

**Part 1630 & PAMM Rulemaking - Cost Standards and Property Management, Acquisition, and Disposal**

**Rulemaking Workshop 2 - May 18, 2016, 1:30 p.m. to 4:30 p.m. EDT**

**Workshop 2 Topic: Discussion of LSC's Proposals**

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

**Items for Discussion:**

1. Prior approval for property acquisition
2. Including services contracts within the scope of part 1630 and the PAMM
3. Regulating intellectual property developed with LSC funds
4. Requirements for the disposal of property acquired with LSC funds

**Workshop Participants:**

<b>Name</b>	<b>Organization</b>	<b>Method of Participation</b>
<b>AnnaMarie Johnson</b>	Nevada Legal Services	Remote
<b>Frank Bittner</b>	California Rural Legal Assistance	In person
<b>Jose Padilla</b>	California Rural Legal Assistance	Remote
<b>Shamim Huq</b>	Legal Aid Society of Northeastern New York	In person
<b>Pat McClintock</b>	Iowa Legal Aid Foundation	Remote
<b>Diana White</b>	Legal Assistance Foundation of Metropolitan Chicago	In person
<b>George Elliott</b>	Legal Aid of Northwest Texas	In person
<b>Jon Asher</b>	Colorado Legal Services	Remote
<b>Steve Ogilvie</b>	Inland Counties Legal Services	In person
<b>Steve Pelletier</b>	Northwest Justice Project	In person
<b>Robin Murphy</b>	National Legal Aid and Defender Association	In person

**Moderator**

Charles N.W. Keckler, Chair, Operations and Regulations Committee

## I. Prior Approval for Property Acquisition (45 C.F.R. § 1630.5)

**LSC’s Proposals:** LSC’s proposed changes with respect to property acquisition are threefold. First, LSC is considering expressly incorporating into the PAMM all of the procedures and requirements governing prior approval that are related to property. Second, LSC is considering raising the \$10,000 prior-approval threshold set by 45 CFR 1630.5(b)(2) and section 3(d) of the PAMM. Finally, Management is also considering revising 45 CFR 1630.5(b)(2) and section 3(d) of the PAMM to require prior approval for each transaction in which the aggregate cost of all items of personal property purchased through the transaction exceeds a specific threshold.

### Questions:

- What are the administrative costs (in terms of dollars, time, and resources) of obtaining prior approval from LSC with respect to property acquisition and disposition? How can LSC revise its prior approval process to lessen these administrative costs?
- If LSC decides to raise the \$10,000 prior approval threshold set by § 1630.5(b)(2), what amount would be appropriate to promote efficiency and decrease the administrative costs of seeking prior approval for purchases of personal property?
- Should LSC continue to have different requirements for single acquisitions of multiple items (“aggregate item purchases”) and acquisitions of single items (“single item purchases”) whose cost exceeds a set threshold (currently \$10,000)? If not, would you recommend that LSC:
  - Require recipients to get quotes from at least three potential sources, but not prior approval? (PAMM Section 3(a))
  - Require recipients to notify LSC \*and\* get quotes from at least three potential sources, but not seek prior approval?
  - Require recipients to get quotes from at least three potential sources \*and\* seek LSC’s prior approval? (PAMM Section 3(d))
  - Require some other process to ensure that recipients are making necessary and reasonable purchases of personal property?
  - Require recipients to have procurement policies that are designed to ensure the necessity and reasonableness of purchases of personal property?
- In response to the ANPRM and during the first workshop, commenters expressed concern about LSC’s proposal to regulate aggregate purchases. LSC contemplated that an aggregate purchase is 1) a single purchase, 2) of several, 3) similar or related items. For example, a single purchase of several copiers (and all of their necessary accessories) for a recipient’s main office and each of its satellite offices

would be an aggregate purchase subject to prior approval requirements if the cost of the purchase exceeded a certain threshold. Another example would be the single purchase of the hardware elements of a videoconferencing system.

- Do the examples help clarify LSC’s thinking?
  - Are there other examples you would like to discuss to further clarify LSC’s thinking?
  - Do the examples affect your thinking of whether or not LSC should require prior approval for aggregate purchases?
- If LSC proposes to require prior approval for purchases of multiple items whose aggregate value exceeds a certain dollar amount threshold, should LSC limit the types of purchases subject to this prior approval requirement? For example, should LSC require prior approval for aggregate purchases of non-expendable personal property and capitalized purchases, but not aggregate purchases of expendable personal property?
    - Should LSC adopt different prior approval thresholds for single purchases of expendable and non-expendable property?
    - Should LSC require recipients to seek prior approval for multiple purchases of single items from the same vendor if the total amount exceeds, or is anticipated to exceed, a certain threshold?
    - If LSC proposes to require prior approval for purchases of multiple items whose aggregate value exceeds a certain dollar threshold, should LSC place a time frame within which purchases are to be considered “aggregate”?
    - If LSC chooses to seek prior approval for aggregate purchases of personal property, should LSC adopt a separate and distinct prior approval threshold amount for aggregate purchases?
    - If LSC were to require prior approval for certain aggregate purchases exceeding a certain threshold amount, how much would this increase the administrative costs (in terms of dollars, time, and resources) of obtaining prior approval from LSC for these purchases?
    - LSC understood from the first workshop that grantees have developed internal controls and procurement policies to comply with LSC’s Accounting Guide and the PAMM. If LSC were to remove the requirement for recipients to seek prior approval of acquisitions of single items of personal property exceeding a certain threshold, would it affect how you conduct your procurements? Would you change your procurement policies and procedures?

If you **wouldn’t** change your procurement policies and procedures, why? What would be administrative costs (in terms of personnel time and resources) of changing your accounting practices?

- LSC also learned from the first workshop that other funders ask for information about anticipated purchases through the grant application or through submission of an annual budget at the beginning of a funding year and approve those purchases as part of the application or budget. Should LSC consider adopting this approach to approving procurements?
- Finally, LSC learned at the first workshop that the PAMM’s prior approval requirements for purchases of real property can create obstacles to purchasing real property. If you have not purchased real property, is it because of the PAMM’s prior approval requirements or because of other, non-regulatory factors (e.g., lack of appropriate available properties, cost, preferable rental arrangements)?

## **II. Including Services Contracts Within the Scope of Part 1630 and the PAMM**

**LSC’s Proposals:** LSC is considering including contracts for services within the scope of part 1630 and the PAMM. Neither part 1630 nor the PAMM currently requires prior approval or specific procurement procedures for services contracts, either alone or accompanying a purchase of personal property.

### **Questions:**

- What are the administrative costs (in terms of dollars, time, and resources) that grantees would incur if LSC were to require recipients to obtain prior approval for contracts for services?
- If LSC requires recipients to seek prior approval of contracts for services should LSC exclude certain services from the requirement in § 1630.5?
- Should LSC regulate service contracts over a certain dollar threshold?
- Should LSC seek prior approval of contracts for services that exceed a certain threshold? If so, should that threshold amount be the same as or different than the threshold amount for property acquisition?
- What procedures and requirements should LSC adopt to govern services contracts?
- Should LSC adopt any procedures currently used by other funders?

### III. Minimum Standards for Procurement Policies

LSC is also considering revising the procedures and requirements applicable to grantee procurements paid for in whole or in part with LSC funds. Currently, neither part 1630 nor the PAMM describes the minimum standards that LSC recipients' procurement policies should have.

- How can LSC ensure competitive procurement of services contracts, other than requiring recipients to seek and obtain competitive quotes from services contractors for services costing more than \$10,000 (or other threshold amount)?
- How can LSC regulate the procurement of services in a way that promotes clarity, efficiency, and accountability, while also maintaining flexibility for recipients in determining their service contract needs?
- How can LSC regulate the procurement of personal property in a way that promotes clarity, efficiency, and accountability, while also maintaining flexibility for recipients in determining their personal property contract needs?

### IV. Regulating Intellectual Property Developed with LSC Funds

**LSC’s Proposal:** LSC is considering revising the PAMM's definition of “personal property” to clarify that it includes data, software, and other types of intellectual property. The definition of “personal property” in section 2(f) of the PAMM currently includes both “tangible” and “intangible” property, with the specific examples of “copyrights or patents” listed under the latter. However, the definition does not expressly include “intellectual property” as a category of intangible property, nor does it include items such as data and software that are often considered to be intellectual and/or personal property.

#### Questions:

- Should LSC revise the PAMM's definition of “personal property” to include intellectual property?
- How should LSC regulate the development of intellectual property created using multiple funding sources?
- How are recipients currently allocating funding to the development of intellectual property? For example, are recipients using multiple funding sources to develop intellectual property or are recipients using funding from a single funder?

Are recipients receiving any other funding to develop intellectual property? If yes, where are the intellectual property requirements found (in the grant application? grant award?)

Should LSC retain exclusive ownership of intellectual property developed using LSC funds?

- How should LSC ensure that all recipients benefit from intellectual property developed using LSC funds? For example, should LSC require recipients to make intellectual property open source if developed (entirely or partially) with LSC funds?
- Should LSC create a new provision that governs exclusively rights in intellectual property created using LSC grant funding?
- Should general rights in data produced under LSC grants be addressed separately from any new provisions governing the acquisition of intellectual property?

## **V. Prior Approval for Disposal of Property Acquired with LSC funds**

**LSC’s Proposals:** LSC is considering revising sections 6(f) and 7(a) and (d) of the PAMM to require recipients and former recipients to provide notice to and obtain approval from LSC prior to disposing of personal or real property acquired with LSC funds.

Section 6(f) requires recipients that cease receiving LSC funding to seek LSC's approval prior to disposing of personal property. Section 7(c) requires entities that no longer receive LSC funding to seek LSC's approval before disposing of real property purchased in whole or in part with LSC funds. The provisions of the PAMM that do not require approval by LSC are section 7(a), governing the disposal of real property during the term of an LSC grant, and section 7(d), governing the transfer of real property by an entity that ceases to receive LSC funding to a recipient who has merged with or succeeded that entity.

### **Questions:**

- Would revising the provisions discussed above to require notice and approval by the Corporation prior to any disposal of personal or real property create or remove problems for grantees?
- Should LSC require recipients to provide LSC with notice when disposing of personal property, but not seek prior approval?
- Should LSC require recipients to seek instructions for disposition of real or personal property if the fair market value of the property exceeds a certain dollar threshold? If so, what should the threshold be and how should recipients determine the value?

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Workshop 2— LSC’s Proposals  
Discussion Outline

- Should any provision governing a particular type of property disposal have its own unique requirements or exceptions? For example, should LSC have unique requirements for particular categories of non-expendable personal property purchased with LSC funds?
- Should LSC combine the procedures for property acquisition and disposition by imposing disposition requirements as a condition for prior approval of certain purchases of real or personal property?
- Should LSC continue to require former recipients to compensate LSC when the recipients dispose of personal or real property purchased with LSC funds? If so, what should be the basis for the compensation: the amount of LSC funds that were used for the original acquisition, including mortgage and improvement costs, or the percentage of the fair market value at the time of the sale that represents the percentage of LSC’s contribution to the acquisition of the real property?