

Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). In any case, Executive Order 13175 does not apply to this rule since there are no Federally recognized tribes in Delaware.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant, and it does not concern environmental health or safety risks that may disproportionately affect children. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State’s application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that satisfies the requirements of RCRA. Thus, the requirements of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701, *et seq.*) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This rule does not impose an information collection burden under the provisions of the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule authorizes pre-existing State rules which are at least equivalent to, and no less stringent than, existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This action is effective October 10, 2017.

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: July 27, 2017.

**Cecil Rodrigues,**

*Acting Regional Administrator, U.S. EPA Region III.*

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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:** Final rule.

**SUMMARY:** This final rule revises the Legal Services Corporation (LSC or Corporation) regulation on Definitions and Cost Standards and Procedures and creates a new part from LSC’s Property Acquisition and Management Manual (PAMM).

**DATES:** This final rule is effective on December 31, 2017.

#### 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), or [sdavis@lsc.gov](mailto:sdavis@lsc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

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, except for 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).

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.

LSC determined that it should undertake regulatory action at this time for three reasons. The first reason is to account for changes in Federal grants policy where appropriate for LSC. 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 now 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.

## II. 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 Board authorized rulemaking and approved the preparation of an ANPRM to revise part 1630 and the PAMM.

In October 2015, LSC published in the **Federal Register** an ANPRM, seeking public comment on potential revisions to part 1630 and the Property Acquisition and Management Manual (PAMM). 80 FR 61142, Oct. 9, 2015. After receiving comments on the ANPRM, LSC conducted workshops to obtain additional input on the potential changes. LSC drafted proposed changes to part 1630 and the PAMM based on the feedback it received from the ANPRM and the workshops.

On October 28, 2016, LSC published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) regarding 45 CFR parts 1600, 1630, and new 1631. 81 FR 75006, Oct. 28, 2016. LSC sought public comment on LSC’s revisions to its definitions and cost standards and procedures and the creation of a new part from the PAMM. In response to a request from the National Legal Aid and Defender Association (NLADA), LSC extended the original 60-day comment period for an additional 30 days. 81 FR 93653, Dec. 21, 2016. The new deadline for comments was January 26, 2017. On July 21, 2017, the Committee recommended publication of this final rule to the Board. On July 22, 2017, the Board voted to publish this final rule.

Materials regarding this rulemaking are available in the open rulemaking section of LSC’s Web site at <http://www.lsc.gov/about-lsc/laws-regulations-guidance/rulemaking>. After the effective date of the rule, those materials will appear in the closed rulemaking section at <http://www.lsc.gov/about-lsc/laws-regulations-guidance/rulemaking/closed-rulemaking>.

## III. Discussion of Comments and Regulatory Provisions

During the public comment period, LSC received comments from six organizations: Indiana Legal Services (ILS), Colorado Legal Services (CLS), Michigan Advocacy Program (MAP), Northwest Justice Project (NJP), NLADA, and Legal Action of Wisconsin (Legal Action).

Commenters expressed support for several elements of the proposed regulations. NLADA supported the proposal to eliminate 45 CFR 1630.3(a)(8), which requires recipients to obtain written consent from federal agencies before they may use LSC funds to match the federal agencies’ grants. NLADA, NJP, and MAP supported increasing the prior approval threshold in § 1630.6(b)(1) from \$10,000 to \$25,000. MAP supported the proposal to exclude employee benefit contracts from the prior approval requirements in § 1630.6(b)(1)(ii). MAP also supported adopting proposed § 1631.8, which requires recipients to have written procurement policies and procedures that meet particular standards because it involves LSC oversight at a policy level, and not individual transactional level. MAP supported the proposal to make the PAMM a regulation. NLADA and MAP supported proposed § 1631.13, which would permit programs to dispose of personal property that has little or no value as the program sees fit.

## IV. Section-by-Section Discussion

### A. Part 1600—Definitions

*Section 1600.1 Definitions.* LSC proposed including definitions of three new terms: *Corporation funds*, *LSC funds*, and *non-LSC funds*.

*Comment:* NJP supported adding these definitions. NJP, NLADA, and CLS, however, expressed concern that the proposed definition of *Corporation funds* or *LSC funds*, which reads “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[.]” could be interpreted to include funds appropriated by Congress to other departments or agencies that can be granted to LSC recipients for the purpose of providing legal assistance. Instead, NJP recommended adding “to LSC” to the definition, which would then read “any funds appropriated by Congress to LSC. . . .”

*Response:* LSC will revise the final rule to add the phrase “to LSC” to the definition in § 1600.1.

### B. Part 1630—Cost Standards and Procedures

*Organizational note:* As described in the discussion for § 1630.10 (Recipient policies, procedures, and recordkeeping), the final rule will insert this section and renumber the sections that follow. This preamble reflects the updated numbering except where noted.

LSC proposed to reorganize part 1630 into four subparts addressing (1) generally applicable provisions; (2)

allocability and allowability of costs charged to LSC grants; (3) questioned cost proceedings; and (4) closeout proceedings.

#### Subpart A—General Provisions

*Section 1630.1 Purpose.* LSC proposed no changes to this section and received no comments.

*Section 1630.2 Definitions.* Proposed § 1630.2(d) defined *final written decision* as either (1) a decision issued by the Vice President for Grants Management, or (2) “the notice of questioned costs if a recipient does not respond to the notice within 30 days of receipt.” Additionally, proposed § 1630.3 (current § 1630.13(b)) recognized that LSC may, on a recipient’s written request for good cause, grant an extension of time.

*Comment:* NJP expressed concern, with which CLS agreed, that the extension of time is not referenced in the § 1630.2(d) definition, nor is it identified in proposed § 1630.10(d)(2) (governing questioned cost proceedings). Proposed § 1630.10(d)(2) established that “[i]f the recipient does not respond to LSC’s written notice [of questioned costs] within 30 days, the written notice shall become LSC’s final written decision.” NJP expressed concern that, if a recipient does not respond to the written notice within 30 days, the recipient loses the right to further appeal because “cutting off any right to appeal after 30 days does not take into account vagaries of notice or possible intervening events.”

*Response:* As NJP noted, the timeframes of part 1630 are subject to extensions for good cause. Accordingly, where a recipient receives a notice of questioned costs, it may request an extension based on the “vagaries of notice or possible intervening events” with which NJP is concerned. LSC believes proposed § 1630.3(b), which described permitted extensions, provided appropriate flexibility to respond to issues that may impede a recipient’s ability to fully respond to the notice within 30 days.

Nevertheless, to clarify both that the extensions of time described in proposed § 1630.3 apply during questioned cost proceedings and that a final written decision is subject to the extension, LSC will amend proposed § 1630.10(d)(2), renumbered as § 1630.11(d)(2), to read, “If the recipient does not respond to LSC’s written notice within 30 days; the recipient does not request an extension of time pursuant to § 1630.3(b) within 30 days; or LSC does not grant an extension of time pursuant to § 1630.3(b) within 30 days the written

notice shall become LSC’s final written decision.”

#### *Section 1630.3 Time.*

*Section 1630.3(a).* Current § 1630.13(a) states that time limits in part 1630 are computed according to the Federal Rules of Civil Procedure, Rules 6(a) and (e). LSC proposed to relocate this language to § 1630.3(a) without change.

*Comment:* NJP noted that the current version of Rule 6 has no paragraph (e) and proposed that LSC eliminate the reference. NJP also noted that, rather than citing to the Federal Rules of Civil Procedure to explain the time limits, it may be less confusing for LSC to include in the rule a standard for calculating time. CLS supported this comment.

*Response:* In response to NJP’s comment, LSC will replace paragraph (a) regarding time computation with language adopted from 24 CFR 26.31. The adopted language provides that the first day of the time period is the day after the event. In other words, if a recipient has 30 days to respond to a notice of questioned costs, the 30 days begins running the day after the recipient receives the notice. For time periods of seven days or less, the time period is seven business days; intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

*Section 1630.3(b).* Current § 1630.13(b) states that LSC may, “on a recipient’s written request for good cause, grant an extension of time and shall so notify the recipient in writing.” LSC did not propose to change this provision in the NPRM.

*Comment:* NJP noted that proposed § 1630.3(b) did not state whether the request for extension of time must be received by LSC before the expiration of the deadline at issue. NJP asserted that if LSC intends that the request be received within the timeframe, the regulation should so state. NJP also requested that the regulation state that “good cause” shall be liberally construed. CLS stated it “believes that the timeline for appealing questioned costs should be clarified, relaxed and allow for extensions of time and exceptions.”

Regarding extensions of time and proposed § 1630.10(d)(2) (review of questioned costs) specifically, NJP also requested that the regulation allow a recipient the opportunity to demonstrate good cause for failing to respond to the notice of proposed costs within 30 days after the allotted 30 days’ response time has passed but before LSC pursues recovery of the disallowed cost. NJP noted that

recipients face technology and mail delivery problems, staff illness, vacation or other extended leave, or other exigent circumstances, including “excusable neglect,” that cause recipients to fail to seek an extension within the 30 days allowed by proposed § 1630.10(d)(2).

*Response:* LSC emphasizes that proposed § 1630.10(d)(2), final rule § 1630.11(d)(2), authorizes a full 30 calendar days for a recipient to seek an extension of time. For effective and efficient management, LSC believes it is reasonable to expect some form of correspondence from a recipient—whether the actual response or a request for an extension—within the timeframe provided by the relevant section of the rule. The circumstances that NJP suggests would merit requests for extensions of time that are filed after the timeframe expired, e.g., staff on vacation or excusable neglect, do not seem to be reasonable justification for a grantee to be unable to request an extension before a deadline expires. Therefore, LSC will adopt NJP’s suggestion to clarify that § 1630.3(b) requires the request for an extension to be submitted within the allotted timeframe. In addition, LSC will add language requiring LSC to respond to a request for extension within seven calendar days of receipt of the request. LSC believes this regulation, as revised, provides an appropriate timeline for questioned costs proceedings, including appropriate extensions of time and exceptions.

*Section 1630.4 Burden of proof.* LSC proposed no changes to this section and received no comments.

#### Subpart B—Cost Standards and Prior Approval

*Section 1630.5 Standards governing allowability of costs under LSC grants or contracts.* In proposed § 1630.5(i), LSC referenced regulations and circulars of the Office of Management and Budget (OMB) as documents providing guidance for all allowable costs arising under part 1630 where relevant policies or criteria are not inconsistent with the provisions and regulations of LSC.

*Comment:* NJP suggested that using OMB guidance “for all allowable cost questions arising under this part when relevant policies or criteria therein are not inconsistent” with LSC laws and regulations “put[s] into play” OMB guidance where LSC does not have other published policies or guidance. NJP and Legal Action expressed concern that OMB guidance does not permit fundraising as an allowable cost, which conflicts with LSC’s longstanding practice of allowing LSC funds to be used for fundraising efforts. See Advisory Opinion EX–1999–12,

<http://www.lsc.gov/sites/default/files/LSC/laws/pdfs/olaeo/EX-1999-12.pdf>. CLS supported this comment. NJP and NLADA also suggested removing the words “and circulars” from proposed § 1630.5(i) because relevant OMB circulars have been replaced by the Uniform Guidance published by the Office of Management and Budget, 2 CFR part 200. CLS supported these suggestions.

*Response:* LSC agrees with these comments and will make two changes to the final rule. LSC will add a new paragraph (i) to this section to reflect LSC’s longstanding policy that recipients may use LSC funds to engage in fundraising for the purposes of expanding the resources available to carry out the LSC grant. LSC will also remove the words “and circulars” from proposed § 1630.5(i), final rule § 1630.5(j).

*Section 1630.6 Prior approval.* Under current § 1630.5(b)(2), LSC requires recipients to seek prior approval for any purchases and leases of equipment, furniture, or other personal, non-expendable property, if the purchase price of any individual item of property exceeds \$10,000. 45 CFR 1630.5(b)(2). LSC also requires recipients to seek prior approval of purchases of real property, capital expenditures costing more than \$10,000, and pre- and post-award costs. *Id.* § 1630.5(b)(1), (3), and (4).

In the NPRM, LSC proposed three changes to the prior approval requirement. First, LSC proposed to increase the prior approval threshold amount to \$25,000 to account for inflation. Second, because LSC believes effective financial oversight requires recipients to seek prior approval for more transactions than only those listed in the current rule, the proposed regulation required prior approval for “any . . . transaction” of purchases or leases of personal property, contracts for services, purchases of real estate, and capital improvements when the cost of the transaction exceeds \$25,000. In the preamble to the NPRM, LSC explained that recipients must seek prior approval for “any single purchase whose costs exceed \$25,000 in LSC funds, regardless of whether that purchase is of a single item of personal property, or a combination of personal property and services.” 81 FR 75006, 75013, Oct. 28, 2016. Finally, LSC proposed to remove pre-award and post-award costs from the list of costs eligible for prior approval because prior approval is not the appropriate process for considering requests to use LSC funds to pay for pre- and post-award costs.

*General comments:* Every commenter opposed at least some part of the proposed prior approval requirement. In general, the commenters objected to LSC’s review of purchases because the recipient knows the local market better than LSC. Commenters observed that seeking prior approval may unduly delay routine and necessary purchases and undermine negotiations for favorable deals with vendors. Commenters were particularly concerned with how the proposed regulation would affect their office supply purchases. NLADA noted that programs may make bulk purchases of expendable property as the most efficient and economical means of acquiring supplies. NLADA noted that the proposed change reverses prior policy which provided “clear” and “objective” standards to determine when prior approval would be necessary. Legal Action encouraged LSC not to require prior approval for personal property purchases because LSC would find itself reviewing routine purchases of office supplies. NJP opined that requiring prior approval for aggregate purchases would “encourage recipients to parse out their purchases to avoid the need to obtain prior approval with the consequences of more paper work, staff time to process this paperwork and payments, and the potential of less favorable pricing.”

Commenters also described challenges anticipating costs for particular services. For example, Legal Action noted how difficult it is to project whether translation services costs and records storage costs would exceed \$25,000 in a year. ILS noted that where anticipated costs are difficult to determine, even where it has no intention of exceeding \$25,000 in a year, it may nevertheless “play it safe” by seeking approval at the outset for these arrangements to avoid later violations. Other commenters noted that recipients may have difficulty determining when to seek prior approval for services contracts because of the various types of contracts recipients have, *e.g.*, a consultancy contract in which a recipient pays a flat fee each month and, potentially, a fee-per-service or hourly fee for additional tasks as needed.

NJP suggested imposing the proposed prior approval requirement only where necessary to address past abuse, conflict of interest, fraud, or “other malfeasance[.]” MAP suggested adding a separate section in the grant application asking grantees to explain proposed purchases over \$25,000 in LSC funds, which would allow recipients and LSC to engage in discussion about purchases

without the bureaucracy of the proposed regulations.

*General Response:* LSC responds to specific concerns under section headers below. Generally, LSC intended this rule to capture single purchases (*i.e.*, purchases at one point in time through one order) of single items or services or aggregate items whose total cost exceeds the threshold, not multiple purchases of multiple items or services at different points in time. LSC is making several changes to the rule to clarify its intention.

*Section 1630.6(b).* Proposed § 1630.6(b)(1) required a recipient to “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[.]” In the preamble to the NPRM, LSC explained that a recipient 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.”

*Comment:* Commenters expressed confusion regarding the circumstances under which prior approval is required. NJP observed that the term “transactions” is undefined in the regulation. All commenters expressed confusion about what types of purchases were aggregated or what constituted a single purchase. NJP and NLADA also expressed confusion about when purchases are “aggregated” for purposes of applying the prior approval threshold. MAP recommended that LSC clarify “single purchase” as “a single order of goods or a single contract for services from a single vendor the cost of which exceeds \$25,000 in LSC funds.”

*Response:* LSC used the term “transactions” as a global term to describe the various types of costs subject to the prior approval requirement. LSC did not intend to introduce a separate category of undefined transactions into the rule. To avoid continued confusion, LSC will change the language in § 1630.6(b)(1) to largely follow the current § 1630.5(b) language. The redrafted subparagraph will read, “Without LSC’s prior written approval, a recipient may not expend \$25,000 or more of LSC funds on any of the following[.]”

Additionally, LSC will clarify that prior approval applies to a “single purchase,” “single lease,” or “single contract” and define these terms in the new rule. LSC will define the terms at § 1630.2(h): “*Single purchase, single lease, and single contract* mean a single

order or lease of goods or a single contract for services from a single vendor.”

Accordingly, the prior approval requirement applies to—

(i) A single purchase or single lease of personal property;

(ii) A single contract for services;

(iii) A single purchase of real estate;

(iv) Capital improvements; and

(v) A single purchase or single lease of personal property combined with a single contract for services.

This clarification resolves the questions commenters raised. For example, ILS has a discount arrangement with an office supplier. Although ILS does not make \$25,000 worth of purchases from this vendor at one time, over the course of a year ILS may purchase more than \$25,000 in LSC funds worth of supplies from the vendor. Under LSC's proposed rule, this scenario does not trigger the prior approval requirement. The requirement is triggered only when a single order of one or multiple items from this vendor exceeds \$25,000. As another example, Legal Action purchases supplies online from a small number of vendors. Over the course of a year, Legal Action explained, the aggregate purchases from an individual vendor, such as Amazon, may exceed \$25,000. Again, a purchase requires prior approval when it is a single order from a single vendor of a good or multiple goods whose cost exceeds \$25,000 in LSC funds.

Finally, MAP posed the example of buying office supplies for seven offices from a single vendor over the course of a year that could add up to \$25,000. Again, the proposed rule does not aggregate purchases over time. If a single order of consumable supplies exceeds \$25,000, there is no reason not to examine that purchase with the same diligence as the purchase of a non-consumable good that costs over \$25,000. Moreover, LSC's proposed approach of increasing oversight over purchases, including supplies, aligns with the Uniform Guidance's inclusion of purchases of supplies as types of purchases subject to increasingly stringent levels of competition. See 2 CFR 200.320.

*Section 1630.6(b)(1)(ii).* Proposed § 1630.6(b)(1)(ii) extended the scope of both the PAMM and the prior approval requirements to contracts for services.

*Comment 1:* All commenters objected to LSC's proposed § 1630.6(b)(1)(ii). Commenters noted that recipients' various structures of contractual arrangements for services make determining when prior approval is required difficult. For example, Legal Action explained that it retains

technology consultant services for a fixed monthly fee with discrete projects that arise billed on a fee-per-service or hourly basis. Similarly, CLS contracts quarterly for its IT services, with quarterly projected expenditures based on an estimated assessment of needed services. CLS noted, however, that its program may have unexpected IT needs late in the year that bring the total cost over \$25,000, even though at the outset, no quarterly agreement met or was likely to meet the threshold. NJP maintains “rate arrangements” with hotels with no individual stay exceeding the threshold amount, but over a year, stays at a particular hotel may exceed \$25,000.

Other recipients arrange to receive services for a period of time at a fixed rate, for example, paying \$25 per hour for translation services as needed over two years. In these scenarios, commenters stated that calculating whether the recipient needs to seek prior approval may be difficult. NLADA asked if a recipient would need to obtain prior approval if services would not exceed \$25,000 in one year, but would exceed \$25,000 over two years. Legal Action also questioned whether payments to various temporary workers, none of whose payments exceeds \$25,000, but when taken together exceed \$25,000, require prior approval.

*Response:* LSC believes that the language of the proposed rule accommodates the concerns described by commenters. First, for all services contracts, because LSC prior approval extends for one year, LSC believes the appropriate period of time to calculate the accrual of costs is one year. Second, regarding situations where a contract does not have a fixed price at the outset, LSC believes the appropriate approach is to require prior approval once a recipient expects the contract will exceed \$25,000 in LSC funds. This requires a business judgment decision by the recipient to determine when it appears the cost of a contract will exceed \$25,000. Applying this approach, a contract based on a monthly rate with an additional fee-for-service cost that arises throughout a year would trigger the prior approval requirement either (1) at the beginning of the contract if the initial cost exceeds or is expected to exceed \$25,000, or (2) once it appears the additional fee-for-service costs (or any other costs that arise) will cause the total cost of the contract to exceed \$25,000. Where services are provided throughout a year based on separate arrangements made throughout the year, each arrangement is considered a separate contract and triggers the prior approval requirement

only if one arrangement exceeds \$25,000. LSC notes that LSC may question the costs associated with contracts if the timing and amounts of contracts with an individual vendor appear calculated to avoid the prior approval requirement, rather than being based on reasonable business judgment.

Finally, for temporary employees, as discussed below, contracts for temporary employees will be exempt from the prior approval process.

*Comment 2:* In response to the proposed prior approval requirement for services contracts, NLADA noted that obtaining prior approval may be problematic for programs seeking auditors for annual audits that are required to comply with standards established by LSC's Office of Inspector General (OIG). NLADA stated that at least ten programs spend over \$25,000 on required annual audits, and some of these programs are in areas with few choices for appropriate and eligible auditors. These auditors are in demand, and time is of the essence in retaining an accounting firm to conduct the LSC-compliant audit. NLADA expressed concern that a delay to seek prior approval would impede a program's ability to retain competent auditors and potentially compromise the program's ability to meet deadlines.

*Response:* After reviewing NLADA's comment, LSC concluded that recipients' hiring of auditors to conduct audits that must comply with OIG standards and be submitted to OIG should not be subject to LSC prior approval process. Accordingly, LSC will revise § 1631.2(g), defining *services*, to exclude such audits from the requirement.

*Comment 3:* Regarding the proposed prior approval requirement for services contracts, Legal Action noted challenges allocating costs of services such as legal research through Westlaw and record storage services like Iron Mountain, each of which could exceed \$25,000 in a year. For each service, Legal Action noted that, in the past, the overall cost has exceeded \$25,000, but the cost apportioned to LSC funds may or may not exceed \$25,000.

*Response:* For a services contract (or any other contract) funded by LSC and another source, the contract triggers LSC's prior approval requirement once the amount apportioned to LSC funds exceeds \$25,000. LSC will revise the rule to clarify this apportionment calculation.

*Section 1630.6(b)(1)(iii).* Proposed § 1630.6(b)(1)(iii) required prior approval for “purchases of real estate” that exceed \$25,000. Proposed § 1631.2(f) defined *real estate* as “land,

buildings (including capital improvements), and property interests in land and buildings (e.g., tenancies, life estates, remainders, reversions, easements), excluding movable personal property.”

*Comment:* Commenters noted that proposed § 1631.2(f) included tenancies in the definition of *real estate*. According to NJP, this would be a “significant departure from prior practice.” NLADA, NJP, MAP, ILS, and CLS requested clarification that leases of real property do not require prior approval.

*Response:* LSC did not intend to subject leases of real property to prior approval requirements. LSC will revise the definition of *real estate* in § 1631.2(f) to include land and buildings but not personal property. This definition reflects the definition provided in the PAMM. Because the term *real estate* is also used in part 1630, LSC will also revise the definition of *real estate* in § 1630.2(g) to mirror the updated definition found in § 1631.2(f).

*Section 1630.6(b)(1)(iv).* Proposed § 1630.6(b)(1)(iv) required a recipient to obtain prior approval for capital improvements costing \$25,000 or more of LSC funds.

*Comment:* NJP, MAP, and NLADA expressed concern that requiring prior approval for capital improvements may impair a recipient’s ability to negotiate capital improvements as part of lease negotiations. NJP expressed concern about leases that include provisions for pass-through building operating charges. NJP observed that reconciliation for pass-through costs occurs after the improvements are made, and a recipient may not be able to obtain prior approval or even control the landlord’s selection of the vendor. MAP suggested that capital improvements that are part of a lease negotiation be explicitly exempt from the prior approval requirement.

*Response:* Existing section 1630.5(b)(4) and section 4(f) of the PAMM currently require recipients to seek prior approval of capital expenditures when the cost of the expenditures exceeds \$10,000. This requirement is not new to the proposed rule. It does not currently apply to capital improvements negotiated as part of a recipient’s lease arrangements. LSC considered the value of reviewing capital improvements in this context compared to the burden imposed. LSC concluded that the cost of the review outweighs benefits and therefore will not extend the prior approval requirement for capital improvements negotiated as part of a recipient’s lease arrangement. Proposed § 1630.6(b)(1)(iv)

applied only to those capital expenditures that a recipient seeks to make to leased property after it enters the lease.

*Sections 1630.7, 1630.8, and 1630.9 Membership fees or dues; Contributions; Tax-sheltered annuities, retirement accounts, and penalties.* LSC proposed to redesignate §§ 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. LSC received no comments on these sections.

*Section 1630.10 Recipient policies, procedures, and recordkeeping.* Effective April 1, 2017, LSC relocated the sections of part 1627 governing the use of recipient funds to pay membership fees or dues, make contributions to other organizations, or contribute to tax-sheltered annuities, retirement accounts, and penalties to part 1630. LSC unintentionally failed to relocate § 1627.7 requiring recipient policies, procedures, and recordkeeping in part 1630 at the same time. Consequently, this section is a necessary carryover from part 1627 to ensure that recipients retain or develop written policies and procedures to ensure that their staff know about and comply with §§ 1630.7–1630.9, and the final rule will include these requirements. The final rule will also renumber the sections that follow.

#### Subpart C—Questioned Cost Proceedings

Subpart C governs LSC’s decisions to question costs and the appeals procedure by which a recipient challenges questioned costs.

*Section 1630.11 Review of questioned costs.* In the proposed regulation, LSC eliminated the five-year lookback period to recover questioned costs from a recipient because, based on its oversight experience, limiting LSC’s ability to recover misspent costs is inconsistent with its duty to responsibly administer appropriated funds. On several occasions, LSC has found that misuse of funds was not discovered during the five-year period, despite LSC’s conscientious review of available reports and documentation.

*General Comments:* NLADA, NJP, CLS, and MAP opposed the removal of the five-year timeframe. They noted that LSC accounting and record retention guidance recommends retaining records for varying times ranging from two years to permanent retention and argued that eliminating the five-year timeframe conflicts with this LSC record retention guidance. NLADA recommended that LSC retain the five-year lookback period

to provide programs certainty as to when they may close their books. NLADA also recommended that, if LSC nevertheless eliminates the lookback timeframe, it apply the change only prospectively to account for programs that have legitimately destroyed records pursuant to LSC’s guidance. Alternatively, NLADA suggested LSC limit its ability to recover costs beyond the five-year limit only to egregious circumstances such as criminal behavior or intentional violations of LSC regulations. NLADA further questioned whether the cost of a recipient retaining documents—which may exceed \$25,000 per year for a program—and the cost of LSC’s investigation are worthwhile.

*General Response:* LSC believes its ability to disallow funds for later-discovered malfeasance should not be limited, notwithstanding an organization’s records retention policy. LSC recognizes that proper destruction of records on schedule when there are no open questions is an appropriate defense to not being able to produce records, but time-limited records retention policies are not an appropriate reason to limit LSC’s ability to recover misspent costs. Accordingly, LSC will retain the proposal to eliminate the five-year lookback period in the final rule.

*Section 1630.11(d)(2).* Under the current questioned costs procedure, a recipient has 30 days from the date it receives a notice of questioned costs from LSC to respond with evidence and an argument for why LSC should not disallow the costs. If the recipient does not respond within 30 days, LSC management must issue a second decision. LSC believes this second step is redundant because it places an unnecessary burden to confirm its own action in the absence of a recipient challenge. LSC proposed to replace this step with proposed § 1630.10(d)(2), which stated that if the recipient does not respond to the notice of questioned cost within 30 days, the notice automatically converts to LSC’s final written decision.

*Comment 1:* NLADA commented that the timeframes are inequitable because, while LSC has “an unlimited time period to investigate a questioned cost, prepare its written determination, and then another 60 days to respond to the recipient[,]” a recipient has 30 days to respond to a questioned cost. NLADA asserted that “[i]n fairness,” respondents should have at least 60 days to prepare their response to LSC and recipients should have the opportunity to extend the time to respond for at least 30 days for good cause.

*Response:* The 30-day timeframe in the proposed rule was adopted without change from current § 1630.7(c). That paragraph provides that the recipient may respond to a written notice of questioned costs, and, if the recipient does not respond, LSC will make a decision based on the information available. The proposed rule effectively reflected the same procedure. LSC has determined that fixing a timeframe by which recipients must respond, either in substance or by seeking an extension pursuant to § 1630.3(b), ensures LSC can proceed with its questioned costs review in an expeditious manner.

As described above, a recipient may seek an extension for good cause, pursuant to proposed § 1630.3(b). LSC's assessment of whether the recipient has shown "good cause" inherently takes into consideration the length of extension a recipient would need. Therefore, LSC will retain language from the proposed rule.

*Comment 2:* As described in the § 1630.2 discussion, NJP and CLS expressed concern that the extension of time is not referenced in either the proposed § 1630.2(d) definition or proposed § 1630.10(d)(2) (final rule § 1630.11(d)(2)).

*Response 2:* For the reasons stated earlier in this preamble, LSC will amend proposed § 1630.10(d)(2), renumbered as § 1630.11(d)(2), to clarify that a recipient must respond, either with a substantive response or a request for extension, within 30 days of receiving the questioned costs notice.

*Section 1630.12 Appeals to the President.* LSC proposed to move existing § 1630.7(e)–(g) to § 1630.11 with one substantive change. LSC proposed to introduce a requirement that prohibits a recipient from appealing a written decision to the LSC President when the recipient did not seek review of the initial notice of questioned costs. LSC believes that a senior manager with direct oversight over 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 because the review is better conducted at an earlier stage than during review by the President. Appeals to the President can address any relevant actions by LSC including substantive decisions such as the amount questioned and procedural decisions such as whether to extend a submission deadline.

*Comment:* NLADA commented that, where a recipient does not respond to LSC's written notice of questioned costs, the decision becomes final and, thus, an LSC denial of a request for extension of time may not be appealed to the

president. NLADA noted that recipients "should have a full and fair opportunity to respond to LSC, including the ability to appeal to the president if LSC management denies a recipient an extension of time to respond to a questioned cost finding."

*Response:* A recipient may fully respond to LSC's notice at the management level. A "full and fair opportunity to respond" does not require providing recipients the ability to skip management-level review and appeal directly to the President. LSC will therefore retain the procedural change proposed in the NPRM, now renumbered as § 1630.12.

*Section 1630.13 Recovery of disallowed costs and other corrective action.* In the NPRM, LSC proposed to redesignate existing § 1630.8 to § 1630.12 with only minor technical changes to reflect the removal of the term *final action* from the rule. LSC received no comments on this section. The final rule renumbers this section as § 1630.13.

*Section 1630.14 Other remedies; effect on other parts.* LSC proposed to redesignate existing § 1630.9 as § 1630.13 with only minor technical edits. LSC received no comments on this section. The final rule renumbers this section as § 1630.14.

*Sections 1630.15; 1630.16; 1630.17 Applicability to subgrants; Applicability to non-LSC funds; Applicability to derivative income.* LSC proposed to redesignate existing §§ 1630.10 (Applicability to subgrants); 1630.11 (Applicability to non-LSC funds); and 1630.12 (Applicability to derivative income) as §§ 1630.14–1630.16, respectively, without change. LSC received no comments on these sections. The final rule renumbers these sections as §§ 1630.15–1630.17, respectively.

#### Subpart D—Closeout Procedures

*Section 1630.18 Applicability.* Proposed § 1630.17, regarding closeout procedures, applies when a recipient changes its current identity or status as a legal entity.

*Comment:* MAP suggested defining the term "change in current identity or status as a legal entity" to ensure that a relatively minor change (such as a corporate name change) or a structural change does not trigger this section. MAP proposed a limited definition such as "a change in legal status under state corporate law with the effect that a different legal entity becomes the LSC recipient."

*Response:* LSC intended to include those mergers where the recipient ceased to exist. LSC did not intend

proposed § 1630.17 to apply to name or logo changes. LSC will revise proposed § 1630.17(a), renumbered as § 1630.18(a), to state that the rule applies to mergers or consolidations with one LSC recipient that result in another LSC recipient ceasing to exist as a legal entity. In those situations, only the LSC recipient that is surrendering its legal status must comply with the closeout procedures in Subpart D. Additionally, LSC will replace the proposed language of § 1630.17, renumbered as § 1630.18, with "Ceases to exist as a legal entity[.]"

*Section 1630.19 Closeout plan; timing.* In the NPRM, LSC proposed to require recipients who stop receiving LSC funding to provide LSC with a plan for the orderly closeout of the grant. LSC received no comments on this section. LSC will renumber the proposed section as § 1630.19.

*Section 1630.20 Closeout costs.* In the NPRM, LSC proposed to formalize its policies for approving the use of LSC funds to complete closeout activities, including requiring recipients to submit a detailed budget and timeline and allowing LSC to withhold unreleased funds until the recipient has satisfactorily completed its closeout procedures. LSC received no comments on this section. The final rule will renumber proposed § 1630.19 as § 1630.20.

*Section 1630.21 Returning funds to LSC.* In proposed § 1630.20, LSC proposed to formalize procedures for recipients to return to LSC excess fund balances and derivative income received after the end of the LSC grant period. LSC received no comments on this section. LSC will renumber proposed § 1630.20 as § 1630.21.

#### C. Part 1631—Purchasing and Property Management

*Organizational note:* As described in the discussion for § 1631.4, the final rule will eliminate § 1631.4 and renumber sections that follow. This preamble reflects the updated numbering except where noted.

##### Subpart A—General Provisions

*Section 1631.1 Purpose.* In the NPRM, LSC proposed to describe the purpose of part 1631 as setting standards for policies governing certain purchases and establishing requirements governing the use and disposition of property purchased with LSC funds. LSC received no comments on this section.

*Section 1631.2 Definitions.* In the NPRM, LSC adopted several definitions from the PAMM into part 1631 and added new definitions.

*Section 1631.2(f)*. LSC proposed to change the PAMM term *real property* to *real estate* and to simplify the rule's language. LSC also proposed to revise the term's definition 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 in the revised definition.

*Comment*: As discussed in the commentary regarding § 1630.6(b)(1)(iii), commenters noted that proposed § 1631.2(f) included tenancies in the definition of *real estate* and requested that leases of real estate not require prior approval.

*Response*: As previously explained, LSC did not intend to subject leases of real estate to prior approval requirements and will revise the definition.

*Section 1631.2(g)*. In the NPRM, LSC proposed to define *services* as services rendered by members of a profession or people who have a special skill and are not employed by a recipient. The proposed definition explicitly included services such as accounting, banking, cleaning, consultation, training, expert services, equipment maintenance, and transportation. It excluded other categories such as services provided by recipients to employees in addition to regular salaries and wages, such as employee insurance, pensions, and unemployment benefit plans. The preamble to proposed part 1631 explained that employee benefits are not the type of services over which LSC intended to increase its oversight. Accordingly, the NPRM preamble explained that contracts for employee benefits are not subject to the definition of *services*.

*Comment 1*: NJP expressed concern that this definition was "extremely broad" and included many basic office services such as banking and cleaning. In addition, NJP expressed concern that the definition included expert services, transportation, and costs associated with litigation (such as expert witness fees and discovery fees). Finally, NJP and ILS noted the exception for "employee insurance" was potentially confusing. They asked, for example, whether the exclusion of "employee insurance" included malpractice insurance that programs must provide staff attorneys or other types of insurances such as employment practices liability, commercial liability, and Directors and Officers liability insurance.

*Response*: In response to this comment, LSC will explicitly exclude

litigation costs (e.g., expert witness and discovery fees), insurance services, and professional services intended to resolve sensitive personnel issues (e.g., labor counsel or mediation services) from the final rule because LSC did not intend to include these services within the proposed rule.

*Comment 2*: As described previously in the discussion of § 1630.6, NLADA noted that obtaining prior approval may be problematic for programs seeking auditors to conduct required annual audits that comply with the standards established by OIG.

*Response*: LSC will revise § 1631.2(g) to exclude such audits from the requirement.

*Section 1631.3 Prior approval process*. Proposed § 1631.3 relocated the provisions governing the timetable and basis for granting prior approval from existing § 1630.6 to new § 1631.3.

*Section 1631.3(b)*. The proposed rule stated that, for purchases or leases of personal property, contracts for services, and capital improvements, LSC will decide on the request within 30 days of receiving the request. For purchases of real estate, LSC will decide within 60 days. If LSC cannot decide within the allotted time, proposed § 1631.3(b)(3) stated that LSC will provide the requester a date by which it expects to decide.

*Comment*: NLADA and MAP expressed concern that § 1631.3(b)(3) gives LSC an unlimited amount of time in which to respond to a request if it cannot decide within the time allotted. MAP suggested adding that "if LSC neither makes a decision on a request for prior approval nor informs the requester of a date to make a decision within 60 days of the date of the request, the request is deemed approved." MAP also suggested adding that "if LSC elects to provide a requester with a date for a decision on a request for prior approval that is longer than 60 days, the date must be within 120 days of the date of the original request; if LSC fails to make a decision by the date it announces, the request is deemed approved." NLADA recommended that the approval time for making capital improvements not exceed 30 days because making capital improvements may be a complex process to coordinate and, after completing negotiations and calculating costs, prior approval delays may jeopardize the project. NLADA additionally questioned whether LSC has sufficient resources to timely process these approvals.

*Response*: As discussed at length during the rulemaking on 45 CFR part 1627, LSC believes sound grants management requires review and an

affirmative decision on each request to use a significant amount of LSC funds. Consistent with the views expressed in that rulemaking, LSC rejects the "deemed approved" approach to authorizing prior approvals.

LSC also will not establish a rigid timeframe within which it must respond to a request for prior approval if it cannot decide within 60 days. In LSC's experience, recipients may not initially submit all documentation LSC needs to make its decision. LSC must have time to review the materials a recipient submits and request additional documentation as needed. Accordingly, LSC will revise § 1631.3(b) to state that (1) if the requester does not provide all required materials in its initial prior approval request, LSC will contact the requester within 20 days of the request with a preliminary assessment of materials LSC requires to make its decision, if necessary, and (2) LSC will approve or deny a request for prior approval within 30 days of receiving all required materials from the requester (60 days for purchases of real estate). This means that if a recipient submits all information that LSC deems sufficient with the initial request, LSC will approve or deny the request for prior approval within 30 days of the initial request (or 60 days for purchases of real estate). Additionally, because the prior approval process requires LSC to determine whether a recipient complied with its own procurement policy, LSC must have a copy of the recipient's procurement policy. LSC therefore will add a new paragraph (b)(2) to final rule § 1631.8 (requests for prior approval) requiring a request for prior approval to also include a copy of the recipient's procurement policy.

*Section 1631.3(d)*. Proposed § 1631.3(d) stated that a recipient may use over \$25,000 of LSC funds to purchase personal property or award a contract for services without prior approval in exigent circumstances. LSC described two exigent circumstances qualifying for the exception: when immediate action is necessary either to avoid imminent harm to the recipient's personnel, physical facilities, or systems; or to remediate or mitigate damage to the recipient's personnel, physical facilities, or systems.

*Comment*: Commenters remarked that exigent circumstances are limited and subject to discretionary interpretation. NLADA listed the need to retain counsel promptly, staff taking unexpected leave and needing to hire a replacement, and programs receiving non-LSC funds and needing to retain additional services to fulfill a grant requirement as additional situations to consider. Legal Action

suggested adding “to avoid disruption to the recipient’s client services delivery system” to the list of exigent circumstances. NJP suggested additional scenarios that may constitute exigent circumstances, including natural disasters that require a recipient to contract for timely services, a lawsuit or dispute that requires immediate outside professional resources, a time-sensitive case that requires expertise, audit RFP, audit renewal engagement, and other additional audit work. NLADA and NJP suggested including a provision that provides for “other exigent circumstances.”

Moreover, NLADA noted the proposed rule does not explain what happens if LSC determines a recipient’s circumstances did not meet “exigent circumstances” requirements. NLADA asked whether LSC would treat the situation as a questioned cost proceeding: “Would LSC seek to recover costs solely on the basis that the recipient did not seek prior approval, even if the purchase or contract met § 1630.5 reasonable and necessary criteria?”

*Response:* In addition to the exigent circumstances identified in the proposed rule, LSC agrees that a recipient should be able to act without prior approval if necessary to avoid disruption to the recipient’s client services delivery system. Examples of such a disruption would be a power surge that causes a recipient’s telecommunications system to stop working, or the occurrence of a natural disaster. LSC will include these two additional situations as exigent circumstances and provide specific examples of each.

Additionally, LSC does not believe that hiring of employees falls within the types of services that LSC intended to regulate in part 1631. Therefore, a recipient would not have to seek prior approval before hiring an attorney, temporary or permanent, to fill the position of an attorney who takes an unexpected prolonged leave. The same rule will apply if the recipient chooses instead to enter a contract with an attorney to fill in for the recipient’s attorney on a temporary basis or with a placement firm to place an attorney with the recipient for that period.

Prudent grants management and the basic principle of federal appropriations law that appropriated funds must be spent only on the purposes for which they were awarded do not permit recipients needing to supplement services to fulfill a non-LSC grant requirement to use LSC funds. Accordingly, LSC rejects the proposal to

allow use of LSC funds as an exigent circumstance in this situation.

Finally, based on our recommendation that the term *services* explicitly exclude litigation services and audits, these services do not need to be considered as subject to prior approval in any circumstances, including exigent circumstances.

*Section 1631.4 Effective Dates.* The proposed language for § 1631.4 made part 1631 effective 90 days after the effective date of the rule, and it made subparts A, C, and E effective 90 days after the effective date of the rule for personal and real property purchased with LSC funds prior to the effective date of this part. This language was adopted from the PAMM. To provide time for LSC to provide appropriate training and recipients to prepare required policies, LSC decided that the final rule will take effect on December 31, 2017. This effective date is well over the 90 days provided in proposed § 1631.4. Therefore, in the final rule, this section will be eliminated and subsequent sections will be renumbered.

*Sections 1631.4, and 1631.5 Use of funds; Recipient policies, procedures, and recordkeeping.* In these sections of the NPRM, LSC proposed to consolidate sections 6 and 7 of the PAMM with minor changes and require recipients to adopt written policies to implement part 1631. LSC received no comments on these sections. The final rule renumbers these sections.

Subpart B—Procurement Policies and Procedures

*Section 1631.6 Characteristics of procurements.* In the NPRM, LSC proposed to adopt a list of characteristics to help recipients determine whether an arrangement is a contract (and therefore subject to parts 1630 and 1631) or a subgrant (and therefore subject to part 1627). LSC received no comments on this section. The final rule renumbers this section.

*Section 1631.7 Procurement policies and procedures.* In the NPRM, LSC identified elements recipients must have in their procurement policies. LSC received one comment on this section from NLADA indicating support. The final rule renumbers this section.

*Section 1631.8 Requests for prior approval.* Proposed § 1631.9 required a recipient seeking prior approval for a purchase of personal property or services to state how the purchase will further the delivery of legal services to eligible clients. The preamble explained that, “[r]egarding contracts for labor counsel, mediators, or other services needed to address sensitive personnel issues, . . . recipients do not need to

disclose in the prior approval request the nature of the problems they are attempting to address.”

*Comment:* CLS expressed concern with how this provision affects prior approval requests seeking retention of labor counsel. CLS questioned how LSC would be able to determine whether an expense is appropriate or reasonable if a recipient did not disclose the nature of the problem it is trying to address. CLS also noted that prior approval requirements for labor counsel may inappropriately and unnecessarily insert LSC into a recipient’s labor-management situations and that seeking prior approval may delay negotiations. CLS recommended that labor and employment services contracts never require prior approval. MAP noted that in services contracts where contracts “directly impact private and confidential matters[.]” local management should retain discretion.

MAP was also “especially troubled” by LSC’s comments in the preamble stating that, in circumstances where the recipient does not disclose the nature of the problems it is attempting to address but rather only how the services will further their legal services delivery, “a statement that the service is necessary to ensure the efficient functioning of the office *may satisfy* that requirement” (emphasis added). MAP requested that if LSC intends to approve requests that do not disclose the nature of the problem, the regulation should explicitly so state.

*Response:* In response to these comments, LSC will exclude contracts for labor counsel and other services necessary to address internal personnel issues from the definition of *services* in the final rule version of § 1631.2. Additionally, to avoid verbosity, LSC will change final rule § 1631.8(b) to require a “statement of need” rather than a statement explaining how the purchase will further the delivery of legal services.

*Section 1631.9 Applicability of part 1630.* In this section, LSC proposed to restate the applicability of part 1630 to all leases, purchases, and contracts made using LSC funds. LSC received no comments on this section. The final rule renumbers the proposed section to § 1631.9.

Subpart C—Personal Property Management

*Section 1631.10 Use of property in compliance with LSC’s statutes and regulations.* LSC proposed to adopt § 5(a), (d), and (e) of the PAMM in proposed § 1631.11 with only minor technical changes. LSC received no

comments on this section. The final rule rennumbers this section.

**Section 1631.11 Intellectual property.** The proposed rule adopted § 5(g) of the PAMM without change. LSC received no comments on this section during the public comment period. During the May 23, 2017 meeting of the Operations and Regulations Committee, the Chair of the Committee expressed concern that LSC's proposal to adopt language that identified only copyright as a type of intellectual property protection available to recipients would have two effects. One was that the rule unnecessarily limited the kind of protection recipients could seek for products or works developed using LSC funds. The other was that the existing language could create an incentive for recipients to use other types of intellectual property protections, where available, to avoid falling within the scope of proposed § 1631.12. See Transcript, Telephonic Meeting of the Operations and Regulations Committee, Legal Services Corporation Board of Directors, May 23, 2017, at 20–21. The Chair recommended that LSC replace this language with the language in LSC's Technology Initiative Grants' (TIG) Grant Assurances, which have been revised more currently than the language in § 5 of the PAMM and speak more generally in terms of recipients' ownership rights in works they develop or improve using LSC funds. There were no public comments in opposition to the Chair's proposal at the meeting. Consequently, in the final rule, LSC will adopt the recommendation and revise proposed § 1631.12 to track the language of the TIG Grant Assurances. This section will be renumbered as § 1631.11.

**Section 1631.12 Disposing of personal property purchased with LSC funds.** Proposed § 1631.13(a) described how a recipient may dispose of personal property purchased with LSC funds. The proposed rule allowed recipients to sell or otherwise dispose of the personal property with no further obligation to LSC where the fair market value of the property is negligible. The proposed rule also permitted recipients to sell the property at a reasonable negotiated price, without advertising for quotes when the value of the property is \$15,000 or less. The proposed rule adopted three options for disposing of personal property—selling the property after advertising and receiving quotes when the property's value exceeds \$15,000; transferring the property to another LSC funding recipient; and transferring the personal property to another organization serving the poor in the same area—from § 6 of the PAMM.

*Comment:* NLADA noted that it appreciated the provision allowing recipients to dispose of personal property with little or no value. NLADA also noted that a recipient may advertise property worth over \$15,000, yet receive no quotes. NLADA recommended adding language stating that “if a program does not receive any quotes, the program may negotiate a reasonable price for disposal of the property.”

*Response:* LSC agrees with NLADA's comment. LSC will change paragraph (4) to this section in the final rule to allow a recipient to negotiate a reasonable price for disposal of the property if, after advertising the personal property for 14 consecutive days, the recipient receives no reasonable quotes. This section will be renumbered as § 1631.12 in the final rule.

**Section 1631.13 Use of derivative income from sale of personal property purchased with LSC funds.** LSC proposed to adopt § 6(e) of the PAMM without change and add a paragraph requiring recipients to account for income earned from the sale, rent, or lease of personal property purchased with LSC funds. LSC received no comments on this section.

Subpart D—Real Estate Acquisition and Capital Improvements

**Section 1631.14 Purchasing real property with LSC funds.** In the NPRM, LSC proposed to adopt in significant part the requirements of § 4 of the PAMM with several revisions, including two to allow recipients additional flexibility when purchasing real property.

*Comment:* NJP commented that, although it had no concerns regarding real estate purchase approval requirements generally, to the extent that LSC intended the term *real estate* to include tenancies, NJP objected to the prior approval requirement.

*Response:* As noted above in the § 1630.6(b)(1)(iii) discussion, LSC did not intend to include tenancies in the definition of *real estate*. LSC therefore will revise the definition of *real estate* in both § 1630.2(g) and § 1631.2(f). LSC believes these revisions will resolve NJP's objection.

*Comment:* In advance of the Committee's May 23, 2017 meeting, LSC received a comment from a Board member recommending that LSC revise proposed § 1631.15(b)(8) to reflect contemporary language regarding compliance with disability laws.

*Response:* LSC agrees and will revise proposed § 1631.15(b)(8) accordingly and renumber the section as § 1631.14(b)(8).

**Section 1631.15 Capital improvements.** LSC proposed to adopt § 4(f) of the PAMM in substantial part and to replace existing § 4(1)(ii) of the PAMM with a requirement that recipients provide documentation showing they complied with their own procurement process developed under (final rule) § 1631.8.

*Comment:* NJP again commented that, to the extent this section applies to leases and tenant improvements negotiated as part of the lease and rental price, NJP objects to imposing prior approval requirements.

*Response:* As noted above in the § 1630.6(b)(1)(iii) and § 1631.14 discussions, LSC did not intend to include tenancies or leases in the definition of *real estate* and will revise the definition in the final rule. LSC currently does not require prior approval for leases of real estate and, after considering the costs and benefits of requiring prior approval for such leases, opted to continue its current policy. LSC did not intend proposed § 1631.16 (final rule § 1631.15) to cover capital improvements negotiated as part of the lease and rental price for real estate leased by recipients.

Subpart E—Real Estate Management

**Section 1631.16 Using real estate purchased with LSC funds.** Section 5(a) of the PAMM currently states that recipients “may use LSC funds to acquire and use personal and real property for the primary purpose of delivering legal services to eligible clients” in accordance with applicable laws, regulations, and guidance. The preamble to the NPRM explained that LSC proposed to adopt this section of the PAMM as proposed § 1631.17 “with only minor technical changes.” Accordingly, the text of proposed § 1631.17 stated, “A recipient *must* use real estate purchased or leased, in whole or in 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.” 81 FR 75006, 75023, Oct. 28, 2017 (emphasis added).

*Comment:* NLADA and NJP commented that using the word *must* in the proposed regulation instead of *may* as in the PAMM is a major change because it appears to prevent a program from subleasing a building or space to a party that does not deliver legal services in accordance with LSC regulations. They noted that recipients may face financial difficulties if not allowed to sublet all or part of buildings purchased or leased using LSC funds. For example, NLADA observed that some programs have smaller regional

offices that programs have had to close due to funding cuts. NLADA commented that, under the proposed regulation, the program would need to leave the property vacant rather than sublease the property. NLADA suggested retaining the permissive *may* rather than changing the language to *must*. NJP suggested that the regulation allow for use of real estate to “support the delivery of legal services.”

*Response:* NLADA and NJP are correct that LSC changed the wording of Section 5(a) of the PAMM in the proposed rule. LSC made this change to reflect its position that if recipients use LSC funds to purchase real estate, the real estate must be used primarily for purposes of carrying out the LSC grant. That said, LSC’s intent is not to bar recipients from putting real estate originally purchased or leased to provide legal services to other uses where circumstances, such as funding, change. Precluding such alternative uses into perpetuity would cause closed offices and invested funds to sit idle, clearly not a prudent or productive use of real estate or invested funds.

Current practice under section 5 of the PAMM permits a recipient to lease or sublease vacant space that the recipient is unable to use to another organization or business. In changing the term “may” in the PAMM to “must” in the proposed rule, LSC did not intend to change this practice in the proposed rule. The final rule will clarify that a recipient must use real estate purchased with LSC funds for purposes consistent with applicable law and regulations. The rule will clarify that a recipient that does not need some or all the real estate to carry out its legal services activities may use the space for other activities described in paragraphs (b) and (c). The other activities cannot interfere with the recipient’s performance of the LSC grant, and the recipient cannot provide the space to an organization that engages in restricted activities without charging the organization an amount of rent equivalent to the amount other non-profits charge to rent the same amount of space in similar circumstances.

*Section 1631.17 Maintenance.* LSC proposed to include a new section requiring recipients to maintain real estate purchased with LSC funds in efficient operating condition and in compliance with state and local standards and codes. LSC received no comments on this section. The final rule will renumber this section.

*Section 1631.18 Insurance.* LSC proposed to introduce minimum standards for the insurance of LSC-funded property. LSC received no

comments on this section. The final rule will renumber this section.

*Section 1631.19 Accounting and reporting to LSC.* Proposed § 1631.20 required a recipient to maintain an accounting of the amount of LSC funds relating to the purchase or maintenance of real estate purchased with LSC funds and provide the accounting for each year to LSC. The final rule will renumber this section.

*Comment:* NLADA noted that, for some programs, the use of LSC funds to purchase or maintain real property occurred over ten years ago, in which case the recipient may have destroyed the records. As a result, a recipient would not be able to account for such purchases or maintenance. In these situations, NLADA suggested applying this provision prospectively.

*Response:* LSC does not, as a general rule, issue regulations with a retroactive effect. This means that the requirement would apply from the effective date of the proposed revisions to part 1631 forward. In the Accounting Guide for LSC Recipients, LSC recommends retention times for various categories of documents, including property documents. *Accounting Guide for LSC Recipients*, Appx. II, pp. 69–71 (2010 Ed.). According to the Accounting Guide, recipients should maintain annual financial statements, documentation related to land and buildings, depreciation schedules, general journals, and general ledgers permanently. *Id.* pp. 70–71. For other documentation related to the purchase and maintenance of real estate, such as the cash disbursements ledger, canceled checks, billings for services, and expense bills, LSC recommends a retention period of seven years or the period required by state law, whichever is longer. *Id.* To the extent that a recipient that owns real estate on the effective date of the revised rule has properly destroyed records related to the purchase or maintenance of such real estate according to its records retention schedule, LSC would not consider that recipient out of compliance with the revised rule. Recipients will need to maintain the accounting documents described in proposed § 1631.20, renumbered in the final rule as § 1631.19, from the effective date of the rule onward.

*Section 1631.20 Disposing of real estate purchased with LSC funds.* In the NPRM, LSC proposed to adopt § 7 of the PAMM in substantial part. In a change from the PAMM, LSC proposed to require that all anticipated dispositions of real estate purchased using LSC funds be subject to LSC’s prior approval, consistent with the federal government’s

policy regarding grantee disposal of property purchased with federal funds. 2 CFR 200.311(c). LSC received no comments on this section.

*Section 1631.21 Retaining income from sale of real property purchased with LSC funds.* In the NPRM, LSC proposed to consolidate §§ 6(e) and 8(c) of the PAMM into proposed § 1631.22 and make technical edits. LSC received no comments on this section. The final rule will renumber this section.

## 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

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

For the reasons stated in the preamble, the Legal Services Corporation amends 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 of “Corporation funds” and “Non-LSC funds” to read as follows:

### § 1600.1 Definitions.

\* \* \* \* \*

*Corporation funds* or *LSC funds* means any funds appropriated to LSC 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.  
 1630.10 Recipient policies, procedures, and recordkeeping.

#### Subpart C—Questioned Cost Proceedings

- 1630.11 Review of questioned costs.  
 1630.12 Appeals to the president.  
 1630.13 Recovery of disallowed costs and other corrective action.  
 1630.14 Other remedies; effect on other parts.  
 1630.15 Applicability to subgrants.  
 1630.16 Applicability to non-LSC funds.  
 1630.17 Applicability to derivative income.

#### Subpart D—Closeout Procedures

- 1630.18 Applicability.  
 1630.19 Closeout plan; timing.  
 1630.20 Closeout costs.  
 1630.21 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.

As used in this part:

(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.

(g) *Real estate* means land and buildings (including capital improvements), excluding moveable personal property.

(h) *Single purchase, single lease, and single contract* mean a single order or lease of goods or a single contract for services from a single vendor.

##### § 1630.3 Time.

(a) *Computation.* In computing any period of time under this part, the time period begins the day following the event and includes the last day of the period, unless the last day is a Saturday, Sunday, or legal holiday observed by the Federal government. In those cases, the time period includes the next business day. When the prescribed time period is seven days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(b) *Extensions.* A recipient may, within the applicable timeframe for a particular response under this part, submit a written request for an extension of time for good cause to LSC. LSC will respond to the request for extension within seven calendar days from the date of receiving the request. LSC may grant the request for extension and shall notify the recipient of its decision 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) *Fundraising.* Costs associated with fundraising for the purpose of increasing recipient funds available to carry out the purposes of the LSC grant are allowable and allocable to the LSC grant if they meet the requirements of this section.

(j) *Guidance.* The regulations 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. 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) Without LSC's prior written approval, a recipient may not expend \$25,000 or more of LSC funds on any of the following:

- (i) A single purchase or single lease of personal property;
- (ii) A single contract for services;
- (iii) A single combined purchase or lease of personal property and contract for services;
- (iv) A single purchase of real estate; and
- (v) Capital improvements.

(2) For costs apportioned between LSC funds and one or more other funding sources, this requirement applies when the cost allocable to LSC funds is \$25,000 or greater.

(3) The process and substantive requirements for requests for prior approval are 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.

#### **§ 1630.10 Recipient policies, procedures, and recordkeeping.**

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

### Subpart C—Questioned Cost Proceedings

#### § 1630.11 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 because 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) The written notice shall become LSC's final written decision unless:

(i) The recipient responds to LSC's written notice within 30 days;

(ii) The recipient requests an extension of time pursuant to § 1630.3(b) within 30 days; or

(iii) LSC grants an extension of time pursuant to § 1630.3(b) within 30 days.

(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 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 § 1630.12 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.

#### § 1630.12 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.

#### § 1630.13 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.

#### § 1630.14 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 of this chapter.

#### § 1630.15 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.

#### § 1630.16 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, title V, sec. 504, as defined by 45 CFR 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.

#### § 1630.17 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****§ 1630.18 Applicability.**

This subpart applies when a recipient of LSC funds:

(a) Ceases to exist as a legal entity, including merging or consolidating functions with another LSC recipient when the other recipient becomes the LSC recipient for the service area; or

(b) 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.

**§ 1630.19 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 paragraph (a) of this section at the same time.

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

**§ 1630.20 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.

**§ 1630.21 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 Use of funds.

1631.5 Recipient policies, procedures, and recordkeeping.

**Subpart B—Procurement Policies and Procedures**

1631.6 Characteristics of procurements.

1631.7 Procurement policies and procedures.

1631.8 Requests for prior approval.

1631.9 Applicability of part 1630 of this chapter.

**Subpart C—Personal Property Management**

1631.10 Use of property in compliance with LSC's statutes and regulations.

1631.11 Intellectual property.

1631.12 Disposing of personal property purchased with LSC funds.

1631.13 Use of derivative income from sale of personal property purchased with LSC funds.

**Subpart D—Real Estate Acquisition and Capital Improvements**

1631.14 Purchasing real estate with LSC funds.

1631.15 Capital improvements.

**Subpart E—Real Estate Management**

1631.16 Using real estate purchased with LSC funds.

1631.17 Maintenance.

1631.18 Insurance.

1631.19 Accounting and reporting to LSC.

1631.20 Disposing of real estate purchased with LSC funds.

1631.21 Retaining income from sale of real estate 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.**

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;

(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 paragraph (b) of this section within 30 days after the circumstances necessitating the purchase or contract have ended.

**§ 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:

(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 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.

(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 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 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 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.

**§ 1631.21 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.

Dated: August 3, 2017.

**Mark Freedman,**

*Senior Associate General Counsel.*

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 79**

**[MB Docket No. 11-43; FCC 17-88]**

**Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts rules pursuant to Section 202 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) to expand the availability of video described programming on top-rated broadcast and nonbroadcast networks. Specifically, the document adopts the proposal to increase the amount of described programming on each "included network" carried by a covered broadcast station or multichannel video programming distributor (MVPD), from 50 hours per calendar quarter to 87.5 hours per quarter. Covered broadcast stations and MVPDs must start providing the additional hours of video described programming on "included networks" in the calendar quarter beginning on July 1, 2018. The document also provides more flexibility than exists under the Commission's current rules regarding when the additional hours of described programming may be aired. This update to the Commission's video description rules will help ensure that Americans who are blind or visually impaired can be connected, informed, and entertained by television.

**DATES:** Effective September 11, 2017.

**FOR FURTHER INFORMATION CONTACT:** Maria Mullarkey, [Maria.Mullarkey@fcc.gov](mailto:Maria.Mullarkey@fcc.gov), or Lyle Elder, [Lyle.Elder@fcc.gov](mailto:Lyle.Elder@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120. For additional information concerning the Paperwork Reduction Act information collection

requirements contained in this document, contact Cathy Williams at (202) 418-2918 or send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, FCC 17-88, adopted on July 11, 2017, and released on July 12, 2017. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) Web site at [http://fjallfoss.fcc.gov/edocs\\_public/](http://fjallfoss.fcc.gov/edocs_public/) or via the FCC's Electronic Comment Filing System (ECFS) Web site at <http://fjallfoss.fcc.gov/ecfs2/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street SW., CY-A257, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

**I. Introduction**

1. In this *Report and Order*, we expand the availability of video described programming on top-rated broadcast and nonbroadcast networks. Specifically, we adopt the proposal to increase the amount of described programming on each "included network"<sup>1</sup> carried by a covered broadcast station or multichannel video programming distributor (MVPD), from 50 hours per calendar quarter to 87.5 hours per quarter. Covered broadcast stations and MVPDs must start providing the additional hours of video described programming on "included networks" in the calendar quarter beginning on July 1, 2018. We also provide more flexibility than exists under our current rules regarding when the additional hours of described programming may be aired. This update to our rules will help ensure that Americans who are blind or visually impaired can be connected, informed, and entertained by television.

<sup>1</sup> An "included network" is a network carried on a programming stream or channel on which a broadcaster or MVPD is required to provide video description. *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 81 FR 33642, May 27, 2016, 31 FCC Rcd 2463, 2464, n.4 (2016) (NPRM).