



Sent by email to: lscrulemaking@lsc.gov.

December 8, 2015

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 (80 Fed. Reg. 61142) (October 9, 2015)

Dear Ms. Davis:

This letter is submitted in response to LSC's 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 comments are made on behalf of NLADA by its Civil Policy Group, the elected representative body that establishes policy for the NLADA Civil Division, and its Regulations and Policy Committee.

NLADA commends LSC for issuing this Anticipated Notice of Rulemaking (ANPRM) to obtain input from the field. However, given the direct impact on program administration that will result from many of these changes, we suggest an additional process that allows for interaction between LSC's staff and knowledgeable representatives from the field, particularly from fiscal officers and experienced executive directors who are intimately familiar with how these potential changes will affect recipients. Such interaction would provide the optimal means for LSC and grantees to exchange ideas, thoroughly explore options and develop revisions to enhance efficiency and clarity, while also maintaining appropriate and necessary accountability.

LSC's revised rulemaking protocol includes the option of using workshops or negotiated rulemaking to explore alternatives with members of the public in order to develop a draft NPRM. "Workshops are open discussions designed to elicit information about problems or

concerns with the regulation (or certain aspects thereof) and provide an opportunity for sharing ideas regarding how to address those issues” 80 FR 48764.

We urge LSC to consider using one of these methods - workshop(s) or negotiated rulemaking - as the best means to develop an accurate and comprehensive understanding of the potential costs and benefits of significant proposed revisions to this complex set of provisions. Direct dialogue between LSC and its recipients will ensure that LSC has a thorough understanding of the implications these proposed revisions will have on the successful management of LSC funded programs. Such a dialogue would likewise provide the opportunity for LSC and its grantees to discuss creative and workable solutions that enable them to manage their programs effectively and efficiently, while maintaining accountability for the use of LSC funds. A number of experienced fiscal staff and executive directors are very qualified and willing to participate in this type of process. They possess substantial accounting and fiscal program management expertise and have extensive experience managing financial matters for LSC recipients and insuring compliance with 45 C.F.R. 1630, the PAMM, LSC’s Accounting and Audit Guides.

A process that allows for direct communication and collaboration between LSC management and recipients on these proposed revisions would well serve LSC’s overall goals in its rulemaking protocol that states: “1) revisions should be justified by a consideration of the costs and benefits of the regulatory approach chosen” and “ 2) regulatory flexibility is maintained where possible by specifying objectives rather than detailed rules.” 80 FR 48762

NLADA is concerned that many of these proposed revisions create additional layers of administrative tasks that would be unnecessarily burdensome to LSC staff and recipients and deprive grantee program management of 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.

Grantees are also challenged by the task of implementing and administering non-LSC grants that have their own specific grant conditions that affect accounting, administration, reporting, and compliance. LSC funding now accounts for only 39.6% of the overall funding of legal services programs. The LSC fiscal and accounting requirements need to be crafted to allow programs the flexibility to seek and administer funds from other public and private sources. In some instances, these non-LSC grants may have limitations on how the funds can be used from a cost accounting perspective.

LSC already has numerous policies and procedures in place to ensure fiscal accountability. The purpose of these revisions should be to not only address the Corporation’s ability to ensure

efficiency and accountability, but also to insure that recipients are able to maximize the time and resources devoted to their mission - the provision of high quality legal services for people unable to afford adequate counsel.

Major Areas of Revisions and LSC's Questions for Public Comment

A. Prior Approval Provisions in 1630 and the PAMM: Revising, Restructuring, and Consolidating the Provisions

LSC Question 1: How should LSC restructure the provisions discussed above to best provide clarity to its grantees?

While the current PAMM structure has been fine, “consolidating and incorporating all relevant policies and requirements related to the acquisition, use and disposal of real and personal property” into the PAMM does make a lot of sense. The best arrangement would include having all of LSC fiscal, property and accounting policies in one resource. The regulation itself should provide a very general description of the overall guidelines with references to a resource that consolidates the LSC Accounting Guide, Property Management Guide and other LSC documents with fiscal, property and accounting policies.

LSC should also specify which provisions of the Office of Management and Budget's (OMB) new Uniform Guidance LSC will incorporate into their policies. As stated in the final rule to 45 C.F.R 1630, effective January 30, 1998,: “Because the LSC Act specifies that the Corporation is not a Federal agency, OMB Circulars are generally not binding on the Corporation, unless Congress has specified elsewhere in the law that the Corporation must adhere to a specific Circular...”. 62 FR 68220.

The new Uniform Guidance is extensive, combining government guidance on administrative requirements, cost principles, and audit requirements for federal awards. Because of the broad, all-encompassing and detailed contents of the Uniform Guidance, it is not feasible to identify which components of the Uniform Guidance will enhance efficiency and clarity for LSC recipients while also maintaining appropriate and necessary accountability within this 60-day comment period. Sound determinations as to which provisions should apply to LSC programs would be most effectively made through a thoughtful process that allows for dialogue between LSC's staff and knowledgeable representatives from the field. Therefore, particularly for revisions that may incorporate policies of the Uniform Guidance, we highly recommend use of rulemaking options such as workshops or negotiated rulemaking to insure LSC staff fully understand the implications of LSC's incorporation of particular provisions and achieve LSC's goal of maintaining regulatory flexibility by specifying objectives rather than detailed rules.

LSC Question 2: In addition to the provisions discussed above, are there any additional provisions from other LSC documents related to prior approval that should also be restructured or consolidated?

The LSC accounting guide was last updated in 2010. LSC should plan on a process to update this guidance based on final changes to 1630, relevant changes to LSC audit compliance supplement, and other GAAP and accounting changes that have occurred since 2010. As indicated above the best arrangement would be to have all of LSC fiscal, property and accounting policies in one resource. The regulation itself should provide a very general description of the overall guidelines with references to a resource that consolidates the LSC Accounting Guide, Property Management Guide and other LSC documents with fiscal, property and accounting policies.

LSC should also specify which provisions of the OMB's new Uniform Guidance LSC will incorporate into their policies. As recommended above, given the breadth of the new Uniform Guidance, rulemaking options such as workshops would be the most effective way of incorporating appropriate provisions.

LSC Question 3: Are there any potential concerns or problems that could arise from revising the rule to specify that recipients must seek prior approval of single acquisitions of multiple items whose aggregate value exceeds the prior approval threshold?

There are major concerns with this revision. The phrase "single acquisition of multiple items" is an ambiguous and subjective term that creates confusion rather than clarity. Aggregating multiple items acquired at the same time can encompass broad categories of purchases routinely made by programs, including bulk orders for supplies, purchases and replacement of office furniture, computers, printers, etc. It is unclear here if LSC intends to exclude supplies and purchases of small equipment (individual items including computers of less than \$5,000) from aggregation? An example would be a purchase of 15 desktop replacement computers, with individual costs of less than \$700 each (aggregate \$10,500). Under Uniform Guidance and recipient capitalization policies, each computer is expenseable as a supply item due to the low unit cost and because they are not capitalized and depreciated.

This revision could also confuse and complicate attempts by LSC, LSC Grantees and Independent Public Accountants (IPAs) to reconcile regulation 1630 (or updated 1630) to the Uniform Guidance. The Uniform Guidance does not appear to include aggregate items and it further defines items of less than \$5,000 as "supplies", specifically including computing devices

with individual unit cost of less than \$5,000 as supplies, rather than treating these purchases as equipment requiring agency equipment- related authorizations.

The current 1630 rule and preamble, finalized in late 1997, clearly 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.

This revision could also confuse and complicate attempts by LSC, LSC Grantees and IPA’s to reconcile regulation 1630 (or updated 1630) with the Uniform Guidance. The Uniform Guidance does not appear to include aggregate items and it further defines items costing less than \$5,000 as “supplies”, specifically including computing devices with individual unit cost of less than \$5,000 as supplies, rather than treating them as equipment requiring agency equipment related authorizations.

Using a threshold amount for a single item provides a clear, objective standard for grantees to use to easily determine when prior approval is necessary. As noted in the 1997 preamble, even when a recipient is not required to seek prior approval for personal property acquisitions, it must still meet the criteria in 1630.3 and insure that all costs are reasonable and necessary. 62 FR 68223

NLADA consulted our LSC-grantee members, who are clearly opposed to a prior approval process for single acquisitions using an aggregate value of multiple items that exceeds the threshold amount. The prior approval process, especially if expanded to include aggregate items and expendable personal property, can serve to unduly delay normal routine purchases of necessary small equipment and supplies and will burden and restrict the operation of grantee programs, for example, when personal property needs to be purchased or replaced quickly, due to failure, such as when a copier breaks. It also can serve to limit, stall and undermine negotiations and purchasing opportunities with vendors.

Currently grantee expenditures of LSC funds must meet the criteria in 1630, as well as the PAMM and the extensive guidance in the LSC Accounting Guide. The LSC Accounting Guide for LSC Recipients includes significant grantee guidance and expectations related to COSO’s (Committee of Sponsoring Organizations) internal control framework and fundamental criteria elements. Information, guidance and training regarding adequate accounting and internal

control systems (including guidance on procurement and purchasing) are paramount to grantee accountability. Grantees are also subject to independent annual auditing examinations as well as periodic reviews and visits by the OPP, OCE, OIG, etc.

LSC-grantee members are clear that the prior approval process should only be used for non-expendable personal property for a single large purchase (not the purchase price of an aggregate of items obtained in a single purchase) and the threshold limit should be significantly raised to \$25,000, as discussed in our response to question 5 below. NLADA further recommends, to account for inflation, by significantly increasing the threshold for pre-approval of single item non-expendable personal property purchase to at least \$25,000 from the current \$10,000. The prior approval process should also be flexible, to allow for an expedited process when necessary and focus on the process that the grantee uses in making the decision, as opposed to a rigid set of requirements.

LSC's standards should focus on whether the grantee's purchasing decision is based on reasonable criteria given the nature of the purchase, the specific needs of the grantee and the purchasing environment in the area the grantee is located. There are some instances where a grantee's decision on a particular product or vendor is driven by the specific needs of the program. For example, if a grantee uses a specific operating system, their range of vendors who both sell and support the servers and software may be limited. If the grantee can describe its need in reference to the purchase and set forth its decision making process, this should be sufficient as a basis for evaluating whether it is an appropriate purchase using LSC funds.

If LSC decides to impose a policy of aggregating the value of items obtained in a single purchase, the threshold amount should be significantly increased, to at least \$40,000, and an expedited process (maximum of 15 to 30 days) for approval should be used.

LSC Question 4: Would the proposed approach generally be consistent with other funders' requirements for all purchases of nonexpendable personal property costing more than the prior approval threshold?

A number of programs advised NLADA that LSC's proposed approach is not consistent with many other funders who do not require prior approval for purchases of personal property. The requirements regarding personal property are varied. Some funders will not allow grants to be used to purchase personal property; others will not cover administrative costs, operating on a pure fee for service basis. Others call for including anticipated purchases of personal property in the budget and, as previously indicated, many do not have any policies regarding the purchase of personal property.

One recipient's major State funder requires a simple summary program budget/projection by natural line item including a general projected line for total purchases of equipment and property. No detailed listings are required. The grantee is not required to obtain approvals for individual purchases for non-expendable personal property, but rather must explain variances for actual expenditures versus budgeted expenditures at the end of the budget cycle. The funder also conducts biennial visits to review the recipient's internal controls, procurement policies and non-expendable personal property records.

While other funders may require budgeted line item approvals of property and fixed assets, detailed requests and approvals comparable to LSC's practice do not appear common. They generally do not require each property purchase be subject to separate documentation and submission with quotes for approval during the term of the award. The recipient must only show that they were part of the accepted grant budget. LSC-grantees do currently submit to LSC their projected expenditures by prescribed categories, including property acquisition and purchase payments. Expenditure projection information is included with the annual LSC grantee application or renewal package.

LSC Question 5: Should LSC raise the prior approval threshold? If yes, what amount should LSC set as the threshold? Are there any similar prior approval requirements imposed by funders other than the federal government that may help LSC make this determination? Should LSC automatically adjust the threshold on a scheduled basis to account for inflation, or should LSC consider another mechanism to allow for adjustment on a discretionary or as-needed basis?

We recommend raising the individual item threshold up to at least \$25,000 from the current \$10,000. The current \$10,000 threshold was included in 45 C.F.R. 1630 when the regulation was finalized in 1986. Using *the Department of Labor, the consumer price index, inflation calculator*, http://www.bls.gov/data/inflation_calculator.htm, this \$10,000 is equal in value to about \$21,700 in today's dollars considering inflation. We recommend setting the amount slightly above the 2015 inflation rate to \$25,000, with a mechanism for periodic review every three to five years to determine if an upward adjustment is supported by inflation data. Setting the amount slightly higher than today's inflation rate creates a buffer that takes into account future inflation for several years. A number of our members agreed that adjusting the rate on an annual basis would be inefficient and support a periodic adjustment.

B. Clarifying When LSC Provides Notice of its Intent to Disallow Costs

LSC Question 6: Are there any other changes LSC should consider when revising § 1630.7(b)? How would the proposed approach affect recipients who are subject to a questioned cost proceeding?

NLADA recommends that the current time period for disallowing a question costs remain the standard. NLADA agrees with LSC that the phrase “determination of a basis for disallowing a questioned cost” means the point at which LSC determines that a recipient has in fact incurred a questioned cost as defined in 45 CFR 1630.2(g). NLADA sees this as a reasonable, appropriate and objective standard for commencing a disallowed cost proceeding and to establish the five year period for recovery. 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. We also agree that providing an earlier good faith notice of intent to disallow costs would be appropriate when LSC has “reasonable belief that a cost is unallowable”. LSC proposes revising the regulation so that the five-year period for recovery of costs is calculated from the date LSC issues a notice of intent to disallow a cost, in lieu of the current rule, that establishes the five-year period for recovery from the date when LSC issues a notice actually disallowing the cost.

The basic purposes of all statutes of limitation, to ensure expedited process of claims and the currency of relevant evidence, clearly apply to the questioned cost process. Investigation of suspected misuse of LSC funds should take priority and be resolved as quickly as possible.

LSC’s proposed approach further exacerbates the challenges recipients face in attempting to meet the increasing demand for legal services with inadequate resources and annual funding levels that continually fluctuate. The proposed approach does not place any limit on how long LSC may take to conduct a questioned cost investigation once a “notice of intent” is issued. LSC’s investigation may take a year, or more, resulting in an indefinite time period that could be extended to six or seven years, or even longer, defeating the purpose of setting the five-year limit. Grantees are left in a state of uncertainty until LSC finishes its investigation and determines whether or not to disallow a cost.

However, if LSC concludes that its approach is necessary NLADA recommends that, consistent with LSC’s concern that the current regulation restricts their ability to recover costs regardless of how unreasonable or unlawful the questioned cost may be, the established five-year time period should be reserved for egregious circumstances, such as criminal behavior or intentional violation of LSC regulations. If LSC does pursue this proposed revision, there should be a clear definition of what is meant by “intent to question costs”, with requirements for some level of

specificity and quantification at the time of the intent to question occurs. This should include safeguards to insure that notices of intent to question costs are not used as a matter of course during all investigations or compliance reviews. These safeguards should include clear criteria for when and how a notice of intent is issued. The regulation should also specify that LSC senior management, such as the Director of the Office of Compliance Enforcement, must review and approve a notice of intent, including confirming that the contents meet established criteria, which clearly delineate the scope of the potential questioned costs to be investigated.

Moreover, if LSC proposes extending the time period in light of its need for time to investigate, there should also be a definite time period set for LSC to complete its investigation. Based on target timelines proposed by LSC, we recommend that this time period for the Office of Compliance Enforcement (OCE) to investigate be limited to four months. In April 2015, LSC proposed target timelines to complete its review of a questioned cost referral from LSC's Office of Inspector General (OIG) in a memo dated April 9, 2015 from Jim Sandman to Jeffrey Schantz, inspector general: "Target Timelines for Review and Resolution of Questioned Costs Referrals". LSC proposed as a target a timeline of 120 days from the date LSC receives a referral from the OIG to initiate a formal questioned cost proceeding. The four-month time period is a reasonable period to complete an investigation of suspected unlawful, unreasonable, or unnecessary expenditures.

Therefore, if LSC does move forward with a change, NLADA recommends revision to this proposed provision of the regulation to provide that:

If the Corporation management issues a written notice of intent to disallow costs, LSC may recover questioned costs for not more than five years from the date the notice was issued, provided no more than 120 days have elapsed between the date LSC issued the notice of intent and the date a written notice initiating a questioned cost proceeding is issued.

C. Revising the Requirements for Using LSC Funds for Federal Matching Purposes

LSC Question 7: Based on the experiences of grantees who have applied to receive awards from federal agencies with matching requirements, would a program letter stating the Corporation's position on the use of LSC funds as matching funds be an effective alternative to the current requirement of obtaining written consent from the awarding agency? Are there any other workable replacements for this requirement that LSC should consider in this rulemaking?

A program letter would be very beneficial to grantees seeking to match other federal funds with LSC funds. There is significant and increasing non-LSC federal funding available to LSC grantees to help meet the demand for services and supplement scarce financial resources for legal services programs. NLADA is working closely with the Department of Justice's Legal Aid Interagency Roundtable (LAIR) to continue the expansion of non-LSC federal funding opportunities for legal services programs. There are currently 20 federal agencies participating in LAIR. NLADA concurs 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 and should not be required. The requirement in 1630.3(a) (8) places unnecessary barriers for programs seeking an award of non-LSC federal funds, a process that is often challenging to navigate.

NLADA recommends that LSC issue a program letter as soon as possible, as this would assist programs in accessing non-LSC federal funds. However, the conflict between the program letter and the language in the regulation should be resolved to eliminate confusion and insure clarity by revising the regulation to eliminate this requirement.

D. Revising the PAMM's Requirements for Disposal of Property

LSC Question 8: Would revising the provisions discussed above to require notice and approval by the Corporation prior to any disposal of personal or real property create or remove problems for grantees? Should any provision governing a particular type of property disposal have its own unique requirements or exceptions?

Revising this provision would definitely create additional problems for grantees by adding additional time-consuming procedures, which would hamper the effective and efficient operation of recipient programs.

Personal Property

The existing Section 6 of the PAMM for Disposal of Personal Property with LSC Funds appears to be comprehensive, clear and reasonable. Section 6 provides reasonable guidelines for grantees and needed flexibility to efficiently dispose of personal property. In addition, for the past four years, LSC has not identified any concerns with the disposal of personal property in its annual compliance guidance for grantees. This LSC guidance describes the most common compliance issues that OCE staff observed during compliance oversight visits or that have otherwise been brought to LSC Management's attention through referrals from LSC's Office of Program

Performance or OIG. According to several of our members virtually all items of personal property that grantees dispose of are fully depreciated and have nominal or no value. Generally, the items programs dispose of are so old and outdated that they must be junked, and electronic waste is disposed of through responsible and reputable recycling firms. Therefore, NLADA recommends that LSC make no changes to the existing PAMM.

If LSC determines that notice and prior approval is necessary, a threshold amount of at least \$100,000 for the fair market value of the personal property at the projected disposal date should be set before prior notice and approval is required. In addition, an expedited process (maximum of 15 to 30 days) for approval should be used generally, or at a minimum made available to grantees for situations when time is of the essence.

Note: The PAMM distinguishes between non-expendable personal property (equipment) and expendable personal property (supplies). If LSC does proceed with any proposed revisions to disposition of personal property, this is an important distinction to maintain whenever referencing LSC requirements regarding personal property. No doubt, LSC does not intend to set criteria for when grantees can dispose of expendable items such as pens, pencils, used file folders, and paper and other items that would be considered refuse.

LSC Question 9: How would it affect recipients if LSC revised the disposal provisions of the PAMM to require grantees to seek disposition instructions from LSC?

Revising this provision would definitely create additional barriers to grantee managements' ability to effectively and efficiently operate their programs. Program officials, who live and work in or near the areas they serve, are in the best position to determine the value of the property and the most advantageous method for disposing of real property. The PAMM provides reasonable guidelines for the disposition of real property. Similar to the disposition of personal property noted above, for the past four years LSC has not identified any common compliance concerns with the disposition of real property in its annual compliance guidance. Therefore, NLADA recommends that LSC not require grantees to seek disposition instructions from LSC.

LSC Question 10: What is an appropriate length of time for recipients to provide LSC with written notice prior to disposing of real property?

Unless a recipient ceases to receive funding, as indicated above, recipients should not be required to provide written notice to LSC prior to disposing of real property. If LSC determines that, despite a lack of common compliance concerns, prior notice is necessary to insure

accountability, a threshold amount for the fair market value of the property should be set, of at least \$100,000, with a 15 day notice period.

The following comment applies to Questions 8, 9, 10 above:

Absent clear evidence that the current provisions regarding the disposition of personal and real property are problematic or inconsistent, there is no benefit to utilizing LSC, or a recipient's, resources to create additional burdens for recipients with provisions that require LSC to be involved in this level of detail in the management of a recipient's program.

The existing PAMM Section 6, Disposal of Personal Property with LSC Funds and Section 7, Disposal of Real Property with LSC Funds appear to be comprehensive, clear and reasonable. NLADA recommends that LSC make no changes to the existing provisions of the PAMM for Disposal of Personal Property Purchased with LSC Funds or Disposal of Real Property Purchased with LSC Funds.

LSC Question 11: Should LSC continue to require former recipients to compensate LSC when the recipients dispose of personal or real property purchased with LSC funds? If so, what are some of the problems facing grantees with regard to the current requirements? How could LSC effectively address such problems in a way that is consistent with the goal of ensuring efficiency and accountability in grant-making and grants oversight practices?

The current requirements and protocols appear reasonable. However, NLADA reiterates its recommendation to use other rulemaking methods. Workshop(s) or negotiated rulemaking would be the most thorough and effective means for revising the current requirements referenced above.

E. Revising Definitions in the PAMM for Clarity and Consistency with Current Practices

LSC Question 12: How should LSC revise the definitions of "acquisition costs for real property" and "capital improvements" in order to address the inconsistencies described in the above proposal? Should the definitions differentiate between renovations done as part of the acquisition process and renovations done on real property already owned by the grantee?

These terms should be clarified and a clear differentiation should be made between renovations done as part of an acquisition process versus general renovations. Renovations that are part of an acquisition should be included, as this cost directly affects the initial value of the asset being acquired. However, general renovations should be excluded as part of 1630

and the PAMM; inclusion of general renovations would limit a grantee's ability to make routine maintenance to their property, changes which do not add value to the property but are necessary to maintain its value.

There should also be a distinction between renovation costs in leases versus purchases. When a grantee purchases property, renovations are part of the cost. However, in lease agreements, these costs are generally a part of a multi-pronged negotiation process (e.g. rent vs. build-out). Programs would lose their best deals if they were required to wait a month for LSC approval. In addition, as indicated above, recipients' management staff know much more about the real estate market in their area than LSC and are in much better position to determine how to proceed in a way that is most advantageous to their programs.

NLADA further recommends that Section 2(c) definition updates include increasing the \$10,000 threshold to \$25,000, based upon inflation.

LSC Question 13: Should LSC revise the PAMM's definition of "personal property" to include intellectual property? Should LSC create a new provision that governs exclusively rights in intellectual property created using LSC grant funding? Should general rights in data produced under LSC grants be addressed separately from any new provisions governing the acquisition of intellectual property?

The intellectual property area is an extremely complex legal area; NLADA strongly recommends use of a workshop(s) or negotiated rulemaking to address the issues raised by this and the following question.

LSC should not create a new provision that provides exclusive rights in intellectual property created with LSC funding. Rights to recipient created intellectual property is burdensome and contrary to the purposes of LSC and its grantees – does LSC want to be contacted to give permission for use of client education, CLE created, articles published, etc.? The tradition in the intellectual property world, even in LSC's own TIG program, is to make everything open source. While LSC-funded programs may copyright their intellectual property they created, the product they created is generally placed within the public domain. This would create additional complications if the intellectual property was created using additional funding sources.

A distinction should be made between data and intellectual property. LSC should not have ownership rights to grantee data. Data is developed and maintained from a program's services and operations and, for many programs, derived from a mix of funds. Therefore, the data is not exclusively generated by LSC funds. LSC's current access to a recipient's data should not be expanded.

LSC Question 14: Do other funders impose rights-in-data requirements that LSC should be aware of when revising the PAMM, such as the retention of a royalty-free, nonexclusive license to reproduce, publish, or otherwise use products developed by the recipient using those funds? If so, what are those requirements?

Once again, the above questions involve complex legal issues. NLADA strongly recommends use of a workshop(s) or negotiated rulemaking to resolve the questions raised above. Funders have different requirements regarding how products developed with their funds can be used. For example, one LSC funded program explained that their state funder owns the pro se website the program developed and the program retains a license.

F. Revising Procedures and Requirements for Procurements; Including Procurements of Services within the Scope of Part 1630 and the PAMM

Question 15: Should LSC model its revised procurement standards on the standards contained in the Uniform Guidance? What standards do other funders require recipients' procurement policies to meet?

The procurement standards in the Uniform Guidance are very detailed with a one-size-fits-all approach that would be quite burdensome for grantees and unnecessary for recipients to be accountable for following reasonable and responsible procurement standards. LSC current procurement requirements and guidelines are contained in the PAMM and LSC's Accounting Guidelines. These procedures maintain accountability, while allowing programs necessary flexibility to meet their programs' needs effectively and efficiently. In many circumstances, it is simply not feasible or practical for programs to obtain competitive bids, let alone use sealed bidding processes referenced in the Uniform Guidance. For example, programs that cover large rural and/or are located in remote areas, have difficulty locating one vendor, let alone three. In these situations, there is no one financial threshold or type of service that would address when a bidding process should be used versus sole source procurement. Sole source procurement is appropriate and necessary for a service where a program needs unique expertise and/or time is of the essence.

LSC Question 16: What procedures and requirements should LSC adopt to govern services contracts? How can LSC incorporate such procedures and requirements in a way that promotes clarity, efficiency, and accountability, while also minimizing any potential burden to grantees?

Our members strongly oppose prior approval of service contracts and we recommend that LSC not go beyond requiring that grantees have policies and procedures covering service contracts in place approved by their board. It would be very burdensome for LSC to require approvals of “contract services to program” activities. Services contracts include everything from internet service, 800 service, accounting services, licensing, case management system maintenance contracts, software licensing, consulting activities and the list goes on.

There are many varied circumstances when a program needs the flexibility to efficiently and effectively determine service contract needs. Programs must be able to make rapid decisions for example if their computer system crashes and they need the services of a consultant immediately. This is an area where the program’s board and staff know best their situation when it comes to obtaining services. Grantees must be able to develop board approved policies that allow for our entering into a service agreement without bids, for example for maintenance coverage on hardware or software when the service vendor is the same as the vendor from whom the equipment was purchased or when the product only has one available source for maintenance. Service contracts for specialty services where the variety of vendors is limited must be permitted. Sound fiscal policies and internal controls will promote clarity, efficiency and accountability while not unduly burdening the recipient.

LSC Question 17: Would codification of the PAMM as a rule create potential burdens to grantees or otherwise unduly disrupt grantees’ current property acquisition and management practices?

We do not recommend codification of the PAMM. This would deprive LSC of flexibility and impose rigid rules on LSC and the programs in an ever-evolving delivery system where modifications will need to be made. As indicated in response to question 1 above, although the current PAMM structure has been fine, “consolidating and incorporating all relevant policies and requirements related to the acquisition, use and disposal of real and personal property” into the PAMM does make a lot of sense. The best arrangement would be to have all of LSC fiscal, property, accounting policies in one resource. The regulation itself should provide a very general description of the overall guidelines with references to a resource that consolidates the LSC Accounting Guide, Property Management Guide and other LSC documents with fiscal, property and accounting policies.

LSC Question 18: Are there any significant conflicts between the Corporation’s requirements in Part 1630 and the PAMM and rules implemented by other public and private funders? If so,

what steps should LSC take to address such conflicts, whether through rulemaking or otherwise?

The Uniform Rules and Procurement Standards are now in effect for Federal awards and calendar 2015 year-end LSC grantees are engaging IPA's now for their audits. Grantees need specific guidance on what is the OMB's Uniform Guidance general applicability to LSC awards, which explains why and when LSC regulations apply to LSC grant awards rather than the Uniform Guidance.

During rulemaking and in creating policy we recommend that LSC should employ standards of:

1. Consolidating all polices into one comprehensive document,
2. Writing policies in an unambiguous manner as possible
3. Granting broad decision making powers to the grantee's board, staff and auditors
4. Minimize creating complications for programs so they can be entrepreneurial in seeking funds from other sources.

LSC Question 19: Are there any aspects of Part 1630 and the PAMM not identified in this ANPRM that the Corporation should address in this rulemaking?

In addition to our above comments, NLADA reiterates its recommendation that LSC use a method, such a workshop(s) or other method to foster dialogue between LSC and grantees. This would insure a comprehensive set of revisions to that incorporate the appropriate provisions of these complex fiscal requirements. LSC's goals of insuring clarity, efficiency and accountability would be achieved while recipients would be able to maintain the managerial flexibility to determine how their program can maximize their provision of high quality legal services to persons unable to afford adequate legal representation in the most effective and efficient manner.

Thank you again 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

