

of the date on which the recipient receives the income.

PART 1631—PURCHASING AND PROPERTY MANAGEMENT

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

SOURCE: 82 FR 37341, Aug. 10, 2017, unless otherwise noted.

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.

As used in this part:

(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 and buildings (including capital improvements), excluding moveable personal property.

(g)(1) *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.

(2) *Services* does not include:

(i) 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;

(ii) Insurance, including malpractice insurance provided to staff attorneys and organizational insurance (e.g., directors and officers liability insurance, employment practices liability insurance, and commercial liability insurance);

(iii) Annual audits required by section 509(a) of Public Law 104–134;

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(iv) Services necessary to conduct litigation on behalf of clients (e.g., expert witnesses, discovery);

(v) Contracts for services necessary to address a recipient's internal personnel issues, such as labor counsel, investigators, and mediators; and

(vi) Contracts for employees, whether with the employee directly or with a placement agency.

(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) of this chapter 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 materials LSC deems sufficient to decide. LSC will inform a recipient within 20 days of receiving the initial prior approval request whether LSC needs additional information to make a decision.

(2) For purchases of real estate, LSC will make a decision within 60 days of receiving materials LSC deems sufficient to decide. LSC will inform a recipient within 20 days of receiving the initial prior approval request whether LSC needs additional information to make a decision.

(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;

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

(iii) To avoid disruption to the recipient's client-service delivery system (e.g., an event that causes a recipient's telecommunications system to cease functioning); or

(iv) To respond to a natural disaster (e.g., a flood washes out roads leading to the recipient's offices such that the recipient must contract for services that will enable it to contact its clients).

(2) The recipient must provide LSC with a description of the exigent circumstances and the information described in §1631.8(b) within 30 days after the circumstances necessitating the purchase or contract have ended.

[82 FR 37341, Aug. 10, 2017; 82 FR 55053, Nov. 20, 2017]

§ 1631.4 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.

§ 1631.5 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

§ 1631.6 Characteristics of procurements.

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

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- (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 of this chapter, the substance of the relationship is more important than the form of the agreement. All 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.

§ 1631.7 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

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sources, fair and objective criteria for selecting sources; and

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

§ 1631.8 Requests for prior approval.

(a) As required by 45 CFR 1630.6 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 of need;
- (2) A copy of the recipient's procurement policy; and
- (3) Documentation showing that the recipient followed its procurement policies and procedures in soliciting, reviewing, and approving the purchase, lease, or contract for services.

§ 1631.9 Applicability of part 1630 of this chapter.

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

§ 1631.10 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.

§ 1631.11 Intellectual property.

(a) A recipient owns all products, technologies, and software developed or improved using LSC funds, subject to any agreement the recipient may have with a third-party vendor. LSC retains a royalty-free, nonexclusive, and irrevocable license to use, reproduce, distribute, publish, and prepare derivative works of any LSC-funded products, technologies, and software, including making them available to other LSC grantees or the broader access to justice community and partners.

(b) A recipient must have a written contract with vendors who develop or improve LSC-funded products, technologies, and software. The contract must include a provision disclosing LSC's royalty-free, nonexclusive, and irrevocable license and prohibiting third-party vendors from denying its existence, challenging its legality, or interfering with LSC's full exercise of it.

§ 1631.12 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) Where the current fair market value of the personal property is \$15,000 or less, selling the property at a reasonable negotiated price, without advertising;

(4) Where the current fair market value of the personal property exceeds \$15,000, advertising the property for 14 days and selling the property after receiving reasonable offers. If the recipient receives no reasonable offers after advertising the property for 14 days, it

may sell the property at a reasonable negotiated price;

(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.

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(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.

§ 1631.13 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 1630.17 (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 1630.17.

Subpart D—Real Estate Acquisition and Capital Improvements

§ 1631.14 Purchasing real estate with LSC funds.

(a) *Pre-purchase planning requirements.* (1) Before purchasing real estate 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

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able to explain why such evaluation was not possible.

(b) *Prior approval.* Before a recipient may purchase real estate 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, including:

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

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

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

(i) Currently complies with the Americans with Disabilities Act (ADA) or applicable state law, whichever is stricter, and 45 CFR 1624.5; or

(ii) Will comply with the ADA, any applicable state law, and 45 CFR 1624.5 upon 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 a written property interest agreement with LSC. The agreement must include:

(1) The recipient's agreement to use the property consistent with §1631.15;

(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.

§ 1631.15 Capital improvements.

(a) As required by 45 CFR 1630.6 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;

(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

§ 1631.16 Using real estate purchased with LSC funds.

(a) Recipients must use real estate purchased or leased in whole or in part with LSC funds to deliver legal assistance to eligible clients consistent with the requirements of the LSC Act, applicable appropriations acts, other applicable Federal law, and LSC's regulations. If a recipient does not need to use some or all such real estate to deliver legal assistance to eligible clients, it may use the space for other activities as described in paragraphs (b) and (c) of this section.

(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.

§ 1631.17 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.

§ 1631.18 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 estate 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

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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.

§ 1631.19 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.

§ 1631.20 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

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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

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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.

§ 1631.21 Retaining income from sale of real estate 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 estate purchased with LSC funds according to 45 CFR 1630.17 (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 real or personal property purchased with LSC funds according to the requirements of 45 CFR 1630.17.

PART 1632—REDISTRICTING

Sec.

- 1632.1 Purpose.
- 1632.2 Definitions.
- 1632.3 Prohibition.
- 1632.4 Recipient policies.

AUTHORITY: 42 U.S.C. 2996e(b)(1)(A); 2996f(a)(2)(C); 2996f(a)(3); 2996(g)(e); 110 Stat. 3009; 110 Stat. 1321(1996).

SOURCE: 61 FR 63756, Dec. 2, 1996, unless otherwise noted.

§ 1632.1 Purpose.

This part is intended to ensure that recipients do not engage in redistricting activities.

§ 1632.2 Definitions.

(a) *Advocating or opposing any plan* means any effort, whether by request or otherwise, even if of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

(b) *Recipient* means any grantee or contractor receiving funds made available by the Corporation under sections 1006(a)(1) or 1006(a)(3) of the LSC Act. For the purposes of this part, *recipient* includes subrecipient and employees of recipients and subrecipients.

(c) *Redistricting* means any effort, directly or indirectly, that is intended to or would have the effect of altering, re-

vising, or reapportioning a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

§ 1632.3 Prohibition.

(a) Neither the Corporation nor any recipient shall make available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or representing any party, or participating in any other way in litigation, related to redistricting.

(b) This part does not prohibit any litigation brought by a recipient under the Voting Rights Act of 1965, as amended, 42 U.S.C. 1971 *et seq.*, provided such litigation does not involve redistricting.

§ 1632.4 Recipient policies.

Each recipient shall adopt written policies to implement the requirements of this part.

PART 1633—RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS

Sec.

- 1633.1 Purpose.
- 1633.2 Definitions.
- 1633.3 Prohibition.
- 1633.4 Recipient policies, procedures and recordkeeping.

AUTHORITY: 42 U.S.C. 2996e(a), 2996e(b)(1)(A), 2996f(a)(2)(C), 2996f(a)(3), 2996g(e); 110 Stat. 3009; 110 Stat. 1321 (1996).

SOURCE: 61 FR 63758, Dec. 2, 1996, unless otherwise noted.

§ 1633.1 Purpose.

This part is designed to ensure that in certain public housing eviction proceedings recipients refrain from defending persons charged with or convicted of illegal drug activities.

§ 1633.2 Definitions.

(a) *Controlled substance* has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(b) *Public housing project* and *public housing agency* have the meanings given those terms in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a);