



Sent by email to: lscrulemaking@lsc.gov.

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Stefanie K. Davis
Assistant General Counsel
Legal Services Corporation
3333 K Street NW
Washington, D.C. 20007

RE: Comments Concerning Proposed Revisions to 45 C.F.R 1630 & the Property Acquisition Management Manual (81 Fed. Reg. 75006) (10/28/2016)

Dear Ms. Davis:

This letter is submitted in response to the Legal Services Corporation's (LSC) request for comments on anticipated proposed revisions to the regulation 45 C.F.R. 1630, Cost Standards and Procedures and the Property Acquisition Management Manual (PAMM). The National Legal Aid & Defender Association's Civil Policy Group, the elected representative body that establishes policy for the NLADA Civil Division, and its Regulations and Policy Committee, submit these comments on behalf of NLADA.

INTRODUCTION:

NLADA appreciates the significant time and effort the LSC Board's Operations and Regulations Committee and the LSC Office of Legal Affairs (OLA) expended to receive and consider input from programs funded by LSC prior to drafting this final proposed final rule. Some highlights of the changes NLADA supports include:

1. New proposed section 45 C.F.R.1631.8.

This subsection sets out a framework with required elements that grantees must incorporate in their procurement policies, while at the same time affording programs flexibility to develop

policies that best cover individual circumstances. The provision addresses the greatest concern identified by LSC's Office of Inspector General (OIG) in its Compendium Report for the time period between October 1, 2013 through September 20, 2015, while providing necessary flexibility for recipients to adopt procurement policies and procedures that meet reasonable and responsible standards.

2. Elimination of the current subsection 45 C.F.R. 1630.3(a)(8).

Elimination of this current subsection in 45 C.F.R. 1630, which requires programs to obtain written consent from federal agencies before the program may use LSC funds to match a grant from the federal agency, is extremely beneficial for grantees and their clients. Significant non-LSC federal funding is available for LSC grantees to help meet the growing demand for services and supplement scarce financial resources for legal aid programs. NLADA works closely with the federal Legal Aid Interagency Roundtable (LAIR) to continue the expansion of non-LSC federal funding opportunities for legal aid programs. We concur with LSC's analysis that, since LSC funds are not "federal funds" for matching purposes, written consent from a federal awarding agency is not necessary. Deleting this provision from the regulation eliminates unnecessary barriers for programs seeking an award of non-LSC federal funds, a process that is often time consuming and challenging to navigate.

3. Proposed 45 C.F.R. 1630.6(b) raising the threshold for prior approval from \$10,000 to \$25,000.

This proposed revision updates the previous threshold of \$10,000, which has not changed for over 19 years, to \$25,000 to account for inflation. This update improves recipients' ability to make economical and timely purchases necessary to support daily program operation.

Areas of Concern:

NLADA and recipients of LSC funding greatly appreciate LSC's efforts to improve the provisions of 45 C.F.R. 1630 and the PAMM, including the improvements noted above. Still, we have significant concerns with a number of new provisions, particularly LSC's proposed revisions regarding the prior approval requirements for expendable personal property, contracts for services, and questioned cost proceedings. A number of these concerns were raised in our first set of written comments submitted in December 2015 and in our testimony and testimony from representatives of grantees during the three workshops held by LSC in the spring of 2016. Since then, NLADA contacted field programs regarding the provisions in this proposed final rule and incorporated their comments and feedback into these comments.

I. PRIOR APPROVAL FOR PROCUREMENT OF PERSONAL PROPERTY AND CONTRACTS FOR SERVICES – 45 C.F.R. 1630 and 1631

NLADA recommends that LSC retain the current rule for procurement of a single item of nonexpendable personal property with the proposed threshold of \$25,000. Maintaining this rule provides clear guidance for grantees, and would not include expendable personal property and contracts for services. When considered, along with the required elements for procurement policies and procedures in proposed 45 C.F.R.1631.8, this approach would equitably balance LSC's need to safeguard clarity, efficiency and accountability, while at the same time ensuring that recipients have the necessary flexibility critical to successful program operation. Recipients face tremendous challenges in attempting to meet the increasing demand for legal services with inadequate resources and funding levels that fluctuate annually from a broad range of funding sources.

If LSC does not follow our recommendation several new proposed provisions would increase administrative obligations on grantees and also decrease recipients' abilities to effectively and efficiency operate their program and provide services to clients. Each provision alone raises these concerns; the combined impact of these new provisions significantly exacerbates their impact.

- **Aggregating Purchases or Leases of Personal Property and Contracts for Services:**

45 C.F.R. 1630.6 (b) indicates that:

“a recipient must obtain prior approval from LSC before charging costs attributable to any of the transactions below to its LSC grant **when the cost of the transaction exceeds \$25,000 (emphasis added).**”

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

Personal property is now defined as “property other than real estate.” 45 C.F.R. 1631.2(c), this language now adds expendable personal property to LSC's prior approval requirement.

“Services” are broadly defined and the list of examples is not an exhaustive one. The only exemption currently provided is for services recipients provide to their employees as compensation in addition to regular salaries and wages. Proposed 45 C.F.R. 1631.2(g). Grantees are currently not required to seek prior approval for contracts for services.

In the preamble, LSC indicates that requiring programs to seek prior approval for aggregated purchases of expendable as well as non-expendable personal property and contracts for services that exceed \$25,000 will eliminate the ambiguities and burdens identified in previous rounds of comments. “The proposed rule makes clear that recipients must seek prior approval for any single purchase exceeding \$25,000, regardless of whether that purchase is of a single item of personal property, several unrelated items of personal property, or a combination of personal property and services.” 81 FR 75006, 75013. However, the rule and preamble do not define or explain what recipients should consider a transaction that triggers the prior approval requirement for these procurements.

The proposed rule leaves open a number of questions regarding the requirement for prior approval. Examples of some of the questions grantees have raised to NLADA include: Does a single purchase mean the aggregate of personal property and services purchased on one particular day from a vendor? Alternatively, would LSC consider personal property and services acquired from a vendor on different days but billed and paid for on one invoice a transaction or single purchase? If a number of items were purchased on the same day from the same vendor but billed on different invoices, is each invoice a separate purchase or transaction or should the value be aggregated? If a vendor bills a program every three months for supplies acquired each month, is the value of the transaction based on when the items were acquired or when they were paid for? If a program contracts with a vendor for office supplies acquired and paid for throughout the year with a set price for the year or a set discount for the year, are all purchases made during the year considered part of a single purchase or transaction or should the value be based on the date items were acquired and/or paid for?

The current rule and preamble, finalized in late 1997, states that approval should only be required for a single item of non-expendable personal property with a purchase price that exceeds the threshold.

“The \$10,000 threshold of subparagraph (b)(2) applies to individual items of personal property only (emphasis added). Corporation prior approval was deemed no longer necessary for purchases and leases of individual items costing less than this amount, even if a purchase or lease of several related items (emphasis added) with individual

costs below \$10,000 has a combined cost which exceeds the threshold amount.” 62 FR 68223.¹

NLADA continues to recommend that LSC only require prior approval for a single item of non-expendable personal property. For many years, this rule has provided a clear, objective standard for grantees to use and easily determine when prior approval is necessary. LSC indicates in the preamble that raising the threshold to \$25,000 will relieve the burden of seeking approval for relatively small purchases of personal property. While this increase does provide programs more leeway, raising the threshold to \$25,000 mainly serves as an update to the threshold amount of \$10,000 in order to account for inflation over the past 20 years.

Currently, purchases of expendable personal property, such as routine office supplies, can exceed \$25,000 once or twice per year, particularly if combined with the purchase of small equipment such as computers, monitors or servers. Programs often take advantage of making bulk purchases of office supplies and small office equipment as the most efficient and economical means of acquiring supplies. Expanding the prior approval process to include aggregate items of both nonexpendable and expendable personal property will unduly delay normal routine purchases of necessary small equipment and office supplies, such as paper, folders, pens and printers, serving to burden grantees’ ability to operate their program efficiently and effectively. It could also limit, stall, and undermine negotiations and advantageous purchasing opportunities with vendors.

- **Adding Contracts for Services to the Prior Approval Requirement:**

Throughout this process, we and representatives of grantee programs, have consistently and strongly opposed LSC requiring prior approval of service contracts. NLADA asked programs that use LSC funds to pay for service contracts exceeding \$25,000 about the impact this would have on their programs. The information we received was consistent with previous comments we received, as well as the testimony of programs during the 2016 workshops.² As indicated in our previous written comment and during the workshops, procurement of services does not neatly fall within discrete categories – there is no one-size-fits-all model. The types of services grantees contract for vary widely from program to program. We received a number of questions from recipients on how to determine if a contract for services would require prior

¹The 1997 revisions also included the elimination of the prior approval requirement for consulting contracts. 62 FR 68219. 68223 (December 31, 1997)

² A number of programs indicated that both prior approval of personal property acquisitions and contracts for services would not impact their program either because they do not use LSC funds to cover these costs or apportion expenses with other funds so that the costs do not exceed the LSC threshold.

approval under the proposed regulations, because many of their contracts for services do not have a predetermined set cost. Since the proposed regulation, 1630.6(c), contemplates approval being valid for one year, we asked programs to inform us about contracts for services where the cost would exceed the proposed threshold of \$25,000 in one year.

At least 10 programs that responded to our inquiry use over \$25,000 of LSC funds to pay for their annual audits. There are a limited number of auditors available who can competently conduct audits that include tests for compliance with LSC regulations, and in at least one state, there is only one auditor who conducts LSC compliant audits. These audit firms are in demand, so time is of the essence when programs seek to retain accounting firms to conduct their annual audits. Delays in negotiating a contract can be costly and result in a program's inability to meet filing deadlines with entities such as the IRS. It is simply not workable for programs to delay contracting with an auditor for up to 30 days, or longer, once they have completed contract negotiations.

Many contracts for services are negotiated to obtain a fixed rate for a particular service, such as an hourly rate for translation services. Grantees raised questions as to what LSC would consider a transaction that exceeds \$25,000 and requires approval under these circumstances? To illustrate, consider a contract to provide translation services over a two-year period at \$25.00 per hour. The vendor bills for services provided each month and payment is due monthly. For purposes of determining when the threshold is met, is the transaction based on separate monthly payments, the annual cost, or the entire cost of the contract over the two-year period? What if for the past several years the cost for translation services has never exceeded \$25,000 in a year, so the program does not seek prior approval; but then one year the cost exceeds \$25,000? What if the program determines that the cost of a contract by year-end is unexpectedly going to exceed \$25,000 mid-year or later in the year – do they seek approval from LSC at that point? In these situations, the language of the regulation would prohibit a program from charging any further costs until it received approval from LSC. The vast majority of contracts for services, such as internet access, telephone service, translators, and payroll, are ongoing and essential to daily program administration; any interruption could disrupt program operations and grantees ability to provide essential services.

For 2016, at least 15 programs have used over \$25,000 in LSC funds to pay for IT contracts over the course of one year. Contracts for translation services (including Language Line) for at least six programs receiving LSC funds have exceeded \$25,000 this past year. A number of programs indicated that their contracts for human resources/payroll services and telephone/internet services could exceed \$25,000.

Requiring prior approval for consultant contracts for services exceeding the threshold also poses problems. The majority of grantee responses indicated that consultants were retained to assist with implementation of improved technology systems (for donor lists, improved accounting and case management procedures, and outcome measurement), legal representation in employment matters, maintenance, temp agency services, file storage and retrieval, online research tools, rental car services, and travel and lodging services. The majority of these contracts are not based on a set fee that can be determined on a periodic basis. The contracts are often individualized and costs are based on how frequently grantees use consultant's services.

Some programs reported that they had only one to two contracts for services that exceeded \$25,000 in a year, while a number of programs had at least six, if not more, contracts for services exceeding the threshold. Programs also contract for services that are nonnegotiable, such as cleaning and security services included as part of their real property lease or leases. The majority of these contracts do not have a fixed cost for the year. Contracts for services are negotiated based on a rate for the service on an as-needed basis, so programs would only be able to calculate the cost of the contract at year-end.

Expanding prior approval requirements to include expendable personal property and contract services, especially in addition to proposing that the threshold value include the aggregated costs of a transaction, appreciably increases administrative burdens for LSC staff and grantees. At the same time, the proposed revisions substantially decrease grantees' ability to negotiate favorable contracts for services and purchases of personal property in a timely manner.

- **Prior Approval Process, Proposed 1631.3**

The proposed process for LSC to grant prior approval creates additional problems for grantees.

- **Timelines for Prior Approval, proposed 1631.3(b)(1):**

Proposed 45 C.F.R 1631.3 (b)(1) indicates that, for purchases or leases of personal property, contracts for services, and capital improvements, LSC will approve or deny a request within 30 days of receipt. However, if LSC is unable to meet the proposed timeline, 45 C.F.R 1631.3(b)(3) then provides an unlimited amount of time to approve or deny a request. The proposed provision states that, if LSC cannot make a decision within 30 days, "it will provide the requester with a date by which it **expects** (emphasis added) to make a decision." This provision

places no cap on how long LSC has to make a decision, nor is LSC required to make a decision by the “expected” date provided to a grantee.

Given the number and variety of potential approvals exceeding the threshold that may be needed under these proposed provisions, there is a serious question as to whether LSC has sufficient resources to timely process these approvals. LSC has previously indicated, in comments to the proposed final revision to 45 C.F.R. 1627, that, due to LSC’s staffing and operational demands, it could not commit to a 30-day initial time frame to respond to subgrant proposals. LSC indicated that:

The staff who review and make recommendations to Management about whether to approve, deny, or suggest changes to a subgrant application are the same staff who conduct site visits and issue reports of those visits. Because those staff balance subgrant review with their travel and other oversight responsibilities, it is necessary for the initial response period to be longer than the 30-day period provided in the Uniform Guidance. Consequently, LSC is responding to the commenters by adopting a 45-day period in which LSC must make a decision on an application for a subgrant or give the requester notice of the date by which it expects to make a decision. LSC believes this rule appropriately balances recipients’ need for certainty about when a decision will be made with LSC’s need to afford its staff adequate time to carry out their responsibilities.
81 FR 24544, 24546

The proposed rule now seeks to add additional significant bureaucratic responsibilities to LSC staff. LSC’s proposal to add approval of purchases of aggregated non-expendable and expendable such as office supplies, and contracts for services is untenable. At a minimum, the approval process creates additional work for LSC and its grantees and could jeopardize grantees’ ability to negotiate the most cost effective terms when procuring personal property and services. Furthermore, the approval process entails delays that could seriously disrupt a program’s operations, if not bring services to a halt until approval is granted, thus decreasing the already limited services available to clients. These types of transactions are critical to maintaining ongoing day-to-day operations. Delays in procurement as a result of LSC’s proposed approval process may also jeopardize a grantee’s ability to comply with LSC regulations, policies, and procedures that depend upon effective and efficient program management.

LSC’s proposed 45 C.F.R. 1631.8 sets out the elements required to be included in recipients’ procurement policies. The proposed subsection references LSC’s Program Letter 16-3 and its Procurement Policy Drafting 101 Guidance. The substantial reporting required of grantees, together with the proposed revision to 45 C.F.R.1631.8, as well as LSC’s newly issued Program

Letter, Guidance, and significant oversight provide the appropriate balance between efficiency and risk management. Sound fiscal policies and internal controls will promote clarity, efficiency, and accountability while not unduly burdening LSC or its recipients.

- **Exigent Circumstances:**

LSC's proposed approval process also includes provision 45 C.F.R. 1631.3(d) allowing a program to proceed without prior approval if a purchase or service is necessary to avoid exigent circumstances defined as:

- (i) Imminent harm to the recipient's personnel, physical facilities, or system; or
- (ii) to remediate or mitigate damage to the recipient's personnel, physical facilities, or systems.

NLADA appreciates LSC's willingness to include this provision to address concerns we have raised, but notes that it is very limited, is subject to discretionary interpretation on what is covered, and does not address the numerous circumstances where a need may be immediate but not exigent. Some examples include: a program or one of its staff may be sued and counsel needs to be retained as soon as possible; a staff person in accounting unexpectedly leaves or becomes ill when the program's grant application is due; a program is awarded a non-LSC federal grant and must contract for additional IT, CMS or other services to fulfill grant requirements. These are just few examples of services a program may need immediately that do not fall within the proposed definition of exigent circumstances.

The proposed rule does not address what would happen to a grantee if LSC subsequently did not concur with the program's conclusion that the circumstances fell within exigent circumstances. Would LSC initiate a questioned cost proceeding if LSC did not agree with a grantee that the circumstances fell within exigent circumstances? Would LSC seek to recover costs solely on the basis that the program did not seek approval even if the contract or purchase met the reasonable and necessary criteria contained in proposed 1630.5?

NLADA recommends that LSC retain the proposed provision regarding exigent circumstances to apply only to the current rule - procurement of a single purchase of non-expendable personal property. In addition, we also recommend including a provision that provides for "other exigent circumstances" to allow recipients to purchase or lease non-expendable personal property for unforeseen or unexpected exigent circumstances that may arise without prior approval under the current rule.

For all the reasons stated above we recommend that LSC retain the current rule for prior approval which is limited to a single item on non-expandable personal property, with the

proposed new threshold of \$25,000 and a provision to allow these procurements without prior approval in exigent circumstances.

II. QUESTIONED COST DEFINITIONS AND PROCEEDINGS, PROPOSED 45 C.F.R. 1630.2, 1630.10, 1630.11:

- **Unlimited Time Period for Recovery of Questioned Cost:**

LSC's proposed final rule does not place any limit on when LSC may recover a questioned cost expended by a grantee. NLADA recommends that the current look back time period for disallowing a questioned cost remain in the regulation, -- five years between the time the recipient incurred the cost and when LSC provides written notice of its intent to disallow a cost. 45 C.F.R. 1630.2(b). The five-year time period from the date of notice of a questioned cost is a reasonable, appropriate, and objective standard for recovering a disallowed cost. Such a period provides programs with a needed level of certainty as to when their books can be closed and any exposure limited regarding the maintenance of relevant financial records. The proposal to eliminate any period to question costs conflicts with LSC's guidance on retention of records that would be needed by a recipient to respond to a questioned cost finding. LSC's Accounting Guide Appendix II provides a list of documents and time frames for their retention ranging from two years to permanently:

<http://www.lsc.gov/sites/default/files/attach/2015/08/AccountingGuideforLSCRecipients-2010.pdf>

Another program letter, dated December 8, 1997, sets out record keeping requirements for LSC programs instructing them to retain all records contained in the memo for at least five years.

<http://www.lsc.gov/program-letter-97-10-30>

According to the proposed regulation 45 C.F.R. 1630.2(c), "Disallowed cost means those charges to an LSC award that LSC determines to be unallowable, in accordance with the applicable statutes, regulations, or terms of the conditions of the grant award." While in some cases questioned costs are recovered due to fraudulent or criminal activities, a number of questioned costs are based on noncompliance with LSC regulations, policies, or procedure (e.g., the purchase of gift cards to celebrate staff milestones with LSC funds). If grantees cannot rely on a five-year look-back period, grantees will need to keep every record for as long as the program operates in order to have the documents it may need to respond to a questioned cost finding. The retention of records is costly, particularly older records that are solely in paper form. File storage and retrieval is one of the costs programs indicated to NLADA may exceed \$25,000 in a year. This raises the question of whether the benefits, including the costs of

recovery, are worth the expense to LSC to investigate and to programs to retain all of their records indefinitely beyond five years.

If LSC concludes that its approach is necessary, NLADA recommends that LSC's ability to recover costs beyond the established five-year time period may only be extended for egregious circumstances, such as criminal behavior or intentional violation of LSC regulations.

LSC should also take into account that many programs up to this point have relied on guidance from LSC and therefore have not retained records beyond time periods recommended by LSC. If programs have legitimately destroyed records needed to respond to a questioned cost finding for costs expended over five years ago, the regulation should require LSC to dismiss the claim.

- **Timeframes to Respond to Questioned Cost, Proposed 45 C.F.R 1630.11:**

Once a grantee receives a written finding of a questioned cost, they are limited to 30 days to prepare a written response to LSC's findings, proposed 45 C.F.R 1630(d) (1). On the other hand, the proposed rule allows LSC an unlimited time period to investigate a questioned cost, prepare its written determination, and then another 60 days to respond to the recipient. These timeframes are inequitable. While LSC staff are permitted to balance their various responsibilities, recipients are not afforded this opportunity and provided even less time to prepare their response. In fairness, recipients should have at least 60 days per the final regulation to prepare their response to LSC. The regulation should also provide recipients with an opportunity to request an extension of time to respond for at least 30 days or longer for good cause, which can include consideration of the length of time for LSC's initial investigation. The longer the investigation, the more complex it is likely to be, and in turn, the recipient is likely to need more time to adequately respond to LSC's findings.

- **Final Written Decision of Questioned Costs, Proposed 45 C.F.R. 1630.2(d), 1630.10(d)(2) 1630.11(a)(2)**

All three of these proposed provisions provide that if a recipient does not respond to LSC's written notice of a finding of questioned costs, the decision becomes final and, thus, a denial by LSC management of a recipient's request for extension of time may not be appealed to the president as provided for in proposed 45 C.F.R. 1630.11. The consequences of a questioned cost decision often entail very serious consequences for both the program and its client community. At a minimum the program may lose significant LSC funding. In addition, the program may be subject to further sanctions as a result of the finding, such as special grant conditions. Recipients should have a full and fair opportunity to respond to LSC, including the

ability to appeal to the president if LSC management denies a recipient an extension of time to respond to a questioned cost finding.

III. PURCHASING AND PROPERTY MANAGEMENT – 45 C.F.R 1631

- **General Definitions, Proposed 45 C.F.R 1631.2**

NLADA understands that the prior approval requirement for contracts for services in proposed 1630 and proposed 1631 is not intended to cover leases for rentals of real property. If this is not correct, NLADA requests that LSC extend further time for the public to comment specifically on the impact of prior approval requirements on leases for the rental of real property.

- **Procurement Policies and Procedures, Proposed 1631.3**

NLADA has already commented in the previous section on procurement of personal property and contracts for services. NLADA also recommends that the approval time frame for capital improvements should be no more than 30 days. The process for making capital improvements can be a complex process requiring coordination with multiple vendors to design the plan for improvements and other vendors to provide labor and materials, as well as obtaining necessary permits from relevant government agencies. Once the process of negotiation for the improvement is completed and costs calculated, further delays jeopardize the project and can, if there was a lengthy delay in receiving LSC approval, require the entire process to be repeated.

- **Disposing of Personal Property purchased with LSC funds, proposed 1631.13**

NLADA appreciates that LSC has adopted the recommendations of panelists to add a provision that authorizes programs to dispose of personal property that has little or no value as the program sees fit. NLADA does recommend a revision to 45 C.F.R 1631(a)(4) which allows grantees to sell property with a fair market value in excess of \$15,000 after having advertised for and received quotes. There may be instances where a program does not receive any quotes and can be bound to hold onto the property based on the language in this proposed subsection. NLADA recommends adding language that: “if the program does not receive any quotes, the program may negotiate a reasonable price for disposal of the property.”

- **Using Real Estate purchased with LSC funds, proposed 1630.17(a)**

1631.17(a) provides that “A recipient **must** (emphasis added) use real estate purchased or leased, in whole or in part, with LSC funds primarily to deliver legal services to eligible clients consistent with the requirements of the LSC Act, applicable appropriations act and LSC regulations.” LSC indicates in the preamble that this proposal adopts Section 5(a) of the PAMM with only minor changes. However, the current PAMM Section 5(a) indicates that the property **may** be used to primarily deliver legal services.

The use of the word “**must**” in this proposed subsection, rather than the word “**may**” as currently used in the preamble, is a major change. This revision appears to prevent a program from subleasing a building or a major portion of space to a third party that does not receive LSC funding. There are many reasons, particularly funding cuts, that may require a recipient to sublease a building or major portion of space to a non-LSC entity to mitigate losses. For example, a number of statewide programs lease small offices all over their state to provide legal services in proximity to client communities. In the past programs have stopped providing services in smaller regional offices and closed offices to limit expenses due to funding reductions. The language in this proposed provision would require the grantee to leave the property vacant instead of subleasing the property to a non-LSC entity until it could be sold or the grantee’s lease expires. This would not be cost effective. Grantees need more flexibility to cover the many contingencies that may require it to reduce services and consequently reduce its usage of real estate it rents or owns to serve clients.

NLADA recommends that LSC maintain the permissive language from the current PAMM indicating that the grantee “**may**” **use the property** to allow flexibility when needed.

- **Accounting and reporting to LSC, proposed 1631.20**

This subsection requires that a recipient must maintain an accounting of the amount of LSC funds relating to the purchase or maintenance of real estate purchased with LSC funds. Recipients are also required to provide this accounting to LSC on an annual basis. For some programs the use of LSC funds to purchase or maintain real property occurred over 10 or more years ago, before these requirements were in effect and after records have been destroyed. In these circumstances, grantees will not be able to retroactively account for purchases or maintenance of real property with LSC funds as the records to establish the portion of LSC funds used no longer exists. In these instances, this provision should only be applied prospectively.

- **Definition of LSC and Corporation and References to Circulars**

The Northwest Justice Project (NWJP) shared a copy of their comments regarding LSC's proposed revisions with NLADA. We support NWJP comments which are in harmony with many of our own comments in this document. In addition, NLADA specifically adopts the comments and recommendations of NWJP on pages 1 and 2 of their comments regarding their recommendation on Definitions, specifically NWJP's request to clarify corporation or LSC funds and non-LSC funds and dropping the reference to circulars in the final rule.

CONCLUSION:

Thank you for this valuable opportunity to provide our comments on matters of critical importance to our members.

Sincerely,

Anthony L. Young, Chair, Civil Policy Group (CPG)
Silvia Argueta, Chair, CPG Regulations and Policies Committee
Don Saunders, Vice President Civil Legal Services,
Robin C. Murphy, Chief Counsel for Civil Programs,
National Legal Aid and Defender Association