comment, please keep it  
20 brief.

21 Is there anyone who would like to comment?  
22 We will try to make it as easy as possible on our Court  
23 Reporter here.

24 MR. GUTIERREZ: My name is Gustavo Gutierrez. I  
25 am the Director for the Committee Legal Service.

1                   One point that interested me here is Section  
2                   1625.3d; the president of the Corporation finds that  
3                   another organization, whether recipient or not, could  
4                   better serve eligible clients in the recipient's service  
5                   area. That kind of mystifies me. What does that mean?  
6                   Does that mean that a private bar could do better? What  
7                   does that mean?

8                   THE CHAIRMAN: Do you want to address that, John?

9                   MR. MEYER: In my view of that procedure, it would  
10                  have to be another organization that would be an eligible  
11                  recipient, because the statute only allows us to fund  
12                  organizations that are qualified. That was just a  
13                  general statement that if the president finds that another  
14                  potential recipient would do the job better than the  
15                  current recipient, and it could be any organization that  
16                  could be eligible -- for instance, let's say an organiza-  
17                  tion is already existing and somebody decided to open up  
18                  another agency to serve recipients, that would be like  
19                  competition. Essentially, it would be competition. If  
20                  there was either an application for funds and if the  
21                  Corporation looked and decided that the new organization  
22                  could better serve the recipient, they could transfer  
23                  some or all of the funding to the new organization, but  
24                  only after a hearing.

25                  THE CHAIRMAN: Thank you.

1 MR. VENEY: My name is Bernie Veney. I am with the  
2 National Clients Council. I would like to follow-up on  
3 some questions that preceeded me.

4 It is not clear to me, from the face of your  
5 proposed regulation, what standards you would use in  
6 making the ultimate determination between an existing  
7 organization and an alternative.

8 MR. MEYER: The standard, as I see it, would be  
9 essentially the same ones that are in the act. If the  
10 new organization, upon evidence in the hearing, could  
11 better serve the person, than the existing recipient,  
12 some or all of the funding could be transferred. It  
13 might well be that some organization could do a particular  
14 thing better, but that the current recipient was judged  
15 to be better for other purposes. If there is nothing  
16 in the statute that prohibits the existance of two organi-  
17 zations serving poor people in the same area, fine.

18 MR. VENEY: I understand that, but I am trying to  
19 get an understanding of exactly what will be the standards  
20 that President Bogard would apply for the decision maker  
21 in the ultimate choice between an existing program and  
22 a new alternative.

23 MR. MEYER: I would say it would be the standards  
24 of the statutes. As I see it, it would be very difficult  
25 to say -- you know -- this, this, and this. There are

1 many factors that go into affective legal service.

2 MR. LUMUNBA: What would be the trigger that would  
3 cause the Corporation to start the process?

4 My name is Jawara Lumunba. I am with NLADA.

5 What are the triggers? Is there a guideline  
6 or a provision of law? What would be the trigger? A  
7 significant failure by recipients using resources? The  
8 application of some other entity?

9 MR. MEYER: In this one, I may need to defer to  
10 the president.

11 As I would see it, there would be two possi-  
12 bilities. One would be not having gotten to the level  
13 where you would trigger a hearing under B or C, a reci-  
14 pient was not doing very well and another potential  
15 recipient existed in the area. That might be the trigger.  
16 The other way would be if someone came in and said that  
17 they could do a better job and submitted an application,  
18 then the Corporation staff could compare them. If it  
19 looked as if the new organization really could do a better  
20 job, a hearing would be triggered. That would be my  
21 understanding, subject to possible correction.

22 MR. HARTLEY: That does not mean to say that we are  
23 going to be soliciting applications, but, yes, applica-  
24 tions frequently come in in an area where there tends  
25 to be a problem of desirous service, which could trigger

1 this.

2 MR. VENEY: I want to leave out the last part,  
3 because we obviously have got some problems with triggers.  
4 When I read this, a trigger would be some kind of a  
5 determination by the president. I guess I misinterpreted  
6 that, because my concern was that the president has to  
7 make the ultimate decision, and is the person that ini-  
8 tiates the process, as I read this.

9 I hear you saying, John, something different,  
10 that this is an after the fact thing. I don't quite  
11 understand that, but that is what I hear you saying.  
12 That it is after the fact. After all of the hearings  
13 have been concluded, the president would then make the  
14 decision that is talked about here in d, as opposed to  
15 before the fact. Based on something, the president would  
16 begin the hearing process.

17 Thank you.

18 THE CHAIRMAN: Please identify yourself.

19 MR. LUMUNBA: I have no sense of what standard would  
20 be used to ultimately apply to the course of the appli-  
21 cation. I would hope that even prior to moving this  
22 through to a point where you propose it as a regulation,  
23 that considerable thought go into Bernie's observations  
24 and the gentleman before me, about standards and that you  
25 come forward with a set of standards, if you choose to

1 retain this provision. Quite frankly, I would hope that  
2 you would delete it.

3 Thank you.

4 MR. CROSS: I would like to follow-up. My name is  
5 Clinton Cross and I am with the State Support Center in  
6 Auston, Texas.

7 In regard to this particular provision, I would  
8 like to ask you whether or not, if there was a compet-  
9 ing application for a grant from a legal service corpora-  
10 tion, whether a program that was facing the possible  
11 denial of refunding in the hearing, that they would have  
12 an opportunity to bring into the hearing the competing  
13 organization that would be applying for a grant and have  
14 an opportunity to question them about their ability to  
15 do a better job or not do a better job.

16 MR. MEYER: Absolutely. It would seem to me that  
17 that is integral to their right to a hearing. It is  
18 their right to get the opposition up so that they can  
19 prove that they intend to continue to do a better job.  
20 I think they would absolutely have that opportunity.

21 MR. CROSS: If the other competing organization  
22 applied for a grant, would there be a meeting over whether  
23 or not they would be qualified and would the existing  
24 organization have an opportunity to intervene in that  
25 hearing?

1 MR. MEYER: When we are talking about another organi-  
2 zation being better able, I would expect that where you  
3 decide that the existing recipient is not good enough  
4 and remove them and go through a process of getting a  
5 new one, that you would have the alternative up there,  
6 at least in general terms, and there would be a potential  
7 to do a better job. So the evidence would be taken at  
8 that hearing and the hearing examiner would give a  
9 recommendation to the president. The president would  
10 make a decision based on the evidence. If the new organi-  
11 zation was brought in for some or all of the money,  
12 there would be a grant applied to them. There wouldn't  
13 be the need for another hearing.

14 MR. CROSS: If I were representing an organization  
15 that was facing possible denial of refunding and I knew  
16 that X organization or X committee had made an applica-  
17 tion, I would have an opportunity to bring them in.  
18 Would the presiding officer in that hearing make a deter-  
19 mination that the competing organization was better  
20 qualified or would the president make the decision, and  
21 thereby, give me notice that the competing organization  
22 was receiving funds?

23 MR. MEYER: I would expect the presiding officer,  
24 since he would be the judge, would make a recommendation  
25 to the president that either the new organization appeared

1 better or the old organization appears better, and the  
2 president would make a decision on that basis.

3 THE CHAIRMAN: Dennis, would you like to comment  
4 on this?

5 MR. DAUGHERTY: The initial decision is a decision  
6 in any of many areas, as you know. It is a decision  
7 reached at staff level. The preliminary determination is  
8 a determination made at staff level. That preliminary  
9 determination is tested at the hearing process. The  
10 criterion that the hearing officer is supplied, that  
11 criterion that the president of the Corporation is sup-  
12 plied, is one of these four conditions for denial of  
13 refunding.

14 MR. CROSS: What I am trying to understand -- and  
15 maybe I am confused -- is whether there is notice or  
16 opportunity to repeal the decision to fund a competing  
17 organization. It talks about the president making a  
18 decision for the first time and there doesn't seem to be  
19 much opportunity to correct.

20 MR. DAUGHERTY: We have had a process that has not  
21 been formalized. This process deals with a process in  
22 which the current recipient loses money and is a process,  
23 obviously, where you can dialog the relevance.

24 In a proceeding brought under 1625.3d, not  
25 only would there be a question about the capabilities of

1 the current recipients, whose refunding is potentially  
2 denied, but the competing applicant, whom the Corporation  
3 proposes could better serve the clients and the recipients  
4 services.

5 MR. CROSS: I am not against competition. I think  
6 it is healthy. I have a concern that a problem could  
7 be facing denial of refunding, because on the sidelines,  
8 another program is competing and may have some line of  
9 communication and may have somebody who is in a favored  
10 position, and the program that is facing denial of  
11 funding, would not have an opportunity to bring in any  
12 question or in anyway participate in the ultimate deci-  
13 sion to fund the competing organization. If that is the  
14 case, it would seem to me that that would not be fair.

15 MR. SANTARELLI: Can we answer that definitively,  
16 John, at this point, that that would not happen that  
17 way.

18 MR. MEYER: I think that is why we have what is  
19 a fairly complex procedural structure here. We have a  
20 hearing, in the first place, where somebody has got to  
21 convince the hearing examiner. The hearing examiner would  
22 make a recommendation. Then the president could overrule  
23 him with or without good reasons. That is obviously  
24 possible. In the case he overrules the hearing examiner  
25 without reason, you have the court saying that when the

1 president: overrules the hearing examiner, it may be a  
2 strong posture in court. So I think your procedure is  
3 protected from that standpoint.

4 MR. SANTARELLI: At the risk of belaboring this any  
5 longer we are clearly here for the purpose of formulating  
6 an idea. These comments to the dialog are very benefi-  
7 cial to us, as we ultimately have to pass judgement on  
8 the proper policy. But I think what we are doing is a  
9 parallel style of administrative proceeding, in which  
10 there is notice and opportunity and disclosure. There  
11 isn't going to be any backtrack side door, back door  
12 deals. It is simply not contemplated by this kind of  
13 open procedure.

14 For the purposes of clarify, I would like to  
15 have a further dialog on this for the benefit of every-  
16 one here to understand.

17 To me, this process is similar -- and I address  
18 this to you, John, for reaction, if you will, please --  
19 to an FCC type license renewal program on a project or  
20 legal proceeding, in which there is no right to the  
21 license by the licensee, but there is an informal pre-  
22 sumption that a licensee is doing a good job and should  
23 not be subject to competing competition at renewal time.  
24 Everyone may put something or anything in the record and  
25 they may overwhelm the existing applicant, but ordinarily

1 they do not. Aside from signs of omission, the license  
2 is renewed. This is not a perfect parallel, although  
3 I find this an anomalous statutory presumption, where  
4 there is some kind of presumption of continuation of a  
5 grant. Recognizing this as a policy of this case, having  
6 once recognized that, it doesn't preclude any other con-  
7 siderations. All we are saying here is that it is a  
8 nature of somewhat a parallel system, by which there are  
9 certain presumptions in favor of people doing a good job,  
10 just like the FCC.

11 Does that illuminate this any further, John?

12 MR. MEYER: I think that actually is quite illumin-  
13 ating. The only difference is, of course, every licensee,  
14 as I understand it, does come up for a hearing, even  
15 though it is only a formality. But once the situation  
16 occurs, it would be, indeed, an illuminating parallel.

17 MR. SANTARELLI: The FCC statute says you have got  
18 to be looked at every once in a while. It is not a  
19 unreasonable concept.

20 THE CHAIRMAN: Any further comments?

21 MR. CORDOVA: Leroy Cordova, Project Advisory  
22 Group.

23 Unless I haven't been understanding and I  
24 haven't heard a lot of give and take, I still have not  
25 heard a response as to what appears to be whether or not

1 we are trying to set up some sort of administrative  
2 procedure in the fairness of due process. One of the  
3 things that frequently happens in those kind of proce-  
4 dures is that, in this case, the president of the Corpora-  
5 tion is put into a situation where he or she reviews his  
6 or her own decision. Under Section d, he or she can  
7 initiate proceedings by creating the grounds for the  
8 denial of refunding, that is by funding that organization  
9 that can better serve. Then he or she is in the process  
10 of reviewing their own decision.

11 MR. SANTARELLI: It is the same as in any other  
12 administrative proceeding.

13 MR. MEYER: I am in agreement with that. In fact,  
14 of course, as I think we are kind of all aware, usually  
15 someone doesn't go out and initiate a denial of refunding  
16 proceeding under one of these other sections. The presi-  
17 dent is usually not ignorant of it when it is initiated.  
18 So the Corporation, having made some kind of initial  
19 decision to, at least, have a hearing to see if a reci-  
20 pient should be continued, is initiated.

21 MS. SANTARELLI: Let me interrupt and make this  
22 very simple. This is the standard administrative proceed-  
23 ing in every agency that I know of or have ever heard of,  
24 the FCC, the FTC. They all conduct the initial investiga-  
25 tion of when they presume something wrong or needs to be

1 looked at and then they judge it. That is inherent in  
2 the American legal system of regulation. There could  
3 be no dismay to that. That is how it works. That is  
4 why we have a judicial review system and is parallel  
5 with what we are dealing with here. The agency initiates  
6 and the agency judges, yes, and then the courts review  
7 those who are not satisfied. That is the American way.

8 MR. CORDOVA: There is a difference. Maybe we are  
9 just engaged in some lawyer give and take.

10 Here we have a situation where the president  
11 is involved in making the initial decision and is involved  
12 in reviewing the decision.

13 MR. SANTARELLI: You do that at all levels.

14 MR. CORDOVA: I understand. We are not going to  
15 get anywhere on that.

16 Let me move on to other comments I have. Some  
17 of them are minor and some of them are major.

18 In Section 1625.5, for some reason, there is  
19 no longer the requirement that the recipient be given  
20 the name of the attorney who will represent the Corpora-  
21 tion. I think it is common practice that you know who is  
22 representing the other side. The recipient will be  
23 frequently represented by counsel and that counsel  
24 should know who it is and they should contact the other  
25 side. I think it is a mistake not to allow other

1 organizations to be heard in the hearing process. That  
2 has frequently been the case. One organization comes to  
3 mind, which is the local affiliate of the National  
4 Clients Council, which has been a very important part of  
5 the hearing process. I think to simply open up the  
6 hearing to the public, but not to make it possible for  
7 organizations to testify and to participate in the hear-  
8 ing, is probably a mistake.

9 As to another one -- if this regulation is  
10 published, you will probably hear more about that, that  
11 is the burden of proof provisions. I am speaking of the  
12 shifting of the burden of proof to the recipient, the  
13 proving of the negative or the proving it ain't so kind  
14 of thing, is not common in hearings, as we know them.

15 I guess I should have probably asked this  
16 question to begin with. Why do we need this regulation?  
17 Why does the current regulation have to be changed?  
18 Is there something that the Corporation has that has been  
19 mandated by Congress? What is the compelling reason why  
20 there is a new regulation or revised regulation?

21 MR. MEYER: Okay. This regulation is strictly in  
22 accord with the 1011. It is not a mandate from Congress.  
23 I think there are some reasons. One reason is that this  
24 doesn't hold a lot, but holds something, that the average  
25 recipient takes at least six months and takes at least

1 \$100,000 between the two sides. Another reason is that  
2 there are some situations in which irrationally trigger  
3 the denial of refunding proceeding, particularly if there  
4 are some recipients with well over \$1 million in funding  
5 and a \$20,000 reduction is two percent, that is way out  
6 of line with the ten percent standards.

7 I think there are a number of things that were  
8 a good idea to be done. Regulations are not left un-  
9 looked at and unchanged forever.

10 THE CHAIRMAN: Thank you.

11 Come up, please and identify yourself.

12 MS. IVY: My name is Sylvia Drew Ivy. I am with  
13 the National Health Law Center. I would like to, first,  
14 note that it is very difficult to give you the input that  
15 I am sure you hope to get from this meeting on this  
16 particular proposed regulation, without having in front  
17 of us the language from the last proposed regulation in  
18 this area.

19 I want to ask a question about the deletion  
20 of the language in your proposed 1625.2a. The previous  
21 language, if I may, read to the Board, reads: "Denial  
22 of refunding means a decision that after the expiration  
23 of a grant or contract, a recipient will be provided with  
24 financial assistance subject to a new condition or  
25 restriction that is not generally applicable to all

1 recipients of the same class and that would significantly  
2 reduce the ability of the recipient to maintain the  
3 quality and quantity of it's current legal assistance to  
4 eligible clients."

5 Now, that language, which used to be 1606.2  
6 A3, is proposed to be deleted here. I would like to ask  
7 Mr. Meyers for some examples of the reason which you  
8 anticipate a recipient could have funding renewed with  
9 significant conditions on the funding of that recipient,  
10 which might affect the quantity and quality of his cur-  
11 rent legal assistance to eligible clients, without  
12 constituting a defunding?

13 MR. MEYER: In the first place, we have checked  
14 our files and we do not believe there has ever been a  
15 hearing on this section.

16 Secondly, under the statute, as this was  
17 written, there would be no occasion for it. We might  
18 attached a significant condition to a grant, a significant  
19 condition to a grant to one recipient, and not the  
20 others of the same class, would be in response to some  
21 problem. That would not be something that should come  
22 up, at all, because it isn't as if the Corporation is  
23 trying to do this and the recipients aren't trying to  
24 do this. Both of us are under the statutes and any  
25 special conditions attached for the purpose of correcting

1 a problem, not for the purpose of reducing the quality  
2 and quantity of legal assistance, would be applied. I  
3 don't think that there really are things in that category  
4 and, therefore, it is for the purpose of establishing  
5 a single and simplified standard, denial of refunding  
6 is a ten percent or cut and removing the other parts  
7 of the standards.

8 Let me point out that this is in parallel with  
9 the statutory wording, because the statutory wording is  
10 the same thing that was carried over. It is a denial  
11 of refunding. A 20 percent reduction was refined to  
12 ten percent.

13 MS. IVY: I am not sure I understood that response,  
14 but let me ask you a further question.

15 If the Corporation were to decide that after  
16 ten different functions that we now carry out, the Cor-  
17 poration would only like for us to carry out one or two  
18 of those functions, is it your interpretation, by dele-  
19 ting this provision, that that type of prefunding would  
20 not constitute defunding of the program? For example,  
21 if we do training and you refund as to say, "you may do  
22 training but you cannot do class actions, you may not do  
23 answering requests for individuals," whatever, just as  
24 an example -- in your judgement, this would not consti-  
25 tute defunding of the program; is that correct?

1 MR. MEYER: Under the definition, it clearly  
2 wouldn't.

3 Let me point out, however, that, most likely,  
4 it wouldn't, anyway. Most of the conditions on National  
5 Support would probably be the conditions on the whole  
6 class of recipients. That is not covered here, anyway.

7 MR. VENEY: Bernard Veney, National Clients Council

8 There is an attitude question that I am con-  
9 cerned about. That is the inclusion of groups other  
10 than the recipients and the Corporation.

11 John's statement was that the program could  
12 bring the client community in on it's side. The presump-  
13 tion is that the client community would want to be in  
14 on the program side. There are significant numbers of  
15 instances where the client community wants to be heard  
16 because it feels that it is important that it's vote  
17 be part of the process because it wants changes in the  
18 program. I would hope that you would do two things,  
19 one: Provide public notice. Not only hold it in a place  
20 where the recipient is providing service, but also provide  
21 public notice, so that the public, can, in fact, know  
22 what is going on, and, two: Restore the intervener part  
23 of that to allow the hearing examiner to make some  
24 decisions as to whether or not it would be appropriate to  
25 hear from an organization or individuals other than the

1 recipient program.

2 The last thing, and it is a very small point,  
3 and I almost hate to bring it up, concerns 1625.17,  
4 where you indicate that notice will be given to a project  
5 director and may be given to the chair person of the  
6 Board. I bring that point up because it is important, I  
7 think, that you signal your understanding that the Board  
8 of Directors run the program and not the Executive  
9 Director. It is a small point, but I hope you take it.

10 MR. MEYER: I want to make one point. I think we  
11 could well think about that. It is exactly the same as  
12 1606. There is not a change.

13 MR. VENEY: I didn't say that. I am suggesting  
14 that 1606 may be wrong.

15 MR. MEYER: I am saying it may be well taken.

16 MR. TAUBEMAN: My name is Dan Taubeman. I am with  
17 the Colorado Coalition of Legal Services Programs, in  
18 Denver, Colorado, and I would like to suggest to you  
19 on the Committee, this afternoon that you table the pro-  
20 posed regulations until a later date, until there has  
21 been an opportunity to provide for people from the legal  
22 services community to provide more formal input to you.

23 There are several reasons why I make this  
24 suggestion. First, these regulations, are in many ways,  
25 very similar to the two alternative proposed regulations

1 on denial of refunding, which were published in the  
2 Federal Register in November and upon which no action was  
3 taken by the Board earlier this year.

4 If these regulations are approved by you now  
5 and, then approved by the Board and published in the  
6 Federal Register, I am concerned that many of the same  
7 hundreds of individuals and organizations, which submit-  
8 ted comments last fall concerning these proposed regula-  
9 tions on denial of refunding, will again be forthcoming.

10 Many of the provisions are the same or very  
11 similar. So it is extremely likely that many of the same  
12 objections will be forthcoming.

13 Secondly, I think that the perception of many  
14 people in the legal services community, perception of  
15 people in bar associations, many people in groups that  
16 are advocates for the poor, will be that these regulations  
17 are another effort not to increase the dialog between the  
18 legal services community and the Legal Services Corpora-  
19 tion, but rather just the opposite.

20 I think that the thrust of almost all of the  
21 changes that are proposed, in this regulation, is to  
22 facilitate defunding of a program, to make it easier and  
23 perhaps less costly -- but also easier. I think one of  
24 the things that is vitally important for all of the field  
25 programs approved by high quality field services is that



1 ask for the input from the legal services community,  
2 with regard to some of the points I have made and that  
3 the other people have made this afternoon and that I  
4 am sure other people throughout the country might make  
5 and that after having taken such comments into considera-  
6 tion, that you then, at a later Committee meeting,  
7 come back with another proposal, which I think might  
8 well be viewed more fairly, and is a more reasonable  
9 attempt to provide for a more expeditious hearing.

10 MR. McCARTHY: Your comments are, indeed, valid.  
11 Addressing myself to the procedure, rather than to the  
12 substance of your remark, I believe that is exactly what  
13 we intend to do.

14 The agenda merely requests a discussion as  
15 to whether or not these regulations are to be published  
16 within a 30 day period, in which the public and all  
17 interested parties are requested to please submit their  
18 proposals and comments. That is what we would like to  
19 have you do.

20 MR. TAUBEMAN: I am suggesting that you not take  
21 the step and approve those proposed regulations for pub-  
22 lication, and instead, before you even come up with a  
23 regulation that is published in the Federal Register,  
24 to have a better starting document.

25 The reason I suggest that is because if you

1 publish those regulations as they are, there will be  
2 again, I suggest, hundreds of comments submitted. There  
3 will be many people throughout the country who will  
4 spend a significant amount of time making comments that  
5 are new and in some cases, substantially similar comments  
6 that they previously made about these regulations.

7 I think if people were to focus their efforts  
8 on trying to make this regulation more fair, you could  
9 come up with a proposed regulation that would be more  
10 acceptable to both the Legal Services Corporation Board  
11 of Directors, the Corporation staff and the legal  
12 services community and that publishing such a regulation,  
13 would be more productive in the long run and would not  
14 produce the antagonism which I fear will be the result  
15 of the publication of those proposed regulations.

16 MR. McCARTHY: I appreciate your comments. I am  
17 sure this committee will consider them. However, again,  
18 I say the opportunity to do exactly what you wanted to  
19 do and what we want to do, is provided for in our proce-  
20 dure and I would look forward to, if they are approved  
21 for publication, your comments in writing and anybody  
22 else's, and they will be carefully reviewed and considered.

23 As to the substance of your comments, I think  
24 that Don has answered them to my satisfaction earlier,  
25 as to the protection by the Administrative Review

1 Procedure.

2 MR. TAUBEMAN: If I could respond to that -- I  
3 think that the person who is specifically concerned or  
4 involved in an initial decision, cannot be involved in  
5 the later review. When you are dealing with other  
6 agencies, there is a review by the head of the agency  
7 at some point, but normally the person has not been per-  
8 sonally involved in the initial decision. Section 1625.3  
9 is different from that, because the president of the  
10 Corporation would be directly involved both at the ini-  
11 tial level and at the decision making level on appeal.

12 I submit that that suggestion does not exist  
13 in any other agency.

14 MR. SANTARELLI: That is not accurate, I'm afraid.  
15 Commissions and commissioners are often the approving  
16 agency before a staff investigation or review is under-  
17 taken in any variety of commissions.

18 The approval is obtained from the commission  
19 itself before conducting an investigation of those  
20 various cases. So that there is a preliminary determina-  
21 tion by the commission. It is something like probable  
22 cause, to conduct the investigation if a serious enough  
23 allegation has been made, and review the matter.

24 I want to review one other aspect of this, at  
25 the risk of belaboring it, since you challenged me. I

1 vowed to be a quiet Board member, but I am constrained  
2 to say something of my own view in this case.

3 I really meant what I said earlier about  
4 monopolies and their tendency to become self-sustaining  
5 and complacent and sometimes fat. I have worked for  
6 one, the LEAA, in which we did not have these kind of  
7 presumptions. Nevertheless, they arose, and every time  
8 a grant was renewed or reapplied for, they arose.

9 My experiences in life are all that I can  
10 express myself about. There are two agencies. One is  
11 the LEAA, which had a billion dollar a year budget, 50  
12 percent of which was discretionary. The other one was  
13 running a small law office in Washington. Both were very  
14 enlightening to me.

15 My own view is that that is a good idea, plain  
16 and simple. I like competition. The fund grantees that  
17 I experienced in LEAA, came to feel that they had a  
18 proprietary interest in the public's money and there was  
19 no mechanism to make sure that they ran efficiently and  
20 continued to work in the public service. The same is  
21 true in the private practice of law. Competition keeps  
22 us lean, mean and competent. The threat, real or unreal,  
23 that there might be some competition for any particular  
24 grantee, whether it be a legal services grantee or others,  
25 make them simply more attentive to continuing to justify

1 their existence by performance not by readoric or by  
2 political connections.

3 So, from my own point of view, I look for  
4 mechanisms that will increase the threat of competition  
5 to keep you more efficient.

6 MR. TAUBEMAN: If I might respond to that very  
7 briefly -- I think it is fair to say that we are not  
8 afraid of competition, because I think we all believe  
9 that we are providing the very best, highest quality  
10 service that we can to our clients. I think our concern  
11 is with the proposed procedures that would be in place  
12 for judgement or evaluating the proposed competitiveness.

13 MR. SANTARELLI: Thank you. You have helped us

14 THE CHAIRMAN: Any further comments on denial of  
15 refunding regulations?

16 MR. MCCARTHY: If there are no comments, I would  
17 propose a resolution to publish the proposed regulations.

18 MR. SANTARELLI: May I ask John a question?

19 Would such a resolution preclude any editing  
20 or minor revisions of these regulations, as they are now  
21 drafted, before publication, or do we still have the  
22 authority, this Board, to ask questions, make minor or  
23 major modifications before publishing?

24 MR. MEYER: You could pass a resolution stating  
25 that the substance of these regulations shall be published,

1 allowing for minor technical changes. We have done it  
2 several times. I think that significant or major changes  
3 probably should not be made after we have taken a vote,  
4 but there is no problem with minor ones.

5 MR. SANTARELLI: Would the Chairman agree to amend  
6 the motion, or is that not in order?

7 I can think of some clarification here to  
8 resolve some of the concerns that we have heard from  
9 our constituency and the public, which might be in order.

10 MR. MCCARTHY: I would be happy to amend the motion,  
11 if that is specific enough.

12 MR. SANTARELLI: Yes. I think, if Council will  
13 assure me that minor modifications are in the highest  
14 sense of the fiduciary responsibility and not like the  
15 Congress' view of minor modifications, as we read about  
16 it in the Washington Post these days, I think that is  
17 enough.

18 MR. MEYER: I think that is proper. We have done it  
19 a couple of times in the past.

20 MR. MCCARTHY: I will amend my motion to submit  
21 the proposed regulations for publication, subject to minor  
22 modifications and editing clarification.

23 MR. SANTARELLI: I will second that.

24 THE CHAIRMAN: The motion is made and seconded.

25 All in favor?

1 MR. McCARTHY: Aye.

2 MR. SANTARELLI: Aye.

3 THE CHAIRMAN: The motion passes.

4 At this time, the next order of business would  
5 be the proposed revision of eligibility regulations.

6 MR. MEYER: Could I request somebody to distribute  
7 these?

8 MR. SANTARELLI: For those of you that have some  
9 concern about the publication and revision proceeding,  
10 I, in my private practice, represented a client where  
11 he got the Interior Department to publish the regulation  
12 four times before the final one.

13 THE CHAIRMAN: I would like to call a brief recess  
14 now, for ten minutes, prior to discussion of the proposed  
15 revision of eligibility regulations.

16 (Brief recess taken.)

17 THE CHAIRMAN: I would like to reconvene the meet-  
18 ing of the Committee on Operations and Regulations.

19 The next order of business being the report  
20 from the Deputy General Council, John Meyer, of the  
21 proposed revision of eligibility regulations.

22 MR. MEYER: This is a much shorter regulation. I  
23 believe most of you should have a copy of it and the  
24 suggested modifications in the accord book. I hope that  
25 will make it easier to follow than the other one, which

1 was rather long.

2 The first change is in 1611.3b. It is purely  
3 a technical change. We are putting in affect official  
4 Federal Poverty Income guidelines, as set for Appendix  
5 A herein. So it is absolutely clear on 25 percent. It  
6 has no affect on any actual operations.

7 Section 1611.4. We have a person whose  
8 income exceeds the maximum income level established by  
9 a recipient, and we are adding, "but does not exceed  
10 150 percent of that level." That does set an absolute  
11 ceiling of monetary income beyond which it is not possi-  
12 ble to represent a client. That ceiling, depending on  
13 where a program sets it's income level, can be as high  
14 as 192 percent of the poverty guidelines. The rationale  
15 behind this is that while one might construct an occa-  
16 sional case where people of that income level could be  
17 served, it is important to concentrate our efforts on  
18 people who are poor and, in any case, even where you  
19 might be able to construct a case with a person with  
20 that high income, it is very reasonable to suppose there  
21 would be several people of a lower income whose need  
22 is greater. So it is a focusing mechanism.

23 The second change is in 1611.4c, which is  
24 deleted. These are authorized exceptions to the maximum  
25 income levels. The first is a, where the person's

1 circumstances require that eligibility should be allowed  
2 on the basis of one or more of the factors set forth  
3 in Section 1611.5b1. The second, there will be no change.  
4 The third is if a person would be eligible, but for  
5 receiving benefits from a governmental program.

6 The reason for deleting this is that it seemed  
7 to us that a dollar received from the government, is  
8 just as good as a dollar received from somewhere else,  
9 from pension or from employment or whatever, and that if  
10 you have a certain number of dollars in income, you are  
11 just as able or unable to afford legal services wherever  
12 that income may come from. Since we are not an official  
13 government program, we do not see a reason to continue  
14 to tie into that income idea. So that is the rationale  
15 for that deletion.

16 Section 1611.5b has been restructured. It is  
17 a long list of criteria that can be considered, in addi-  
18 tion to the criteria of income. It is rather confusing.  
19 The confusion really comes from the fact that the statute  
20 provides an income level and a list of criteria. It  
21 is generally interpreted to be a list of criteria on  
22 which you can serve over-income clients, but that condi-  
23 tion is not really correct, and is not our official  
24 interpretation. In fact, one of the criteria is there  
25 is obviously a criterion for clients not over the income

1 level, where the lack of income is voluntary, refuses  
2 to seek employment. Therefore, we decided in this sec-  
3 tion the facts which may be used to justify serving  
4 clients over a maximum income level and denying assis-  
5 tance to those under that level. So there are certain  
6 plus factors and minus factors. Some of the factors  
7 occur in both lists because they may go either way in  
8 different circumstances, such as current income prospects.

9 The other thing that has been changed is  
10 1C. It used to read, "fixed assets and obligations,  
11 including federal and local taxes." Now, it reads,  
12 "fixed debts and obligations, including outstanding  
13 federal and local taxes."

14 There are two changes in there. One is that  
15 the state taxes are included. The other reason is we  
16 are talking about outstanding taxes, rather than all  
17 taxes. The purpose of this is to deal in a situation in  
18 which an individual is facing an emergency that already  
19 has that standing and even if he has a certain amount  
20 of income, it may be possible to afford legal services.

21 There are a number of other changes. Under  
22 1E, we have expenses associated with age or physical  
23 affirmity of resident family members, and under 2D, we  
24 have the existance of substantial liquid or non-liquid  
25 assets. It was in the long list, but it is made more

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clear here.

The next area is 1611.5c, which is the criterion for providing legal assistance to a group, corporation or association, and that has been amended. Essentially, it has been amended to say the criteria, one and three in the original regulation, might be met and criteria two has been eliminated. If an association is primarily composed of four people and cannot obtain funds to hire a private counsel, it may be represented. This narrows the applicability of group representation. There are essentially two reasons for this. It is our desire to concentrate on representing the interests of individual eligible clients. We discussed that before today. There is not enough to go around, anyhow. The other thing, number two, is rather nebulous. You could even have two of those organizations publishing different things that they thought were in the interests of poor people.

The next change is in Section 1611.6c, and that is an addition. At the end of that, we have adopted that the recipient shall provide such information to the Corporation when, and there are four criterion. This has to do with information published by clients to establish eligibility. The four criterion are, one: The Corporation is investigating allegations that question

1 the financial eligibility of a particular previously  
2 identified client, and, two: The information sought by  
3 the Corporation relates solely to the financial eligi-  
4 bility of the particular client and, three: The informa-  
5 tion sought by the Corporation is necessary to confirm  
6 or deny specific allegations relating to that particular  
7 client's financial eligibility, and, four: The specific  
8 information sought by the Corporation is not protected  
9 by the attorney/client privilege.

10 I must emphasize that one, two, three and four  
11 must be met. If anyone is missing information, it cannot  
12 be disclosed to the Corporation. The information provided  
13 to the Corporation by the recipient, shall not be dis-  
14 closed to any person who is not employed by the Corpora-  
15 tion. Prior to providing the information to the Corpora-  
16 tion, the recipient shall notify the client that the reci-  
17 pient is required to provide to the Corporation the  
18 information sought. The purpose of this is, quite clearly  
19 to make it possible in the case of a client, an eligible  
20 client, to make it possible for the Corporation to  
21 investigate and find out whether or not the client is  
22 or is not, indeed eligible, which has been a considerable  
23 difficulty in the past. So this is an extremely narrow  
24 provision and is fairly safeguarded to make it possible  
25 when concerning eligibility, without jeopardizing

1 confidentially of client information. Finally, there  
2 is a new section, Section 1611.7. The old 1611.7 is  
3 retained and you have 1611.7a, which contains a written  
4 retainer agreement. A recipient shall execute a written  
5 retainer agreement, on a form approved by the Corporation  
6 with each client who receives legal services from the  
7 recipient who receives legal services from the recipient.  
8 The retainer agreement shall be executed when represen-  
9 tation commences and shall clearly identify the relation-  
10 ship between the client and the recipient, the matter in  
11 which representation is sought, the nature of the legal  
12 services to be provided and the rights and responsibili-  
13 ties of the client. The recipient shall retain the  
14 executed retainer agreement as part of the client's  
15 file, and shall make the agreement available for review  
16 by the Corporation, in a manner which protects the iden-  
17 tity of the client.

18 Section b simply says that a recipient is  
19 not required to execute a written retainer agreement  
20 when the only service to be provided, is brief advice  
21 and consultation. The purpose of that is to insure  
22 uniform documentation of the attorney/client relationship.  
23 Most programs already do this, but we wanted to make it  
24 universal.

25 At this point, I will be ready to answer

1 questions.

2 THE CHAIRMAN: I would open up the floor to any  
3 discussion or questions from the Committee.

4 At this time, we would welcome any public  
5 comment on the proposed regulations.

6 Please come up front and identify yourself.

7 MR. HARRIS: My name is John Harris. I am the  
8 Director of the Arapaho Legal Services, which is a small  
9 native American program about 100 miles south of here

10 I have a comment on your proposed 1611.7b,  
11 where a recipient is not required to execute a written  
12 retainer agreement when the only service to be provided  
13 is brief advice and consultation. We do a lot of very  
14 brief service in our office. This is something that has  
15 been identified by our Board of Directors, by our clients  
16 by our community as a priority. There are a lot of things  
17 that people simply have difficulty getting done because  
18 they live 60 or 70 or 80 miles from the nearest munici-  
19 pality, because they come from different cultures and  
20 because they speak different languages. They can be as  
21 elementary as discussing with a client the rights and  
22 obligations that accrue to him if he signs or doesn't  
23 sign a paternity affidavit and helping him sign the  
24 thing and notarizing it for him. It is a very brief  
25 service. Very rarely, do most of these services extend

1 in time beyond either the initial interview with the  
2 client or, say, a half an hour, at the most.

3 I think it would be a real burden on an office  
4 like ours to have to provide a retainer agreement to  
5 all of the people who come in for what might be a five  
6 or ten minute service, at the most.

7 MR. SANTARELLI: What about Section d? Doesn't  
8 that answer your question?

9 MR. HARRIS: My attitude is that if the Board is  
10 clear in it's mind that that encompasses the sort of  
11 brief service, in addition to advice, then that satis-  
12 fies me.

13 MR. SANTARELLI: It seems to me that that is a  
14 liberal interpretation. I think it couldn't be better  
15 written out, without becoming suggestive of the luminous  
16 standards.

17 If you have any ideas, we would be happy to  
18 hear them.

19 THE CHAIRMAN: John, would you concur on Mr. San-  
20 tarelli's statement?

21 MR. MEYER: I would concur. I think we intend to  
22 cover exactly that kind of thing. As long as people  
23 don't decide that except for an actual court appearance,  
24 everything else was a brief consultation, I think that  
25 would be fine.

1 MR. SANTARELLI: Obviously, the retainer agreement  
2 is not an exclusive agreement. It is merely a CYA  
3 provision.

4 If you want specific language, we would be  
5 happy to hear about it.

6 MR. HARRIS: Simply adding, perhaps, at the end,  
7 brief advice or consultation or brief service is that  
8 which can be completed at the initial client meeting  
9 or in a half hour after the meeting.

10 MR. SANTARELLI: It is too narrow, rather than  
11 broadening.

12 MR. HARRIS: Shucks.

13 MR. SANTARELLI: I don't make the decisions.

14 MR. HARRIS: Well, if the Board anticipates that  
15 in interpreting this, then we don't have any problem.

16 MR. SANTARELLI: Let the legislative history  
17 reflect the views of the gentleman to be liberally inter-  
18 preted.

19 MR. HARTLEY: Isn't that something we can handle  
20 through the preamble?

21 MR. MEYER: Yes. This is what we thought, to begin  
22 with. Yes, we can handle this in the preamble.

23 THE CHAIRMAN: Come up front and be identified,  
24 please.

25 MR. CAVACOS: My name is Francisca Cavacos. I am a

1 client representative.

2 I have a couple questions to ask and some  
3 examples to address. I would like to have them answered.

4 The first one, I would like to know about is  
5 why the eligibility is being revised. It is my under-  
6 standing that it is not required by law.

7 The second thing that I would like to know  
8 about is what is the philosophy behind this. Is it to  
9 help people or keep people from receiving legal services?  
10 In particular, I have some examples to address on 1611.5.  
11 Two factors shall be considered in denying assistance  
12 to otherwise eligible individuals, shall include --  
13 and, in particular, I have two examples. Under B, the  
14 example that I have is that if a client walks into a  
15 recipient's office and he is getting his house repossessed  
16 and during the eligibility process, he discloses that  
17 he has \$100 saved up because he is going to have a  
18 major transmission job done on his car -- does that mean  
19 that because he has this \$100 saved up, that he can  
20 use that money to pay a private attorney to help him  
21 in the repossession of his house? Is that a correct  
22 interpretation?

23 MR. MEYER: Let me pick that up before we go to  
24 the next one. It looks to me like a completely error-  
25 nous interpretation. It doesn't say anywhere that if

1 a person has any money, they suddenly become ineligible.  
2 It is substantial liquid or unliquid assets in at least  
3 four figures. We are talking about if a person doesn't  
4 have much income, that has \$50,000 sitting in an account  
5 drawing interest, or maybe not, but they could spend  
6 some of it to defend. We are not talking about \$100  
7 some place.

8 MR. CAVACOS: Well, that is vague and is not clear  
9 to me. The second one is on C. Another example is if  
10 a client walks into the office, into a recipient office,  
11 and he is owed \$100 by a labor contractor or \$50, can  
12 limited consequences be interpreted to mean that they  
13 cannot help him, because \$50 isn't much or \$100 isn't  
14 much? Can that be?

15 MR. MEYER: I suppose you could, theoretically.  
16 We wouldn't, and I think that may need some clarifica-  
17 tion through the preamble. That is not what we meant,  
18 at all. We put the word, "limited," in to show that it  
19 wouldn't be something of an extreme nature. I suspect  
20 that any monetary thing would clarify that. I think it  
21 would cover it if somebody had something that was not a  
22 serious problem, wasn't going to do anything, but simply  
23 wanted to sue somebody else. That is more the kind of  
24 thing it would be intended to cover.

25 THE CHAIRMAN: Thank you very much for your comment.

1 MR. CORDOVA: Leroy Cordova. I am with PAG.

2 With regard to the new sections in 1611.6.  
3 This is not the first time that I think the Corporation  
4 has dealt with the question of what information that we,  
5 as direct providers of legal services, get from our  
6 clients, that we shouldn't be free to divulge to the  
7 Corporation. If the Corporation is attempting to carry  
8 out it's own exception, that would allow it to receive  
9 that information which is covered by the attorney/client  
10 privilege.

11 If, in fact, number four means what it says,  
12 that the information is protected by the attorney/client  
13 privilege, the Corporation can't see that information.  
14 Then I don't know what you would accomplish here, because  
15 there are ample ABA ethics that exist that say that  
16 information, including the name and address of the  
17 client, are covered by the attorney/client privilege,  
18 in the absence of a waiver by the client. There are some  
19 other ethics that say what you have to do in the process  
20 of trying to get that kind of a waiver.

21 It seems to me that if number four is true,  
22 it doesn't get you anywhere, if, in fact that information  
23 is covered by the attorney/client privilege, the  
24 Corporation is going to be permitted to see it, anyway.

25 MR. MEYER: Number four is there and is enforceable.

1 It, indeed, means what it says. Even if we didn't  
2 think it meant what it says, we would be told that once  
3 we adopt a regulation, we have to follow it, but it  
4 does mean what it says.

5 Secondly, number one talks about a particular  
6 previously identified client. Once a person is identified  
7 through other sources, then their name or names are  
8 no longer of a confidential nature, by definition. That  
9 is why number one was in there. The intent was to  
10 draw something extremely narrow, which would allow us,  
11 in some instances, to carry out a check on eligibility  
12 when it was challenged. It is true that there are times  
13 when, even though we have good reason for wanting  
14 information, we wouldn't be able to get it because of  
15 number four.

16 MR. CORDOVA: In other words, you are saying that  
17 the fact that someone else has identified a client,  
18 that means that the information about their income is  
19 no longer protected?

20 MR. MEYER: No, but it certainly means that their  
21 name is not protected. It doesn't necessarily mean the  
22 income information is no longer protected.

23 MR. SANTARELLI: I need an elementary lesson in  
24 the attorney/client privilege. There are some instances  
25 in which the Corporation is party to the privilege, or

1 is the arm's length nature of a grant to a third party  
2 to deliver the services preclusive of a privileged  
3 relationship?

4 MR. MEYER: I think our recipients are independent  
5 contractors, for a number of other legal purposes, which  
6 would certainly cover this.

7 Also, the program and the individual attorneys  
8 are the attorneys. We cannot automatically go in and  
9 step into their shoes. This is why we need to try to  
10 draft a very narrow defined regulation, in order to  
11 get as much of this information as can be gotten. If  
12 it is a clear showing that it is the attorney/client  
13 privilege, we will just have to say it will be too bad  
14 for us.

15 MR. CORDOVA: There are ethical opinions that say  
16 the corporation is not in that privileged position.

17 MR. SANTARELLI: I would recognize that when it is  
18 a third party grantee.

19 MR. CORDOVA: The Board of Directors cannot get  
20 that information about our clients based upon ethical  
21 opinions, absent a waiver by the client. I would  
22 suggest that with regard to the last point, that the  
23 Board be provided, that research be done on the ethics  
24 opinions that exist, that you consider those to see if  
25 there is any point to this or not.



1 years or as a determination does not mean that program  
2 is authorized to use net income, as opposed to gross  
3 income, which has been long standing.

4 MR. VENEY: Why don't we say that we are now, in  
5 fact, dealing with gross income?

6 MR. HARTLEY: Because what we are trying to say  
7 is that you can give an exception for outstanding.  
8 If someone owes 3,000 from previous years, that can be  
9 a reason for an exception.

10 MR. VENEY: We are now moving to gross income de-  
11 terminations and not net income determinations.

12 MR. MEYER: Let me make a point here. If you check  
13 1611.2, this is an unchanged section. It means actual  
14 current total cash receipts before taxes. So we have  
15 always been dealing with gross income.

16 What we had is a situation where these defini-  
17 tions, 1611.5, I think were confusing before, because  
18 you had plus factors to go in above the income level and  
19 minus factors to reduce it in the same list with no dif-  
20 ferentiation. What we are doing is differentiating. So,  
21 in that sense, the outstanding has not changed. What is  
22 changing is what you consider as a factor to serve some-  
23 one after you determine their income is too high, is out-  
24 standing federal, state and local taxes.

25 MR. VENEY: The taxes seem to say to me that in

1 making the eligibility determination, here are the things  
2 that you will take into consideration. One of the things  
3 that I think you have indicated is that if there is a  
4 prior determination, that can be used as a factor. I  
5 think everything is clear that that is a disabling fac-  
6 tor, that a person who is found to be unable to afford  
7 legal assistance and who has been determined by a prior  
8 judicial determination to have refused to accept work,  
9 has been found ineligible.

10 Your current income prospects, taking into  
11 account variations as a disqualifying factor. I don't  
12 even understand that.

13 MR. MEYER: I can explain that. It is very simple.  
14 It was listed before. There are current income prospects  
15 that would disable you. Let's suppose that you are sea-  
16 sonably employed as a construction worker and you make  
17 \$15,000 a year, but you make it during the summer and  
18 this is the winter. That would be a current income pros-  
19 spect that might disable you, even though, at the moment,  
20 your income is low. The other way around also exists.  
21 Current income prospects may let you in. You may have  
22 1,500 a month, which would put you way over, but your  
23 employment is so seasonal that your annual income puts  
24 you well within. So that is why that appears. It is  
25 much clearer now than it was before.

1 MR. VENEY: The way I read it, of course, and I  
2 may be wrong, was your current income prospects. Do you  
3 have the chance of becoming employed? If you have a  
4 chance of becoming employed, then we cannot find you  
5 eligible. Before, it was a factor that would be used  
6 in determining eligibility. Now you are putting it in  
7 as a factor for denying assistance. So the current income  
8 prospect as an income factor for denying assistance,  
9 would seem to me to say that if the person has the pos-  
10 sibility of getting a job, that you have to deny assistance.

11 MR. MEYER: Let me clarify. You are right about  
12 the terminology. The reason for denying appears because  
13 we split the list. This was very confusing when thrown  
14 together. We listed what are called "plus factors,"  
15 factors that even though you have more income than the  
16 limit, you can still be served. The other would be deny-  
17 ing, which I call "minus factors," but it shall be all  
18 of the factors considered. Employment prospects are not  
19 good enough.

20 MR. VENEY: Where does it say that anywhere in the  
21 regulations? It says that in determining eligibility,  
22 you would keep throwing in some effort to make people  
23 who are over income eligible, but you would consider the  
24 factors.

25 MR. MEYER: What we did was attempted to make this

1 easy. You look at the person's income. You look at  
2 other factors. All of this is listed in the statute.  
3 We laid out a systematic way of doing it, which is that  
4 some factors tend to be plus factors, and, then minus  
5 factors. It doesn't change the overall set of facts  
6 considered. We are talking about facts considered, not  
7 factors that are a bar. So, in no case, did we say that  
8 because a person might get employed, they are ineligible.

9 MR. SANTARELLI: I detect that there are some sig-  
10 nificant issues here that can be discussed informally  
11 for a better resolution of this proposal, then the con-  
12 duct this dialog here at everyone else's expense.

13 THE CHAIRMAN: With the issues raised by Mr. Veney  
14 and others, I would entertain a motion to submit these  
15 regulations to the staff for re-working, to be brought  
16 before this Committee again at a later date.

17 MR. SANTARELLI: May I modify that to say reconsi-  
18 deration, with further dialog by those who have make  
19 points here today, on an informal basis?

20 THE CHAIRMAN: It is your motion.

21 MR. SANTARELLI: Okay. It is my motion.

22 Is that agreeable?

23 MR. MCCARTHY: I will second that motion.

24 THE CHAIRMAN: The motion is made.

25 All in favor?

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MR. McCARTHY: Aye.

MR. SANTARELLI: Aye.

We would move to the next item of business, which is a report from the office of Field Services, Mr. Gregg Hartley.

MR. HARTLEY: I will make a very brief report.

As evident by today, we are reviewing all of the regulations and program institutions on a regular basis and looking for changes or revisions that need to be made. One of them about to be undertaken, although we have not actually provided any provisions yet, is the funds balance policy. We had, about two months ago, a Committee meeting of a number of people in the Corporation, people from regional offices, Audit Department, General Counsel, et cetera, to begin looking at some of the problems that we have detected in determination of current fund balance policy.

The first, to begin with, is some areas about what is covered and not covered, specifically, the need to include some items and exclude other items and trying to make the fund balance match proposed changes in the audit and accounting guidelines that have been on the Board for some time.

In addition, we are taking a look at it to see if we are covered, in that all the things that should be

1 determined in the standards used for assessing what  
2 should be considered for waiver of the ten percent ceil-  
3 ing, and we will be initiating that review very quickly.  
4 We welcome any input on that. Hopefully, within the next  
5 30 to 60 days, we will have a staff recommendation on  
6 the proposed fund balance instruction.

7 As a report, simply, we are in the process now  
8 with the fund balance instruction from the past year,  
9 and we have reviewed about 236 programs, 204 of which had  
10 some fund balance, a substantial number of those had  
11 fund balances over ten percent. About \$23 million  
12 at the end of 1982, was a carryover. Approximately 11  
13 to 12 million, maybe as high as 14 million was above  
14 the ten percent level. Of that, we intend to recover  
15 somewhere between one million and two million. That  
16 fund, at the direction of the Board, will be reprogramed  
17 in one time grants with a priority towards those pro-  
18 grams that have cases involving ineligible clients,  
19 that they would not be able to represent the 1983 funds.  
20 The RFP on that should be done in the next couple of  
21 weeks.

22 If there are any questions, I would like to  
23 respond to them.

24 THE CHAIRMAN: Any questions for Mr. Hartley.

25 The next order of business would be to ~~recess~~

1 entertain a motion for adjournment.

2 MR. McCARTHY: I will move that this Committee  
3 meeting be adjourned.

4 MR. SANTARELLI: It is the privilege of senior mem-  
5 bers, and I will second that motion.

6 THE CHAIRMAN: The motion is made and seconded.

7 All in favor?

8 MR. McCARTHY: Aye.

9 MR. SANTARELLI: Aye.

10 THE CHAIRMAN: This Committee now stands adjourned.

11 MR. McCARTHY: I would like to express my apprecia-  
12 tion to this audience for it's excellent participation  
13 and it's input, which will be considered, and I do thank  
14 you for the manner in which this has been smoothly run.

15 THE CHAIRMAN: Thank you.

16 (Proceedings concluded at 4:00 p.m.)

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I, RONALD J. BARTELT, do hereby certify that the foregoing pages numbered from 1 to 67, inclusive, constitute a full, true and accurate transcript of all the proceedings had in the above matter, all done to the best of my skill and ability.

DATED this 4th day of August, 1973.

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Court Reporter

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