

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPERATIONS AND REGULATIONS COMMITTEE
RULEMAKING WORKSHOP

Wednesday, April 20, 2016

1:34 p.m.

Legal Services Corporation
3333 K Street, N.W., 3rd Floor
F. William McCalpin Conference Center
Washington, D.C. 20007

CHAIR:

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

PANELISTS:

Steve Pelletier, Northwest Justice Project
 George Elliott, Legal Aid of Northwest Texas
 (by video)
 Steve Ogilvie, Inland Counties Legal Services
 AnnaMarie Johnson, Nevada Legal Services
 (by telephone)
 Shamim Huq, Legal Aid Society of Northeastern
 New York
 Patrick McClintock, Iowa Legal Aid Foundation
 (by telephone)
 Jon Asher, Colorado Legal Services (by telephone)
 Michael Maher, Legal Action of Wisconsin
 (by telephone)
 Robin Murphy, National Legal Aid and Defender
 Association
 Rebecca Weir, Assistant General Counsel, LSC

LSC ATTENDEES:

Ronald Flagg, Secretary and General Counsel
 Stefanie Davis, Assistant General Counsel
 Mark Freedman, Senior Assistant General Counsel,
 Office of Legal Affairs
 Rebecca Weir, Assistant General Counsel, Office of
 Legal Affairs
 Jean Fischman, Graduate Fellow
 Davis Jenkins, Graduate Fellow
 Lora Rath, Director, Office of Compliance
 and Enforcement
 Megan Lacchini, Deputy Director for General
 Compliance, Office of Compliance and Enforcement
 Glenn Rawdon, Program Counsel, Office of Program
 Performance
 Shila Mashhadishafie, Program Counsel, Office of
 Compliance and Enforcement
 Laurie Tarantowicz, Assistant Inspector General and
 Legal Counsel
 Dan O'Rourke, Assistant Inspector General for
 Investigations
 Magali Khalkho, Director of Management Operations,
 Office of the Inspector General

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C O N T E N T S

TOPICS FOR DISCUSSION

Topic 1: Requirements of Other Funders

A. Property Acquisition: Other Funders and
Prior Approval

Prior Approval for Purchases of Real
and Personal Property

Prior Approval for Aggregate Purchases
of Personal Property

Prior Approval for Procurement of
Services

Intellectual Property and Other Funders
Disposition of Property: Other Funders
and Prior Approval

General Interaction Between LSC'S
Requirements and the Requirements of
Other Funders

1 PROCEEDINGS

2 (1:34 p.m.)

3 CHAIRMAN KECKLER: We're going to go ahead and
4 continue to monitor the technical efforts. I do want
5 to start up by thanking everybody here at LSC for
6 preparing this and for working on the technology, which
7 we're adapting. We're here. We're here in the 21st
8 century, doing it.

9 So I want to welcome everybody, both the
10 people who came here to our building here in Georgetown
11 and everybody on the line, to the first of three
12 rulemaking workshops on 1630 and the PAMM, which we're
13 in the process of revising. When was it that they were
14 last revised, Stefanie?

15 MS. DAVIS: The PAMM was last revised in 2001,
16 and I believe that Part 1630 was last revised in 1997.

17 CHAIRMAN KECKLER: Yes. So it's been some
18 time. There have been a lot of changes, both in what
19 grantees do, how they do it, the different funding
20 streams, and the multiplicity of funding by which they
21 do it. And so we're going to take a look at these
22 rules, this guidance, with your help.

1 And so this is an early stage in the process.

2 For those that haven't done a rulemaking workshop
3 before, it's something that will generally occur early
4 in rulemaking.

5 We have it here and do it occasionally, not
6 for every rule, but for rules like this where there is
7 a need for us to get information to learn how things
8 work, and especially where there's an expectation that
9 things are going to work differently in different
10 places, so that we need to get not just a single view,
11 but a multiplicity of views on the topic so that we can
12 try to make the rule work for the different variations
13 and different situations that might occur.

14 So one thing about it, though -- obviously, I
15 haven't introduced myself. I'm Charles Keckler, a
16 member of the board, and chair of the Operations and
17 Regulations Committee. That's relevant because in
18 addition to chairing this workshop, as the rule
19 proceeds through, eventually, after the workshops and
20 after we process the comments and thoughts that you're
21 going to offer and the other workshops will bring, a
22 notice of proposed rulemaking is going to come. And

1 that's going to go out, and then we'll start the
2 process of formal comments on the different proposed
3 provisions.

4 But as that part of the process begins in the
5 fall or the late summer, then my role will change and
6 I'll have to examine the rule and we'll be voting on it
7 and considering it, deliberating on it, formally as a
8 member of the board of directors.

9 And so as part of that, my role now is very
10 much to keep an open mind. I wanted to keep an open
11 mind anyway, but apart from that, it's also my duty to
12 do so. And so for those that know me, my usual habit
13 is usually to offer suggestions and ideas and think,
14 hmm, I don't know, and maybe no, or react to people's
15 ideas and offer suggestions of my own. That's usually
16 how I like to do things. But don't be surprised if I
17 don't do that for these rulemaking workshops since I
18 have to just keep neutrality on things until they come
19 to me more formally.

20 So with that caveat, I will be listening
21 closely and soaking it all in. And also, don't be
22 surprised if, as I turn things over and we get

1 information from management, that management has some
2 of these same considerations as well since we are still
3 in the early process and are not being final or
4 decisive today in any way.

5 With that, thank you again. Welcome. And
6 I'll begin with turning it over to Stefanie Davis from
7 the Office of Legal Affairs, who will talk about the
8 logistics.

9 MS. DAVIS: Great. Thank you, Charles. As
10 Charles mentioned, my name is Stefanie Davis. I'm an
11 assistant general counsel here in the Office of Legal
12 Affairs at LSC. And I also would like to welcome
13 everyone who's on the call.

14 I very much want to thank our panelists for
15 expressing interest in participating in these workshops
16 and volunteering your time to either come to Washington
17 or to be on the phone with us to talk through these
18 issues.

19 You are the ones who work with these rules
20 every day in addition to the rules that you follow for
21 all of your other funders, and so we think it's
22 critical to hear from you at this early stage of the

1 rulemaking to understand what challenges you face, what
2 rule structures you're working under, as we're thinking
3 about the modifications that we want to make to Part
4 1630 and the PAMM.

5 So I just want to thank you. I also want to
6 thank our law fellows, Jean Fischman and Davis Jenkins,
7 who have been heavily involved in pulling these
8 workshops together, and the members of our internal
9 work group who are here in the audience and will be
10 listening and thinking through these issues with us as
11 we work toward a proposed rule.

12 A number of housekeeping issues. If you are
13 here in headquarters and have not signed in on the
14 sign-in sheet at the front desk, please do so on your
15 way out. If you are on the phone, please have your
16 phones on mute during the panel discussion. There will
17 be a public comment period toward the end of our three
18 hours together, but we'll flag that and open the floor
19 for comments at that time.

20 We are trying something new. We invite you,
21 if you're listening in, to send written questions to
22 lscrulemaking -- that's all one word -- @lsc.gov during

1 the course of the discussion. Davis and Jean are
2 standing by and will be checking questions. They'll be
3 bringing relevant questions to me and Charles, which we
4 may ask during the workshop discussion or immediately
5 prior to the public comment period at the end of the
6 workshop.

7 All written comments and oral comments and
8 questions received are part of the public rulemaking
9 process. They will become part of the administrative
10 record for rulemaking. So if you are commenting,
11 please be sure not to include confidential information
12 in your comment as we cannot ensure that that
13 information will remain confidential.

14 There is a general comment period for this
15 rulemaking. It is open until July 15th. If you are
16 interested in suggesting questions for our May 18th
17 workshop, which is on LSC's proposed changes to the
18 rules, those can be sent in by May 6th, and they can be
19 either sent to me directly at sdavis@lsc.gov or also to
20 lscrulemaking@lsc.gov.

21 The public comment portion of this afternoon's
22 call will be either from attendees here in Washington

1 who are not part of the panel or, if you are on the
2 telephone, you can ask questions toward the end of the
3 workshop. We do ask that you identify yourself prior
4 to speaking, as this meeting is being recorded and
5 transcribed.

6 Finally, anything you ever wanted to know
7 about the 1630 PAMM rulemaking can be found on our
8 rulemaking page that is dedicated to this rulemaking.
9 If you go to our website at www.lsc.gov rulemaking, you
10 will find a link to the rulemaking page where all of
11 the notices -- the notice of proposed rulemaking,
12 comments received in response to that rulemaking, the
13 agendas for these workshops, the transcripts of these
14 workshops -- will be available.

15 So I think that's all of the housekeeping
16 matters, so I will turn it back over to Charles for our
17 panelist introductions.

18 CHAIRMAN KECKLER: Thank you very much,
19 Stefanie.

20 So we've divided up, to some extent, as I'm
21 sure you're aware if you're here as a panelist, in any
22 event, the rulemaking workshops into different

1 categories. So today we're definitely going to be
2 talking about and focusing on the issue of prior
3 approvals and harmonizing, if that's possible, or at
4 least finding out what the situation is vis-a-vis other
5 funders and their requirements versus LSC's
6 requirements.

7 But as topics arise that are related and
8 germane and you have thoughts, don't hold them up.
9 Just go ahead and tell us about them, and we'll write
10 them down and have them on the record.

11 And to some extent, we may have to reserve
12 things for the next session, but particularly, as this
13 is workshop number one, if you raise things here, we're
14 going to have an opportunity to explore them in
15 subsequent workshops. So go ahead and do bring them to
16 our attention if these topics occur to you.

17 So with that, the first order of business for
18 the meeting is introductions. And the way that we've
19 written our Federal Register notice is a description of
20 your program's, if that's relevant, funding
21 composition, and an overview or give us a perspective
22 on how LSC's oversight in this area relates to, is

1 stronger than, less strong than, or just simply
2 different than other funders, and how you reconcile
3 those issues.

4 So do we have an order? I'll go ahead and
5 start with you Steve, here, right at my right.

6 MR. OGILVIE: My name is Steve Ogilvie. I'm
7 controller with Inland Counties Legal Services. I've
8 been in the position for the last eight or nine months.
9 Previously, I was with Inland Counties Legal Services
10 as well in the 1990s for a two- to three-year time
11 frame.

12 As far as a description of our program, our
13 program has eight or nine different funders, and we
14 have 13 to 15 different grants with those different
15 funders.

16 As far as differences, I would say each one of
17 the funders has a difference in regards to approval and
18 the acquisition of the assets and so forth. And so I
19 don't think that LSC is particularly different, that
20 they just have different standards, as do each of the
21 grants we work with.

22 CHAIRMAN KECKLER: Steve, to follow up one of

1 the parts of it, is there a difference that you see
2 with regard to services and -- goods and services? Is
3 there any distinction there for funders?

4 MR. OGILVIE: As I think about the
5 differences, probably moreso on the capital side, with
6 our acquisitions. With other funders, I think we have
7 a tendency to get the approval of acquisition items
8 through the budgeting process.

9 And so once we're ready to go forward with an
10 acquisition, it's already been reviewed by the funders.

11 The funder has already reviewed, conceptually, the
12 approval of the concept that we're going forward with.

13 However, I think with LSC, there's the
14 approval before we actually go forward with that
15 purchase. And so I do see that by having the approval,
16 that final approval, at that point in time, it does
17 delay and it does cause some -- I'm going to say it
18 delays the timing of when you're actually ready to go
19 forward with that bid.

20 CHAIRMAN KECKLER: And how long, just as a
21 rough estimate, how long does that delay occur in terms
22 of the period of back-and-forth with LSC?

1 MR. OGILVIE: Again, I've been here for just
2 eight or nine months. And so we haven't completely
3 gone through that approval process since I have been
4 here. But just by looking at the regulations and
5 looking forward, or looking through, the various grant
6 comparisons, I just see -- well, we do have one right
7 now.

8 We're pending, ready to go out for a purchase
9 on something, but we are writing up the final paperwork
10 to submit to LSC. So there is a delay because at this
11 point in time we would be moving forward other than
12 we're waiting for the submitting of that paperwork.

13 CHAIRMAN KECKLER: Okay. Thanks.

14 Steve?

15 MR. PELLETIER: Hello there. I'm Steve
16 Pelletier. I'm the director of finance of the
17 Northwest Justice Project. We're the Washington state
18 LSC grantee. We've been a grantee since 1996, and I've
19 been on board with Northwest Justice Project since
20 1999.

21 I am a CPA. I've been a CPA in Washington
22 state since 1982. And in my prior experience before

1 working with Northwest Justice Project, I was in public
2 accounting for the most part in my career, doing audit
3 and accounting type work.

4 My role at Northwest Justice Project, I'm part
5 of the administrative team. The finance component is
6 built into the executive group. They're very much an
7 equal member with others on that team. And Northwest
8 Justice Project is around \$23 million.

9 Twenty-eight percent of our funding in 2016's
10 budget is from LSC sources. About 50 percent of our
11 funding is from the Office of Civil Legal Aid, state of
12 Washington. And then we have roughly 20 percent that
13 comes from another 25 or 30 grants and contracts of
14 various types -- local, city, state, federal, small
15 grants, which we call them soft grants because they're
16 very specific grants. They fund one or two staff
17 people. Anyway, that's me.

18 CHAIRMAN KECKLER: So I guess the first
19 question that I have is, given what you talked about
20 with Northwest Justice, specifically how did the
21 funding requirements, reporting requirements,
22 standards, prior approvals, in particular compare

1 vis-a-vis LSC and the Office of Civil Legal Aid?

2 MR. PELLETIER: The Office of Civil Legal Aid
3 prepare a biennial budget. So every two years we
4 prepare a fairly broad penciled budget for them for
5 that two-year period. We invoice them on an ongoing
6 basis; currently, we invoice them monthly.

7 We provide them an invoice, but we do not and
8 are not required to provide them backup detail on each
9 line item of purchase unless requested. Sometimes
10 they'll request that we follow up with some additional
11 information on that invoice. It is a contract, not a
12 grant. And it's cost-reimbursable. So we expending
13 the money, doing the work, submitting the bill, getting
14 paid for it.

15 They tend to come in on a biennial basis for a
16 review, very extensive review. And at that time they
17 will look at budget to actual information, and they may
18 ask for support for variances and/or areas of interest
19 to them. So we do not have with OCLA any specific
20 approvals of a purchase.

21 To qualify that a little bit, a year and a
22 half ago or so we submitted with OCLA a request for

1 additional funds from the legislature to precision a
2 communications system. So that one was a specific ask
3 for a large purchase, and we did receive that. But
4 that really wasn't -- we didn't have after-the-fact
5 approval of it. It was basically they funded that
6 specific project.

7 CHAIRMAN KECKLER: Thanks.

8 So Robin, on the more general level, what are
9 the impressions that you have about people's thoughts
10 from the field regarding these topics?

11 MS. MURPHY: Okay. Can you hear me? First of
12 all, I just wanted to introduce myself. I know some
13 people know me, but not everybody knows me. I'm chief
14 counsel at NLADA.

15 And by way of background, I have been employed
16 both as a staff attorney and management at a number of
17 LSC current and former programs, including Land of
18 Lincoln Legal Services, Legal Services of Eastern
19 Missouri, and New Haven Legal Assistance in
20 Connecticut, as well as a non-LSC program here in D.C.,
21 Legal Aid Society of D.C.

22 And I just wanted to really thank everybody

1 for coming to this workshop, both for LSC and LSC's
2 board and staff, who are extending the opportunity to
3 talk with the grantees, and also my appreciation for
4 the grantees to take the time and effort to be here.
5 Logistics and finances made this very difficult for
6 programs, and I think you see we have a great turnout,
7 and it really reflects the field's level of interest in
8 this topic.

9 So I see from my perspective, and the reason
10 we have so many people from finance is because this is
11 really more of a financial issue, and they deal with
12 that much more than just the legal issue. But I do see
13 a number of things which I see as very different from
14 other grantees.

15 One is that LSC has multiple layers of
16 reporting and approval requirements. Two is, LSC has
17 three different compliance offices who independently
18 request, review, investigate grantees, their service
19 delivery, and their fiscal operations, and when those
20 reviews are done, they make detailed findings and
21 recommendations to individual programs.

22 LSC also has unique and extensive regulatory

1 restrictions that are monitored. None of the other
2 grantees do. And then the fourth thing is, LSC
3 regulations also require that for subgrants, which is
4 somewhat unique to LSC other than the PAI subgrants
5 that all the regulatory restrictions that apply to LSC
6 also apply to their subgrantee, making it difficult
7 both to recruit subgrantees and then to monitor
8 subgrantees because there's a second layer of
9 monitoring. It's not just fiscal. It's regulatory.

10 As to the other areas of difference, the main
11 thing I've heard from our different field components is
12 the difference between having a budget that's submitted
13 to a funder for approval with line items, not
14 necessarily detailed line items but with standard
15 accounting principle line items, it's approved, and
16 then it's resolved at the end of the budget time.

17 And there is not, as already discussed, prior
18 approval processes that, really, people have to wait
19 for. They are able to make their purchases as long as
20 they've put it in their budget. If there is a
21 variance, I think the different grantees have different
22 procedures for dealing with a variance.

1 But basically, there's general categories for
2 making purchases, staffing, and whatnot, and then
3 reporting at the end of the grant cycle, as opposed to
4 LSC, which has really different requirements for
5 different things at different times, on top of
6 extensive other reporting that's done. So I think
7 that's really the main differences I see.

8 The other thing is, we don't have the benefit
9 of that wonderful statistics, that PowerPoint, that was
10 done. Really, I think we have to look at what are the
11 differences in terms of funding. Basically, it seems
12 like, similar to Northwest Justice right now, many
13 people's funding schemes are 40 percent, approximately,
14 or less, LSC, maybe 50 percent state, as a general
15 rule.

16 There's some LSC fundings that get up to 80
17 percent LSC funding, and there's not support in the
18 state for that, but for the most part. And then
19 there's also some large different urban programs that
20 have different funding structures, too. But it seems
21 like those are the two major funders that we're looking
22 at.

1 And then the other smaller grants -- I mean,
2 some programs literally have 60 to a hundred grants.
3 So to try to resolve for those smaller grants,
4 consistent procedures would seem to me to be a miracle
5 or impossible. So that's my summary for now.

6 CHAIRMAN KECKLER: Okay. Thanks Robin. And
7 you can respond or others can, too.

8 So what I'm hearing is, well, it might be that
9 -- and you can go ahead and correct me -- a picture
10 emerges in my mind that in a lot of cases, partly just
11 for good management reasons and partly because of the
12 requirements of other funders, a lot of grantees will
13 prepare at some time in -- the usual time of the year a
14 budget that will have future purchases listed. And
15 that will be sufficient for these other funders. That
16 will go to the other funders, the budget, for approval.

17 MR. PELLETIER: It could be a specific list or
18 a list of types of things that you are likely to be
19 purchasing during that grant cycle or during that
20 period.

21 CHAIRMAN KECKLER: Right. But then, as a
22 follow-on to that, some of those line items, which are

1 relevant to LSC or are being used by LSC funds or reach
2 a threshold, you'll then -- as you are planning to
3 implement that aspect of the budget, you'll seek prior
4 approvals for those particular line items from LSC.

5 MR. PELLETTIER: Right. Any time we have an
6 individual item that looks to be \$10,000 or more of
7 expenditures with LSC funds, we would request an
8 approval for that. And it could be, in our case, for
9 the larger items. Typically, it's a shared cost
10 between LSC and the state funder. It's anywhere from
11 50/50 to 60/40 state versus LSC, which is roughly what
12 the funding is between the two of them.

13 Anyway, so we would request approval from LSC.
14 We would not need to request approval from OCLA.

15 CHAIRMAN KECKLER: Okay. Thanks. So I'll go
16 ahead and turn it over to Shamim -- is that right?

17 MR. HUQ: Yes.

18 CHAIRMAN KECKLER: Okay. Thank you.

19 MR. HUQ: Okay. My name is Shamim Huq. I'm
20 the physical director at Legal Aid Society of
21 Northeastern New York. I have been in the nonprofit
22 world for over 18 years, out of which the last four

1 years has been with the Legal Aid Society of
2 Northeastern New York.

3 So I sort of jumped ship. I had been working
4 with the nonprofit world of community actions prior to
5 coming to legal aid. But nevertheless, nonprofit work
6 is similar in many ways.

7 Legal Aid Society of Northeastern New York is
8 predominately funded by the state of New York, and our
9 largest funder is the New York State Office of Court
10 Administration, which funds our judiciary civil legal
11 services grant.

12 We have other state funding grants as well,
13 and some small grants that we get from other sources.
14 But we have two federal grants that are directly from
15 the federal government. One is from the Office of
16 Justice Programs from our Office of Violence Against
17 Women, and we have one with the IRS for the LITC grant,
18 the Low-Income Taxpayer Clinic.

19 None of our grants at this point has required
20 us to do any kind of prior approval, and one of the
21 reasons, I would like to say, is that our type of work
22 -- we are a service-oriented industry, so majority of

1 our expenses are in our personnel expenses, which is
2 almost over 80 percent of our expenses are personnel.

3 So other than that, the supplies and other
4 things that support the organization to keep moving is
5 competitively very less compared to the whole expenses
6 of our organization. So this basically is where we
7 are.

8 CHAIRMAN KECKLER: So just as an overall
9 assessment, as your complying with the requirements of
10 different funders, there's a percentage that the
11 grantee gets from the different funders, and I'm not
12 sure what the percentage is at LSC, from an LSC grant.
13 For Northeastern New York, what's LSC's percentage at
14 your program?

15 MR. HUQ: I would say less than 10 percent.

16 CHAIRMAN KECKLER: Less than 10 percent. And
17 given that, does the need for -- and I can't put this
18 any -- I'm no diplomat, so I won't do it. But does it
19 take more than 10 percent of your time, the time that
20 you take to respond to funding requirements and seek
21 approvals and do communications and handle all of that,
22 for all the different funders that you have? Thinking

1 of that time, is the time that you devote to LSC more
2 than 10 percent?

3 MR. HUQ: As we follow LSC's regulatory
4 processes, and our physical manual is dominated by the
5 LSC rules and regulations, which all of our funders
6 have accepted that -- they feel that it's okay because
7 we tell them that LSC is the rule that we follow.

8 And sometimes some of the reportings and
9 things does require more than 10 percent because of the
10 requirements that we have fulfilled for LSC. But as
11 far as the other funders, we do the budgets and submit
12 the budgets.

13 And once the budget is approved, if they do
14 not require any changes, then we -- it's an
15 expense-based budget. We make the expenses and submit
16 quarterly or monthly statements to them, and we get
17 reimbursed. So basically, that's all it takes for us
18 to go through those fundings.

19 CHAIRMAN KECKLER: Thanks. And so this is
20 another question that other people can respond to or
21 think about as we turn to you, is that I guess the flip
22 side of whether the reporting burden is relatively

1 greater on the LSC side -- it may or may not be -- but
2 whether or not for these other funders, the existence
3 of LSC's reporting requirements, whether they're relied
4 upon by other funders to some extent as a guarantor,
5 since LSC may be one of the earlier grantees, and they
6 may have come in later and there's been an expectation
7 that that sort of structure is in place from LSC.

8 MR. HUQ: I think Steve wants to comment. You
9 want to comment?

10 MR. PELLETIER: When I started at Northwest
11 Justice Project in 1999, we were about 90 percent
12 LSC-funded. Our systems, our accounting manual
13 internally, and most of our processes and procedures
14 have evolved, really, around LSC. And, frankly, the
15 clients we serve are still 95 percent LSC-fundable
16 clients. The other 5 percent would be over-income
17 seniors for some of our seniors grants.

18 So we have build our organization around LSC
19 and LSC's guidance, if you will. And I think that has
20 been because of robust accounting processes, and good
21 audits along the way, and a host of other things that's
22 helped us with our other grantees, if you will. So I

1 don't know if that answers the question.

2 CHAIRMAN KECKLER: I think it does. I think
3 it represents the flip sides about expectations, and at
4 the same time, that on the other hand, there's -- well,
5 I won't say anything right now. Remembering what I
6 said before, I'm not going to create a hypothesis right
7 now.

8 Okay. So let's go ahead and turn to everybody
9 on the phone. Do we have a list of everybody there?

10 MS. DAVIS: Sure. Why don't we start with
11 you, George Elliott, in Texas.

12 MR. ELLIOTT: All right. Thank you. Good
13 afternoon, everyone. My name is George Elliott. I'm
14 the director of administration for Legal Aid of
15 NorthWest Texas. We're situated in the north and west
16 part of the state, and we're one of the three legal
17 services-funded organizations for Texas.

18 Our budget runs about \$18 million, and that's
19 about 45 percent LSC. We have nine other major
20 grantors. Those are people who are giving us at least
21 \$100,000. And the state is probably 50 percent of our
22 total budget now.

1 The biggest issue that we see is with respect
2 to the way our approval, prior approvals, are set
3 forth. Well, our program started out as basically
4 LSC-funded as well, and so our purchasing really has
5 that in mind. But we tend not to share costs on items.

6 Either an item is purchased entirely with LSC funds or
7 entirely with a particular grant's funds, and billed
8 solely to that particular funding source.

9 The big thing that we notice is that a number
10 of our grantees want us to provide services rather than
11 overhead. And so especially with the smaller grants,
12 there is really no -- maybe a little bit of travel or a
13 little bit of training built into the budget, but no
14 real overhead beyond simple office supplies.

15 The other state funders generally will
16 approach us when we need overhead supplies or larger
17 purchases. But for instance, we just had a VOCA
18 partnership that allowed us to buy a whole new set of
19 computers for our new VOCA project. But that's
20 actually kind of the exception.

21 Like some of the others have said, our prior
22 approval for state tends to be in our budget. We

1 submit a budget to them, and then when they come and
2 monitor our program, they look deeper into some of
3 those purchases. And if they have questions, they'll
4 ask.

5 But generally speaking, if the budget is
6 approved -- and then we make quarterly reports on that
7 budget as to how our expenditures are going and where
8 those funds are being expended. And again, as those
9 quarterly reports are reviewed, if questions come in,
10 they'll either come to me or to our chief financial
11 officer.

12 Knowing what the LSC regulations are, whenever
13 we're looking at a major purpose, regardless of the
14 source of the funding, we generally take a view of,
15 well, let's make sure that we're compliant with the
16 PAMM and with 1630.

17 We get three bids, or we designate a single
18 source. We look to make sure that we've got all of our
19 documentation put together in a way that makes it easy
20 for any funder to come and say, okay. Let's take a
21 look at your computer, your last computer purchase.
22 And so we've got all that information together for that

1 particular funder.

2 Our last request for prior approval was for a
3 phone system. And I will say that that process went
4 fairly well. But it was turned around probably within
5 I want to say 60 days. But we had notified LSC ahead
6 of time that that purchase was coming. It was just a
7 matter of getting the details to them and making the
8 final purchase.

9 The problem that we have and that I seem to
10 see whenever we're looking at this is the purchase when
11 we decide that the need is there, there's such a large
12 lead-in time to make sure that we've crossed all our
13 T's and dotted all our I's so that we don't run afoul
14 of an aggregating issue or an individual item that may
15 have a list price that's more than \$10,000, but our
16 actual cost is something less than that.

17 And so since I've taken over the
18 administration position in 2013, I'm actually doing a
19 PAMM memo for every purchase that might be affected,
20 whether we're using LSC funds or not.

21 CHAIRMAN KECKLER: Thanks. So we heard that
22 Northwest Justice Project sometimes purchases things

1 with both the state money and LSC money in rough
2 proportion to the funding stream. Why do you do things
3 in this other way?

4 MR. ELLIOTT: I think the decision has been
5 made -- and from a very, very long time ago; I want to
6 say even prior to our merger in 2003 -- it was just
7 easier to dedicate resources to particular grants.

8 The big state grant, which is \$5.5 million,
9 which is similar to the LSC grant -- and in Texas,
10 they've tried to make those as least onerous as
11 possible so we're not having to write two separate
12 reports or two separate funding requests or two
13 separate -- we can use as much as we can of data from
14 one grant or the other.

15 They set forth very general rules. But all
16 the other grants are very specific in what they want
17 accomplished and what they want done. And so it's just
18 easier for us, if a project needs a particular thing,
19 to bill it to that project if that project allows the
20 overhead.

21 Otherwise, to just try and -- I guess it just
22 makes it easier if everything is attributed to a

1 particular source. I don't know that it's necessarily
2 better or worse. I think that's just kind of a
3 philosophy that our accounting department has had.

4 CHAIRMAN KECKLER: Okay. Thanks.

5 Who's next?

6 MS. DAVIS: Sure. Could we have AnnaMarie
7 Johnson, please?

8 MS. JOHNSON: Sure. I'm AnnaMarie Johnson.
9 I'm the executive director of Nevada Legal Services,
10 and I've been here for 12 years. I've been in legal
11 services for 30. Prior to Nevada, I was at DNA Peoples
12 Legal Services and then at Mid-Minnesota Legal Services
13 before that.

14 Here at Nevada Legal Services, our current
15 budget is \$5.2 million. LSC makes up about 57 or 58
16 percent of our entire budget. I have a total of 21
17 funding sources. Five of those funding sources are
18 contracts for services. It's a fee for service.

19 And with those five contracts, what we've done
20 is negotiated an hourly rate for the work that we do
21 for a client. And that hourly rate is to include
22 enough money to cover the costs for travel, per diem,

1 the purchase of any electronic equipment we might have.

2 So there's no actual prior approval involved
3 with those contracts at all. It's just assumed that
4 the hourly rate that we're receiving for the fee for
5 service is enough to cover our entire cost for that
6 contract.

7 With our other grants that we receive outside
8 of LSC, there's no grant that requires prior approval.

9 I have a number of grants that I have where we do
10 budget negotiations. We include in the budget for the
11 grants what purchases we may need during that grant
12 year.

13 And when it comes time for budget negotiation,
14 if there's a need because the amount of money that's
15 available to be given for the grant is less than what
16 we've budgeted, we'll negotiate either taking something
17 out and trying to cover it with LSC funds or other
18 funding that we have.

19 I have no other funding that would allow me to
20 purchase real property. The only grant that allows me
21 to purchase real property is the LSC grant. And we're
22 actually in the process right now of trying to purchase

1 a new building for our Las Vegas office, and it's been
2 difficult with the current regulations in that LSC
3 can't move fast enough for the turnaround in real
4 property in Las Vegas. I've lost three buildings
5 simply because we can't guarantee that within 48 hours,
6 I'm going to have approval from the federal government
7 for this particular purchase.

8 CHAIRMAN KECKLER: So tell us a little bit
9 more, if you don't mind, about what you would envision
10 as the kind of regulation that you would think would be
11 more helpful and appropriate for you in your program
12 with regard to real property.

13 MS. JOHNSON: What I would envision is a
14 process where we can enter into the agreement to
15 purchase the property and inform LSC of this and of our
16 reasoning for it, and not have prior approval, but have
17 an approval that doesn't necessarily mean that you're
18 going to turn us down, as long as we've justified that
19 the approval should be there. It's very difficult to
20 get it prior to the purchase of the property.

21 CHAIRMAN KECKLER: Right. So in other types
22 of purchases, if you had budgeted at the beginning of

1 the year for a purchase and negotiated that budget, is
2 that something that's more workable?

3 MS. JOHNSON: Yes, it is.

4 CHAIRMAN KECKLER: Thanks.

5 MS. DAVIS: All right. Could we get an
6 introduction from Michael Maher, please?

7 MR. MAHER: Yes. This is Mike Maher. Thank
8 you for inviting me. I've been with legal services for
9 the last 31 years in Milwaukee. Legal Action serves
10 the southern half of Wisconsin.

11 When I started, we just had the LSC grant and
12 the Older Americans Act grant. And I've watched the
13 whole legal services funding expand over the years.
14 Legal Action currently has over 50 grants. We have
15 \$8.8 million in revenues.

16 LSC is approximately 47 percent of our
17 funding. We have IOLTA funding of about 6 percent.
18 There is no state funding in the state of Wisconsin.
19 All the rest of our funding are really special project
20 grants, mostly federal and a couple state. We get
21 funds from the Department of Labor, Department of
22 Justice, HUD, VA, DHSS, IRS, Department of Ag. But

1 they're very specific projects.

2 And usually there's no prior approval of
3 equipment. But usually we're just budgeting, if
4 possible, like a laptop or phone for the new staff that
5 are coming on.

6 The real framework of our computer system and
7 phones are supported by the LSC. They provide the
8 framework that we're able to accept these special
9 projects and deliver services. I'd say almost all of
10 our clients are LSC-eligible except for the Older
11 Americans Act and a couple other small number of
12 clients, but a real majority of our clients are all
13 LSC-eligible.

14 So in reviewing the materials, a couple areas
15 that I have some concerns about is the aggregation kind
16 of idea because the current system of LSC approval
17 seems to be working. We went in for a
18 videoconferencing approval. We've gone in for two
19 phone systems in the last couple years.

20 I think we've had three TIG grants. And the
21 existing process actually works pretty good. It moves
22 along fairly quickly. The LSC staff is very helpful.

1 So I think the system now is working.

2 The aggregation issue could become
3 problematic, and I don't think it really gains LSC any
4 advantage, because we'll routinely buy like 20
5 workstations, computer workstations, in a year. And
6 they'll be over \$10,000.

7 And we go on these internet, we get pricing,
8 and we buy from the lowest bidder. And that's what
9 I've seen in the last few years is with the internet
10 pricing, it's very easy to get competitive pricing on
11 workstations, printers, copiers, all kinds of stuff.

12 So I'm not sure -- we mainly focus just to
13 make sure the costs are reasonable and necessary. And
14 then we've got some pricing in our file to justify,
15 with a competitive price.

16 The other area I'm very concerned about is
17 there was some mention of contractual services and
18 prior approval. That would be very problematic for us
19 because particularly the use of computer consultants
20 and programming.

21 We have website consultants. We have a
22 consultant that works on our main networks. We have a

1 consultant that does all our database work. We have a
2 consulting firm that programs our phone switches.

3 And these are relationships that have
4 developed over many years. We've changed vendors
5 because we weren't satisfied with their programmers.
6 And you're really not looking at price, necessarily.
7 You're looking at qualifications. And we make sure
8 their rates are within a reasonable range, and they
9 generally all fall, like for a programmer, 119- to
10 \$130.

11 But we have this relationship, and it's not
12 like you're buying a phone system. You don't know what
13 you're going to be buying next week when your server
14 goes down, or one of your outcomes, you need to program
15 new outcomes. You have work orders. You have a
16 relationship and you have work orders.

17 And so the LSC, as it currently is structured,
18 allows for this flexibility to maintain your technology
19 system, and to quickly react to changes, and to be
20 ready to enhance the services.

21 If there was some structured, contractual
22 services approval, it could be very problematic,

1 particularly if you have a sole source and then you've
2 got to go through a lot of explanation of your sole
3 source. That takes time.

4 And we actually just encountered with the
5 Department of Justice -- the VOCA just did a national
6 redo of their outcomes reporting report, which required
7 us to redo a data screen. We approached our lead
8 agency and said, you of course will fund this
9 reprogramming of this data screen.

10 Our consultant charges \$119 for high-level
11 programming. And they go, oh, DOJ only allows \$81, and
12 it's a sole source, so you're going to have to go
13 through this whole thing. And they're still saying, we
14 need the report in like two weeks.

15 So if LSC gets into contractual service
16 approvals and stuff, for us it could be disastrous. It
17 could really hurt our ability to react quickly to
18 changing technology, or our servers go down and we've
19 got to bring people in over the weekend. So that's the
20 two main areas I had concerns.

21 CHAIRMAN KECKLER: Thanks, Michael. So it
22 sounds as if you've had some difficulties with the

1 Department of Justice on this particular issue. Do you
2 find, since you have several federal grants and federal
3 relationships, do you find a consistency or a pattern
4 among the federal grantors? Or do their requirements
5 tend to vary among themselves for the different grants?

6 MR. MAHER: At this point, they tend to vary a
7 little. But as I think the uniform guidance gets
8 implemented, I would imagine they may become more
9 uniform eventually. But usually we aren't going in for
10 those types of requests. It was just so specific to
11 this funder that we thought, well, this is a
12 no-brainer. They're asking for it. And it wasn't
13 flexible enough.

14 We do not have another -- like we don't have a
15 large state pool of money that we can turn to and say,
16 well, we're going to buy this server from this state
17 fund. We've got to rely on LSC to really build the
18 framework for legal services delivery.

19 CHAIRMAN KECKLER: Okay. Thanks.

20 MS. DAVIS: All right. Pat McClintock, could
21 we hear from you, please?

22 MR. MCCLINTOCK: Sure. My name is Pat

1 McClintock. I'm with Iowa Legal Aid. We are a
2 statewide program. We have ten regional offices across
3 the state of Iowa. I've been with the program since
4 1974. I've been in my current position since 1982.

5 Obviously, during that period of time, I've
6 seen a lot of changes, particularly in the area of
7 technology, and certainly in the amount of money that
8 our program has had to devote to certain forms of
9 technology where the prices have actually come down
10 quite dramatically over the last several years.

11 And to put things in perspective from our
12 organization's point of view, I went back and looked at
13 the last six years, and we spent \$375,000 on capital
14 purchases during that period. And during that same
15 period, our budget was about \$48 million during that
16 six-year period.

17 So we're spending less than 1 percent of our
18 budget on capital items. Fortunately, or maybe
19 unfortunately, we don't have any real property, so
20 that's not a factor that we look at. But in terms of
21 personal property, the costs and the expenses that
22 we're incurring are very modest in comparison with our

1 program's total operating costs.

2 So I think that's an important consideration
3 to take into account when you're looking at developing
4 a regulatory scheme for the acquisition of personal
5 property. And I think that any regulatory requirement
6 should be proportionate to the resources that programs
7 are spending on those needs.

8 Within that context, we tend to take an
9 entrepreneurial approach to capital purchases.
10 Typically what we'll do is we'll identify what our
11 program's needs are, and we'll go through the process
12 of identifying potential vendors.

13 We'll meet with vendors, get quotes, and then
14 we'll go out and develop a strategy for raising funds
15 to achieve that objective. So typically, we are
16 relying almost exclusively on non-LSC funds for a lot
17 of our purchases.

18 There have been two instances, however, in the
19 last four years where we've used LSC funds in
20 combination with other funds. But in each of those
21 instances, the amount of LSC funds used was about
22 proportionate to our ratio of LSC to non-LSC funds,

1 which is our LSC funds are about 30 to 35 percent of
2 our total overall funding, and then the rest of our
3 funding makes up the other two-thirds of our funding
4 base.

5 Most of our funds sources, our largest ones --
6 while we do receive federal grants from VAWA and the
7 LITC and a few other federal sources, the largest
8 portion of our non-LSC funding is from private funding.

9 In fact, our third largest pool of funding is
10 the aggregated total of United Way funding that we
11 receive from the various communities in the state of
12 Iowa. And then our foundation and philanthropic
13 funding is actually about \$800,000, or about 10 percent
14 of our total funding.

15 So we're fortunately in a position where we
16 can rely on a number of different sources that have
17 been willing many times in the past to finance capital
18 purchases when we're able to document that need.

19 I guess I would echo Mike's concerns regarding
20 the contract issue. I do think that's a different
21 species of expense. And we are now looking more and
22 more at cloud-based resources. We use eTapestry as our

1 fundraising infrastructure. We're looking at a
2 migration to Windows 365.

3 And while we'll go through a bidding and RFP
4 process in making a decision regarding those
5 acquisitions or those contracts, I think we have to be
6 careful not to create regulations that make that
7 process more complicated. And I'm not exactly sure how
8 best to do that, but I just raise that as a concern.

9 CHAIRMAN KECKLER: Okay. Thanks.

10 MS. DAVIS: All right. If we could hear, last
11 but not least, from our final remote panelist, Jon
12 Asher.

13 MR. ASHER: Hi. Thank you. Let me just
14 start. I'm Jon Asher. I'm the executive director of
15 Colorado Legal Services, which is a statewide program,
16 has been since 1999. We have 14 offices. By way of
17 background, I've been in legal services now for 45
18 years in Colorado. Have been the director of an
19 LSC-funded program since late 1980.

20 One of the complexities we face is a state
21 culture of local control. We have 64 counties in
22 Colorado, 22 separate judicial districts, each one of

1 which controls some funding. We have 27 local bar
2 associations. We have at least 14 specialty bars,
3 ranging from women and Hispanic to federal bar and
4 trial lawyers.

5 We have 16 separate area agencies on aging,
6 which allocate funding, both state and federal, to
7 serve the elderly. And we have 14 separate United Ways
8 in the state. As of this morning, we have 62 separate
9 funding sources; revenue this year will be between 10-
10 and \$11 million.

11 Our LSC funding varies from year to year,
12 about 38 to 42 percent. It's going down because of the
13 census adjustment. Despite the increase in LSC
14 funding, our LSC grant went down.

15 Our second largest funding source is state
16 money to serve victims of domestic violence, which is
17 now about \$2 million, or about 20 percent of our
18 funding. That's by statutory formula, and it requires
19 us to represent low-income victims of domestic
20 violence, but with virtually no other restrictions or
21 requirements other than on checking eligibility. Now,
22 of course, it's tied up with this super-restriction.

1 I want to thank LSC both for the opportunity
2 to share some thoughts with you, also for the
3 opportunity to reread a number of our grants and
4 contracts. There are really some interesting things in
5 there that you don't always remember or notice.

6 Many of our grants and/or contracts are to
7 serve either specific geographic areas of the state or
8 a specific population, such as the elderly or victims
9 of domestic violence.

10 Let me just -- in terms of the comments, I
11 agree with most things that have already been said. A
12 number of federal grants have limits on purchases. We
13 own no real property. The Department of Justice and,
14 in the past, HUD have particularly strict and somewhat
15 rigid requirements. They change now and again.

16 They seem to be more concerned with our not
17 supporting efforts to legalize prostitution or to
18 subgrant to ACORN than anything else, but they do have
19 a number of restrictions on procurement as well.

20 We have a couple of local foundations that
21 address intellectual property issues. Most of the
22 federal and state grants don't seem to.

1 Let me just say that we have made a number of
2 capital acquisitions with targeted non-LSC money.
3 We're in the process of implementing a new case
4 management system.

5 Most of the money came from two \$30,000
6 grants, one from the Denver Bar Foundation and one from
7 a major law firm in Denver that was celebrating its
8 100th anniversary last year. And they both made up
9 \$60,000 out of 65-, \$66,000 acquisition. And the law firm
10 also provided pro bono assistance in reviewing and
11 negotiating the contract for the purchase of the case
12 management system.

13 A number of years ago, when IOLTA revenue was
14 higher, we got a significant one-time grant to purchase
15 a new phone system. As I said, we don't own real
16 property. We on occasion will lease a new copier that,
17 over the period of the lease, exceeds \$10,000.

18 We are careful. The time taken to do that has
19 always been in my experience, on the front end. When
20 we try to get bids, some vendors are much more
21 responsive than others. Frequently it's harder than
22 you might think to compare apples to apples so that we

1 can make a reasoned judgment.

2 In my experience, LSC has been timely in its
3 approval once we're ready to go, and if there is a
4 delay, it's almost always my fault for having left
5 something out. And I get a nice call from Lora or
6 Megan saying, is it this? Is it that? And we confirm
7 the revision.

8 But if you're coming to the end of a long-term
9 lease and have time to project it, that's one thing.
10 If you have an emergency, if a piece of equipment
11 breaks, not only may you need a very quick consulting
12 service, but there are times when a protracted process
13 of soliciting bids and getting prior approval really is
14 inefficient and unfortunate.

15 We have a number of small towns in which we
16 virtually can't get multiple bids. If there's one
17 office supply store in a small town, it's sometimes
18 hard to do that. We sometimes have to make lease
19 arrangements elsewhere. Frequently the service
20 provider is even somewhere else.

21 And so I would hope that you wouldn't
22 aggregate the actual lease or purchase price with

1 service. Sometimes they're closely connected;
2 sometimes they're not at all. But to try to parse that
3 out, I'd think, would be unnecessary.

4 I must admit the last time I sought approval
5 to get a new \$10,000 copier for the office here in
6 Denver, it occurred to me that LSC really doesn't care
7 what sort of bozo I might hire forever. But to spend
8 \$2,000 a year on a copier, we have to be very careful.

9 And I think we have to put in relative
10 perspective, as I think it was Pat who said, the very
11 small percentage of time and expense that we put in to
12 capital acquisitions. And the more administrative
13 hurdles there are, it is not really as efficient or as
14 effective as we might want to be.

15 There's several other things, on intellectual
16 property and disposal of property and contracting for
17 service, which is very different from a copier or a
18 printer or the like. And I agree with the comments
19 that those are very idiosyncratic, very internal, very
20 relational decisions for which great deference and no
21 prior approval ought to be required of grantees or
22 local programs.

1 CHAIRMAN KECKLER: Thank you, Jon. And thanks
2 to everybody for setting the table for the discussion
3 going forward.

4 So a couple of themes that are in our
5 documents, but they're also in your comments, are, one,
6 the issue of services. And this particularly relates
7 to the issue of exigencies and things that you need to
8 keep going, services in general being something that
9 overlaps with immediate needs; and the aggregation
10 issue.

11 So let's begin by talking a little bit about
12 aggregation, and how people see the issues, and what
13 suggestions or thoughts they have about that. Breaking
14 out of my usual not saying anything, I do understand
15 that there is such a thing as purchasing in bulk, and
16 that that has a value. And at the same time, if you
17 don't purchase in bulk, you would fall under a
18 threshold as it currently exists.

19 And so there are those pressures, and we're
20 here to talk about how we can be helpful but still
21 responsible for our oversight. So I'm just opening the
22 floor to people's thoughts on the aggregation and how

1 we should best go forward with that.

2 MR. PELLETIER: I, initially reading this, was
3 concerned, greatly concerned, by the notion of
4 aggregating, particularly when you're not seeing that
5 it's distinguished between expendable and
6 non-expendable property.

7 Property in the Uniform Rules and in LSC is
8 capitalizable at \$5,000 and above. And frankly, in our
9 organization now, copies and things of that nature are
10 over \$5,000 and over 10-, often, but PCs are in the 5-
11 or \$600 range now.

12 So an aggregate purchase for us in NJP, we
13 have 200 staff. We replace probably 50 PCs a year on a
14 cycle of some sort. We don't replace them till they
15 break, but we tend to buy 50 or so a year. And we do
16 buy them in batches of fifteen to twenty, so they can
17 go over \$10,000, potentially. So that would then throw
18 those into an approval situation for us.

19 Also, the question would be, what is the
20 definition of aggregate? Is it what you've ordered?
21 Is it what's been shipped and billed for? Is it from
22 one vendor or is it from multiple vendors that you've

1 ordered at the same time?

2 I'm very confused about what that would mean
3 in that sense. So the scope of it is hard for me to
4 grasp in terms of what that would mean to us.

5 CHAIRMAN KECKLER: Yes. Not prejudging
6 anything else about what we're going to do, but what
7 thoughts do you have from an accounting perspective
8 about what the right definition of "aggregate" would be
9 from an accounting or management perspective? How
10 would you think of an aggregate purchase?

11 MR. PELLETTIER: Well, for capitalizable items,
12 if we were to say something to the effect that, okay,
13 we're going to have a threshold where you're buying
14 capitalizable pieces of equipment at the same time over
15 a certain threshold, and you might have to have
16 approval for that, that seems to make sense to me.

17 Also in the past there's been an issue of
18 whether an individual item was -- in the case of a
19 copier, for instance -- an individual item was the base
20 copier, and the collator and the additional drawer and
21 the stapler are all separate, or whether those are all
22 part of the acquisition cost of that copier. That's

1 one issue. That's a smaller issue, but it is an issue.

2 But rather than aggregating whatever you
3 bought from that vendor or ordering from that vendor
4 over a period of time -- and I don't know whether
5 aggregating it one -- it's a question of what are we
6 aggregating, and it is capitalizable goods or is it
7 everybody else, supplies and things like that?

8 MR. ELLIOTT: This is George Elliott. I just
9 wanted to add that we struggle with this aggregate
10 issue as well. How closely do the things have to be
11 related to each other? Is it that our aim is that
12 everybody have a copier, a desktop printer, and a
13 scanner? Would that make that an aggregate purchase?

14 Or is that a group of scanners and a group of
15 printers and a group of desktop or laptop computers,
16 and especially where we're not necessarily ordering all
17 of those items from the same vendor, and not
18 necessarily even in the same calendar year. Some may
19 be ordered in November or December, and then the next
20 part of that in January or February of the next year.

21 CHAIRMAN KECKLER: So one issue, from my own
22 nontechnical perspective on the accounting, is what the

1 relationship would be between a line item for a
2 purchase, a line item in a budget, and an aggregate.
3 That is, a line item could say the cost of twenty PCs,
4 copier, or whatever.

5 Obviously, they're different. But how related
6 are, in your experiences, line items for purchases and
7 a sense of the aggregate?

8 MR. MAHER: This is Michael Maher. I guess
9 one thing that I'm trying to understand is what is the
10 goal of the LSC in looking at aggregate, especially
11 smaller items. Like what would fall, laptops or
12 workstations?

13 The pricing on that's pretty narrow, pretty
14 consistent. What does LSC hope to gain by creating
15 this aggregate when there should be pretty good records
16 in the recipient's accounting records of competitive --
17 like three bids got on workstations?

18 I think it creates more confusion, more work.
19 And what do we gain by doing it?

20 MS. DAVIS: Sure. This is Stefanie. As we
21 were looking through the PAMM and thinking about areas
22 for revision, one of the things -- part of the reason

1 we're having this discussion about the difference
2 between a purchase of a single item and a purchase of
3 aggregate items is that we treat them differently in
4 the PAMM. One requires prior approval and one does
5 not.

6 So the question, I think, was more about, is
7 LSC thinking about purchases in the correct way? And
8 if we are thinking about making changes to what our
9 purchasing requirements look like, should it be to have
10 the same standard for purchases of aggregate items and
11 purchases of one single large item, or should they
12 continue to be different?

13 So the goal is always for us to be saying, are
14 we being as accountable and responsible for the uses of
15 our funds as we should be, but also asking, is there a
16 reason that these two types of policies are treated
17 differently, and should they be treated the same?

18 MR. MAHER: Okay.

19 MR. PELLETIER: An earlier comment was made
20 that what we currently have works pretty well in terms
21 of I think we all pretty much understand what's
22 required of the single item \$10,000 preapproval

1 threshold.

2 And so I do think that the question goes back
3 to what is gained by prior approval and how much prior
4 approval does the corporation want to get involved in
5 in the daily operations of our organization rather than
6 the maybe unusual or less frequent and larger purchases
7 that might make sense for the organization to want to
8 know about an advance.

9 CHAIRMAN KECKLER: Yes. I guess what I hear
10 them saying is something that -- to take a concrete
11 example, based on what people have been saying, there's
12 a prior approval for a \$10,000 copier. On the one
13 hand, rhetorically, why should LSC be concerned about
14 the \$10,000 copier?

15 Well, there's the usual oversight concerns.
16 And I guess I hear Stefanie saying that the issue or
17 the question is, maybe even from the same vendor you
18 could buy ten PCs from the same vendor, or a copier.
19 And the question is -- it's really six of one, half a
20 dozen of the other. Right? In some sense.

21 But it might not be treated the same way from
22 a prior approval sense. That is, the fiscal oversight

1 concerns might be similar in terms of vendor
2 relationships or having the competitive bidding or
3 whatever have you, but simply by the nature of the
4 items purchased rather than the level of expenditure,
5 or the level of concern would differ.

6 MR. HUQ: This is Shamim. Just adding to what
7 Steve had mentioned and everyone else had mentioned,
8 the difference, I think, the way I look at it is the
9 non-aggregated items, the small items, those are
10 day-to-day operations that an organization incurs on an
11 everyday basis.

12 And though they may put together on an
13 accounting prospective look aggregated total of an
14 amount that may cross the \$10,000 threshold, but those
15 were made individually on a daily basis as and when
16 they were required.

17 Or some of them are just -- there were
18 comments like, we buy copying paper, or things like
19 that, small things. But they tend to add up. Or
20 they're stationery and supplies that we buy from a
21 certain vendor. Maybe when we pay the bills, that may
22 add up to the aggregate total.

1 But those were bought individually as and when
2 required, and there was no foresightness (sic) to
3 seeing that they will aggregate up to that certain
4 amount. But I just give you an idea of where our
5 organization stood, and I did a little analysis of
6 2015, what would have happened to us if this wasn't
7 enforced.

8 So I looked at -- we would put in about five
9 to seven hours of additional work to do the prior
10 approval process. We had revenue at \$8.3 million in
11 2015, and within five offices with 90 employees.

12 If we would have had to do the prior approval
13 of aggregate purchases for supplies and services in
14 2015, I found that we would have 21 incidences where we
15 would have had to seek prior approval. And that would
16 have put in about 105 hours, or three work weeks, into
17 the process to getting those approvals.

18 So just by saying that, I think that just puts
19 an extra barrier, extra work, on day-to-day operations.

20 It's going to slow things down. It's going to make
21 things where we won't be able to -- hey, hold the
22 thing. We can't do it because we got to follow the

1 rule first before we can get to providing the services.

2 So all that is just -- I think from our side
3 is just an extra process that will create barriers and
4 be slowing down the process of what we are out there
5 for, to create services to our clients that need the
6 services right now as they walk in the door or as we
7 receive them. So that's basically what I think what I
8 would like to add to it, too.

9 CHAIRMAN KECKLER: Well, thanks for that
10 calculation, Shamim. And just to follow up on that,
11 what sorts of things, as interpreting the idea, would
12 you have to seek prior approval of? What sort of
13 items, aggregate items, were you using?

14 MR. HUQ: Well, I broke them down into several
15 categories of things, like -- I have a work sheet that
16 I put together for this purpose. So I put them in
17 separate groupings of things for billing purposes.
18 Like building repairs and all those stuff, all those
19 smaller things if we did that.

20 In the month of February, we spent \$11,000.
21 So if we would look at a monthly aggregate, that was --
22 \$11,000, that would have been one incident where we'd

1 have had to seek prior approval. Equipments, rental
2 equipments, equipments lesser than \$5,000, and we have
3 -- I've got two months where in month of June and in
4 December, we spent over \$10,000 where I would have had
5 to seek prior approval.

6 So on and so forth -- supplies. I've read
7 four, five, six incidents where -- in the categories of
8 supplies, office supplies, photocopying supplies,
9 printing, postage, shipping, all those. I've got five
10 different months where I would have had to seek prior
11 approval. And the list goes on with other things.

12 So they're small items. If you look at them
13 together, they add up.

14 CHAIRMAN KECKLER: Okay. That's interesting.
15 Robin?

16 MS. MURPHY: Yes. I just wanted to add, from
17 the perspective of an attorney working in the office,
18 as the board is well aware and LSC is well aware, the
19 funding for the programs is less than ideal. I mean,
20 you're really at a crisis point.

21 So the management is at a very delicate
22 balance of trying to purchase a quality item while

1 doing it as cheaply as possible and then having to
2 anticipate what is going to break down. And that's a
3 very difficult thing.

4 And these are lawyers. These are
5 professionals. They need to be able to go to court and
6 copy pleadings and have working computers and deal with
7 their clients professionally.

8 And that's really difficult if they're seeking
9 prior approval because -- and I've been in offices
10 where we've run out of paper. And it's embarrassing.
11 It's not professional. And people need these tools,
12 and they are really basic, daily tools of the trade
13 that people need, and software, and computers, to even
14 keep up with their adversaries, for instance, in family
15 court.

16 CHAIRMAN KECKLER: So do you think anything
17 further -- oh, I'm sorry. Are there further thoughts
18 on --

19 MR. ASHER: This is Jon.

20 CHAIRMAN KECKLER: Okay. Go ahead.

21 MR. ASHER: Well, let me give you -- I think
22 symptoms the opposition to the administrative time of

1 prior approval can blend into a desire not to be
2 financially responsible or accountable. And I don't
3 think that's really what any of my colleagues or I are
4 talking about.

5 You of course can look at whether an
6 expenditure was reasonable and whether it was necessary
7 for the delivery of service. But a scenario that I
8 see, for example, is I meet with the head of our
9 technology unit on the 1st of December. And we are in
10 the process -- we try to replace desktops every four
11 years, to cycle them through on about a four-year
12 basis.

13 So she says, well, the most critical needs are
14 for about ten new computers, and they're on eBay or
15 Amazon -- however we're going to get them, at that
16 point they're a little less than \$500 for the ten. So
17 that's \$5,000 right there.

18 And then we're implementing a statewide intake
19 system, and people have said that headsets really make
20 their life doing a day of telephonic intake much
21 easier. The good ones cost \$175. So she says, we want
22 to buy ten of those. So we're at about \$7,000 of

1 individual items, and that's fine.

2 And she comes back the middle of February and
3 says -- this is now two and a half months later --
4 well, we've had three of our oldest computers break,
5 but we really don't have any in the ready. We need a
6 couple of extra ones.

7 So we really ought to buy another seven to ten
8 computers. We'll get them to different offices around
9 the state. So we spent about another 5-, \$6,000. And
10 headsets, by the way, are a communicable disease.
11 They're contagious. If somebody sees one, everybody in
12 that office then wants one. So we buy a couple more
13 headsets to be efficient.

14 And then six months later, we have an
15 oversight visit from the Office of Inspector General.
16 And they say, well, you just cooked the books. You
17 should have bought all -- you should have guessed that
18 those three computers were going to break in February.
19 You should have made one single purchase in December.
20 And you should have sought prior approval.

21 Now, they could say, is the price of those
22 headsets and computers reasonable? Did you really need

1 them? Are you on top of internal controls to project
2 that? That's a very different judgment than whether we
3 ought to guess about aggregated future needs and ask
4 for prior approval on things that, individually, don't
5 come to set point where we know we're going to need
6 prior approval.

7 And it just opens up the door for
8 second-guessing both before and after that process. So
9 it's not a desire not to be accountable. We just, I
10 don't think, need to -- prior approval gives you very
11 little control, really, over what we need or what we're
12 going to expend.

13 MR. ELLIOTT: This is George. Can I add to
14 that, too? If you have every LSC program making,
15 instead of one or two prior approval requests every
16 year, they're not making ten or twenty because they're
17 afraid that they're going to aggregate over the course
18 of the year to meet that threshold. The 110 hours, it
19 gets multiplied by every program.

20 CHAIRMAN KECKLER: Yes. I guess one of the
21 things is -- and this is all very helpful information.
22 One of the things that was just raised, though, is this

1 just common for any kind of oversight situation, you
2 can do it before or you can do it afterwards. Right?

3 You can either get -- if it's somehow able to
4 work it out all head of time, then you have a safe
5 harbor situation. But oftentimes, you want to just go
6 ahead and have it be available for review after the
7 fact. Those are two approaches, and there are
8 disadvantages and advantages to both, I think from both
9 perspectives.

10 In light of that, and we can put a pin in that
11 and think about that and what the best balance is
12 between those, but let's go ahead and turn to the topic
13 of services because it's relevant to that as well.

14 And that's already come up a number of times
15 in terms of the need for -- it's something that's a lot
16 more difficult, from what I'm hearing, to anticipate
17 than perhaps purchases of capital goods.

18 So what are people's thoughts about the prior
19 approval of -- I have the document in front of me --
20 prior approval for procurement of services? Here's
21 what it says. In particular, what I'm curious about:

22 "Under the current versions of Part 1630 and

1 the PAMM, when recipients purchase personal property
2 and services in the same transaction -- purchase a new
3 copier and associated maintenance -- they must separate
4 out the cost of the services from the cost of the
5 personal property and seek prior approval on if the
6 cost associated with the purchase of the personal
7 property exceeds \$10,000."

8 So, number one, that separation. Number two,
9 the general prospect of prior approval for services.

10 MR. PELLETIER: One of the things that
11 immediately came to mind when I saw services in there
12 was, we are in the process right now of our open
13 enrollment for benefits. So on an annualized basis,
14 we're going out. Oftentimes we're getting bids.

15 It's a very time-sensitive process. It is a
16 high-cost process. I mean, benefits are an expensive
17 proposition. But the thought of trying to get a
18 preapproval process in the mix with that, it causes me
19 a little bit of a nightmare in the process as well
20 because it's very typically -- those are crunched
21 processes.

22 The providers don't want to provide

1 information too soon before the open enrollment, and
2 you're oftentimes making decisions about how many other
3 providers to get involved as you're moving through
4 negotiating with staff and others.

5 So anyway, the thought there is, again, having
6 to get another party involved, and then having to have
7 an approval before you go out and get things moving to
8 get the open enrollment process going. That's just one
9 example of many, many areas of where services in our
10 organizations are there that we might not even think
11 about yet.

12 MR. OGILVIE: On services, I think the
13 definition of the services is probably the most
14 problematic thing in regards to -- what one may
15 consider a service, someone else may consider just a
16 necessity and a requirement.

17 I think if you're talking health benefits and
18 some of those things, I wouldn't necessarily see that
19 as a service, but somebody else may. And so I think if
20 we go down the road of defining or of requiring an
21 approval for services, we need to be very clear as to
22 what type of services are required.

1 MS. JOHNSON: This is AnnaMarie, and I agree
2 that the definition of services is going to be very
3 important. If we're going to include health services
4 or health benefits under services, it makes it very
5 difficult for -- it would make it very difficult for
6 our program.

7 We serve the entire state, and we have six
8 offices across the state. And I have areas of the
9 state where there's only one health provider available
10 for the staff. There's no way of getting a competitive
11 bid from anyone else because there just isn't anyone
12 else.

13 We have another area of the state where our
14 staff is included under the county employees' program,
15 and they're not going to give us a bid. We are just
16 treated as, you're very lucky we're including your
17 employees so that you can get health care in this area,
18 and that's it.

19 And there are other services that -- Jon spoke
20 about this earlier -- where we're in very tiny towns,
21 and you don't have competition. You have one person
22 that can come in and provide tech support for our

1 staff. We're not going to be able to get bids from
2 other places. We deal with just what they provide and
3 whatever costs they choose to charge us for those
4 costs.

5 When you're out on the reservation, besides
6 the lack of services in some areas, you're also dealing
7 with Indian preference. And where all other things are
8 equal, you go with the Native American project, whether
9 or not their bid may be the lowest or the most
10 competitive.

11 So there are these issues that also need to be
12 thought about.

13 MR. PELLETTIER: Another question I would have
14 on services -- would that also bring up the notion of
15 aggregate services and how and what obstacles might be
16 there for that?

17 Many, many of our arrangements are
18 fee-for-service for things, so we're paying, maybe, by
19 the hour for somebody to come in and provide tech
20 support or whatever. And we wouldn't necessarily know
21 in advance whether we would be breaking a threshold or
22 would need to go over a threshold, in advance.

1 We would know along the way when we were
2 getting close, but we wouldn't necessarily know
3 beforehand, at the beginning of the year, for instance,
4 or whenever we would need to get preapproval.

5 CHAIRMAN KECKLER: Yes. That's a good point,
6 Steve. And I wanted -- people may jump in -- I wanted
7 to know how many of the other people, other panelists,
8 had a situation in their program that, during the year,
9 a service provider was needed or a tech or for
10 whatever, whereby -- to handle something.

11 And it was maybe not an unbudgeted or
12 particularly a welcome event that you maybe wanted.
13 But you needed to bring in a service provider, and
14 might have had to spend substantial monies that might
15 be close to that threshold. So how many people have
16 experienced exigent circumstances? Yes?

17 MS. JOHNSON: This is AnnaMarie. We did.
18 This was a few years ago. In Las Vegas, we had a
19 500-year rain event, and our office flooded. And we
20 ended up having to -- well, one, do a lot of ripping
21 out of linoleum and ripping out of drywall and having
22 things like that replaced, as well as some electronic

1 equipment because the water got into our server room.

2 And that was exigent circumstances. It was
3 work that had to get done, and had to get done
4 immediately. And if we had aggregated that over the
5 course of a year, we would have been well above the
6 \$10,000 limit.

7 MR. ELLIOTT: This is George. Let me add,
8 too, we pay, normally, a maintenance company to take
9 care of things like changing the light and making sure
10 the emergency exit signs are lit, and all that sort of
11 stuff.

12 And the one year when the HVAC system goes
13 out, suddenly that contract, which is never anywhere
14 near the threshold, is now looming over it.

15 MR. MAHER: Yes. This is Mike Maher. A
16 couple things I would struggle with would be -- and we
17 have -- we're going more to web-based applications.
18 And is that a server you're buying, or is that -- what
19 are you buying there? And I think that would have to
20 be clear. We have trouble categorizing these new types
21 of costs.

22 Also, maintenance, the old concept of

1 maintaining your copier, well, with the new technology
2 like with phones, when does it move from you're just
3 maintaining to programming? What bucket do you put
4 those -- are those in separate buckets? Is something
5 contractual services?

6 And then the other thing would be just what
7 are you applying for? We know we're going to have some
8 programming costs in the year. But I may know it's
9 going to be over \$10,000, but I don't know if it's
10 going to be 15 or 20.

11 Is my network going to go down in June and I'm
12 going to have programmers in all weekend? What would I
13 anticipate and what would I request from the LSC? I
14 guess that would be something I would have an issue
15 with.

16 CHAIRMAN KECKLER: As a general question,
17 background question, do people have any thoughts that,
18 over time, taking a historical perspective, that there
19 has been a shift in expenditures more toward services
20 as opposed to goods?

21 MS. DAVIS: An example of that with us has
22 been we no longer have hard copy libraries in our

1 offices to any great extent. It's all services. We're
2 paying Westlaw, in our instance, right now for a
3 service. We're paying so much per advocate on a
4 monthly basis. And those contracts renew on a periodic
5 basis. But we are paying now for our library as a
6 service.

7 CHAIRMAN KECKLER: Well, again, if people have
8 further thoughts on that, please go ahead and add them
9 in. But I do want to make sure that we healthcare time
10 to talk about the intellectual property issue that is
11 also part of our workshop today.

12 And so I'm not sure that the library is an
13 exact segue into that, but that's another thing whereby
14 there's been a shift in the way people do business,
15 both in what we do and business generally in that
16 intellectual property has become more important over
17 time, obviously.

18 And it's something that's not particularly
19 dealt with in the PAMM, is it? Stefanie, why don't you
20 tell us a little bit about that issue.

21 MS. DAVIS: Sure. So the PAMM actually deals
22 with this very minimally. It deals with it -- I'm

1 looking for it now; this is how minimally it deals with
2 it. I'm barely able to locate the paragraph.

3 (Laughter.)

4 MS. DAVIS: But it essentially says that LSC
5 retains I believe it's a license or some limited -- oh,
6 here it is. This is Section 5(g) of the PAMM. It's
7 really right in the middle.

8 "Recipients may copyright any work that is
9 subject to copyright and was developed or for which
10 ownership was obtained under an LSC grant or contract,
11 provided that LSC reserves a royalty-free,
12 non-exclusive, and irrevocable license to reproduce,
13 publish, or otherwise use work copyrighted by
14 recipients when the work is obtained or developed in
15 whole or in part with LSC funds."

16 That's the only provision that speaks to ip
17 developed with LSC's funds in the PAMM or anywhere in
18 LSC's rules. We're aware that the federal government
19 has somewhat different rules and are not very familiar
20 with what requirements other funders might place on
21 property, intellectual property, that grantees may
22 develop used with the funds.

1 So our question here really was, is this
2 provision the correct one, or does LSC need to think
3 about modifying it? Do we need to look at changing
4 this provision at all?

5 CHAIRMAN KECKLER: So I'll go ahead and open
6 up the floor. That provision, as you're saying, was
7 written, I think -- it's not really even written --
8 it's written more with written works. It could be
9 applicable, and less to do with software and the
10 technology that is becoming more important throughout
11 civil legal aid.

12 So I'm opening up the floor for thoughts on
13 the IP issue.

14 MR. MCCLINTOCK: This is Pat in Iowa. I think
15 the TIG grants already include a grant condition that's
16 relevant to that issue. And I think, from our
17 perspective, anything that we would develop along those
18 lines would probably be funded with a TIG grant. So
19 I'm not sure what we're accomplishing by adding
20 something to the PAMM beyond what's already included.

21 MR. ELLIOTT: This is George in Texas. I tend
22 to agree.

1 MS. JOHNSON: This is AnnaMarie. I also tend
2 to agree. I do have a number of other grants that
3 require prior approval of the actual material that's
4 created, but they don't retain any type of intellectual
5 property interest in what we create. They just get
6 prior approval of the creation. And I would like to
7 see LSC just leave things alone right now.

8 MR. ASHER: This is Jon. I don't think -- I
9 looked through our state and other federal grants, none
10 of which directly address IP. As I said earlier, we
11 have a couple of foundation grants that address it
12 pretty carefully, and I could share those with Stefanie
13 or whomever if you want.

14 But they no longer just refer to copyright,
15 but they refer to works, and that we're allowed to
16 develop and keep them as long as they fulfill our
17 charitable mission and they aren't designed to
18 generate, nor do they generate, unrelated
19 business-taxable income.

20 And their language about their license is just
21 a little broader. They retain a non-exclusive,
22 irrevocable, perpetual, worldwide, fully transferable,

1 royalty-free license to the works that we may develop.

2 So it's a touch broader, and that's true of
3 another foundation. It is more limited to just
4 copyright, but it does allow us to do it as long as
5 they have royalty-free perpetual license to use such
6 documents.

7 CHAIRMAN KECKLER: Thank you, Jon. And I
8 think Stefanie would be interested in seeing those
9 provisions. One of the thoughts there that's brought
10 up is, some of the materials that in principle might be
11 produced in conjunction with our grantees for civil
12 legal aid might be potentially useful to somebody else
13 and might have some intellectual property value from a
14 market perspective.

15 Generally, probably not, but it's certainly
16 conceivable that that might occur. How do people think
17 that should be handled? By which hypothetical example,
18 I mean software that's created of some kind that other
19 organizations might be interested in and might have
20 some commercial potential.

21 MR. ASHER: It might conflict with LSC; at
22 least in TIG grants, Pro Bono Innovation Fund grants,

1 the strong emphasis is on ease of replicability. If
2 we're going to have to pay for it, particularly if we
3 need prior approval to buy it, we're not likely to make
4 use of other innovations within the community.

5 MR. MAHER: This is Mike Maher. I guess I'd
6 wonder how this would relate to the requirement that
7 income generated from LSC-funded activities are
8 returned to the LSC fund. So that would be something
9 to maybe consider, too. If it was funded by LSC, the
10 revenue should return to LSC.

11 MR. HUQ: May I add something? This is
12 Shamim.

13 CHAIRMAN KECKLER: Please do.

14 MR. HUQ: The only couple of grants that I
15 know of that promotes development of software for the
16 legal aid arena, one is the TIG grant and the other is
17 the Pro Bono Innovation Fund.

18 And besides that, otherwise, whether it's a
19 state fund or any other funding source or LSC's basic
20 field grant, it's primarily focused on providing legal
21 services, and a very small portion, as I can speak for
22 my own organization, is for other expenses to support

1 our attorneys in the process of providing legal
2 services.

3 So I don't see an scope of us putting aside
4 funds to even do that. If we require software or any
5 expertise that will help our attorneys to provide legal
6 services, it is either acquired from reputable software
7 developers or out there that we have gone out and
8 referenced other providers, other service providers,
9 that have already acquired that software and perceive
10 that they are proven in the market before we even go
11 out and acquire it.

12 So I don't see where we would have even
13 involve in developing software, per se, as far as
14 intellectual property is concerned. Any written
15 materials or anything of that sort, anything that I
16 guess is presented in court, and I'm not an attorney so
17 I don't want to step into the language of saying
18 something like that, but I think anything that is of
19 legal reference that could be used in future, goes into
20 the law journals, or anything for that matter.

21 But other than that, I don't see anything that
22 we would develop that would be particular of interest

1 that would have a commercial value as a software.

2 MR. ELLIOTT: This is George. I'd like to
3 add, too, we're contemplating developing an app, a
4 mobile app, for online intake. But I don't see how
5 that would be useful to anybody other than us. Not
6 that we wouldn't share, and be happy to share, but
7 developing those works of software are really going to
8 be target-specific.

9 MS. MURPHY: And this is Robin. This is more
10 of a question because this is not my area. Yesterday
11 there was an announcement about a partnership with LSC
12 and Microsoft to develop an online intake system, a
13 one-portal online state intake system. And the
14 referred to that it would be an open source product.
15 So I don't know -- my understanding of open source is
16 there's really no right. It's not considered property.
17 It's considered available to everyone.

18 So if things are going to be open source, but
19 then there's a provision here that if LSC creates it
20 they have some interest in it, is there a conflict?
21 And how do we resolve things that would be open source
22 versus things that then have other residual property

1 rights, and what would they be? More of a question,
2 but --

3 CHAIRMAN KECKLER: I think that's a question
4 for us, too, and I think that's a good way to phrase
5 and talk about what we're thinking about, is to what
6 extent should we require things to be open source that
7 we do? To what extent should we retain interests in
8 maintaining open source provisions or in things that
9 are not open source?

10 And so there's a set of things that I think a
11 lot of funders are now thinking about in this new
12 electronic era. But you phrased it, I think, in a good
13 way.

14 Okay. So another issue that came up in this
15 -- it's the last of the main substantive issues on our
16 agenda -- has to do with the disposal of property, both
17 real and personal property, and to what extent we
18 should change our rules regarding that since the PAMM
19 already does cover both notice requirements and
20 approval requirements on disposal and disposition.

21 And I noticed in the comments, with regard to
22 the ANPRM, in particular there's an issue about how to

1 account for the value of disposed property,
2 particularly if it has been capitalized over time. And
3 so I'm wondering what other funders require you to do
4 as you dispose of property, if they require you to do
5 anything, and thoughts about our procedures on
6 disposition.

7 MR. MAHER: This is Mike Maher. One of our
8 Older Americans Act funders does require we notify
9 them, and that occurs maybe every couple years, where
10 they've bought a computer or workstation. And they're
11 like, why are you asking? That's one of your
12 requirements.

13 Otherwise, what really we're facing is a room
14 full of old computer equipment that has no value. And
15 I know the Uniform Guide -- I was looking over that
16 last night -- I think it has a threshold of \$5,000 of
17 current, fair market value.

18 Most stuff is junked or fully depreciated.
19 It's only been in the last five years I can remember we
20 had, when we replaced our phone system, the phones were
21 worth like \$25. We were able to sell them to a vendor
22 that paid for them. Otherwise, everything is just

1 hauled to the recyclers.

2 CHAIRMAN KECKLER: Is most of this, the real
3 personal property that would be relevant to this, does
4 it undergo depreciation? Is that the case?

5 MR. PELLETTIER: Yes. We don't have any grants
6 or contracts that have any disposal requirements other
7 than our state grant has some that mirror LSC's,
8 meaning if we no longer are a grantee, property
9 purchased with their funds -- and they have some other
10 guidelines in there.

11 If it's got an asset value of over \$10,000 and
12 blah blah blah, then we have to either transfer it to
13 the new grantee or dispose of it and return the funds
14 to them. So it's a similar kind of thing. But it is
15 really based upon us no longer being a grantee. While
16 we're a grantee, we can dispose of things as we deem
17 appropriate.

18 CHAIRMAN KECKLER: What about real property in
19 particular? Because I know that that's an issue that
20 I've seen over time over to the board. It occasionally
21 elevates that issue when people -- not just when they
22 cease being a grantee; that's one thing.

1 But when they do change locations and decide,
2 sometimes for unfortunate reasons, they need to close
3 an office and dispose of real property, or for more
4 positive reasons, when they open a new office.

5 But what about that? What's your sense of the
6 way that LSC retains interests in real property of its
7 grantees? And is there anybody else who generally puts
8 in an interest?

9 MS. JOHNSON: This is AnnaMarie. I've got no
10 other grant that puts in an interest on real property.

11 And just, as I said earlier, trying to purchase some
12 new property for our Las Vegas office, that the LSC
13 retains an interest is a hindrance on our ability to
14 sell the property -- not that I think you would ever
15 deny the sale because I think it's good for our
16 program.

17 But I did have one buyer that just looked at
18 that and said no, that they just did not want to deal
19 with it.

20 CHAIRMAN KECKLER: That's interesting,
21 AnnaMarie. If you'd tell us, what would their concern
22 be about our interest or that would --

1 MS. JOHNSON: Well, this is Nevada, and their
2 concern is that the federal government has no business
3 sticking its nose in the private dealings between two
4 individuals in Nevada. It may just be that one buyer,
5 but it was a concern, and they just did not want to
6 deal with it.

7 MR. ELLIOTT: This is George. Our downtown
8 Dallas area where our office is located is undergoing
9 some redevelopment, for lack of a better word, and so
10 there has been interest in that location in the past.

11 But one of the things that we were a little
12 wary of on the parts of potential purchasers was
13 because of the LSC interest and because of the
14 requirement of prior approval.

15 Timing on some of those things is really -- as
16 AnnaMarie was saying, when you want to move on a real
17 estate issue, it tends to move very, very quickly. And
18 while the market doesn't move, that's whatever the
19 momentum is that's been built up. And so any little
20 hiccup like that can turn away potential investors or
21 potential buyers.

22 MS. JOHNSON: And that's true. Downtown Las

1 Vegas is experiencing a tremendous development boom,
2 and anything that's downtown is now considered quite
3 valuable.

4 And whenever I'm out looking for property,
5 there's more than one person that's available to take
6 it, and you're in a bidding war type of situation. And
7 anything that hinders the process means that you're not
8 going to come out on top in the end.

9 CHAIRMAN KECKLER: I have a quick question for
10 management, and you may not know this off the top of
11 your head, Stefanie. So normally, not always but
12 oftentimes in real estate, even ordinary real estate
13 transactions, you're buying and disposing of a
14 property.

15 And the only reason you can buy the property
16 is because you're disposing of the other property to
17 get the funds to do it. Do we have a joint approval
18 PCs for buying and disposing, or do we have -- explain
19 a little bit more about this.

20 MS. RATH: Hi. This is Lora Rath, the
21 director of the Office of Compliance and Enforcement.
22 Though we don't have an official process for selling

1 and buying at the same time, when the requests do come
2 in, we will work with the program to make sure that
3 both go through our process at the same time up through
4 the Office of Legal Affairs and then through to
5 President Sandman's office for him to sign off on both
6 at the same time. So that can happen.

7 CHAIRMAN KECKLER: Okay. Thank you. Thanks,
8 Lora. But I can see that there's some adaptation
9 there that we've made, but there's clearly some --
10 that's a relevant concern, we will note.

11 MS. JOHNSON: Can I put in a plug for those
12 programs that have to deal with property on
13 reservations for their offices?

14 CHAIRMAN KECKLER: Please do, yes.

15 MS. JOHNSON: We went through this when I was
16 at DNA, and we were hoping to open two new offices, one
17 on the Navajo reservation and one on the Hopi
18 reservation. And there, you don't have a choice.

19 You go to the business commission and say,
20 this piece of property or this building that I
21 currently have is not working for us; we need new
22 space. And the business commission will tell you

1 exactly what lot of land you're going to get and
2 whether or not you are approved for giving up your
3 other -- the current lot.

4 LSC's approval or nonapproval means nothing to
5 the tribe. You get what you're given, and that's it.
6 And when I went through this process at DNA, it took a
7 very long time to educate the folks at LSC about tribal
8 Indian law. And it was about a six- or seven-month
9 process.

10 My point basically is that the process that's
11 set out currently in the regulations and in the PAMM
12 just does not work on the reservation. It does not
13 take into account what the reality is under tribal law.

14 CHAIRMAN KECKLER: How would you need to
15 modify it so it would work better for you?

16 MS. JOHNSON: I think it's a simple
17 modification. All you would have to do is put in "or
18 as needed under tribal law," is a fairly simple
19 modification to the LSC regulation.

20 CHAIRMAN KECKLER: Okay.

21 MS. DAVIS: Sorry, this is Stefanie. Is that
22 true, or are similar adjustments needed in other parts

1 of 1630 or the PAMM to account for things like or to
2 consider -- give some flexibility for considerations of
3 things you mentioned, like Indian preference or even
4 access to reservation lands for off-reservation
5 providers?

6 MS. JOHNSON: Yes. I think so.

7 CHAIRMAN KECKLER: Okay. That brings up this
8 other issue, which is -- I'm sure there might be
9 complexities with regard to disposing of real property
10 on tribal land as well.

11 MS. JOHNSON: Well, you don't really dispose
12 of it. You're not -- you don't own. You never own the
13 land. You're given a long-term lease. It can be
14 anywhere from a ten-year to a 99-year lease, depending
15 on the tribe and where you are in the country.

16 So you never own it outright, and no one
17 besides like DNA Peoples Legal Services could have an
18 interest in it. With the lease that we had in our
19 office in Window Rock and our office in Tuba City, even
20 though the federal regulation says you retain and
21 interest in it, you don't under federal law. You never
22 had one.

1 And if we were to move from the property that
2 we were currently at to another property, what we would
3 get is a lease on the new property, and then the tribe
4 would decide what to do with the lease on the old
5 property.

6 CHAIRMAN KECKLER: So LSC has sort of a not
7 really interest, or its interest is superseded by
8 tribal requirements?

9 MS. JOHNSON: Yes. Yes, it is.

10 CHAIRMAN KECKLER: Okay. Well -- yes. Oh,
11 please.

12 MR. OGILVIE: In regards to personal property,
13 I hate to bring up the word again, aggregate, but as I
14 read that, I also looked at it and thought, am I
15 getting rid of aggregate equipment or am I getting rid
16 of individual items? And so that was one thing in
17 regards to the personal property.

18 In regards to real property, we do have one
19 funder that is a significant funder who their current
20 regulations would limit the amount of grant funds that
21 they could recoup to the amount of grant funds that
22 were actually used to purchase the building; versus the

1 way that it's written right now, it's written with a
2 fair market value, I believe, percentage.

3 And so in the instance of -- if a grantor had
4 purchased some property early on and it had appreciated
5 in value significantly, and for any purpose they were
6 defunded or a situation were to arise, if we were to
7 use the fair market value of the proceeds and so forth,
8 LSC could recoup a significant amount of funds
9 regarding that purchase.

10 And the entity then would be in a situation
11 of, how would they come up with the funds or how could
12 they come up with the funds to, or how those funds
13 should be used with LSC.

14 So I would think consideration should be given
15 to limiting LSC's recoup to the amount of funds that
16 were originally used to purchase that particular
17 building.

18 In addition to that and in this particular
19 grantor, in order to have purchased a piece of real
20 property, you do have to do a five-year period in
21 lookback and so forth. And in their particular
22 situation, at the end of five years, none of the

1 proceeds would go back and be considered grant funds.

2 And so in that scenario, five years is a short
3 period of time. But that's the provisions. That's
4 with another grant.

5 CHAIRMAN KECKLER: Okay. Think about that,
6 and I'll think about that also. It's a good point
7 about the aggregate issue because I think people
8 purchase equipment, and to the extent they purchase
9 equipment in bulk or they dispose of some of this older
10 equipment in bulk.

11 What about vehicles, by the way? Is that
12 relevant for disposition, or is there not a lot of
13 vehicle purchase or lease on the programs?

14 MS. DAVIS: Lora's shaking her head "No" at
15 me, but I would be interested. We had spoken with a
16 funder earlier who mentioned that they didn't have
17 general prior approval of disposal requirements for
18 large items of personal property such as vehicles, but
19 that there was one grant in which they did have the
20 grantee come back to them when the period of the grant
21 was over and they negotiated how the vehicle that was
22 purchased in part with those grant funds would be

1 disposed of.

2 And so I think we'd be interested in knowing
3 what, if any, requirements your other funders have,
4 either formal requirements, like it's in your grant
5 agreement, or informal requirements, where it was a
6 situational disposal, whether you have any similar
7 requirements or similar experiences.

8 MR. ASHER: This is Jon. We have a couple of
9 grants that state that if we purchase personal property
10 with grant funds, we have to inform the grantor if we
11 stop using them. But there are only a couple of those.

12 The question to me is the definition of
13 disposable or nondisposable property, and having a
14 sufficient fair market value threshold that if a
15 keyboard breaks, it's more expensive to get it fixed
16 than replaced. Or other small items, even if
17 aggregated over time, you don't want us to have to ask
18 you all for approval to dispose of stuff.

19 If there's liability for any of us, I think
20 it's that we don't dispose of property soon enough. If
21 a computer only sparks once in a while, we think it's
22 still perfectly good. Or if a desk has three legs, we

1 tell people not to lean on the corner that might fall
2 over.

3 So I do think we don't want to flood either
4 our administrative staff or LSC with unnecessary
5 requests for instructions or approval to dispose of
6 really non-capitalized purchases.

7 And maybe having a high enough threshold and
8 defining it as capitalized versus non-capitalized --
9 maybe people on the financial side would have to tell
10 me -- but that would make prior approval --
11 theoretically it could swamp prior approval for
12 acquisitions, depending on where you set it and what
13 you really want.

14 Other than real property, I have not heard of
15 any issues in OCE or OIG, reports about inappropriate
16 disposal of property. But I may be wrong about that.

17 CHAIRMAN KECKLER: Okay. Well, I'm turning to
18 our -- what is it -- the last item on our agenda here,
19 in which generally the issues of LSC's requirements and
20 those of other funders comes back into play.

21 And I'm going to get back to the thought that
22 I forestalled myself from saying before, which is the

1 idea that perhaps, to some extent, LSC, maybe more
2 extensive requirements are relied upon by other
3 funders, so that although there may be more of them on
4 the one hand, if they didn't exist, then other funders
5 might put some of them back into place.

6 Well, that's completely hypothetical. But
7 that seems like it might occur in some situations.

8 Looking at the questions, is there anything
9 that you're seeing in your experience -- this is the
10 most interesting question to me, but you can cover
11 whatever you want in this area -- but is there anything
12 that you see in other funders that would constitute a
13 best practice, or at least a better practice, in prior
14 approval and oversight of expenditures? I'm rephrasing
15 it.

16 But what we're doing here is we're trying to
17 find out the best way to do things, or at least a
18 better way to do it. And if you've seen positive ideas
19 or positive interactions with these other funders,
20 that's certainly something we'd be interested in
21 knowing about.

22 MR. PELLETIER: We have site visits from a

1 variety of our contracting sources and our funders,
2 compliance-related reviews, typically not anything near
3 as extensive as LSC.

4 But the focus tends to be on, what are you
5 accounting policies? What are your internal controls?
6 Are they monitored? Are you doing what you're
7 supposed to be doing in the purchasing arena as per
8 what you say you're going to do? And then what are you
9 relying on to build those policies?

10 LSC's accounting guide has the criteria, the
11 fundamental criteria, in it, which is what we've built
12 our manual around in a substantial way. So from that
13 perspective, I think that LSC has contributed to us
14 having a better guide and maybe stronger internal
15 controls than we might otherwise have had. And that
16 has served us with our other funders.

17 I don't think preapprovals and things like
18 that have made much of a difference for the other
19 funders.

20 MR. ELLIOTT: This is George.

21 MR. HUQ: I wanted --

22 MR. ELLIOTT: I'm sorry. No, go ahead.

1 MR. HUQ: Oh, thank you. I wanted to join
2 Steve in saying the similar thing, that our accounting
3 manual is also very much influenced by the LSC
4 accounting guide. And so therefore, we've enjoyed
5 great internal critical phrases from other funders.

6 Just last year, for the first time that I have
7 known about, one of our state funding sources, Division
8 of Criminal Justice, they came in for an audit of some
9 of their grants that they have funded us over the
10 years.

11 And I was kind of surprised. They were small
12 grants, and the spectrum of time that they said they
13 would spend with us, I was kind of shocked. They were
14 saying about almost a week with us, whereas those
15 grants are very small. So I was wondering, what are
16 they going to do for a week?

17 And so they went from -- page by page, by
18 every single item. And we had great reviews from that
19 audit, saying that how well we had maintained in
20 compliance with the requirements of the grant. And so
21 I think that all comes from our adherence to the LSC
22 regulations and what we practice in our real life,

1 abiding by those regulations.

2 So I think that sets the foundation for
3 getting good reviews from any funders, for that matter.

4 So sometimes it feels so stiff and strict, the LSC
5 regulations. But I think that keeps everybody in good
6 shape, in a way. So I guess I would say thank you.

7 CHAIRMAN KECKLER: You're welcome. I'll take
8 that.

9 (Laughter.)

10 MR. MAHER: This is Mike Maher. I would agree
11 with those comments. I think that current cost
12 standards and the property management standards are
13 actually working, and I think they're achieving the
14 oversight. And I feel it works internally to make sure
15 the internal controls are there for the appropriate
16 level.

17 And I think it really maintains the needed
18 flexibility to really maintain services and not spend
19 time that is not really accomplishing any additional
20 oversight that really provides. So I think the
21 existing standards are very good.

22 MR. ELLIOTT: This is George. I'd like to

1 echo that. That's probably true. And the fact that
2 most LSC organizations, at least the ones I'm familiar
3 with, tend to build their accounting procedures around
4 LSC's procedures, when our state funders and our local
5 funders come and they look at our accounting guide and
6 they look at our principles and they look at our
7 internal controls, they understand that we're already
8 looking hard at our own internal expenditures.

9 And they get that supplies are part of doing
10 the job. Getting a computer is part of doing the job.

11 And if we have good internal policies and procedures
12 in place, then they don't really want to second-guess
13 us in those small expenditures.

14 And if we have a particularly large
15 expenditure that we want funding from them, we usually
16 go to them, almost like we're getting prior approval,
17 whether it's actually required or not, simply because
18 that's part of our policy anyway.

19 CHAIRMAN KECKLER: Okay. Good. Have we
20 received any questions or anything like that from the?

21 MS. DAVIS: It doesn't sound like it.

22 CHAIRMAN KECKLER: All right. So are there

1 any further or final thoughts, or how should we
2 proceed, Stefanie?

3 MS. DAVIS: So we do have time here at the end
4 of the workshop for public comment. So I don't have
5 any other additional thoughts other than to once again
6 thank our panelists for providing me with 12 pages of
7 notes plus whatever Peter has recorded on the
8 transcript.

9 So thank you so much for being willing to
10 share your experiences with us. And Charles, do you
11 have any other thoughts or public comment?

12 CHAIRMAN KECKLER: I just wanted to echo those
13 comments, Stefanie. And this is a great process in
14 which I've learned a lot. And it's something where we
15 don't -- there's lots of people in this building that
16 do various kinds of oversight and go and visit the
17 programs.

18 So we don't handle the finances and the
19 accounting for a legal aid program. You do. And so
20 you're the people that we're talking to in this
21 regulation. And so we need to hear from you before we
22 change what we're saying.

1 So thank you so much for coming and for being
2 online and offering your experiences and your
3 expertise.

4 MR. ELLIOTT: Thank you for the opportunity.

5 MS. DAVIS: Absolutely. We're happy to have
6 you. We are also happy to hear from anyone who is not
7 a panelist who has dialed in. This is the public
8 comment period of the workshop.

9 So if you are calling in and providing
10 comments, or if you are here in the room in Washington
11 and would like to make comments, please state your name
12 and identify who you're with before you begin speaking.

13 CHAIRMAN KECKLER: Robin, please go ahead for
14 public comment.

15 MS. MURPHY: Sure. I just had some final
16 comments, and doing the balancing act that we've been
17 talking about in terms of services and some food for
18 thought criteria.

19 I think we need to be thinking of, is this
20 provision fixing a current problem? Because what we're
21 hearing is that things are working well. And when I
22 reviewed even the OIG's report, there may be other

1 issues, but these do not seem to be issues in terms of
2 procurement. People aren't going out and buying very
3 expensive equipment. They're really making very good
4 business decisions.

5 And if it's not a problem, is it a good idea
6 to do this? If it is a good idea, is it worth the
7 expense? We just had a report at the board meeting
8 that just to approve a subgrant by LSC takes ten to
9 twenty hours.

10 Now, maybe prior approval of a computer would
11 not take that long. But we need to be mindful. Can
12 you quantify, how much does this really cost? And I
13 think Shamim pointed out very clearly that there is
14 clearly a cost, and it's a high cost, depending on what
15 you're doing.

16 So not just say no, it's a good idea, but what
17 is this going to cost LSC? What's this going to cost
18 the program? Does that mean you're going to have to
19 eliminate a staff attorney and put in another
20 administrator, which is really going to hurt the client
21 community.

22 And there's quite a bit of other controls in

1 place and quite a bit of reporting, and the programs
2 are audited annually. So I think we need to look at,
3 also, what else is in place, and does that already take
4 care of this before adding more?

5 But thank you very much for this opportunity,
6 and I really appreciate everybody, including those on
7 the phone and the webinar, for coming and sharing with
8 LSC; and for LSC, listening to us.

9 CHAIRMAN KECKLER: Thank you, Robin. If there
10 are no other public comments or further thoughts, we
11 will resume our conversation at the next workshop. And
12 that will be at what time, Stefanie?

13 MS. DAVIS: That will be on Wednesday, May
14 15th, here once again at LSC headquarters. We will
15 have in-person and remote panelists. That panel will
16 also be from 1:30 to 4:30 in the afternoon on May 15th.

17 So we hope to have -- we'll have another great
18 discussion, I think. Our panel's going to change a
19 little bit. But we again thank you. Very grateful to
20 the panelists who came out today, joined us remotely
21 and here in Washington. And we look forward to
22 continuing to learn from you as we move forward in this

1 process.

2 CHAIRMAN KECKLER: With that, I will close the
3 workshop.

4 (Whereupon, at 3:58, the workshop was
5 adjourned.)

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