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LEGAL SERVICES CORPORATION

45 CFR Parts 1600, 1630, and 1631

Definitions; Cost Standards and Procedures; Purchasing and Property Management

AGENCY: Legal Services Corporation

ACTION: Notice of proposed rulemaking.

SUMMARY: The Legal Services Corporation (LSC or Corporation) is issuing this notice of proposed rulemaking to request comment on the Corporation's proposed revisions to its Definitions and Cost Standards and Procedures rules and the creation of a new part from LSC's Property Acquisition and Management Manual (PAMM).

DATE: Comments must be submitted by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

E-mail: lscrulemaking@lsc.gov. Include "Parts 1630/1631 Rulemaking" in the subject line of the message.

Fax: (202) 337-6519.

Mail: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Parts 1630/1631 Rulemaking.

Hand Delivery/Courier: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Parts 1630/1631 Rulemaking.

LSC prefers electronic submissions via email with attachments in Acrobat PDF format.

LSC may not consider written comments sent via any other method or received after the end of the comment period.

FOR FURTHER INFORMATION, CONTACT: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, (202) 295-1563 (phone), (202) 337-6519 (fax), sdavis@lsc.gov.

SUPPLEMENTARY INFORMATION:

I. Regulatory Background of Part 1630 and the PAMM.

The purpose of 45 CFR part 1630 is “to provide uniform standards for allowability of costs and to provide a comprehensive, fair, timely, and flexible process for the resolution of questioned costs.” 45 CFR 1630.1. LSC last revised Part 1630 in 1997, when it published a final rule intended to “bring the Corporation’s cost standards and procedures into conformance with applicable provisions of the Inspector General Act, the Corporation’s appropriations [acts], and relevant Office of Management and Budget (OMB) Circulars.” 62 FR 68219, Dec. 31, 1997. Although the OMB Circulars are not binding on LSC because LSC is not a federal agency, LSC adopted relevant provisions from the OMB Circulars pertaining to non-profit grants, audits, and cost principles into the final rule for part 1630. *Id.* at 68219-20 (citing OMB Circulars A-50, A-110, A-122, and A-133).

LSC published the PAMM in 2001 “to provide recipients with a single complete and consolidated set of policies and procedures related to property acquisition, use and disposal.” 66 FR 47688, Sept. 13, 2001. Prior to the PAMM’s issuance, such policies and procedures were “incomplete, outdated and dispersed among several different LSC documents.” *Id.* The PAMM contains policies and procedures that govern both real and non-expendable personal property, but, with the exception of contract services for capital improvements, the PAMM does not apply to contracts for services. *Id.* at 47695. The

PAMM's policies and procedures were developed with guidance from the Federal Acquisition Regulation at 48 CFR parts 1-52, federal property management regulations, and OMB Circular A-110. Id. at 47688. The PAMM also incorporates several references to provisions of part 1630 pertaining to costs that require LSC's prior approval and the proper allocation of derivative income. Id. at 47696-98 (containing references to 45 CFR 1630.5(b)(2)-(4), 1630.5(c), and 1630.12, respectively).

II. Impetus for this Rulemaking.

Part 1630 and the PAMM have not been revised since 1997 and 2001, respectively. Since then, procurement practices and cost-allocation principles applicable to awards of federal funds have changed significantly. For instance, in 2013, OMB revised and consolidated several Circulars, including the Circulars LSC relied upon to develop part 1630, into a single Uniform Guidance. 78 FR 78589, Dec. 26, 2013; 2 CFR part 200. OMB consolidated and simplified its guidance to "reduce administrative burden for non-Federal entities receiving Federal awards while reducing the risk of waste, fraud and abuse." 78 FR 78590, Dec. 26, 2013.

LSC has determined that it should undertake regulatory action at this time for three reasons. The first reason is to account, where appropriate for LSC, for changes in Federal grants policy. The second reason is to address the difficulties that LSC and its grantees experience in applying ambiguous provisions of Part 1630 and the PAMM. Finally, LSC believes rulemaking is appropriate at this time to address the limitations that certain provisions of both documents place on LSC's ability to ensure clarity, efficiency, and accountability in its grant-making and grants oversight practices.

III. Procedural History of this Rulemaking.

In July 2014, the Operations and Regulations Committee (Committee) of LSC's Board of Directors (Board) approved Management's proposed 2014–2015 rulemaking agenda, which included revising Part 1630 and the PAMM as a priority item. On July 7, 2015, Management presented the Committee with a Justification Memorandum recommending publication of an Advance Notice of Proposed Rulemaking (ANPRM) to seek public comment on possible revisions to Part 1630 and the PAMM. Management stated that collecting input from the regulated community through an ANPRM would significantly aid LSC in determining the scope of this rulemaking and in developing a more accurate understanding of the potential costs and benefits that certain revisions may entail. On July 18, 2015, the LSC Board authorized rulemaking and approved the preparation of an ANPRM to revise Part 1630 and the PAMM.

Pursuant to LSC's Rulemaking Protocol, on October 4, 2015, the Committee voted to authorize publication of this ANPRM in the Federal Register for notice and comment. The ANPRM was published on October 9, 2015, with a 45-day comment period closing on December 8, 2015. 80 FR 61142, Oct. 9, 2015. After receiving comments on the ANPRM, LSC sought authorization from the Committee to conduct a series of rulemaking workshops to obtain additional stakeholder input on the questions asked in the ANPRM. The Committee authorized the workshops and publication of a Federal Register notice announcing the topics to be discussed and soliciting participants for the workshops. 81 FR 9410, Feb. 25, 2016.

LSC held workshops on April 20, May 18, and June 15, 2016, at its headquarters in Washington, DC. The three topics discussed were:

Topic 1: Requirements of Other Funders – How do LSC's proposed changes to its cost standards and procedures and

property acquisition and disposition requirements interact with the requirements imposed by recipients' other funders, including the requirements governing intellectual property created using various sources of funding?

Topic 2: LSC's Proposals – In the ANPRM, LSC proposed to regulate services contracts. LSC also proposed to require recipients to seek prior approval of aggregate purchases of personal property, acquisitions of personal and real property purchased or leased using LSC funds, and disposal of real or personal property purchased or leased using LSC funds.

Topic 3: Establishing Standards Based on the Office of Management and Budget's (OMB) Uniform Guidance. LSC proposed to establish minimum standards for recipients' procurement policies based on the OMB Uniform Guidance. LSC also proposed to revise part 1630 for consistency with the Uniform Guidance, where appropriate.

81 FR 9410, 9411, Feb. 25, 2016. The participants in the workshops were:

- Steve Pelletier, Northwest Justice Project
- George Elliott, Legal Aid of Northwest Texas
- Dilip Shah, Legal Aid of Northwest Texas
- Steve Ogilvie, Inland Counties Legal Services
- AnnaMarie Johnson, Nevada Legal Services
- Shamim Huq, Legal Aid Society of Northeastern New York
- Patrick McClintock, Iowa Legal Aid Foundation
- Jonathan Asher, Colorado Legal Services
- Michael Maher, Legal Action of Wisconsin, Inc.
- Frank Bittner, California Rural Legal Assistance, Inc.
- Jose Padilla, California Rural Legal Assistance, Inc.
- Diana White, Legal Aid Foundation of Metropolitan Chicago
- Nikole Nelson, Alaska Legal Services Corporation
- Tracey Janssen, Alaska Legal Services Corporation
- Robin Murphy, National Legal Aid and Defender Association

All materials related to the workshops, including agendas, audio recordings, and transcripts, are available at the rulemaking page for part 1630 on LSC's website, <http://www.lsc.gov/rulemaking-cost-standards-and-property-management-acquisition-and-disposal> .

IV. Discussion of Proposed Changes

A. Part 1600

LSC proposes to add or revise several definitions to Chapter XVI. First, LSC proposes to add a new definition for the terms Corporation funds and LSC funds. LSC currently uses these terms interchangeably throughout Chapter XVI, but does not define either term. LSC does define the term financial assistance as “annualized funding from the Corporation granted under section 1006(a)(1)(A) for the direct delivery of legal assistance to eligible clients.” 45 CFR 1600.1. LSC uses this term in very few places in Chapter XVI.

LSC believes that new definitions are necessary for three reasons. The first is to account for the widespread use of the terms Corporation funds and LSC funds throughout its regulations. The second is to distinguish between appropriated funds granted by LSC, which generally are governed by LSC’s regulations, and private funds granted by LSC, which must be used consistent with 45 CFR part 1610. The third reason is to formalize LSC’s longstanding policy that its regulations apply to all grant awards that LSC makes to carry out the purposes of the Legal Services Corporation Act, not just those grants described in the definition of financial assistance.

In recent years, LSC has begun receiving funds from private sources to make grants for specified purposes, not all of which are for the delivery of legal assistance to eligible clients. For example, LSC receives funding from the Arnold & Porter Foundation to make grants to LSC recipients to support leadership development training. Grants made through the G. Duane Vieth Leadership Development Program may be used to pay for individuals in leadership positions at LSC grantees to receive training, coaching, or

other professional development in nonprofit leadership skills. Because the funding for this program is provided by a private foundation, it is not subject to LSC's regulations, which govern only those grants made with funds that Congress appropriated for the purpose of carrying out activities authorized by the LSC Act.

Since 1996, Congress has placed restrictions on how funds it appropriates to LSC may be used. In its annual directive, Congress does not distinguish between funds appropriated to make grants to provide legal assistance to eligible clients—Basic Field Grants—and funds that LSC may use to make other types of grants authorized by the LSC Act. At the current time, LSC uses the funds that Congress appropriates to carry out the purposes of the LSC Act to make awards in the following programs: 1) Basic Field Grants, 2) Technology Initiative Grants, and 3) the Pro Bono Innovation Fund. In addition to these grant programs, LSC uses recovered funds to award emergency relief grants to grantees in areas with government-declared emergencies on an as-needed basis. LSC historically has considered its regulations applicable to all three grant programs and grants made with recovered funds, as well as to any other funds that Congress occasionally appropriates to LSC for the purposes of carrying out the LSC Act. An example of the latter would be the 2013 supplemental appropriation to “carry out the purposes of the Legal Services Corporation Act by providing for necessary expenses related to the consequences of Hurricane Sandy[.]” Pub. L. 113-2, Div. A, Title X, Chap. 2, 127 Stat. 4, Jan. 29, 2013.

Against this background, LSC believes that it is necessary to define the terms Corporation funds and LSC funds, rather than to revise the regulations to replace those terms with the more limited term financial assistance. LSC proposes to define these terms

to mean “any funds appropriated by Congress to carry out the purposes of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996 et seq., as amended.” LSC believes that the proposed definition accurately describes the funds implicated by the use of these terms throughout Chapter XVI.

Second, LSC proposes to define the term non-LSC funds. LSC proposes to define the term in reference to the new definition of Corporation funds or LSC funds. LSC proposes this definition to make clear that the term non-LSC funds has the same meaning throughout LSC’s regulations.

B. Part 1630

Organizational note. LSC proposes to reorganize part 1630 into four subparts.

Subpart A will contain provisions generally applicable to all of part 1630. These provisions include the purpose and definitions. Subpart B will contain the sections governing the allocability and allowability of costs charged to LSC grants. It will also set forth the process that recipients should use to request prior approval for certain classes of costs. Subpart C will contain the sections governing questioned cost proceedings. In Subpart D, LSC will establish the rules governing the closeout of an LSC grant when a recipient stops receiving LSC funds. LSC believes that restructuring part 1630 in this way will improve the organization and coherence of the rule.

Subpart A—General Provisions

§ 1630.1 Purpose. LSC proposes to make no changes to this section.

§ 1630.2 Definitions. LSC proposes several revisions to this section. LSC proposes to remove the definition of the term allowed cost from § 1630.2(a) as that term is not used in part 1630. LSC also proposes to delete the definition of the term final

action and remove references to final action throughout part 1630 because the term does not appear to have legal significance in this part. The remaining definitions will be redesignated as appropriate.

LSC proposes to revise definitions that are currently taken from the Inspector General Act, 5 U.S.C. Appx., as amended, to track the Uniform Guidance issued by the Office of Management and Budget (OMB), 2 CFR part 200. LSC believes that the OMB-defined terms are more appropriate in the context of LSC's cost standards and disallowance procedures, which are more similar to an agency's standards and procedures than to an inspector general's operations.

§ 1630.2(c) Disallowed cost. In addition to renumbering this definition, LSC proposes to revise the definition to substantially mirror the definition of disallowed cost contained in the Uniform Guidance, 2 CFR 200.31.

§ 1630.2(d) Final written decision. LSC proposes to replace the term management decision with the term final written decision. Management decision was adopted from section 5(f)(5) of the Inspector General Act, as the decision of an agency head "concerning its response to such findings and recommendations" made in an audit report issued by the agency's inspector general. For LSC's purposes, the decision described is not a final decision made by LSC management. Rather, the decision that this term refers to is made by an officer of LSC below the President after reviewing the evidentiary record supporting a staff determination that certain costs should be disallowed. In addition to replacing the term, LSC proposes to redefine the term to mean 1) the decision issued by the Vice President for Grants Management after reviewing a recipient's

response to a questioned cost notice, or 2) that the notice of questioned costs will become the final written decision after 30 days if the recipient does not file a response.

§ 1630.2(e) Membership fees or dues. LSC proposes to adopt the definition of this term from part 1627 in substantial part. As noted in the April 20, 2015 NPRM, LSC proposed to relocate this section of part 1627 to part 1630 in order to limit the scope of part 1627 to the oversight of subgrants. 80 FR 21692, 21698, Apr. 20, 2015. LSC proposes to add a nonexclusive description of the types of fees or dues that recipients may use LSC funds to pay. Such fees or dues include those that an attorney must pay to the highest court of a state or a bar organization acting on behalf of the court or in another governmental capacity in order to practice law in the jurisdiction.

§ 1630.2(f) Questioned cost. LSC proposes to revise this definition to make clear that a questioned cost is one that LSC itself is questioning. This definition was adopted from section 5(f)(1) of the Inspector General Act. As currently drafted, the term indicates that the Office of Inspector General, the General Accounting Office (now the Government Accountability Office), and other authorized auditors may also question costs. While it is true that any of those entities may question costs, it is ultimately LSC's decision whether to issue a notice of questioned costs. Additionally, LSC may question costs based on information developed through its own oversight and program quality activities or as a result of information received from the public or whistleblowers. Finally, the text of existing § 1630.5(a) provides that LSC may question costs based on findings issued by the entities listed in the existing definition of questioned costs. For these reasons, LSC proposes to revise the definition of questioned costs.

§ 1630.3 Time. As part of the proposed reorganization of part 1630, LSC proposes to relocate existing § 1630.13 to § 1630.3 without change. This section prescribes the method for computing time periods under part 1630.

§ 1630.4 Burden of proof. LSC proposes no changes to this section.

Subpart B—Cost Standards and Prior Approval

§ 1630.5 Standards governing allowability of costs under LSC grants or contracts. LSC proposes to redesignate existing § 1630.3 as § 1630.5 within Subpart B as part of the restructuring of part 1630. Except as described below, LSC proposes to make only technical edits to this section.

LSC proposes to delete paragraph (a)(8) from this section. The preamble to the 1986 final rule for part 1630 describes paragraph (a)(8) as “a standard federal provision to ensure that [matching funds for federal grants] must be raised from a source other than the federal treasury and taxpayer.” 51 FR 29076, 29077, Aug. 13, 1986. Under existing § 1630.3(a)(8), recipients may use LSC funds to satisfy the matching requirement of a federal grant program only if “the agency whose funds are being matched determines in writing that Corporation funds may be used for federal matching purposes[.]” LSC introduced this language in response to comments expressing concern that because LSC makes grants from appropriated funds, those grants could not be used to match, for example, grants awarded by the Administration on Aging within the U.S. Department of Health and Human Services. Id. LSC’s approach is unique in requiring recipients to obtain a written determination from the agency whose grant the LSC funds are intended to match that the LSC funds may be used to satisfy the match. It is not clear from the regulatory history of the 1986 final rule why LSC believed it was appropriate for a

different agency to find that LSC's funds could be used to match the agency's funds in order for the recipient to use LSC funds in that manner.

The 1986 preamble was correct that federal funds cannot be used to satisfy the matching requirement of another federal grant unless specifically authorized by law. See U.S. Government Accountability Office, "Principles of Federal Appropriations Law," 3rd Ed., Vol. II, at 10-97 (Feb. 2006). But section 1005 of the Legal Services Corporation Act states that, "[e]xcept as otherwise specifically provided in [the Act]," LSC is not "considered a department, agency, or instrumentality, of the Federal Government." 42 U.S.C. 2996d(e)(1). Therefore, LSC funds are not "federal funds" for matching purposes. Several federal agencies, including the Department of the Treasury, the Department of Justice, and the General Accountability Office, have reached the same conclusion and do not consider LSC funds to be "federal funds" subject to federal grant policy. See, e.g., Department of Treasury Memorandum GLS-107648 (Mar. 26, 2011); U.S. Gen. Accounting Office, Legal Services Corporation: Governance and Accountability Practices Need to Be Modernized and Strengthened (2007).

Based on this language, LSC is reversing its prior policy with respect to the use of LSC funds to match grants awarded by federal agencies. LSC believes that recipients may use LSC grant funds to satisfy cost-sharing or matching requirements of federal awards as long as the funds are used consistent with LSC's governing statutes and regulations. LSC is considering other mechanisms for communicating its position on the use of LSC funds to satisfy cost-sharing or cost-matching requirements to federal agency funders.

§ 1630.6 Prior approval. LSC proposes to redesignate existing § 1630.5, which lists costs requiring LSC’s prior approval, as § 1630.6 with substantive changes. LSC proposes no changes to paragraph (a) (Advance understandings.) or (c) (Duration.).

LSC proposes to simplify paragraph (b) and relocate all provisions pertaining to prior approval for purchases and leases of personal property, contracts for services, purchases of real estate, contracts for capital improvements, and use of LSC funds to pay costs after the cessation of an LSC grant. LSC proposes to relocate the provisions governing prior approval of purchases and contracts to proposed part 1631. LSC also proposes to create a new Subpart D in part 1630 that will establish the procedures for closing out an LSC grant, including the use of LSC funds to complete the closeout process. Because LSC does not permit applicants for funding to charge costs incurred prior to the start date of the grant to LSC funds, LSC proposes to eliminate pre-award costs from the list of costs for which recipients must seek prior approval.

Consistent with the proposal to relocate the prior approval provisions, LSC also proposes to eliminate existing § 1630.6—Timetable and basis for granting prior approval.

Finally, LSC proposes to redesignate newly transferred §§ 1630.14 (Membership fees or dues), 1630.15 (Contributions), and 1630.16 (Tax-sheltered annuities, retirement accounts, and penalties) as §§ 1630.7—1630.9, respectively, with no changes.

Subpart C—Questioned Cost Proceedings.

For readability and ease of reference, LSC proposes to split existing § 1630.7 into two discrete sections. Proposed § 1630.10 will govern only LSC’s initial decision to question costs, and proposed § 1630.11 will describe the process by which a recipient may appeal a disallowed cost of \$2,500 or more to the LSC President. Finally, LSC

proposes to redesignate existing §§ 1630.8-1630.12 as §§ 1630.12-1630.16 with only minor technical changes.

§ 1630.10 Review of questioned costs. LSC proposes to redesignate § 1630.7(a)-(d) as § 1630.10(a)-(b) and (e)-(f), respectively. In order to locate all provisions governing questioned costs in one section, LSC proposes to move the second sentence of existing § 1630.4(b) to paragraph (c) of this section. In that paragraph, LSC states that when it disallows a cost solely because the cost is excessive, LSC will disallow only the amount that LSC has determined is excessive.

LSC is proposing to eliminate the five-year lookback period within which LSC may recover questioned costs. The LSC Act does not place any temporal limitation on LSC's ability to recover costs inappropriately charged by a recipient to its LSC grant. LSC adopted the five-year period when it revised part 1630 in 1997. 62 FR 68219, 68226, Dec. 31, 1997. This requirement is located currently at 45 CFR 1630.7(b) and states that LSC must provide a recipient with notice when LSC "determines that there is a basis for disallowing a questioned cost, and if not more than five years have elapsed since the recipient incurred the cost[.]"

Since LSC first promulgated part 1630 in 1986, it has chosen to limit the amount of time for which it may recover questioned costs from a recipient. LSC adopted a six-year period in the original version of § 1630.7(b), which it shortened to five years in 1997. 51 FR 29076, 29083, Aug. 13, 1986 (1986 final rule); 62 FR 68219, 68226, Dec. 31, 1997 (1997 final rule). The preamble to the 1997 final rule contains the most substantive discussion about LSC's intent regarding the limitation. Initially, the Board proposed a three-year limitation period on the recovery of questioned costs. 62 FR 68223.

LSC Management and the Office of Inspector General recommended that the Board adopt a five-year period

on the grounds that a three-year time period might be too short to enable the Corporation to fulfill its statutory obligation to follow up on questioned costs which might arise during the course of a GAO or OIG audit, or during a complaint investigation by Corporation management. Such an audit or investigation might occur at the end of the three-year period, and the time limitation in the proposed rule would prevent the Corporation from following up on a questioned cost finding.

Id. The Board accepted the recommendation and adopted a five-year lookback period.

Based on its oversight experience in the intervening years, LSC has come to the conclusion that limiting its ability to recover misspent costs is not consistent with its duty to responsibly administer appropriated funds. In LSC's experience, some misuses of funds are not discovered within the five-year period, even though LSC conscientiously reviews the reports and other documentation it requires recipients to provide. In some cases, recipients have failed to represent uses of LSC funds accurately, and those misrepresentations have come to LSC's attention only through complaints to LSC itself or via the Office of Inspector General. LSC also proposes to streamline the questioned costs review procedure. In the current version of § 1630.7, a recipient has 30 days from the date it receives a questioned cost notice from LSC to respond with evidence and an argument for why LSC should not disallow the cost. 45 CFR 1630.7(c). If the recipient does not respond within 30 days, LSC management must issue a second decision. LSC believes that this second step is redundant. It places an unnecessary administrative burden on LSC to confirm its own action in the absence of a challenge by the recipient. LSC proposes to replace this step with a new paragraph (d)(2), which states that if the

recipient does not respond within 30 days, the notice of questioned costs automatically converts to LSC's final written decision.

§ 1630.11 Appeals to the President. LSC proposes to move existing § 1630.7(e)-(g) to § 1630.11 with one substantive change. LSC proposes to introduce paragraph (a)(2), which prohibits a recipient from appealing a final written decision to the LSC President when the recipient did not seek review of the initial notice of questioned costs. In LSC's view, a senior manager with direct oversight of the office that issues a notice of questioned costs should have the first opportunity to review the evidence relating to the decision to question costs for two reasons. First, reviews of questioned cost notices may involve consultations with several offices within LSC, as well as several rounds of engagement with the recipient to obtain all of the information necessary to fairly consider the recipient's request for review. Second, an intermediate level of review may provide the recipient with the relief sought, reduce the amount of the costs LSC proposes to disallow, or narrow the issues in dispute. The effort needed to fully evaluate the recipient's defenses and narrow down the amount and issues in dispute is better invested at an earlier, lengthier stage in the process than during review by the President, who is the ultimate decision-maker for the Corporation. The President has only 30 days to make a decision on the recipient's appeal under § 1630.11(c), compared to the 60 days provided for review at the senior management stage in § 1630.10(e).

§ 1630.12 Recovery of disallowed costs and other corrective action. LSC proposes to redesignate existing § 1630.8 to § 1630.12 with only minor technical changes to reflect the removal of final action from the rule.

§ 1630.13 Other remedies; effect on other parts. LSC proposes to redesignate existing § 1630.9 as § 1630.13 with only minor technical edits. LSC proposes to remove the references to denials of refunding under part 1625 as obsolete. In paragraph (b), which describes types of sanctions that are not equivalent to a disallowed cost proceeding, LSC proposes to include limited reductions of funding under part 1606. LSC added limited reductions of funding as an enforcement mechanism in 2013. 78 FR 10085, Feb. 13, 2013.

LSC proposes to redesignate existing §§ 1630.10 (Applicability to subgrants.); 1630.11 (Applicability to non-LSC funds.); and 1630.12 (Applicability to derivative income.) to §§ 1630.13-16 without change.

Subpart D—Closeout Procedures

LSC proposes to create Subpart D to formalize its procedures to close out grants whenever a recipient ceases to receive LSC funding. LSC's closeout procedures are currently located on its website at <http://www.lsc.gov/orderly-conclusion-role-responsibilities-recipient-lsc-funds>. LSC proposes to promulgate the procedures as rules in the interest of formalizing and consolidating its grant requirements. The procedures established in Subpart D reflect LSC's current process for closing out grants.

§ 1630.17 Applicability. In this section, LSC proposes to describe when the procedures of Subpart D apply. Cessation of LSC funding may occur either voluntarily or involuntarily and may take different forms. Changes requiring closeout of the LSC grant include merger or termination with another LSC funding recipient, changes to the recipient's current identity or status as a legal entity, or the recipient's decision to stop

receiving LSC grants. Involuntary termination occurs when LSC decides to stop funding a recipient. Terminations may occur during or at the end of a grant period.

§ 1630.18 Closeout plan; Timing. LSC proposes to require recipients who stop receiving funding to provide LSC with a plan for the orderly closeout of the grant. Recipients who are merging or consolidating with another LSC recipient, changing legal status, or opting out of further LSC grants must provide LSC with notice and the closeout plan no less than 60 days prior to the change ending the grant. If LSC involuntarily terminates a recipient's funding, the recipient must provide LSC with the closeout plan no more than 15 business days after receiving the notice of termination from LSC.

LSC proposes to maintain the required elements of a closeout plan on its website and to provide recipients with a link to the relevant page in the grant award documents. Currently, LSC provides the link in the annual grant assurances that recipients must sign. LSC proposes to continue this practice, which is similar to the approach that LSC has taken in other rules that require compliance with statutes or policies that may be updated without needing to go through the regulatory process. For example, when LSC updated 45 CFR part 1640—Application of Federal Law to LSC Recipients in 2015, it undertook an obligation to post and maintain the list of applicable federal laws on its website. 80 FR 21654, 21655, Apr. 20, 2015. LSC believes this approach is desirable because it allows LSC the flexibility to change the information it needs to ensure that grants are closed out properly without having to engage in rulemaking.

§ 1630.19 Closeout costs. In this section, LSC proposes to formalize its policies for approving the use of LSC funds to complete closeout activities. Recipients must submit a detailed budget and timeline for completing the activities described in the

closeout plan. LSC must approve both the budget and the proposed timeline before closeout activities may begin. In paragraphs (b) and (c) LSC proposes to restate its policy of withholding any unreleased funds until the recipient has satisfactorily completed all closeout activities.

§ 1630.20 Returning funds to LSC. In new § 1630.20, LSC proposes to formalize the procedures for recipients to return to LSC excess fund balances and derivative income received after the end of the LSC grant period. The procedure for returning derivative income described in paragraph (b) applies only to derivative income attributable to work performed by the recipient during the term of and attributable to work funded by the LSC grant.

C. Part 1631

In the ANPRM, LSC asked for comments on whether the PAMM should remain a separate manual or be incorporated into Chapter XVI of the Code of Federal Regulations as an official rule. Only the National Legal Aid and Defender Association (NLADA) responded to this item, recommending against codifying the PAMM as a rule. NLADA stated that making the PAMM into a rule would “deprive LSC of flexibility and impose rigid rules on LSC and the programs in an ever-evolving delivery system where modifications will need to be made.” Instead, NLADA advocated that LSC publish a regulation that provides “a very general description of the overall guidelines with references to a resource that consolidates the LSC Accounting Guide, Property Management Guide and other LSC documents with fiscal, property and accounting policies.”

As indicated in the ANPRM, LSC believes that incorporating the PAMM into Chapter XVI of the Code of Federal Regulations will “promote and preserve the effectiveness and consistency of LSC’s property acquisition, use, and disposal policies and procedures.” 80 FR 61142, 61142, Oct. 9, 2015. The LSC Act requires LSC to publish all rules, regulations, and guidelines for public comment, and to publish all rules, regulations, guidelines, and instructions in the Federal Register for 30 days prior to their effective date, which deprives LSC of flexibility to make changes quickly to even informal grants administration guidelines and instructions. In fact, the PAMM itself was published after a notice and comment process, even though it is not a formal rule. 66 FR 47688, Sept. 13, 2001.

LSC thus proposes to introduce a new procurement and property management rule at 45 CFR part 1631. The new part 1631 will draw substantially from the existing PAMM, but will differ from the PAMM in three significant respects. First, LSC proposes to require that recipients adopt policies for making purchases with LSC funds. Second, LSC proposes to expand the rule to include contracts for services made with LSC funds. Lastly, LSC proposes to restructure the PAMM into five discrete subparts: Subpart A—General Provisions; Subpart B—Procurement Policies and Procedures; Subpart C—Personal Property Management; Subpart D—Real Estate Acquisition and Capital Improvements; and Subpart E—Real Estate Management. LSC proposes this restructuring to improve the coherence and usability of the rule.

Subpart A—General Provisions

§ 1631.1 Purpose. LSC proposes to describe the purpose of part 1631 as twofold:

1) setting standards for policies governing the purchase of property, including real estate,

or contracts for services with LSC funds; and 2) establishing the requirements governing the use and disposition of property purchased with LSC funds.

§ 1631.2 Definitions. LSC proposes to adopt several definitions from the PAMM into part 1631. LSC also proposes to add new definitions.

§ 1631.2(a) Capital improvements. LSC proposes to adopt the definition of this term from the PAMM with technical changes for ease of readability.

§ 1631.2(b) LSC property interest agreement. LSC proposes to adopt the PAMM definition of this term with only technical changes.

§ 1631.2(c) Personal property. LSC proposes to simplify the PAMM definition of this term to mean any property other than real estate. LSC intends the revised definition to include both expendable property (e.g., supplies) and non-expendable property (e.g., equipment, furniture, law books). LSC believes this change is appropriate for several reasons. First, LSC is proposing to require recipients to establish procurement policies that apply to all purchases of property, so that continuing to exclude supplies (expendable property) from the definition no longer makes sense. Second, and similarly, LSC is proposing to require recipients to seek prior approval for all purchases of personal property that exceed a specific dollar threshold. LSC does not believe it is appropriate to distinguish between expendable and non-expendable personal property under this proposal.

§ 1631.2(d) Purchase. LSC proposes to revise this definition for simplicity and to include contracts for services.

§ 1631.2(3) Quote. LSC proposes to adopt the PAMM definition of this term with only minor technical changes.

§ 1631.2(f) Real estate. LSC proposes to revise the PAMM definition of the term real property for clarity. LSC does not intend the change from “land, buildings, and appurtenances, including capital improvements thereto, but not including moveable personal property” in the existing PAMM to limit, narrow, or expand the scope of property captured by the revised definition.

§ 1631.2(g) Services. Because LSC is proposing to expand the scope of the PAMM to include contracts for services, LSC believes it is necessary to define the types of services it intends to regulate. LSC proposes to adopt a definition of services that reflects how the term is used in the Uniform Guidance, particularly 2 CFR 200.431 and 200.459.

LSC proposes to define services as those professional and consultant services provided to a recipient by members of a particular profession or individuals having a specific skill who are not employees of the recipient. Such individuals would include, but are not limited to, management consultants, payroll administrators, custodians, plumbers, and computer maintenance personnel. LSC does not, however, propose to include fringe benefits, such as health insurance, pensions, and unemployment benefits, within the scope of services regulated by part 1631.

During the rulemaking workshops, several commenters identified an issue that LSC had not considered when drafting the NPRM. Those commenters noted that their largest contracts for services were contracts with their employee insurance providers or insurance brokers. They expressed concerns that 1) the process of obtaining bids and negotiating terms with health insurance providers is a time-sensitive process that would be complicated by having to simultaneously engage in a prior approval process with

LSC; 2) their health insurance was provided by the county in which their offices were located and it was not possible for them to negotiate terms with the government agency providing the benefits; 3) there is only one provider in the area, so it is not possible to obtain multiple quotes for insurance; and 4) they use a healthcare administrator to handle employee claims for benefits. See, e.g., Transcript of April 20, 2016 Rulemaking Workshop, at 67-68 (comments of Steve Pelletier), 69 (comments of AnnaMarie Johnson); Transcript of May 18, 2015 Rulemaking Workshop, at 55-56 (comments of Steve Pelletier), 63-64 (comments of Diana White). When LSC proposed to regulate services contracts, it did not consider whether employee benefits were services that should be subject to part 1631. After the commenters raised the concern that employee benefits could be covered by the proposed rule, LSC considered the issue and determined that employee benefits are not the type of services over which LSC intended to increase its oversight. Consequently, LSC proposes to exclude contracts for employee benefits from the definition of services. LSC notes that contracts for employee benefits are subject to the reasonable and necessary standard of part 1630 for costs charged to the LSC grant.

§ 1631.2(h) Source. LSC proposes to adopt the PAMM definition of this term with technical changes to reflect the inclusion of contracts for services within part 1631.

§ 1631.3 Prior approval process. LSC proposes to relocate the provisions governing the timetable and basis for granting prior approval from existing § 1630.6 to new § 1631.3. LSC proposes to require recipients to obtain prior approval for 1) all purchases and leases of personal property, 2) contracts for services, and 3) capital improvements when the cost of any of those transactions exceeds \$25,000 of LSC funds.

LSC also proposes to increase the prior approval threshold. Currently, the prior approval threshold in the PAMM is \$10,000. LSC established this threshold when it revised part 1630 in 1986. 51 FR 29076, 29082, Aug. 13, 1986. In its comments on the ANPRM, Northwest Justice Project (NJP) encouraged LSC to increase this threshold to \$25,000 to account for inflation in the intervening years. LSC agrees that an increase in the threshold is appropriate. Consistent with NJP's recommendation and reasoning, LSC proposes to increase the prior approval threshold to \$25,000.

LSC proposes to expand the prior approval process to include contracts for services and all purchases of personal property, whether the purchase is for a single item or multiple items, exceeding the \$25,000 threshold. Throughout the initial stages of this rulemaking, commenters opposed the potential application of the prior approval requirement to contracts for services. In its response to the ANPRM, NLADA stated that its members "strongly oppose prior approval of service contracts." NLADA observed that recipients need the flexibility to make rapid decisions about how to address, for example, a computer system crash. NLADA also asserted that whatever policy LSC adopted should allow recipients to enter into sole-source contracts for reasons other than exigent circumstances. As examples, NLADA discussed the situations where a recipient purchases hardware or software from a vendor that includes routine maintenance, or the service is a specialty service for which only one vendor is available in the recipient's area. NLADA concluded that "[s]ound fiscal policies and internal controls will promote clarity, efficiency, and accountability while not unduly burdening the recipient."

Workshop panelists discussed the problems with expanding the prior approval requirement to both contracts for services and aggregate purchases of property. Like

NLADA, panelists discussed the need to react quickly in emergency situations, which generally makes prior approval impractical as well as impossible. See, e.g., Transcript of April 20, 2016 Workshop at 72-73 (statement of AnnaMarie Johnson); May 18, 2016 Workshop at 57-58 (statement of Jonathan Asher), 69-71 (statement of Jose Padilla). Panelists also observed that some situations in which they must contract for services, such as labor-management negotiations or mediating employment issues, are sensitive situations in which it is inappropriate for LSC to weigh in on the recipient's choice of contractor. See Transcript of May 18, 2016 Workshop at 57 (statement of Jonathan Asher), 59-63 (statement of Jose Padilla), 67-69 (statement of Jonathan Asher), 69-72 (statement of Jose Padilla).

Panelists opined as well on the issue of prior approval of aggregate purchases. Several panelists expressed concern that the concept of aggregate purchases was ambiguous, with respect to both timing—did LSC mean a purchase of multiple items occurring at one time, or several purchases of the same type of item over a certain period?—and nature—do all items in the purchase have to be the same, or would aggregate purchase include a copier and all of the accessories needed to operate it?—of the purchase. See, e.g., Transcript of April 20, 2016 Workshop at 53-54 (statements of Steve Pelletier and George Elliott), 62-65 (statement of Jonathan Asher), 70-71 (statement of George Elliott), 72-73 (statement of Michael Maher); Transcript of May 18, 2016 Workshop at 13-14 (statement of Jonathan Asher). Panelists discussed and questioned the value of obtaining prior approval for regular purchases of supplies throughout the course of the year, in contrast to obtaining prior approval for major purchases that they have planned for. See Transcript of May 18, 2016 Workshop at 20-22

(statements of Shamim Huq and Steve Pelletier). One panelist calculated the amount of time that would be required of his staff if LSC were to implement a prior approval requirement for all purchases of personal property at the current threshold of \$10,000. He stated that based on his organization's purchasing patterns, his staff would need to put in an additional 105 work hours to comply with such a requirement. See Transcript of April 20, 2016 Workshop at 59 (statement of Shamim Huq).

LSC understands recipients' need to react quickly to prevent or mitigate damage caused by unexpected crises. To address that concern, LSC proposes to allow recipients to purchase personal property or contract for services without first seeking prior approval in limited emergency circumstances. Proposed § 1631.3(d)(1) permits a recipient to use more than \$25,000 in LSC funds to obtain personal property or services when the purchase is necessary to avoid imminent harm to, remediate, or mitigate damage to the recipient's personnel, physical facilities, or systems. Under proposed § 1631.3(d)(2), the recipient would have to provide LSC with the information it normally would submit as a request for prior approval within a reasonable time after the situation requiring the emergency purchase or contract has ended.

Regarding contracts for labor counsel, mediators, or other services needed to address sensitive personnel issues, LSC observes that recipients do not need to disclose in the prior approval request the nature of the problems they are attempting to address. LSC proposes to require only that recipients describe how the services will further their legal service delivery. In these circumstances, a statement that the service is necessary to ensure the efficient functioning of the office may satisfy that requirement. Additionally, LSC notes that at the current time, contracts for services are subject to 45 CFR part 1630.

Part 1630 requires that recipients document that any costs charged to the LSC grant are incurred in the performance of the grant, reasonable and necessary for the performance of the grant, and allocable to the grant. 45 CFR 1630.3(a)(1)-(3). Requiring prior approval for service contracts does nothing more than give LSC the ability to oversee costs recipients intend to use LSC funds to pay prior to the costs being incurred, rather than after. Prior approval may prevent the funds from being misspent, whereas an after-the-fact review of the cost could lead to sanctions, disallowed costs, suspension, or termination, depending on the magnitude of the wrongdoing. All of these after-the-fact proceedings are time consuming for both LSC and the recipient and do not prevent the misuse of funds. LSC believes that for large purchases or contracts, regardless of the nature of the property or service involved, prior approval is a more effective tool for preventing fraud, waste, and abuse than post hoc review.

Finally, with respect to aggregate purchases of property, LSC believes that the proposals to require recipients to adopt procurement policies and to seek prior approval for purchases and contracts using \$25,000 or more of LSC funds will eliminate the ambiguities and burdens identified by commenters. The proposed rule makes clear that recipients must seek prior approval for any single purchase whose cost exceeds \$25,000 in LSC funds, regardless of whether that purchase is of a single item of personal property, several unrelated items of personal property, or a combination of personal property and services. Additionally, the proposed increase of the threshold to \$25,000 will relieve recipients of the burden of seeking prior approval for relatively small purchases of personal property.

LSC specifically requests comment on the number of purchases recipients have made in the preceding five years for which they would have had to seek prior approval under the new threshold, including purchases of services. LSC believes that the proposed \$25,000 threshold is appropriate as it corresponds to inflation over the 30-year period since LSC adopted the current \$10,000 threshold. Recipients, however, are in the best position to provide information regarding the impact that LSC's proposals to both increase the prior approval threshold and require recipients to seek prior approval of all purchases exceeding the proposed threshold are likely to have.

LSC proposes to simplify the procedure described in current § 1630.7 by committing to make a decision or inform the requester of the date by which LSC expects to make a decision within a specific time frame. For purchases or leases of personal property, contracts for services, or capital improvements, LSC will make a decision or give notice of the date by which it expects to make a decision within 30 days of receiving the request. For purchases of real estate, the time frame for decision or notice is 60 days.

Finally, as LSC did in the revisions to part 1627, LSC is eliminating language that suggests recipients may incur costs without receiving prior approval if LSC has not made a decision within the regulatory time frame. LSC does not believe that responsible grants administration practices should permit the expenditure of large amounts of LSC funds without LSC's prior approval. At the same time, LSC commits itself to making a decision or communicating the anticipated decision date to the requester within the time frames specified in § 1631.3(b).

§ 1631.4 Effective date and governing regulations. In this section, LSC proposes to require that the provisions of part 1631 apply to all purchases of real estate, purchases

and leases of personal property, and contracts for services occurring after the effective date of part 1631. LSC also proposes to make Subparts A (General Provisions), C (Personal Property Management), and E (Real Estate Management) applicable to all personal property leased or purchased with LSC funds and real estate leased or owned by recipients on the effective date of part 1631. LSC recognizes that recipients will need time to develop procurement policies and procedures, obtain insurance for real property, and ensure that real estate leased or purchased with LSC funds meets the new maintenance standards. LSC therefore proposes to require that recipients comply no later than 90 days after the effective date of part 1631. LSC specifically seeks comment on whether 90 days is the appropriate transition period to come into compliance.

§ 1631.5 Use of funds. Sections 6 and 7 of the PAMM require recipients and former recipients of LSC funds to repay LSC for its contributions to purchases of personal property or real estate in certain circumstances. Both sections have paragraphs stating that LSC will use funds repaid upon disposition of property purchased in whole or in part with LSC funds to make emergency and special grants. Because the provisions have the exact same language, LSC proposes to consolidate them in § 1631.5 with only minor changes to reflect the consolidation.

§ 1631.6 Recipient policies, procedures, and recordkeeping. LSC proposes to require recipients to adopt written policies and procedures implementing part 1631. LSC also proposes to require that recipients maintain documentation sufficient to demonstrate compliance with this part. The documentation described in this section includes documentation showing that the procedures followed for each lease or purchase of

personal property, purchase of real estate, or contract for services complied with the recipients' policies.

Subpart B—Procurement Policies and Procedures

§ 1631.7 Characteristics of procurements. Concurrent with this NPRM, LSC issued a final rule implementing revisions to 45 CFR part 1627 regarding subgrants. The primary purpose of that rulemaking was to distinguish between awards from recipients to third parties to help recipients carry out the delivery of legal assistance and awards to provide property or services, such as janitorial services, to recipients. In part 1627, LSC adopted the characteristics of subgrants from the Office of Management and Budget's (OMB) Uniform Guidance, 2 CFR 200.330(a), to help recipients determine when their proposed awards of LSC funds to third parties constitute subgrants that must comply with LSC's governing statutes and regulations. LSC now proposes to adopt a parallel list of characteristics of procurement contracts in part 1631.

Like the characteristics of subgrants, the characteristics of procurement contracts originated in OMB's Uniform Guidance, 2 CFR 200.330. The characteristics describe awards that recipients make to obtain goods or services necessary to administer their programs, rather than those that recipients give to other legal aid providers or bar associations to help them achieve the goals of their grant awards. LSC proposes to make only minor revisions to the characteristics to reflect their use in the LSC grant context. As with the characteristics of a subgrant in part 1627, not all of the characteristics of a contract need be present for an award to be considered a contract, and recipients must use judgment in evaluating whether a particular award should be considered a subgrant under part 1627 or a contract under part 1631.

§ 1631.8 Procurement policies and procedures. In the ANPRM, LSC proposed to revise part 1630 and the PAMM “to incorporate minimum standards for recipient procurement policies.” 80 FR 61142, 61146, Oct. 9, 2015. LSC noted that unlike the Uniform Guidance, part 1630 and the PAMM do not require LSC funding recipients to have procurement policies and procedures. LSC sought comment on whether LSC should revise part 1630 and the PAMM to incorporate contracting provisions similar to those contained in the Uniform Guidance or to be consistent with the policies and procedures required by recipients’ other funders. LSC also sought comment about whether the same or different standards should apply to contracts for services.

NLADA recommended that LSC refrain from adopting the contracting standards in the Uniform Guidance. They described the procurement standards in the Uniform Guidance as “one-size-fits-all” and stated that they “would be quite burdensome for grantees and unnecessary for recipients to be accountable for following reasonable and responsible procurement standards.” NLADA described the procurement requirements and guidelines currently in the PAMM and LSC’s Accounting Guide for Recipients as “procedures [that] maintain accountability, while allowing programs necessary flexibility to meet their programs’ needs effectively and efficiently.” NLADA continued to describe the unique needs faced by some of LSC’s statewide and rural recipients:

In many circumstances, it is simply not feasible or practical for programs to obtain competitive bids, let alone use sealed bidding processes referenced in the Uniform Guidance. For example, programs that cover large rural and/or are located in remote areas, have difficulty locating one vendor, let alone three. In these situations, there is no one financial threshold or type of service that would address when a bidding process should be used versus sole source procurement. Sole source procurement is appropriate and necessary for a service where a program needs unique expertise and/or time is of the essence.

With respect to the proposal to regulate contracts for services, NLADA stated that their members recommended that LSC “not go beyond requiring that grantees have policies and procedures covering service contracts in place approved by their board.” They observed that recipients need the flexibility to make rapid decisions about how to address, for example, a computer system crash. They also asserted that whatever policy LSC adopted should allow recipients to enter into sole-source contracts for reasons other than exigent circumstances, such as when the vendor that a recipient purchased software or hardware from offers maintenance coverage or when the service is a specialty service for which only one vendor is available in the area. NLADA concluded that “[s]ound fiscal policies and internal controls will promote clarity, efficiency, and accountability while not unduly burdening the recipient.”

CLS provided similar comments in its response. Like NLADA, CLS opined that recipients must have the ability to enter into contracts for services quickly when they experience emergencies. CLS also observed that all contracts for services must be reasonable and necessary for carrying out the LSC grant if LSC funds are to be expended on the contracts.

In December, 2015, LSC’s Office of Inspector General issued a compendium report of its audit findings regarding recipients’ internal controls over a two-year period. See Compendium of Internal Control Audit Findings & Recommendations from Reports Issued October 1, 2013 through September 30, 2015, available at https://oig.lsc.gov/images/Final_Compndium_Report_-_ISSUED.pdf (“Compendium Report”). In the report, the OIG stated that it had issued 18 internal control audit reports

containing a total of 166 recommendations for improvement. Of those recommendations, 67 pertained to weaknesses in recipients' written policies and procedures and 24 pertained to contracting. See Compendium Report at 3. Of the 67 recommendations for improvement of written policies and procedures, 13 pertained to weaknesses in recipients' procurement policies. Id. All 18 reports contained recommendations to improve recipients' written policies and procedures.

With respect to written policies and procedures, OIG found that several recipients' policies lacked terms that complied with LSC's Accounting Guide for Recipients. Specifically, OIG identified "procedures for securing various types of contracts, competition requirements, approval authorities, dollar thresholds for approvals, documentation requirement to support contracting decisions and contract oversight responsibilities [and documentation of] deviations from approved contracting processes" as missing from many procurement policies. See Compendium Report at 6.

OIG grouped the findings of weaknesses in recipients' contracting practices into six categories: inadequate supporting documentation; failure to ensure that a contract was valid and formalized; poor adherence to written policies; failure to maintain a centralized filing system for procurement-related documents; failure to periodically evaluate long-term contracts and put them out for bids when appropriate; and failure to cross-train employees on contracting procedures. See Compendium Report at 7-12. Notably, OIG found that "[i]n certain cases, the contracting process and payments made to vendors conformed to LSC regulations and guidelines; however, supporting documentation justifying the process used to obtain the contracts, some of which were sole-sourced, did not exist or was not adequate." Id. at 8. OIG also found that some recipients' "current

practices were not in accordance with their current contracting policy or LSC's Fundamental Criteria." Id. at 9.

In response to the Compendium Report, LSC issued Program Letter 16-3, "Procurement Policy Drafting Guidance for LSC Recipients." The letter was accompanied by a document explaining in detail the elements of an effective procurement policy and factors that recipients should consider when developing their own policies. In the guidance document, LSC identified four areas that it believes are critical to an effective procurement policy:

1. Competition—How to identify, evaluate, and select vendors;
2. Negotiating terms—Identification of rights and responsibilities of each party to the contract;
3. Documentation—How to verify best value in purchasing; and
4. Internal controls—How to increase opportunity for vendors and reduce opportunities for fraud, waste, and abuse of LSC funds.

"Procurement Policy Drafting 101: Guidance for LSC Grantees" at 1; available at <http://www.lsc.gov/procurement-policy-drafting-101-guidance-lsc-grantees> .

Based on the feedback received in the comments to the ANPRM and the rulemaking workshops and on the findings in OIG's Compendium Report, LSC proposes a rule requiring recipients to develop policies and procedures governing purchases of personal property and contracts for services made with LSC funds. Rather than adopting the procurement rules in OMB's Uniform Guidance, LSC proposes to create a rule based substantially on the guidance provided in Program Letter 16-3 and the accompanying guidance documents. The rule will identify generally the elements that a recipient's policy must have, but it will not prescribe the specific procedures that recipients must follow when making purchases with LSC funds. The proposed rule will replace the

specific requirements currently contained in Sections 3(a) and 3(d) (personal property) and 4(f) (capital expenditures) of the PAMM. LSC is also proposing to revise the parts of Section 4 of the PAMM that govern the use of LSC funds to acquire real property. Those changes will be discussed in more detail below.

In § 1631.8, LSC proposes to require that recipients develop procurement policies that have the following elements:

- Identification of competition thresholds that establish the basis for the level of competition required at each threshold. LSC expects recipients to consider the types of purchases and contracts for services that they make using LSC funds and to develop procedures for making each type of purchase. For example, a recipient may determine that its purchasing patterns require different levels of competition based on the type of purchase, such as a lease of a copier or a contract for a management consultant, while another may decide that the level of competition depends on the amount that it intends to spend regardless of the type of purchase.
- Establish the grounds for sole-source purchases. During the workshops, several panelists discussed various justifiable reasons why LSC recipients may award contracts or make purchases on a non-competitive basis. One reason was that in remote or rural areas, there may be only one vendor for a particular service or type of property. Another reason was that recipients sometimes require experts or professionals with a particular skill type, such as handwriting analysis, and award contracts for such services based on recommendations from trusted colleagues rather than through competition. LSC generally believes that competition among vendors is the best way to ensure that recipients are getting best value in their purchases. LSC understands, however, that there are times outside of emergency situations when recipients may need to make contracts on a non-competitive basis. LSC does not propose to limit the situations in which recipients can make sole-source contracts to exigent circumstances, but LSC does expect recipients to develop procurement policies that establish standards for making sole-source purchases and procedures for justifying the purchase, selecting the vendor, and documenting the transaction.
- Establish the level of documentation necessary to justify procurements. Like the first element, this requirement anticipates that recipients may tie the level of documentation needed to justify a purchase to the nature of the purchase or to the competition thresholds. LSC does not propose to require recipients to maintain a particular form or type of documentation, but

expects recipients to determine a level of documentation that is appropriate to the type of purchase and that will support a showing that the purchase was reasonable and necessary for the purposes of the LSC grant.

- Establish internal controls that, at a minimum, provide for segregation of duties in the procurement process; identify which employees, officers, or directors have authority to make purchases for the recipient; and identify procedures for approving purchases. In its most recent annual compliance guidance, LSC identified weaknesses in segregation of duties and approval of financial transactions by an “appropriate level of management” as two of the most common compliance issues identified through Office of Compliance and Enforcement oversight visits to grantees. See Program Letter 16-7, Compliance Guidance, Aug. 19, 2016; available at <http://www.lsc.gov/program-letter-16-7> . The Accounting Guide for LSC Recipients currently requires recipients to have internal controls to safeguard program resources that should include the authority given to recipient employees to make and approve financial transactions, including purchases. Accounting Guide for LSC Recipients, § 3-5.1, p. 28. LSC proposes to formalize this requirement and expand upon it in part 1631. LSC does not propose to prescribe the assignment of procurement responsibilities among recipient staff, nor does it propose to require recipients to follow certain procedures when making purchases. LSC simply proposes to require that recipients establish procurement policies that address each of these elements.
- Establish procedures to ensure quality and cost control in purchasing. LSC intends to address two issues through this requirement: evaluating purchases in the first instance, and review and evaluation of existing contracts. In order to ensure best value for all purchases, recipients should develop fair and objective criteria for evaluating sources and procedures for selecting among sources. The rigor of the selection procedures at each competition threshold should be commensurate with the level of competition and documentation required. During the workshops, several panelists stated that they had longstanding, non-competitive contracts with service providers. LSC has also learned of this practice through its regular oversight activities. LSC believes that the efficient, responsible administration of appropriated funds requires recipients to evaluate their long-term and multi-year contracts regularly for continued quality of services or products and for best price. LSC does not propose to require recipients to evaluate their longstanding contracts or open them up for bids on a prescribed schedule. LSC expects recipients to establish policies for regularly evaluating the value and quality of each of their contracts and for establishing standards to determine when continuing versus recompeting each contract is appropriate.

- Establish procedures for identifying and preventing conflicts of interest in the purchasing process. For several years, LSC has required recipients of TIG and Pro Bono Innovation Fund grants to adhere to an LSC-created “Policy on Disclosure of Interests for Determination of Conflicts.” LSC did not require recipients of Basic Field Grants to develop or follow conflicts of interest policies until grant year 2016. Beginning in 2016, the grant assurances for the Basic Field Grant program required recipients to develop conflicts of interest policies, to distribute the policies to their staff, and to train all covered staff on the policies. LSC now proposes to formalize in a rule the requirement to develop conflicts of interest policies applicable to the purchasing process. As with all of the other elements proposed in this section, LSC does not propose to dictate the terms of recipients’ conflicts of interest policies. LSC merely expects recipients to adopt, comply with, and document compliance with the policies they develop.

LSC strongly encourages recipients to look to Program Letter 16-3 and its accompanying documents, as well as the Accounting Guide, for guidance when drafting their procurement policies. In particular, LSC recommends that recipients consider establishing annual purchasing plans and contract management procedures if they have not done so already. In addition to thoughtful procurement policies, well-considered purchasing plans and effective contract management procedures can reduce the risk of fraud, waste, and abuse of LSC funds.

§ 1631.9 Prior approval. In this section, LSC proposes to prescribe the contents of a request for prior approval. A request must include a statement explaining how the personal property or services will further the delivery of legal services to eligible clients and documentation showing that the recipient followed the procurement policy and procedures it developed under § 1631.8. This language is adopted from §§ 3(d) and 4(f) of the PAMM, but has been revised to reflect LSC’s proposal to require general procurement policies, rather than to incorporate the current purchase-specific procedures.

§ 1631.10 Applicability of part 1630. Because LSC is proposing to limit the prior approval requirement to all purchases of real property, purchases and leases of personal property costing more than \$25,000 in LSC funds, and contracts for services exceeding \$25,000 in LSC funds, LSC also proposes to include a section restating the applicability of part 1630 to all leases, purchases, and contracts made using LSC funds.

Subpart C—Personal Property Management

§ 1631.11 Use of property in compliance with LSC’s statutes and regulations. LSC proposes to adopt § 5(a), (d), and (e) of the PAMM in this section with only minor technical changes.

§ 1631.12 Intellectual property. In this section, LSC proposes to adopt § 5(g) of the PAMM without change.

§ 1631.13 Disposing of personal property purchased with LSC funds. In this section, LSC proposes to adopt § 6(d), (e), (f), and (g) of the PAMM with one substantive change. In proposed paragraph (a)(2), LSC proposes to explicitly authorize recipients to determine the appropriate method to dispose of personal property that has little or no fair market value at the time of disposal. The recipient does not have to notify LSC of its intent to dispose of such property, nor does it have to compensate LSC out of the proceeds from any sale of the property. LSC proposes to include this provision in response to feedback it received from panelists during the rulemaking workshops that prior approval to dispose of personal property with nominal or no monetary value is unnecessary. See, e.g., Transcript of April 20, 2016 Rulemaking Workshop at 94 (Statement of Jonathan Asher); Transcript of May 18, 2016 Rulemaking Workshop at

101 (Statements of Steve Pelletier and Diana White). Additionally, LSC proposes to reorganize the paragraphs taken from the PAMM for ease of reference.

§ 1631.14 Use of derivative income from sale of personal property purchased with LSC funds. In § 1631.14(a), LSC proposes to adopt § 6(e) of the PAMM without change. LSC also proposes to include paragraph (b), which requires recipients to account for income earned from the sale, rent, or lease of personal property purchased with LSC funds as required by § 1630.16—Applicability to derivative income.

Subpart D—Real Estate Acquisition and Capital Improvements

§ 1631.15 Purchasing real property with LSC funds. LSC proposes to adopt in significant part the requirements of § 4 of the PAMM. In paragraph (a), LSC proposes to consolidate and restructure existing paragraphs (a)-(c) of § 4 of the PAMM. LSC also proposes to introduce paragraph (a)(3), which allows a recipient who cannot evaluate three properties to explain why such an evaluation is not possible. For example, a recipient may not be able to compare three properties if the inventory of commercial properties suitable for the recipient’s activities is extremely limited.

LSC proposes to adopt § 4(d) of the PAMM in significant part in paragraph (b). LSC proposes to revise two specific provisions to allow recipients additional flexibility when purchasing real property. In § 1631.15(b)(6), LSC proposes to allow a recipient to provide documentation that the recipient’s governing body approves of the purchase, even if the governing body’s approval is contingent upon LSC’s approval. LSC understands that some recipient governing bodies may be reluctant to authorize a real estate purchase if they are not assured that one of the proposed funding sources consents to the purchase. As a funder, LSC similarly wants to know that a recipient’s governing

body has been informed about a proposed purchase and agrees that the purchase is in the recipient's interest. Consequently, LSC proposes to revise existing § 4(d)(4) of the PAMM to allow for contingent approvals.

Additionally, LSC proposes to revise existing § 4(d)(5) of the PAMM and promulgate it as § 1631.15(b)(8). Currently, § 4(d)(5) requires a recipient to include in its request for prior approval a "statement of handicapped accessibility sufficient to meet the requirements of 45 CFR 1624.5(c)[.]" On several occasions, LSC has received simultaneous requests to purchase real estate and to make capital improvements to the property for the purpose of making it accessible to persons with disabilities. For this reason, LSC proposes to revise this requirement to allow the recipient to provide a statement that the property will be accessible once the requested capital improvements have been completed. LSC expects the recipient to act expeditiously to make the requested improvements if LSC approves both the purchase and the capital expenditures. Consequently, LSC proposes to require that any capital improvements authorized under this section be completed within 60 days of the date the real estate purchase is completed.

LSC proposes to add three additional elements to the list of requested information currently contained in § 4(d) of the PAMM and proposed for inclusion in § 1631.15(b). First, LSC proposes to require that recipients provide the information described in paragraph (a) as part of the prior approval request. Second, LSC proposes to require recipients to provide a breakdown of the sources of funds it intends to use toward the purchase. In other words, recipients would provide an estimate of the amount of LSC funds and non-LSC funds, respectively, that it intends to put toward the acquisition costs of the building and subsequent mortgage payments for the life of the financing

arrangement. Third, LSC proposes to require recipients to provide a comparison of available loan terms considered by the recipient. LSC proposes this requirement to encourage recipients to investigate various options for financing a building purchase to obtain the best value.

In § 1631.15(c), LSC proposes to adopt § 4(e) of the PAMM with only a minor conforming change. LSC does, however, propose to add subparagraph (c)(4), which will require a recipient to agree not to dispose of real estate purchased with LSC funds without prior approval.

§ 1631.16 Capital improvements. In this section, LSC proposes to adopt § 4(f) of the PAMM in substantial part. LSC proposes to replace existing § 4(1)(ii) of the PAMM, which requires a recipient to provide a description of the contractor selection process, with a requirement to provide documentation showing that the recipient complied with the procurement process it developed under § 1631.8. LSC also proposes to add language requiring a recipient to maintain adequate supporting documentation to identify and account for any LSC funds used to make capital improvements.

Subpart E—Real Estate Management

§ 1631.17 Using real estate purchased with LSC funds. LSC proposes to adopt § 5(a), (d), and (f) of the PAMM with only minor technical changes.

§ 1631.18 Maintenance. LSC proposes to introduce a section requiring recipients to maintain real estate purchased with LSC funds in efficient operating condition and in compliance with state and local property standards and building codes. From previous requests to dispose of real estate, LSC has learned of recipient facilities falling into disrepair. LSC believes that it is essential that recipients maintain assets purchased with

appropriated funds in compliance with state and local standards and building codes. LSC also believes it is critical to the delivery of legal services for recipients to provide services in space that is clean, in good repair, and welcoming to clients. For these reasons, LSC proposes to prescribe the facilities standards that recipients must meet if they use LSC funds to purchase real estate.

§ 1631.19 Insurance. LSC proposes to introduce minimum standards for the insurance of real estate acquired or improved with LSC funds. Similar to the rationale for prescribing minimum maintenance standards, LSC believes it is essential for recipients to provide the same level of insurance for real estate acquired or improved with appropriated funds as they do for non-LSC funded real estate and in a manner that protects LSC's interest in the event of a title failure or physical destruction of the property. LSC proposes to adopt the insurance standard from the regulations governing facilities purchases under the Head Start program, 45 CFR 1309.23.

§ 1631.20 Accounting and reporting to LSC. LSC proposes to require recipients to maintain records showing, for each piece of real estate purchased in whole or in part with LSC funds, the amount of LSC funds it spends each year on the property. Costs that recipients should account for include, but are not limited to, acquisition costs in the year of purchase; mortgage payments; insurance, maintenance, and taxes; and costs associated with capital improvements made using LSC funds. LSC also proposes to require recipients to provide LSC with the accounting in one of two ways. The first is by submitting the accounting to LSC no later than April 30 of the calendar year following the calendar year in which the recipient incurred the costs. In other words, if a recipient uses LSC funds to purchase a new office building in March, 2017, it must provide LSC

with an accounting of all LSC funds used in 2017 to support the purchase and maintenance for the building by April 30, 2018. The second method is to provide LSC with the required accounting in the audited financial statements that recipients must submit to LSC annually.

§ 1631.21 Disposing of real estate purchased with LSC funds. In this section, LSC proposes to adopt § 7 of the PAMM in substantial part. In a change from the PAMM, LSC proposes to require that all proposed dispositions of real estate acquired using LSC funds be subject to LSC's prior approval. This approach is consistent with the federal government's policy regarding grantee disposal of property purchased with federal funds. See 2 CFR 200.311(c). LSC believes that the federal government's policy on the disposition of real property purchased with federal funds is more appropriate to its oversight role than the policy that currently exists in the PAMM. Under the PAMM, organizations must seek LSC's approval prior to disposing of property purchased with LSC funds only when they are no longer receiving LSC funds. In LSC's experience, it is far more common for LSC recipients to sell real estate acquired with LSC funds while they are still receiving LSC funds. At the present time, the PAMM does not require recipients to seek LSC's approval before selling such property, although LSC's property interest agreements generally contain terms requiring recipients to seek approval before encumbering or selling the property. LSC believes it is appropriate for the requirement to be formalized in a rule.

LSC proposes to establish the prior approval process for disposition of real estate in § 1631.21(c). LSC proposes to require a recipient or former recipient to seek prior approval at least 60 days before the recipient proposes to dispose of the property. In its

request, the recipient or former recipient should tell LSC how it proposes to dispose of the property and why; provide documentation of the fair market value of the property; if selling, describe its process for advertising the property and receiving offers; account for all LSC funds used in the acquisition and capital improvement of the property; and identify the proposed transferee. The requester should also provide a document describing the terms of transfer or sale. LSC also proposes to clarify that LSC's percentage interest in the proceeds of a real estate sale is equal to the percentage of the costs of the original acquisition and any capital improvements made to the real estate over the life of the property that were paid using LSC funds.

§ 1631.22 Retaining income from sale of real property purchased with LSC funds.

LSC proposes to consolidate §§ 6(e) and 8(c) of the PAMM in this section. LSC proposes to make only technical edits to reflect the redesignation of § 1630.12 as § 1630.16.

List of Subjects

45 CFR part 1600

Legal services.

45 CFR part 1630

Accounting, Government contracts, Grant programs-law, Hearing and appeal procedures, Legal services, Questioned costs.

45 CFR part 1631

Legal services, Government contracts, Grant programs-law, Real property acquisition.

For the reasons stated in the preamble, the Legal Services Corporation proposes to amend 45 CFR Chapter XVI as follows:

PART 1600—DEFINITIONS

1. The authority citation for part 1600 is revised to read as follows:

Authority: 42 U.S.C. 2996g(e)

2. Amend § 1600.1 by adding, in alphabetical order, the definitions for “Corporation funds” and “Non-LSC funds” to read as follows:

§ 1600.1 Definitions.

* * * * *

Corporation funds or LSC funds means any funds appropriated by Congress to carry out the purposes of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996 et seq., as amended.

Non-LSC funds means any funds that are not Corporation funds or LSC funds.

3. Revise part 1630 to read as follows:

PART 1630 – COST STANDARDS AND PROCEDURES

Subpart A – General Provisions

Sec

1630.1 Purpose.

1630.2 Definitions.

1630.3 Time.

1630.4 Burden of proof.

Subpart B – Cost Standards and Prior Approval

1630.5 Standards governing allowability of costs under LSC grants or contracts.

1630.6 Prior approval.

1630.7 Membership fees or dues.

1630.8 Contributions.

1630.9 Tax-sheltered annuities, retirement accounts, and penalties.

Subpart C – Questioned Cost Proceedings

1630.10 Review of questioned costs.

1630.11 Appeals to the president.

1630.12 Recovery of disallowed costs and other corrective action.

1630.13 Other remedies; effect on other parts.

1630.14 Applicability to subgrants.

1630.15 Applicability to non-LSC funds.

1630.16 Applicability to derivative income.

Subpart D—Closeout Procedures

1630.17 Applicability.

1630.18 Closeout plan; Timing.

1630.19 Closeout costs.

1630.20 Returning funds to LSC.

Authority: 42 U.S.C. 2996g(e)

Subpart A – General Provisions

§ 1630.1 Purpose.

This part is intended to provide uniform standards for allowability of costs and to provide a comprehensive, fair, timely, and flexible process for the resolution of questioned costs.

§ 1630.2 Definitions.

(a) Corrective action means action taken by a recipient that:

- (1) Corrects identified deficiencies;
- (2) Produces recommended improvements; or
- (3) Demonstrates that audit or other findings are either invalid or do not warrant recipient action.

(b) Derivative income means income earned by a recipient from LSC-supported activities during the term of an LSC grant or contract, and includes, but is not limited to, income from fees for services (including attorney fee awards and reimbursed costs), sales and rentals of real or personal property, and interest earned on LSC grant or contract advances.

(c) Disallowed cost means those charges to an LSC award that LSC determines to be unallowable, in accordance with the applicable statutes, regulations, or terms and conditions of the grant award.

(d) Final written decision means either:

- (1) the decision issued by the Vice President for Grants Management after reviewing all information provided by a recipient in response to a notice of questioned costs; or
- (2) the notice of questioned costs if a recipient does not respond to the notice within 30 days of receipt.

(e) Membership fees or dues means payments to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein. Membership fees or dues include, but are not limited to, fees or dues paid to a state supreme court or to a bar organization acting as an administrative arm of the

court or in some other governmental capacity if such fees or dues are required for an attorney to practice law in that jurisdiction.

(f) Questioned cost means a cost that LSC has questioned because of an audit or other finding that:

- (1) There may have been a violation of a provision of a law, regulation, contract, grant, or other agreement or document governing the use of LSC funds;
- (2) The cost is not supported by adequate documentation; or
- (3) The cost incurred appears unnecessary or unreasonable and does not reflect the actions a prudent person would take in the circumstances.

§ 1630.3 Time.

(a) Computation. Time limits specified in this part shall be computed in accordance with Rules 6(a) and 6(e) of the Federal Rules of Civil Procedure.

(b) Extensions. LSC may, on a recipient's written request for good cause, grant an extension of time and shall so notify the recipient in writing.

§ 1630.4 Burden of proof.

The recipient shall have the burden of proof under this part.

Subpart B – Cost Standards and Prior Approval

§ 1630.5 Standards governing allowability of costs under LSC grants or contracts.

(a) General criteria. Expenditures are allowable under an LSC grant or contract only if the recipient can demonstrate that the cost was:

- (1) Actually incurred in the performance of the grant or contract and the recipient was liable for payment;

(2) Reasonable and necessary for the performance of the grant or contract as approved by LSC;

(3) Allocable to the grant or contract;

(4) In compliance with the Act, applicable appropriations law, LSC rules, regulations, guidelines, and instructions, the Accounting Guide for LSC Recipients, the terms and conditions of the grant or contract, and other applicable law;

(5) Consistent with accounting policies and procedures that apply uniformly to both LSC-funded and non-LSC-funded activities;

(6) Accorded consistent treatment over time;

(7) Determined in accordance with generally accepted accounting principles; and

(8) Adequately and contemporaneously documented in business records accessible during normal business hours to LSC management, the Office of Inspector General, the General Accounting Office, and independent auditors or other audit organizations authorized to conduct audits of recipients.

(b) Reasonable costs. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the same or similar circumstances prevailing at the time the decision was made to incur the cost. In determining the reasonableness of a given cost, consideration shall be given to:

(1) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the recipient or the performance of the grant or contract;

(2) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms-length bargaining, Federal and State laws and regulations, and the terms and conditions of the grant or contract;

(3) Whether the recipient acted with prudence under the circumstances, considering its responsibilities to its clients and employees, the public at large, the Corporation, and the Federal government; and

(4) Significant deviations from the recipient's established practices, which may unjustifiably increase the grant or contract costs.

(c) Allocable costs. (1) A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. Costs may be allocated to LSC funds either as direct or indirect costs according to the provisions of this section.

(2) A cost is allocable to an LSC grant or contract if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(i) Is incurred specifically for the grant or contract;

(ii) Benefits both the grant or contract and other work and can be distributed in reasonable proportion to the benefits received; or

(iii) Is necessary to the recipient's overall operation, although a direct relationship to any particular cost objective cannot be shown.

(3) Recipients must maintain accounting systems sufficient to demonstrate the proper allocation of costs to each of their funding sources.

(d) Direct costs. Direct costs are those that can be identified specifically with a particular grant award, project, service, or other direct activity of an organization. Costs identified specifically with grant awards are direct costs of the awards and are to be assigned directly thereto. Direct costs include, but are not limited to, the salaries and wages of recipient staff who are working on cases or matters that are identified with specific grants or contracts. Salary and wages charged directly to LSC grants and contracts must be supported by personnel activity reports.

(e) Indirect costs. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. A recipient may treat any direct cost of a minor amount as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives. Indirect costs include, but are not limited to, the costs of operating and maintaining facilities, and the costs of general program administration, such as the salaries and wages of program staff whose time is not directly attributable to a particular grant or contract. Such staff may include, but are not limited to, executive officers and personnel, accounting, secretarial and clerical staff.

(f) Allocation of indirect costs. Where a recipient has only one major function, i.e., the delivery of legal services to low-income clients, allocation of indirect costs may be by a simplified allocation method, whereby total allowable indirect costs (net of applicable credits) are divided by an equitable distribution base and distributed to individual grant awards accordingly. The distribution base may be total direct costs, direct salaries and wages, attorney hours, numbers of cases, numbers of employees, or

another base which results in an equitable distribution of indirect costs among funding sources.

(g) Exception for certain indirect costs. Some funding sources may refuse to allow the allocation of certain indirect costs to an award. In such instances, a recipient may allocate a proportional share of another funding source's share of an indirect cost to LSC funds, provided that the activity associated with the indirect cost is permissible under the LSC Act, LSC appropriations statutes, and regulations.

(h) Applicable credits. Applicable credits are those receipts or reductions of expenditures which operate to offset or reduce expense items that are allocable to grant awards as direct or indirect costs. Applicable credits include, but are not limited to, purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits relate to allowable costs, they shall be credited as a cost reduction or cash refund in the same fund to which the related costs are charged.

(i) Guidance. The regulations and circulars of the Office of Management and Budget shall provide guidance for all allowable cost questions arising under this part when relevant policies or criteria therein are not inconsistent with the provisions of the Act, applicable appropriations law, this part, the Accounting Guide for LSC Recipients, LSC rules, regulations, guidelines, instructions, and other applicable law.

§ 1630.6 Prior approval.

(a) Advance understandings. Under any given grant award, the reasonableness and allocability of certain cost items may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, a

recipient may seek a written understanding from LSC in advance of incurring special or unusual costs. If a recipient elects not to seek an advance understanding from LSC, the absence of an advance understanding on any element of a cost will not affect the reasonableness or allocability of the cost.

(b) Costs requiring prior approval. (1) A recipient must obtain LSC's prior approval before charging costs attributable to any of the transactions below to its LSC grant when the cost of the transaction exceeds \$25,000 of LSC funds:

- (i) Purchases or leases of personal property;
- (ii) Contracts for services;
- (iii) Purchases of real estate; and
- (iv) Capital improvements.

(2) The process and substantive requirements for requests for prior approval are located in 45 CFR part 1631—Purchasing and Property Management.

(c) Duration. LSC's advance understanding or approval shall be valid for one year, or for a greater period of time which LSC may specify in its approval or advance understanding.

§ 1630.7 Membership fees or dues.

(a) LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of the recipient or an individual.

(b) Paragraph (a) of this section does not apply to the payment of membership fees or dues mandated by a governmental organization to engage in a profession, or to the payment of membership fees or dues from non-LSC funds.

§ 1630.8 Contributions.

Any contributions or gifts of LSC funds to another organization or to an individual are prohibited.

§ 1630.9 Tax-sheltered annuities, retirement accounts, and penalties.

No provision contained in this part shall be construed to affect any payment by a recipient on behalf of its employees for the purpose of contributing to or funding a tax-sheltered annuity, retirement account, or pension fund.

Subpart C – Questioned Cost Proceedings

§ 1630.10 Review of questioned costs.

(a) LSC may identify questioned costs:

- (1) When the Office of Inspector General, the General Accounting Office, or an independent auditor or other audit organization authorized to conduct an audit of a recipient has identified and referred a questioned cost to LSC;
- (2) In the course of its oversight of recipients; or
- (3) As a result of complaints filed with LSC.

(b) If LSC determines that there is a basis for disallowing a questioned cost, LSC must provide the recipient with written notice of its intent to disallow the cost. The notice of questioned costs must state the amount of the cost and the factual and legal basis for disallowing it.

(c) If a questioned cost is disallowed solely on the ground that it is excessive, only the amount that is larger than reasonable shall be disallowed.

(d) (1) Within 30 days of receiving the notice of questioned costs, the recipient may respond with written evidence and argument to show that the cost was allowable, or

that LSC, for equitable, practical, or other reasons, should not recover all or part of the amount, or that the recovery should be made in installments.

(2) If the recipient does not respond to LSC's written notice within 30 days, the written notice shall become LSC's final written decision.

(e) Within 60 days of receiving the recipient's written response to the notice of questioned costs, LSC management must issue a final written decision stating whether or not the cost has been disallowed and the reasons for the decision.

(f) If LSC has determined that the questioned cost should be disallowed, the final written decision must:

(1) State that the recipient may appeal the decision as provided in § 1630.11 and describe the process for seeking an appeal;

(2) Describe how it expects the recipient to repay the cost, including the method and schedule for collection of the amount of the cost;

(3) State whether LSC is requiring the recipient to make financial adjustments or take other corrective action to prevent a recurrence of the circumstances giving rise to the disallowed cost.

§ 1630.11 Appeals to the president.

(a) (1) If the amount of a disallowed cost exceeds \$2,500, the recipient may appeal in writing to LSC's President within 30 days of receiving LSC's final written decision to disallow the cost. The recipient should state in detail the reasons why LSC should not disallow part or all of the questioned cost.

(2) If the recipient did not respond to LSC's notice of questioned costs and the notice became LSC's final written decision pursuant to § 1630.11(d)(2), the recipient may not appeal the final written decision.

(b) If the President has had prior involvement in the consideration of the disallowed cost, the President shall designate another senior LSC employee who has not had prior involvement to review the recipient's appeal. In circumstances where the President has not had prior involvement in the disallowed cost proceeding, the President has discretion to designate another senior LSC employee who also has not had prior involvement in the proceeding to review the appeal.

(c) Within 30 days of receiving the recipient's written appeal, the President or designee will adopt, modify, or reverse LSC's final written decision.

(d) The decision of the President or designee shall be final and shall be based on the written record, consisting of LSC's notice of questioned costs, the recipient's response, LSC's final written decision, the recipient's written appeal, any additional response or analysis provided to the President or designee by LSC staff, and the relevant findings, if any, of the Office of Inspector General, General Accounting Office, or other authorized auditor or audit organization. Upon request, LSC shall provide the recipient with a copy of the written record.

§ 1630.12 Recovery of disallowed costs and other corrective action.

(a) LSC will recover any disallowed costs from the recipient within the time limits and conditions set forth in either LSC's final written decision or the President's decision on an appeal. Recovery of the disallowed costs may be in the form of a

reduction in the amount of future grant checks or in the form of direct payment from you to LSC.

(b) LSC shall ensure that a recipient who has incurred a disallowed cost takes any additional necessary corrective action within the time limits and conditions set forth in LSC's final written decision or the President's decision.

§ 1630.13 Other remedies; effect on other parts.

(a) In cases of serious financial mismanagement, fraud, or defalcation of funds, LSC shall refer the matter to the Office of Inspector General and may take appropriate action pursuant to parts 1606, 1623, and 1640 of this chapter.

(b) The recovery of a disallowed cost according to the procedures of this part does not constitute a permanent reduction in a recipient's annualized funding level, nor does it constitute a limited reduction of funding or termination of financial assistance under part 1606, or a suspension of funding under part 1623.

§ 1630.14 Applicability to subgrants.

When disallowed costs arise from expenditures incurred under a subgrant of LSC funds, the recipient and the subrecipient will be jointly and severally responsible for the actions of the subrecipient, as provided by 45 CFR part 1627, and will be subject to all remedies available under this part. Both the recipient and the subrecipient shall have access to the review and appeal procedures of this part.

§ 1630.15 Applicability to non-LSC funds.

(a) No costs attributable to a purpose prohibited by the LSC Act, as defined by 45 CFR 1610.2(a), may be charged to private funds, except for tribal funds used for the specific purposes for which they were provided.

(b) No cost attributable to an activity prohibited by or inconsistent with Pub. L. 103-134, tit. V, § 504, as defined by §1610.2(b), may be charged to non-LSC funds, except for tribal funds used for the specific purposes for which they were provided.

(c) LSC may recover from a recipient's LSC funds an amount not to exceed the amount improperly charged to non-LSC funds. A decision to recover under this paragraph is subject to the review and appeal procedures of §§ 1630.11 and 1630.12.

§ 1630.16 Applicability to derivative income.

(a) Derivative income resulting from an activity supported in whole or in part with LSC funds shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of LSC funds expended bears to the total amount expended by the recipient to support the activity.

(b) Derivative income allocated to the LSC fund in accordance with paragraph (a) of this section is subject to the requirements of this part.

Subpart D—Closeout Procedures

§ 1630.17 Applicability.

This subpart applies when a recipient of LSC funds:

- (a) Merges or consolidates functions with another LSC recipient;
- (b) Changes its current identity or status as a legal entity; or
- (c) Otherwise ceases to receive funds directly from LSC. This may include voluntary termination by the recipient or involuntary termination by LSC of the recipient's LSC grant, and may occur at the end of a grant term or during the grant term.

§ 1630.18 Closeout plan; timing.

- (a) A recipient must provide LSC with a plan for the orderly conclusion of the

recipient's role and responsibilities. LSC will maintain a list of the required elements for the closeout plan on its Web site. LSC will provide recipients with a link to the list in the grant award documents.

(b) (1) A recipient must notify LSC no less than 60 days prior to any of the above events, except for an involuntary termination of its LSC grant by LSC. The recipient must submit the closeout plan described in § 1630.19 at the same time.

(2) If LSC terminates a recipient's grant, the recipient must submit the closeout plan described in § 1630.19 within 15 days of being notified by LSC that it is terminating the recipient's grant.

§ 1630.19 Closeout costs.

(a) The recipient must submit to LSC a detailed budget and timeline for all closeout procedures described in the closeout plan. LSC must approve the budget, either as presented or after negotiations with the recipient, before the recipient may proceed with implementing the budget, timeline, and plan.

(b) LSC will withhold funds for all closeout expenditures, including costs for the closing audit, all staff and consultant services needed to perform closeout activities, and file storage and retention.

(c) LSC will release any funding installments that the recipient has not received as of the date it notified LSC of a merger, change in status, or voluntary termination or that LSC notified the recipient of an involuntary termination of funding only upon the recipient's satisfactory completion of all closeout obligations.

§ 1630.20 Returning funds to LSC.

(a) Excess fund balance. If the recipient has an LSC fund balance after the

termination of funding and closeout, the recipient must return the full amount of the fund balance to LSC at the time it submits the closing audit to LSC.

(b) Derivative income. Any attorneys' fees claimed or collected and retained by the recipient after funding ceases that result from LSC-funded work performed during the grant term are derivative income attributable to the LSC grant. Such derivative income must be returned to LSC within 15 days of the date on which the recipient receives the income.

4. Add part 1631 to read as follows:

PART 1631—PURCHASING AND PROPERTY MANAGEMENT

Subpart A—General Provisions

Sec

1631.1 Purpose.

1631.2 Definitions.

1631.3 Prior approval process.

1631.4 Effective dates.

1631.5 Use of funds.

1631.6 Recipient policies, procedures, and recordkeeping.

Subpart B—Procurement Policies and Procedures

1631.7 Characteristics of procurements.

1631.8 Procurement policies and procedures.

1631.9 Requests for prior approval.

1631.10 Applicability of part 1630.

Subpart C—Personal Property Management

1631.11 Use of property in compliance with LSC's statutes and regulations.

1631.12 Intellectual property.

1631.13 Disposing of personal property purchased with LSC funds.

1631.14 Use of derivative income from sale of personal property purchased with LSC funds.

Subpart D—Real Estate Acquisition and Capital Improvements

1631.15 Purchasing real property with LSC funds.

1631.16 Capital improvements.

Subpart E—Real Estate Management

1631.17 Using real estate purchased with LSC funds.

1631.18 Maintenance.

1631.19 Insurance.

1631.20 Accounting and reporting to LSC.

1631.21 Disposing of real estate purchased with LSC funds.

1631.22 Retaining income from sale of real property purchased with LSC funds.

Authority: 42 U.S.C. 2996g(e)

Subpart A—General Provisions

§ 1631.1 Purpose.

The purpose of this part is to set standards for purchasing, leasing, using, and disposing of LSC-funded personal property and real estate and using LSC funds to contract for services.

§ 1631.2 Definitions.

(a) Capital improvement means spending more than \$25,000 of LSC funds to improve real estate through construction or the addition of fixtures that become an integral part of real estate.

(b) LSC property interest agreement means a formal written agreement between the recipient and LSC establishing the terms of LSC's legal interest in real estate purchased with LSC funds.

(c) Personal property means property other than real estate.

(d) Purchase means buying personal property or real estate or contracting for services with LSC funds.

(e) Quote means a quotation or bid from a potential source interested in selling or leasing property or providing services to a recipient.

(f) Real estate means land, buildings (including capital improvements), and property interests in land and buildings (e.g., tenancies, life estates, remainders, reversions, easements), excluding moveable personal property.

(g) Services means professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of an LSC recipient. Services includes, but is not limited to intangible products such as accounting, banking, cleaning, consultants, training, expert services, maintenance of equipment, and transportation. For purposes of this section, services do not include services provided by recipients to their employees as compensation in addition to regular salaries and wages, including but not limited to employee insurance, pensions, and unemployment benefit plans.

(h) Source means a seller, supplier, vendor, or contractor who has agreed:

(1) to sell or lease property to the recipient through a purchase or lease agreement; or

(2) to provide services to the recipient through a contract.

§ 1631.3 Prior approval process.

(a) LSC shall grant prior approval of a cost listed in § 1630.6(b) if the recipient has provided sufficient written information to demonstrate that the cost would be consistent with the standards and policies of this part. LSC may request additional information if necessary to make a decision on the recipient's request.

(b) (1) For purchases or leases of personal property, contracts for services, and capital improvements, LSC will make a decision to approve or deny a request for prior approval within 30 days of receiving the request.

(2) For purchases of real estate, LSC will make a decision within 60 days of receiving the request.

(3) If LSC cannot make a decision whether to approve the request within the allotted time, it will provide the requester with a date by which it expects to make a decision.

(c) If LSC denies a request for prior approval, LSC shall provide the recipient with a written explanation of the grounds for denying the request.

(d) Exigent circumstances. (1) A recipient may use more than \$25,000 of LSC funds to purchase personal property or award a contract for services without seeking LSC's prior approval if the purchase or contract is necessary;

(i) to avoid imminent harm to the recipient's personnel, physical facilities, or systems; or

(ii) to remediate or mitigate damage to the recipient's personnel, physical facilities or systems.

(2) The recipient must provide LSC with a description of the exigent circumstances and the information described in paragraph (b) within a reasonable time after the circumstances necessitating the purchase or contract have ended.

§ 1631.4 Effective dates.

(a) All provisions of this part apply to purchases and leases of personal property, contracts for services, and purchases of real estate made 90 days after the effective date of this rule.

(b) Subparts A, C, and E become effective 90 days after the effective date for all personal property and real property leased or purchased by recipients using LSC funds prior to the effective date of this part.

§ 1631.5 Use of funds.

When LSC receives funds from a disposition of property under this section, LSC will use those funds to make emergency and other special grants to recipients. LSC generally will make such grants to the same service area as the returned funds originally supported.

§ 1631.6 Recipient policies, procedures, and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Subpart B—Procurement Policies and Procedures

§ 1631.7 Characteristics of procurements.

(a) Characteristics indicative of a procurement relationship between a recipient and another entity are when the other entity:

(1) Provides the goods and services within its normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the LSC grant; and

(5) Is not subject to LSC's compliance requirements as a result of the agreement, though similar requirements may apply for other reasons.

(b) In determining whether an agreement between a recipient and another entity constitutes a contract under this part or a subgrant under part 1627, the substance of the relationship is more important than the form of the agreement. All of the characteristics above may not be present in all cases, and a recipient must use judgment in classifying each agreement as a subgrant or a contract.

§ 1631.8 Procurement policies and procedures.

Recipients must have written procurement policies and procedures. These policies must:

(a) Identify competition thresholds that establish the basis (for example, price, risk level, or type of purchase) for the level of competition required at each threshold (for example, certification that a purchase reflects the best value to the recipient; a price comparison for alternatives that the recipient considered; or requests for information, quotes, or proposals);

(b) Establish the grounds for non-competitive purchases;

- (c) Establish the level of documentation necessary to justify procurements.

The level of documentation needed may be proportional to the nature of the purchase or tied to competition thresholds;

- (d) Establish internal controls that, at a minimum, provide for segregation of duties in the procurement process, identify which employees, officers, or directors who have authority to make purchases for the recipient, and identify procedures for approving purchases;

- (e) Establish procedures to ensure quality and cost control in purchasing, including procedures for selecting sources, fair and objective criteria for selecting sources; and

- (f) Establish procedures for identifying and preventing conflicts of interest in the purchasing process.

§ 1631.9 Requests for prior approval.

- (a) As required by §1630.6 of this chapter and §1631.3, a recipient using more than \$25,000 of LSC funds to purchase or lease personal property or contract for services must request and receive LSC’s prior approval.

- (b) A request for prior approval must include:

- (1) A statement explaining how the personal property or services will further the delivery of legal services to eligible clients; and

- (2) Documentation showing that the recipient followed its procurement policies and procedures in soliciting, reviewing, and approving the purchase, lease, or contract for services.

§ 1631.10 Applicability of part 1630.

All purchases and leases of personal property and contracts for services made with LSC funds must comply with the provisions of 45 CFR part 1630 (Cost Standards and Procedures).

Subpart C—Personal Property Management

§ 1631.11 Use of property in compliance with LSC’s statutes and regulations.

(a) A recipient may use personal property purchased or leased, in whole or in part, with LSC funds primarily to deliver legal services to eligible clients under the requirements of the LSC Act, applicable appropriations acts, and LSC regulations.

(b) A recipient may use personal property purchased or leased, in whole or in part, with LSC funds for the performance of an LSC grant or contract for other activities, if such other activities do not interfere with the performance of the LSC grant or contract.

(c) If a recipient uses personal property purchased or leased, in whole or in part, with LSC funds to provide services to an organization that engages in activity restricted by the LSC Act, LSC regulations, or other applicable law, the recipient must charge the organization a fee no less than that which private nonprofit organizations in the same area charge for the same services under similar conditions.

§ 1631.12 Intellectual property.

Recipients may copyright any work that is subject to copyright and was developed, or for which ownership was obtained, under an LSC grant or contract, provided that LSC reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use work copyrighted by recipients, when the work is obtained in whole or in part with LSC funds.

§ 1631.13 Disposing of personal property purchased with LSC funds.

(a) Disposal by LSC recipients. During the term of an LSC grant or contract, a recipient may dispose of personal property purchased with LSC funds by:

(1) Trading in the personal property when it acquires replacement property;

(2) Selling or otherwise disposing of the personal property with no further obligation to LSC when the fair market value of the personal property is negligible;

(3) Selling the property at a reasonable negotiated price, without advertising for quotes, where the current fair market value of the personal property is \$15,000 or less;

(4) Selling the property after having advertised for and received quotes, where the current fair market value of the personal property exceeds \$15,000;

(5) Transferring the property to another recipient of LSC funds; or

(6) With the approval of LSC, transferring the personal property to another nonprofit organization serving the poor in the same service area.

(b) Disposal when no longer a recipient. When a recipient stops receiving LSC funds, it must obtain LSC's approval to dispose of personal property purchased with LSC funds in one of the following ways:

(1) Transferring the property to another recipient of LSC funds, in which case the former recipient will be entitled to compensation in the amount of the percentage of the property's current fair market value that is equal to the percentage of the property's purchase cost borne by non-LSC funds;

(2) Transferring the property to another nonprofit organization serving the poor in the same service area, in which case LSC will be entitled to compensation

from the recipient for the percentage of the property's current fair market value that is equal to the percentage of the property's purchase cost borne by LSC funds;

(3) Selling the property and retaining the proceeds from the sale after compensating LSC for the percentage of the property's current fair market value that is equal to the percentage of the property's purchase cost borne by LSC funds; or

(4) Retaining the property, in which case LSC will be entitled to compensation from the recipient for the percentage of the property's current fair market value that is equal to that percentage of the property's purchase cost borne by LSC funds.

(c) Disposal upon merger with or succession by another LSC recipient. When a recipient stops receiving LSC funds because it merged with or is succeeded by another grantee, the recipient may transfer the property to the new recipient, if the two entities execute an LSC-approved successor in interest agreement that requires the new recipient to use the property primarily to provide legal services to eligible clients under the requirements of the LSC Act, applicable appropriations acts, and LSC regulations.

(d) Prohibition. A recipient may not dispose of personal property by sale, donation, or other transfer of the property to its board members or employees.

§ 1631.14 Use of derivative income from sale of personal property purchased with LSC funds.

(a) During the term of an LSC grant or contract, a recipient may retain and use income from any sale of personal property purchased with LSC funds according to 45

CFR 1630.16 (Cost Standards and Procedures: Applicability to derivative income.) and 45 CFR 1628.3 (Recipient Fund Balances: Policy.).

(b) The recipient must account for income earned from the sale, rent, or lease of personal property purchased with LSC funds according to the requirements of 45 CFR 1630.16.

Subpart D—Real Estate Acquisition and Capital Improvements

§ 1631.15 Purchasing real property with LSC funds.

(a) Pre-purchase planning requirements. (1) Before purchasing real property with LSC funds, a recipient must conduct an informal market survey and evaluate at least three potential equivalent properties.

(2) When a recipient evaluates potential properties, it must consider:

(i) The average annual cost of the purchase, including the costs of a down payment, interest and principal payments on a mortgage financing the purchase; closing costs; renovation costs; and the costs of utilities, maintenance, and taxes, if any;

(ii) The estimated total costs of buying and using the property throughout the mortgage term compared to the estimated total costs of leasing and using a similar property over the same period of time;

(iii) The property's quality; and

(iv) Whether the property is conducive to delivering legal services (e.g. property is accessible to the client population (ADA compliant) and near public transportation, courts, and other government or social services agencies).

(3) If a recipient cannot evaluate three potential properties, it must be able to explain why such evaluation was not possible.

(b) Prior approval. Before a recipient may purchase real property with LSC funds, LSC must approve the purchase as required by 45 CFR 1630.6 and 1631.3. The request for approval must be in writing and include:

(1) A statement of need explaining how the purchase will further the delivery of legal services to eligible clients, including:

(i) The information obtained and considered in paragraph (a);

(ii) Trends in funding and program staffing levels in relation to space needs;

(iii) Why the recipient needs to purchase real property; and

(iv) Why purchasing real estate is reasonable and necessary to performing the LSC grant.

(2) A brief analysis comparing:

(i) The estimated average annual cost of the purchase including the costs of a down payment, interest and principal payments on a mortgage financing the purchase; closing costs; renovation costs; and the costs of utilities, maintenance, and taxes, if any; and

(ii) The estimated average annual cost of leasing or purchasing similar property over the same period of time;

(3) Anticipated financing of the purchase, including:

(i) The estimated total acquisition costs, including capital improvements, taxes, recordation fees, maintenance costs, insurance costs, and closing costs;

(ii) The anticipated breakdown of LSC funds and non-LSC funds to be applied toward the total costs of the purchase;

(iii) The monthly amount of principal and interest payments on debt secured to finance the purchase, if any;

(4) A current, independent appraisal sufficient to secure a mortgage;

(5) A comparison of available loan terms considered by the recipient before selecting the chosen financing method;

(6) Board approval of the purchase in either a board resolution or board minutes, including Board approvals that are contingent on LSC's approval;

(7) Whether the property will replace or supplement existing program offices;

(8) A statement of handicapped accessibility for the disabled sufficient to meet the requirements of 45 CFR 1624.5 or a statement that the property will be accessible upon the completion of any necessary capital improvements. Such improvements must be completed within 60 days of the date of purchase; and

(9) A copy of a purchase agreement, contract, or other document containing a description of the property and the terms of the purchase.

(c) Property interest agreement. Once LSC approves the purchase, the recipient must enter into a written property interest agreement with LSC. The agreement must include:

(1) The recipient's agreement to use the property consistent with § 1631.16;

(2) The recipient's agreement to record, under appropriate state law, LSC's interest in the property;

(3) The recipient's agreement not to encumber the property without prior LSC approval; and

(4) The recipient's agreement not to dispose of the property without prior LSC approval.

§ 1631.16 Capital improvements.

(a) As required by §1630.6 of this chapter and §1631.3, a recipient must obtain LSC's prior written approval before using more than \$25,000 LSC funds to make capital improvements to real estate.

(b) The written request must include:

(1) A statement of need explaining how the improvement will further the delivery of legal services to eligible clients;

(2) A brief description of the nature of the work to be done, the name of the sources performing the work, and the total expected cost of the improvement; and

(3) Documentation showing that the recipient followed its procurement policies and procedures in competing, selecting, and awarding contracts to perform the work.

(c) A recipient must maintain supporting documentation to accurately identify and account for any use of LSC funds to make capital improvements to real estate owned by the recipient.

Subpart E—Real Estate Management

§ 1631.17 Using real estate purchased with LSC funds.

(a) A recipient must use real estate purchased or leased, in whole or part, with LSC funds primarily to deliver legal services to eligible clients consistent with the requirements of the LSC Act, applicable appropriations acts, and LSC regulations.

(b) A recipient may use real estate purchased or leased, in whole or part, with LSC funds for the performance of an LSC grant or contract for other activities, if they do not interfere with the performance of the LSC grant or contract.

(c) If a recipient uses real estate purchased or leased, in whole or part, with LSC funds to provide space to an organization that engages in activity restricted by the LSC Act, applicable appropriations acts, LSC regulations, or other applicable law, the recipient must charge the organization rent no less than that which private nonprofit organizations in the same area charge for the same amount of space under similar conditions.

§ 1631.18 Maintenance.

A recipient must maintain real estate acquired with LSC funds:

(a) In an efficient operating condition; and

(b) In compliance with state and local government property standards and building codes.

§ 1631.19 Insurance.

At the time of purchase, a recipient must obtain insurance coverage for real estate purchased with LSC funds which is not lower in value than coverage it has obtained for other real property it owns and which provides at least the following coverage:

(a) Title insurance that:

(1) Insures the fee interest in the property for an amount not less than the full appraised value as approved by LSC, or the amount of the purchase price, whichever is greater; and

(2) Contains an endorsement identifying LSC as a loss payee to be reimbursed if the title fails.

(3) If no endorsement naming LSC as loss payee is made, the recipient must pay LSC the title insurance proceeds it receives in the event of a failure.

(b) A physical destruction insurance policy, including flood insurance where appropriate, which insures the full replacement value of the facility from risk of partial and total physical destructions. The recipient must maintain this policy for the period of time that the recipient owns the real estate.

§ 1631.20 Accounting and reporting to LSC.

A recipient must maintain an accounting of the amount of LSC funds relating to the purchase or maintenance of real estate purchased with LSC funds. The accounting must include the amount of LSC funds used to pay for acquisition costs, financing, and capital improvements. The recipient must provide the accounting for each year to LSC no later than April 30 of the following year or in its annual audited financial statements submitted to LSC.

§ 1631.21 Disposing of real estate purchased with LSC funds.

(a) Disposal by LSC recipients. During the term of an LSC grant or contract, a recipient must seek LSC's prior written approval to dispose of real estate purchased with LSC funds by:

(1) Selling the property after having advertised for and received offers; or

(2) Transferring the property to another recipient of LSC funds, in which case the recipient may be compensated by the recipient receiving the property for the percentage of the property's current fair market value that is equal to the percentage of the costs of the original acquisition and costs of any capital improvements borne by non-LSC funds.

(b) Disposal after a recipient no longer receives LSC funding. When a recipient who owns real estate purchased with LSC funds stops receiving LSC funds, it must seek LSC's prior written approval to dispose of the property in one of the following ways:

(1) Transfer the property title to another grantee of LSC funds, in which case the recipient may be compensated the percentage of the property's current fair market value that is equal to the percentage of the costs of the original acquisition and costs of any capital improvements by non-LSC funds;

(2) Buyout LSC's interest in the property (i.e., pay LSC the percentage of the property's current fair market value proportional to its percent interest in the property); or

(3) Sell the property to a third party and pay LSC a share of the sale proceeds proportional to its interest in the property, after deducting actual and reasonable closing costs, if any.

(4) When a recipient stops receiving LSC funds because it merged with or is succeeded by another recipient, it may transfer the property to the new recipient. The two entities must execute an LSC-approved successor in interest agreement that requires the transferee to use the property primarily to provide legal services

to eligible clients under the requirements of the LSC Act, applicable appropriations acts, and LSC regulations.

(c) Prior approval process. No later than 60 days before a recipient or former recipient proposes to dispose of real estate purchased with LSC funds, the recipient or former recipients must submit a written request for prior approval to dispose of the property to LSC. The request must include:

(1) The proposed method of disposition and an explanation of why the proposed method is in the best interests of LSC and the recipient;

(2) Documentation showing the fair market value of the property at the time of transfer or sale, including, but not limited to, an independent appraisal of the property and competing bona fide offers to purchase the property;

(3) A description of the recipient's process for advertising the property for sale and receiving offers;

(4) An accounting of all LSC funds used in the acquisition and any capital improvements of the property. The accounting must include the amount of LSC funds used to pay for acquisition costs, financing, and capital improvements;
and

(5) Information on the proposed transferee or buyer of the property and a document evidencing the terms of transfer or sale.

§ 1631.22 Retaining income from sale of real property purchased with LSC funds.

(a) During the term of an LSC grant or contract, a recipient may retain and use income from any sale of real property purchased with LSC funds according to §§1630.16 and 1628.3 of this chapter.

(b) The recipient must account for income earned from the sale, rent, or lease of real or personal property purchased with LSC funds according to the requirements of §1630.16 of this chapter.

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