LEGAL SERVICES CORPORATION

Property Acquisition and Management Manual

AGENCY: Legal Services Corporation.

ACTION: Issuance of Property Acquisition and Management Manual.

SUMMARY: This Notice sets forth the text of a Property Acquisition and Management Manual that governs the use by recipients of LSC funds to acquire, use and dispose of real and nonexpendable personal property. The Property Acquisition and Management Manual is intended to provide recipients with a single complete and consolidated set of policies and procedures related to property acquisition, use and disposal and supercedes guidance currently contained in several LSC documents.

EFFECTIVE DATE: This Property Acquisition and Management Manual is effective on October 15, 2001.

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SUPPLEMENTARY INFORMATION:

Background

The Legal Services Corporation's (''LSC'') policies and procedures regarding LSC-funded recipients' property acquisition, use and disposal are incomplete, outdated and disbursed among several different LSC documents. In 1975 and again in 1979, LSC published Instructions in the **Federal Register** setting out procedures for the procurement, inventory control and disposal of nonexpendable personal property by LSC recipients. See 44 FR 22525, April 16, 1979. In 1981, the 1979 Instruction was superseded by the Property Management Manual for LSC Programs (''1981 Property Manual'').[1]

LSC also addressed property acquisition and management issues in the 1981 version of the Audit and Accounting Guide for Recipients and Auditors (''1981 Audit Guide''). The 1981 Audit Guide included provisions requiring LSC's prior approval of certain purchases and leases of property (real and personal). These provisions were superseded by the LSC rule on cost standards and procedures, 45 CFR part 1630, which was adopted in 1986. See 51 FR 29082, August 13, 1986. Under the current part 1630 rule, adopted in 1997, LSC must approve in advance all purchases of real property, purchases or leases of personal property with a value of over $10,000 and capital expenditures of more than $10,000 to improve real property. 45 CFR 1630.5(b).

Notwithstanding the 1981 Audit Guide (or the current part 1630 requirements), the 1981 Property Manual, like its predecessor Instructions, does not address the acquisition, use or disposal of real property.[2] LSC has instead established its policies relating to real property in a variety of internal memoranda, Program Letters, regulations, grant assurances and individual agreements with recipients purchasing real property which have either restricted the use or regulated the disposal of the property in the event of cessation of LSC funding. Having policies related to real property in such unconnected and disparate sources has become untenable. For example, grant assurances on property have not been consistent over time and have on occasion been challenged as lacking legal authority.

Accordingly, LSC has decided that all of the relevant policies and requirements related to the acquisition, use and disposal of real and personal property should be consolidated and issued in one document. LSC published a proposed Property Acquisition and Management Manual (PAMM) for comment on September 28, 2000 (65 FR 58288). The comments received and the final version of the PAMM are discussed below.

Proposed Property Acquisition and Management Manual

Generally

The PAMM contains both existing and new or revised standards and procedures. In developing the new or revised standards and procedures, LSC looked to three existing Federal sources of property acquisition and management policy: the Federal Acquisition Regulations (FAR); the Federal Property Management Regulations; and Office of Management and Budget (OMB) Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations'' which contains standards governing the use and disposition of personal and real property by non-profit recipients of Federal funding. While many provisions of the PAMM are based on equivalent sections on these sources, LSC has revised these provisions as necessary to be consistent with LSC law and practice. In addition, this final version of the PAMM reflects some additional changes suggested by the comments LSC

[1] The Introduction to the 1981 Property Manual states that it was intended to supersede the 1975 Instruction. No mention is made of the 1979 Instruction. However, because the Manual was finalized as a slightly revised version of the 1979 Instruction, longstanding LSC policy has been that the 1981 Property Manual superseded the 1979 Instruction as well. Current LSC grant assurances and the current Accounting Guide for LSC Recipients reference the Property Manual ''or its duly adopted successor.''

[2] There have been suggestions to LSC that the 1981 Property Manual was originally intended to apply to real property and was so applied at sometime in the past. LSC's reading of the terms of the Manual, however, and LSC's practice over the last several years applying the requirements of the 1981 Property Manual only to personal property, indicate that it does not, in fact, apply to real property.

received on the proposed PAMM, as discussed below.

The personal property use standards are intended to give recipients flexibility in using such property acquired with LSC funds, provided that the primary use of the property is for the delivery of legal services to eligible clients in accordance with the requirements of the LSC Act and regulations. The standards governing the disposal of personal property revise existing policy to reflect the heightened need, in this era of reduced funding and competition for grants, for LSC to receive reimbursement to ensure that the scare funds available are serving their original intended purpose to the maximum extent possible. Accordingly, in the event that a recipient owning personal property purchased with LSC funds ceases to receive LSC funding, these standards require LSC approval prior to dispose of the property. The PAMM also provides for transfer of personal property in the case of a merger with or the succession of another recipient.

The PAMM retains LSC's longstanding policy to permit recipients, with LSC's approval, to use LSC funds to purchase real property for the primary purpose of delivery of legal services to eligible clients. The procedures, which incorporate provisions from Program Letter 98–4, require recipients to demonstrate that purchasing is more economical than leasing. Recipients are also required to agree to reimburse LSC in the event of a discontinuation of funding, unless a transfer of the property is made to a merged or successor entity in the case of a merger with or the succession of another recipient.

Most of the comments LSC received addressed specific sections of the proposed PAMM. These comments are addressed in the section-by-section analysis portions of this notice. There was one suggestion, however, which affects most of the sections of the PAMM, and which, therefore, LSC wishes to address at the outset. Many commenters objected to application of the PAMM to leases of personal property. Among the reasons given for this objection were: (1) Leases and leased property is generally not considered ''assets'' and, as such, should not be subject to the PAMM; (2) the negotiation of leases may not be ''amenable'' to the competition requirements of the PAMM; (3) the recipient Board of Directors is already charged with the fiduciary duty to ensure that leases of personal property are appropriate; (4) leases of personal property are often for items which are shared operating expenses, allocated among the recipient's funding sources and it could become problematic to have differing procedural requirements relating to the same property; and (5) as monthly lease payments may be small, representing a small amount of LSC resources, and since Part 1630 already requires program resources to meet a reasonableness standard, there is no need to include them in the PAMM.

LSC proposed to include leases of personal property under the coverage of the PAMM because recipients are increasingly spending sizable sums of LSC funds on leases of personal property and LSC believes that some measure of accountability to LSC for such expenditures is appropriate. The fact that a leased item may not be considered an ''asset'' of the recipient for an accounting purpose is not germane; the requirements of the PAMM are not intended to track assets, but rather to ensure that LSC funds are being expended on property in an efficient manner to best meet the legal services needs served by the recipient. LSC disagrees that it not feasible, as a general matter, to seek competitive quotes on large scale leases of equipment and other nonexpendable personal property and none of the commenters provided any factual evidence to back up this claim. Moreover, if the seeking of competitive quotes is not feasible in a particular instance, the PAMM provides a safe harbor for recipients to engage in sole source acquisitions.

LSC appreciates that recipient Boards already exercise fiduciary responsibilities relating to expenditures of LSC funds and that LSC regulations at 45 CFR part 1630 require a rule of reason in relation to expenditures of funds. However, part 1630 applies to all costs and Boards exercise fiduciary responsibility related to all expenditures of funds. If these facts were sufficient to ameliorate the need to apply the PAMM to leases of personal property, they would suffice to ameliorate the need to have the PAMM at all. The commenters, however, do not appear to question the propriety of having acquisition, use and disposal standards for purchased property.

LSC also disagrees that the fact that a lease may be funded from other than just LSC funds is likely to cause practical problems. First, the competition (and for individual items, the prior approval) requirements only apply to leases in which more than $10,000 of LSC funds are used. It is unlikely that such a lease would be one in which LSC funds are the minority source of funds and that other, inconsistent, competition requirements would apply and no such examples were specifically identified in any of the comments received. Second, the use requirements are broad enough that it is hard to imagine a inconsistent requirement stemming from another funding source. Finally, the disposition requirements only note that leased property is to be disposed of in accordance with the terms of the lease. Again, none of the comments received provided specific instances in which these requirements would be burdensome or inconsistent in reference to other directives attached to use of other funds.

LSC also notes that in the extensive comment process leading to the development of the proposed PAMM, no objection was raised to including leased personal property under coverage of the PAMM.

Section-by-Section Analysis

Section 1—Purpose and Scope

The section contains a statement indicating that the purpose of this PAMM is to set forth standards governing the acquisition, retention, use and disposal of personal and real property acquired in whole or in part with LSC funds. The section also specifies that LSC intends the standards in this PAMM to apply to both real and nonexpendable personal property, but not to expendable personal property or services, except services for capital improvements which are subject to the requirements of section 4(f). LSC has not previously applied the 1981 Property Manual standards to supplies and LSC does not believe that it is necessary to enlarge the scope of its oversight in such a manner. Finally, this section makes clear that LSC will apply the requirements of the PAMM to acquisitions made on or after the PAMM's effective date as set forth in this notice. For acquisitions of real property prior to the PAMM's effective date, the written agreement between the program and LSC will control. For prior acquisitions of personal property, the 1981 Property Manual will control.

LSC received three comments specifically related to this section. One comment suggested that the parenthetical reference to ''equipment'' should either be removed or clarified since there is nonexpendable personal property other than what is generally thought of as equipment. LSC agrees. References to ''equipment'' and ''supplies'' have been removed from this section. The definitions of nonexpendable personal property and expendable personal property have been

clarified. These issues are discussed further under Section 2—Definitions, below.

The second comment LSC received on this section suggested that the reference to services for capital improvements should specify ''contracted'' services. This was certainly LSC's intent and the section has been modified to make this clarification.

LSC also received a request with regard to acquisitions of real property prior to the PAMM's effective date. The comment requested that LSC clarify its intent with regard to property for which there is no written agreement. LSC is aware of instances in which recipients have acknowledged through documented evidence that LSC funds have been used towards the acquisition of real property, without, however, a real property interest agreement having been executed. In the event of cessation of funding in these instances, disposition of the property will be handled on a case-by-case basis.

Section 2—Definitions

This section sets forth definitions of key terms used throughout the PAMM.

Section (2)(a) defines acquisition as a purchase of real property or a purchase or lease of personal property. It can consist of a single item or it can consist of multiple items obtained simultaneously through a single contract. This definition of acquisition is adapted from the definition of acquisition appearing in the FAR. The FAR definition of acquisition includes leases of real property as well, but LSC has chosen to leave real property leases out of the definition of acquisition because LSC is excluding leases of real property from the coverage of the PAMM. The term ''acquisition'' is used throughout the PAMM, except in those instances in which it is necessary to differentiate between personal property which is leased and personal property which has been purchased. In those cases, the term ''lease'' or ''purchase'' is used, as appropriate.

LSC received one comment suggesting that the term ''single acquisition'' as it is used in the definition is confusing. The commenter suggests replacing it with the term ''individual item.'' LSC does not agree that this term is confusing. Further, substituting the term ''individual item'' for ''single acquisition'' would alter the meaning of the definition. As noted above, the term ''single acquisition'' includes transactions in which more than one item is procured in a single contract, while ''individual item'' does not. Since many acquisitions are for multiple items acquired under a single contract, excluding these acquisitions from the PAMM (which would be the result if LSC were to make the suggested change) would seriously undermine the object of the PAMM of ensuring accountability and the efficient use of LSC funds. Accordingly, the definition is being adopted as proposed.

In addition, as discussed above, several commenters suggested that the PAMM not apply to leases of personal property, and these commenters, accordingly, suggested amending this section. For the reasons discussed above, LSC is retaining the requirement that leases of personal property be subject to the PAMM. Therefore, references to leases in the definition in 2(a) are retained as proposed.

LSC received a comment suggesting the addition of a definition for ''acquisition costs for real property.'' The commenter stated that LSC currently has no such definition. LSC disagrees. The preamble to the current part 1630 final rule, 62 FR 68219, addresses this matter, stating that the acquisition costs associated with the purchase of real property include principal and interest payments and initial down payments. However, LSC agrees that including that definition in the PAMM would be useful in as much as the PAMM is intended to be a single source for information. Accordingly, a definition of ''acquisition costs for real property'' is added as section 2(b). This definition reproduces and explicitly references the definition found in the December 31, 1997 preamble to the part 1630 final rule.

Section 2(c), capital improvement, incorporates the $10,000 capitalization threshold of LSC's regulation governing cost standards and procedures, 45 CFR 1530.5(b)(2). One commenter suggested that this section be clarified to specify that it applies only to amounts of over $10,000 of LSC funds. This has been and continues to be LSC's policy and this clarifying change has been made.

Section 2(d) defines lease as a contract for the use of property during a specified period for a specified price. Under a lease, the lessee does not take ownership of or title to the property. As discussed above, several commenters suggested that the PAMM not apply to leases of personal property, and these commenters, accordingly, suggested deleting this section. For the reasons discussed above, LSC is retaining the requirement that leases of personal property be subject to the PAM. Therefore, the definition is retained as proposed, although to allow for the insertion of a new definition of ''acquisition costs for real property,'' as discussed above, the definition has been redesignated from 2(c) to 2(d) in this final PAMM.

Section 2(e) contains a definition for LSC property interest agreement, a term used in sections 4(e) and 8(d) of this PAMM. The definition is consistent with section 2–2.4 of the Accounting Guide for LSC Recipients, which sets forth the principle that LSC possesses a reversionary interest in real property purchased in whole or in part with LSC funds.

LSC received no comments on this section and the definition is adopted as proposed. LSC notes that it is not using the term ''reversionary interest'' in the PAMM because LSC believes that the use of ''reversionary interest'' might be confusing. Although LSC's recipients who have entered into agreements with LSC pursuant to the purchase of real property understand what reversionary interest means in the context of their agreements, the term is a widely used term of art in the property law context with a somewhat broader and different meaning. To avoid potential confusion, LSC will use the more accurate ''LSC property interest agreement.'' In addition, to allow for the insertion of a new definition of ''acquisition costs for real property,'' as discussed above, the definition has been redesignated from 2(d) to 2(e) in this final PAMM.

Section 2(f) contains a definition of personal property adapted from OMB Circular A–110. LSC is, however, omitting supplies, which are considered to be personal property in the OMB Circular, from the definition because LSC does not intend to apply its property acquisition and management standards to the purchase, retention or use of supplies. As noted above, LSC has clarified the definition to provide more detailed examples of the types of things which are considered nonexpendable personal property or expendable personal property. Thus, the definition now notes that nonexpendable personal property includes such things as furniture and books in addition to equipment and that supplies include items such as stationery, paper clips, and pens. The items do not represent an exhaustive list, but rather are intended to signify the most common examples of each type of property. In addition, to allow for the insertion of a new definition of ''acquisition costs for real property,'' as discussed above, the definition has been redesignated from 2(e) to 2(f) in this final PAMM.

Section 2(g) limits the definition of real or personal property to property with a market value of over $5000 and a useful life of more than one year. This definition is consistent with OMB

Circular A–110. With this definition, LSC intends that property acquisition and management standards not apply to property excluded from the definition.

LSC originally proposed a definition of property with a $1000 threshold. LSC received several comments opposing the capitalization threshold of $1,000. These commenters noted that other Federal grants they receive are subject to the $5,000 OMB definition and that raising the limit would provide a greater measure of consistency to them in meeting property acquisition standards across grants. These commenters also noted that the $1,000 threshold seems artificially low in the current economy and that a $5,000 threshold would more appropriately reflect the point at which additional program oversight is justified. Raising the threshold, it is argued, would increase recipient flexibility. To the extent that LSC desires to maintain consistency with the LSC Accounting Guide, these comments suggest raising the capitalization threshold in the Guide to $5,000 as well.

In light of the above, LSC is adopting a $5000 threshold for the definition of property. To allow for the insertion of a new definition of ''acquisition costs for real property,'' as discussed above, the definition has been redesignated from 2(f) to 2(g) in this final PAMM.

Section 2(h) contains a definition of purchase which uses the term purchase in reference to personal property of which the recipient obtains ownership, as distinguished from leasing. As discussed above, several commenters suggested that the PAMM not apply to leases of personal property, and these commenters, accordingly, suggested amending this section. For the reasons discussed above, LSC is retaining the requirement that leases of personal property be subject to the PAMM. Therefore, the definition is retained as proposed, although to allow for the insertion of a new definition of ''acquisition costs for real property,'' as discussed above, the definition has been redesignated from 2(g) to 2(h) in this final PAMM.

Section 2(I) sets forth a definition for quote which incorporates language from the definition of ''offer'' in the FAR. For the purposes of the PAMM, a quote is intended to be the basis for informal negotiation which results in an offer by the recipient, typically in the form of a purchase order, which a source may accept or reject.

In response to a suggestion that the word ''bid'' be substituted for ''quote'' in section 4(f), LSC has instead chosen to amend section 2(I) to explicitly include competition for capital improvement services contracts in the definition of ''quote.'' LSC agrees with the commenter that this clarification is appropriate, but LSC thinks it is better accomplished in the definitions section. In addition, to allow for the insertion of a new definition of ''acquisition costs for real property,'' as discussed above, the definition has been redesignated from 2(h) to 2(I) in this final PAMM.

Section 2(j) sets forth a definition of real property taken from the definition of the same term in OMB Circular A–110. LSC received no comments on this definition and it is adopted as proposed, although to allow for the insertion of a new definition of ''acquisition costs for real property,'' as discussed above, the definition has been redesignated from 2(I) to 2(j) in this final PAMM.

Section 2(k) contains a definition of source as a supplier, vendor or contractor who has agreed to provide property to a recipient through a purchase or lease agreement. LSC received no comments on this definition and it is adopted as proposed, although to allow for the insertion of a new definition of ''acquisition costs for real property,'' as discussed above, the definition has been redesignated from 2(j) to 2(k) in this final PAMM.

Section 3—Acquisition Procedures for Personal Property

This section sets forth the procedures governing the acquisition of personal property with LSC funds. The requirements herein are based on both the FAR and OMB Circular A–110. Through the use of these procedures, LSC intends to encourage recipients to conduct their property acquisitions in a manner that provides free and open competition to the maximum extent practical.

LSC received a number of comments on the various aspects of this section, several of which indicated a significant misunderstanding of the proposed requirements. Specifically, several commenters objected to what they took to be LSC's proposal to require prior approval of aggregate acquisitions of over $10,000. However, LSC did not propose to require prior approval of aggregate acquisitions of over $10,000, but rather, only to require certain minimum competition standards for such large acquisitions. Under both the proposed and this final PAMM, prior approval is required, as specified in 45 CFR part 1630, for individual item acquisitions of over $10,000, but not for aggregate acquisitions of over $10,000.

A variant of this objection was contained in one comment which suggested deleting Section 3(a)–(d) as redundant, given the need for prior approval of large acquisitions referenced in Section 3(e). However, since section 3(e) refers only to the showing a recipient must make to obtain prior approval and sections 3(a)–(d) apply to acquisitions not requiring prior approval, the competition requirements of 3(a)–(d) are not redundant. Further, to the extent that, for acquisitions requiring prior approval, 3(e) recapitulates the requirements of 3(a)–(d), it does not place any additional substantive burden on recipients.

One commenter suggested that the competition requirements not apply to aggregate acquisitions of over $10,000, but only to individual item acquisitions of over $10,000. Acquisitions using over $10,000 of LSC funds represent a significant investment of funds, whether for a single item or multiple items in a single acquisition. As noted elsewhere herein, one of LSC's responsibilities is to act as a steward, ensuring the public funds it is entrusted to distribute are used for the purpose and in the manner which Congress made them available. Thus, LSC has a responsibility to ensure that recipients are, to the extent possible, ''getting a good deal'' on large acquisitions. Limiting the competition requirement to individual item purchases does not meet this objective and would undermine LSC's ability to exercise effective oversight over the use of LSC funds.

As proposed, acquisitions of over $10,000 would have to have been accomplished by written competitive quote. This proposed requirement was based on the FAR and OMB Circular A–110, each of which require that requests for quotes clearly identify the salient characteristics of the property to be acquired, as well as the basis for evaluating quotes and selecting a source. LSC received comments suggesting that the requirement for three written quotes could be relaxed or otherwise redesigned to allow recipients greater flexibility in competing and completing procurements. In this area, a few commenters suggested the language of this section take into account the increasing use of catalogs and internet sites in procurement.

LSC agrees with these commenters that LSC could make changes to provide more options to recipients while still meeting LSC's objective that recipients seek to obtain competitive prices on the items they acquire. An as initial matter, LSC notes that, even as proposed, the use of electronic media would have been permissible to secure written quotes. However, LSC believes that this section was susceptible to improvement beyond simply making this point more explicit. Accordingly, section 3(a) has been significantly revised to require a

recipient to consider competitive quotes from at least three potential sources for the property. Under the revised language, a recipient may make individual requests for quotes and/or may use quotes listed in suppliers' online or printed catalogs, posted on electronic websites or contained in other publicly available materials.

Individual item acquisitions of over $10,000 will have to be approved in advance by LSC. This includes acquisitions made to replace already-existing property, the original acquisition of which LSC may have approved at a prior point in time. Consistent with previous LSC guidance, requests for prior approvals will have to include a justification stating the need for the acquisition, a brief description of the property to be acquired and a description of the acquisition process used, including the quotes received by the recipient.

LSC has added language to this section to allow a recipient making a grant application to include a prior approval request in the grant application. The provision specifies that any such request must identify the particular item proposed to be acquired and include a justification which complies with the requirements of this section. In such a case, the grant approval will serve as the notice of the approval of the acquisition request. LSC believes that this will save time and effort for recipients, particularly (but not exclusively) those seeking funds under the Technology Grants program, who know that they intend to acquire a large individual item with the grant funds for which they are applying. Thus, by allowing a recipient to include the prior approval request in the grant application instead of having to make a separate request once the grant is awarded, LSC hopes to lessen the burdens on recipients, while still ensuring compliance with the requirements of Part 1630. Any prior approvals granted in this manner would, like all grants, be conditional upon the availability of the grant funds, and like app prior approvals, be subject to the duration requirements of 45 CFR 1630.5(c).

Other comments LSC received on this section noted concerns about situations in which exceptions to the basic policy would be necessary. LSC notes that the procedures permit sole source acquisitions if circumstances prevent requesting competitive quotes. In such cases, recipients would have to document the reason(s) for conducting the acquisition on a sole source basis. LSC believes that this language is sufficient to alleviate concerns in this area. This is particularly so in light of the fact that the language reflects current LSC policy, which has worked well up to this point.

In addition, as discussed above, several commenters suggested that the PAMM not apply to leases of personal property, and these commenters, accordingly, suggested amending this section. For the reasons discussed above, LSC is retaining the requirement that leases of personal property be subject to the PAMM. Therefore, references to leases in this section are retained as proposed.

Section 4—Acquisition Procedures for Real Property

Section 4 contains the procedures for the acquisition of real property. Under this section, prior to acquiring real property, a recipient is required to identify and evaluate at least three potential sites. This section draws upon a similar requirement in the FAR relating to the selection of sources for the leasing of real property. The types of costs to be considered in an analysis of an acquisition of real property would be those which LSC asks recipients to describe when seeking prior approval of an acquisition of real property pursuant to LSC Program Letter 98–4, dated July 1, 1998. Recipients are encouraged to negotiate with potential sources prior to entering a contract in order to obtain the most favorable contract terms possible.

LSC received a variety of comments on the proposed requirements in this section. One comment suggested that the competition requirements not be applied to purchases of real property, while others suggested that the competition factors be broadened to allow recipients to take into account certain non-monetary factors (i.e., accessibility of facility to public transportation), and that the required cost analysis include occupancy costs.

For many recipients, such a purchase may represent the single largest acquisition they ever make. Hence, LSC does not believe it is unreasonable to expect recipients to consider alternate properties and gain the benefits of competition in making real estate purchases. However, LSC does agree that many factors other than price alone are appropriately considered in making the choice of selecting one property over another. Indeed, past practice in reviewing and granting prior approvals demonstrates that recipients do consider factors other than price and LSC approves of such practices. Accordingly, LSC has revised section 4 to make explicit the ability of recipients to consider a range of qualitative factors when considering real property acquisition alternatives and that the required cost analysis includes occupancy costs.

One commenter requested that LSC clarify the time period over which the average annual cost analysis should be done. Section 4(c), as proposed, stated that the cost analysis should be for the life of the financing. LSC believes this is sufficiently clear and has made no changes to this language.

This section retains LSC's prior approval requirement for acquisitions of real property.[3] Sections 4(d)(1) through (7) reflect provisions from Program Letter 98–4 setting forth the types of information which LSC requires recipients to submit in support of a request for prior approval of an acquisition of real property. LSC received no comments on this section and LSC retains the language as proposed.

Section 4 also retains LSC's longstanding practice of requiring, as a condition of LSC's approval of the acquisition of real property, a formal agreement between LSC and the recipient setting forth the terms of LSC's approval. These agreements have included provisions governing the disposal of property purchased with LSC funds, both during the grant term and upon cessation of funding and requiring the recipient to record LSC's interest in the property. LSC received a few comments on this provision.

One commenter requested that LSC clarify 4(e)(1) relating to property agreements, on the basis that the reference to ''delivering legal services to eligible clients'' was somewhat confusing because it could be interpreted to require that real property could be used only for the delivery of legal services to eligible clients and not for any other purpose or for services to ineligible clients who are otherwise lawfully served by the recipient (with non-LSC funds). LSC agrees that such an interpretation would be overbroad and unnecessary. However, LSC does not believe that the section 4(e)(1), as proposed, lends itself to such an interpretation. Moreover, LSC notes that other sections of the property manual contemplate use of property for other purposes (see, e.g., section 5(f) on conditions under which property may be used by organizations engaging in LSC-restricted activities). Rather, the language was intended to convey the message that recipients are not to use LSC funds to purchase real estate simply for investment purposes, but that

[3] LSC's longstanding policy is that leases of real property do not require prior approval and LSC does ot propose any change to that policy.

rather, any real estate purchased is to be acquired primarily as office space for the recipient. Although LSC has not made any changes to the language in section 4(e), LSC has clarified the language elsewhere in the PAMM to make explicit that property acquired with LSC funds is to be acquired and used for the primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts and LSC regulations.

Another commenter suggested that the PAMM should more fully explicate LSC's interest in real property. Individual property agreements, which are expressly required by the PAMM, currently do and will continue to serve this functions. Accordingly, LSC has made no changes in section 4 in regard to this matter.

Finally, LSC restates in the PAMM LSC's requirement in 45 CFR 1630.5(b)(4) that recipients obtain prior approval of expenditures for capital improvements. This requirement applies to leasehold improvements as well as improvements to recipient-owned property. LSC retains the existing requirement from Program Letter 98–4 that recipients submit certain information in support of requests for prior approval of capital improvements. LSC did receive one comment on this section, requesting that LSC allow for emergency approval of acquisitions related to capital expenditures. LSC has traditionally permitted recipients to make such arrangements as are necessary in emergency situations, such as in response to natural disasters or other such occurrences which require emergency repairs and there was no intention to change this policy in the proposed PAMM. Accordingly, section 4(f) has been revised to permit a recipient to seek emergency approval of expenditures for capital improvements prior to providing the full written justification. In such cases, recipients will have to provide the required information to LSC in a timely manner.

Another commenter suggested substituting the word ''bid'' for ''quote'' in section 4(f). As noted above, while a clarification is appropriate, LSC thinks the clarification is better accomplished in the definitions section. Accordingly section 2(l) is amended to explicitly include competition for capital improvement services contracts.

Section 5—Retention and Use of Property Acquired With LSC Funds

Section 5 sets forth the standards for the management of real and personal property acquired with LSC funds. These standards build upon the principle contained in OMB Circular A–110, that grant recipients should possess full ownership of personal and real property purchased in whole or in part with grant funds. With regard to leased personal property, the PAMM reflects current LSC policy that leased property may be used according to the lease terms during the term of an LSC grant or contract, and must be disposed of according to the lease terms in the event that there is a cessation of LSC funding.

Under the provisions of this section, recipients are permitted to retain property as long as they continue to receive LSC funding. This represents a change from the prior policy which permitted recipients to retain property as long as it was needed for civil legal assistance. This change reflects the heightened need, in the competitive grant environment, for LSC to ensure that its funds are available to the maximum extent possible for LSC recipients and programs.

Notwithstanding the above, under the PAMM a recipient may use property acquired with LSC funds for permissible non-LSC activities, such as the representation of income-ineligible clients, provided that such other use does not interfere with the performance of the recipient's duties under its LSC grant. This flexibility parallels similar provisions in OMB Circular A–110. Further, a recipient is permitted to lease space to others or otherwise allow the use of its property for restricted activities, provided that the recipient charges a fair market price for such lease or property use. Any such use will also have to be consistent with the program integrity requirements of 45 CFR Part 1610.

LSC received one comment specifically addressing this particular provision. The commenter suggested that LSC replace the phrase ''shall not be less than'' with ''shall be reasonable and comparable to'' in 5(e) and (f). The phrase ''shall not be less than'' was derived from OMB Circular A–110 and chosen to ensure that the provisions would be consistent with IRS rules. As such, LSC does not believe that changing this language is desirable or advisable. Accordingly, the language has not been changed.

Section 5(f) addresses the use of a particular subset of personal property—copyrights. Incorporating language from OMB Circular A–110, this paragraph provides that recipients be permitted to own copyrights to publications, software, and other copyrightable works created in whole or part with LSC funds. However, in conformance with longstanding LSC policy, recipients creating or otherwise obtaining copyrightable materials with LSC funds will have to provide LSC free access to and use of such materials, including the right to make such materials available to other LSC recipients.

Other than the comments relating to paragraphs (e) and (f) discussed above, the only other comments LSC received on section 5 suggested amendments to this section reflecting the suggestion that the PAMM not apply to leases of personal property. For the reasons discussed above, LSC is retaining the requirement that leases of personal property be subject to the PAMM. Therefore, references to leases in this section are retained as proposed. All other provisions are also retained as proposed.

Section 6—Disposal of Personal Property Acquired With LSC Funds

This section establishes requirements governing the disposal of personal property. Generally, recipients have considerable discretion in selecting methods of disposing of personal property purchased with LSC funds, except at the point which a recipient ceases to receive LSC funds. At the cessation of LSC funding, recipients have an obligation to LSC with respect to items of personal property.

LSC received a comment asking LSC to clarify section 6 with regard to the proper standards for disposing of property having a value of less than the definitional threshold standard in Section 2(g). Property is defined in the PAMM as having a threshold value of $5,000. Thus, property with a current market value at the time of disposition of less than $5,000 is not, by its own terms, subject to the PAMM. Recipients are, accordingly, free to dispose of property having a value of less than $5,000 in any manner in which the recipient sees fit. LSC reminds recipients that the relevant dollar value is the current market value. Thus, property with a current market value of less than $5,000 at the time of disposal is not subject to the PAMM, regardless of the value of the property at the time of acquisition.

In the notice setting forth the proposed PAMM, LSC requested comment on the proposal to prohibit the sale of excess property to recipient Board members or employees. None of the commenters affirmatively supported this proposal, while one commenter stated that it did ''not disagree'' with the proposal and several commenters stated that they disagreed with the proposal. It was not altogether clear, however, whether those commenters opposing the

proposal were considering that the prohibition, as proposed, would only apply to property with a value of over $1,000. Given the definition of property in the PAMM, property with a current market value of less than $5,000 would, as noted above, be subject to disposal by the recipient without restriction, including by sale to Board members or employees. In light of the above, LSC believes that the proposed restriction should be adopted. As written, the prohibition will only apply items of significant value. LSC believes this is appropriate, yet still allows recipients flexibility in disposing of items of lesser value.

The PAMM, as noted above, permits recipients considerable latitude in disposing of personal property purchased with LSC funds during the term of an LSC grant. Specifically, under this section, recipients may: (1) Trade property to suppliers or vendors in return for reductions in the acquisition price of new or replacement property; (2) sell the property, by the solicitation of formal quotes for property with a value of over $15,000, or by negotiation where the property has a value $15,000 or less or where advertising for bids has not resulted in reasonable bid prices; [4] (3) transfer the property to third parties which are eligible under statute to receive support from LSC; (4) transfer the property to non-LSC programs, subject to LSC approval; or (5) transfer the property to other nonprofit programs serving the poor in the same community. These options are consistent with current Federal practice as reflected in OMB Circular A–110, the Federal Property Management Regulations (41 CFR Chapter 101) and the 1981 Property Manual.

Another comment addressing the disposal procedures suggested that the requirements should apply only in situations in which the recipient had to get prior approval of the acquisition and in which the property had a current market value (at the time of disposition) of greater than $10,000 and that LSC should limit its interest in such property to a period of one year. If LSC were to adopt this suggestion, almost all personal property dispositions would no longer be subject to any standards. Under such circumstances, LSC would lose its ability to exercise effective oversight over the use of LSC funds. As noted above, one of LSC's responsibilities is to act as a steward, ensuring the public funds it is entrusted to distribute are used for the purpose and in the manner which Congress made them available and the lack of accountability over most funds cannot be justified.

The PAMM provides for different options for the disposal of personal property at the point that a recipient ceases to receive LSC funding. Recipients are permitted to transfer or retain personal property purchased with LSC funds, provided that LSC would be compensated in an amount equal to the percentage of the property's acquisition cost funded with LSC monies. These provisions are based on disposal options set forth in OMB Circular A–110. It is anticipated that LSC and recipients will identify, on a case by case basis at the time of cessation of funding, the best method for disposing of personal property purchased with LSC funds.

One commenter also suggested that LSC should delete references to LSC being entitled to compensation in the case of disposal of property by sale by the recipient. This commenter suggested that such an action would make it appear that LSC was interested in profit-making. As LSC noted in the notice of the proposed PAMM, funding is limited and available only on a competitive basis. Thus, rather that seeking some undue ''windfall'' from the disposition of property acquired with LSC funds, LSC is seeking to recoup funds in order to redistribute them to ensure that the scarce funds available are serving their original purpose to the maximum extent possible. If LSC were to permit recipients to retain all the proceeds from a disposition of property once they ceased being funded by LSC, it could be argued that the recipient would be reaping an undue windfall. At the least, the benefits of those dollars would no longer be assured of serving the original intended purpose. Accordingly, these provisions have not been changed. A provision has been, however, to reflect the current LSC policy that reimbursed funds are to be used to make additional grants to the field and that grants will generally be to recipients in the same service area which the funds originally supported.

With respect to leased personal property, the PAMM provides that during the term of an LSC grant or contract, recipients be permitted to dispose of such leased with LSC funds in accordance with the terms of the lease. When a recipient ceases to receive LSC funding, the recipient would be required to dispose of items of personal property leased with LSC funds in accordance with the terms of the lease.

LSC was asked provide additional clarification regarding it what it intended by requiring disposal of leased property in conformance with the terms of the lease. The other disposal-related requirements all apply to property purchased and owned by recipients. Leased property is, by definition, not owned by the recipient and the recipient is not at liberty to dispose of the property by giving it away or selling it. However, since LSC anticipates that there will occasionally be a need for recipients to divest themselves of leased property, it was appropriate that this circumstance be included in the PAMM. Since, the use and disposal of leased property is generally governed by the terms of the lease itself, LSC thought it was sufficient to note that any such property should be disposed of as required by the terms of the lease under which the property was obtained. This provision is retained as proposed.

A number of commenters noted that the requirements related to disposal in the case where a recipient ceases to receive funding are unclear if the recipient is undergoing a merger or takeover. In such a case, while the recipient may itself become a different (or non-existent) legal entity, the successor organization will be a funded recipient.

LSC agrees that this is a special circumstance which merits specific treatment in the PAMM. Accordingly, LSC has added a new provision to Section 6 to provide that when a recipient ceases to receive LSC funding because the recipient has merged with or is succeeded by another recipient, the recipient may transfer the property to the merged or successor recipient, provided that the recipient and the merged or successor recipient execute a successor in interest agreement, approved by LSC, which requires the merged or successor recipient to use the property for the primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts, and LSC regulations.

Section 7—Disposal of Real Property Acquired With LSC Funds

Section 7 sets forth the proposed standards for the disposal of real property purchased with LSC funds. As with the personal property disposal standards in Section 6, LSC proposes to provide different options for disposals occurring during the grant term and at the cessation of LSC funding.

[4] By reference to 45 CFR 1630.12, section 6(c) would clarify that income from the state of property purchased with LSC funds is LSC derivative income subject to the requirements of the LSC Act, regulations, and other applicable law. As such, LSC derivative income becomes part of the LSC fund balance which may need to be returned to LSC if the fund balance amount exceeds limits established by 45 CFR part 1628.

For recipients seeking to dispose of real property during the grant term, LSC retains the longstanding LSC policy whereby recipients are permitted to sell real property acquired with LSC funds.[5] Recipients are also permitted to transfer real property to other LSC recipients. This is consistent with most LSC property interest agreements between LSC and recipients using LSC funds to purchase real property.

LSC also received a couple of comments suggesting limiting section 7 to ''acquisition costs.'' The PAMM, as proposed, reflected current policy related to disposition of property and is what LSC is currently requiring in property agreements. LSC sees no reason to change the policy at this time.

At the point of cessation of LSC funding, the PAMM permits recipients to sell, transfer or retain real property acquired with LSC funds, provided that LSC is compensated in an amount equal to the percentage of the property's acquisition cost funded by LSC monies. LSC will have to approve any such disposition in advance.

One commenter suggested that LSC should delete references to LSC being entitled to compensation in the case of disposal of property by sale by the recipient. This commenter suggested that such an action would make it appear that LSC was interested in profit-making. As LSC noted in the notice of the proposed PAMM, funding is limited and available only on a competitive basis. Thus, rather that seeking some undue ''windfall'' from the disposition of property acquired with LSC funds, LSC is seeking to recoup funds in order to redistribute them to ensure that the scarce funds available are serving their original purpose to the maximum extent possible. If LSC were to permit recipients to retain all the proceeds from a disposition of property once they ceased being funded by LSC, it could be argued that the recipient would be reaping an undue windfall. At the least, the benefits of those dollars would no longer be assured of serving the original intended purpose. Accordingly, these provisions have not been changed. A provision has been, however, to reflect the current LSC policy that reimbursed funds are to be used to make additional grants to the field and that grants will generally be to recipients in the same service area which the funds originally supported.

A number of commenters noted that the requirements related to disposal in the case where a recipient ceases to receive funding are unclear if the recipient is undergoing a merger or takeover. In such a case, while the recipient may itself become a different (or non-existent) legal entity, the successor organization will be a funded recipient.

LSC agrees that this is a special circumstance which merits specific treatment in the PAMM. Accordingly, LSC has added a new provision to Section 7 to provide that when a recipient ceases to receive LSC funding because the recipient has merged with or is succeeded by another recipient, the recipient may transfer the property to the merged or successor recipient, provided that the recipient and the merged or successor recipient execute a successor in interest agreement, approved by LSC, which requires the merged or successor recipient to use the property for the primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts, and LSC regulations.

Section 8—Documentation and Recordkeeping Requirements

Section 8 contains requirements for the documentation of property acquisitions and disposals. This section is intended to ensure that recipients create and retain the required records in support of property acquisition and disposal decisions and LSC fund expenditures related thereto.

LSC received no comments addressing this section and it is adopted as proposed.

Section 9—Recipient Policies and Procedures

This section requires that recipients adopt written procurement procedures. This requirement stems from OMB Circular A–110 and is intended to ensure that recipients have standardized procurement procedures that are consistent with LSC requirements. LSC will not collect, review or approve such procedures, although a recipient will have to make them available to LSC upon request for LSC oversight and compliance purposes.

LSC received no suggestions for changing this section and it is adopted as proposed. One commenter, however, did pose a question about when LSC expects recipients to have developed and implemented their written procedures as required by Section 9. LSC expects recipients to comply with this section within 90 days of the effective date of this notice.

Property Acquisition and Management Manual

Sec. 1 Purpose and Scope.
Sec. 2 Definitions.
Sec. 3 Acquisition Procedures for Personal Property.
Sec. 4 Acquisition Procedures for Real Property.
Sec. 5 Retention and Use of Property Acquired with LSC Funds.
Sec. 6 Disposal of Personal Property Acquired with LSC Funds.
Sec. 7 Disposal of Real Property Acquired with LSC Funds.
Sec. 8 Documentation and Recordkeeping Requirements.
Sec. 9 Recipient Policies and Procedures.

Section 1 Purpose and Scope

The purpose of this PAMM is to set forth standards governing the acquisition, retention, use and disposal of personal and real property acquired in whole or in part with LSC funds. The standards set forth herein apply to both real and non-expendable personal property, but not apply to expendable personal property or services, except for contracts for services for capital improvements which are subject to the requirements of Section 4(f) herein.

The requirements set forth herein apply to acquisitions made on or after the PAMM's effective date as published in the **Federal Register**. For purchases of real property prior to the PAMM's effective date, the written agreement between the program and LSC will control. For prior acquisitions of personal property, the 1981 Property Manual will control.

Section 2 Definitions

(a) *Acquisition* means a purchase of real property or a purchase or lease of personal property made in whole or in part with LSC funds. For the purposes of this PAMM, recipients should treat a purchase or lease of related property as a single acquisition when the property can be readily obtained through a single contract with a single source.

(b) *Acquisition costs for real property* means the initial down payment and principle and interest on debt secured to finance the acquisition of the property, as provided in the December 31, 1997 preamble to the final rule on cost accounting, 45 CFR Part 1630.

(c) *Capital improvement* means an expenditure of an amount of LSC funds exceeding $10,000 to improve real property through construction or the purchase of immovable items which become an integral part of real property.

[5] By reference to 45 CFR 1630.12, Section 7(b) would clarify that income from the sale of property acquired with LSC funds is LSC derivative income subject to the requirements of the LSC Act, regulations, and other applicable law. As such, LSC derivative income becomes part of the LSC fund balance which may need to be returned to LSC if the fund balance amount exceeds the limits established by 45 CFR part 1628.

(d) *Lease* means a contract for the use of property during a specified period for a specified price.

(e) *LSC property interest agreement* means a formal written agreement between LSC and a recipient setting forth the terms of LSC's approval of the recipient's use of LSC funds to acquire real property.

(f) *Personal Property* means property of any kind, including tangible property (having physical existence), such as equipment, furniture, or books, or intangible (having no physical existence), such as copyrights or patents, but does not include supplies, such as stationery, paper clips, pens, etc., or real property or improvements to real property.

(g) *Property* means any real or personal property having a market value greater than $5,000 and a useful life of more than one year. For the purposes of Sections 6 and 7 related to the disposal of property, the relevant market value is the value at the time of disposal.

(h) *Purchase* means to obtain and take ownership of property through the payment of money or its equivalent.

(i) *Quote* means a quotation or bid from a potential source interested in selling or leasing property to a recipient, or providing services to a recipient for capital improvements.

(j) *Real property* means land, buildings, and appurtenances, including capital improvements thereto, but not including moveable personal property.

(k) *Source* means a supplier, vendor, or contractor who has agreed to provide property to a recipient through a purchase or lease agreement.

Section 3 Acquisition Procedures for Personal Property

(a) Before using more than $10,000 of LSC funds to make an acquisition of personal property, including, but not limited to, acquisitions of single items of over $10,000, a recipient shall consider competitive quotes from at least three potential sources for the property. A recipient may make individual requests for quotes and/or may use quotes listed in suppliers' online or printed catalogs, posted on electronic websites or contained in other publicly available materials.

(b) The selection of a source shall be on the basis of criteria established and documented by the recipient. Such criteria may include price alone or price in combination with other factors.

(c) Notwithstanding paragraph (a) of this section, a recipient may make a sole source acquisition when circumstances prevent the requesting of competitive quotes. When an acquisition is made on a sole source basis, the recipient shall maintain written documentation of the reason(s) for not obtaining competitive quotes.

(d) A recipient using more than $10,000 of LSC funds to acquire an individual item of personal property must request and receive LSC's prior approval pursuant to 45 CFR 1630.5(b)(2), whether or not the acquisition is to replace existing property, before making the expenditure.

(1) A request for prior approval shall include:

(i) Three quotes, if obtained; and

(ii) A letter or memorandum containing:

(A) A statement of need explaining how the acquisition will further the delivery of legal services to eligible clients;

(B) A brief description of the property to be acquired, including the make and manufacture of the item, the name of the source supplying the item, the quantity to be acquired, and the total dollar amount of the acquisition; and

(C) A brief description of the acquisition process, including the names of the potential sources who submitted quotes, the amounts of the quotes, the quantity of items offered by the potential sources, and a brief explanation of the reasons for selecting a particular source to supply the item(s). In the absence of quotes, the description should explain what circumstances prevented the recipient from obtaining quotes.

(2) A recipient making a grant application may include a prior approval request in the grant application. Any such request must identify the specific item proposed to be acquired and include a justification which complies with the requirements of paragraph (d)(1) of this section. In such a case, approval of the grant application shall be deemed an approval of the acquisition request, in accordance with 45 CFR 1630.5(b)(2) and 1630.5(c).

Section 4 Acquisition Procedures for Real Property

(a) Prior to acquiring real property with LSC funds, recipients shall conduct an informal market survey in order to identify and evaluate at least three potential sources. Recipients may retain a real estate agent or broker for the purposes of conducting a market survey, provided that the cost is reasonable.

(b) The evaluation of potential acquisitions of real property shall include consideration of:

(1) The total cost of the acquisition;

(2) The quality of the property to be acquired; and

(3) Other factors affecting the appropriateness of the property for the delivery of legal services, such as location, accessibility to the client population and public transportation, and proximity to courts and/or other government or social services agencies.

(c) Recipients shall conduct an analysis of the average annual cost of the acquisition, including the costs of a down payment, interest and principal payments on debt acquired to finance the acquisition, closing costs, renovation costs, and the costs of utilities, maintenance, and taxes, where applicable. The cost analysis shall include a comparison of:

(1) The estimated total costs of acquiring and occupying the property over the life of the financing of the acquisition; with

(2) The estimated total costs of leasing and occupying similar property over the same period of time.

(d) The use of LSC funds to acquire real property requires LSC's prior approval pursuant to 45 CFR 1630.5(b)(3). When requesting LSC prior approval of an acquisition of real property, recipients shall provide to LSC in writing:

(1) a statement of need explaining how the acquisition will further the delivery of legal services to eligible clients in terms of:

(i) The location of the property in terms of accessibility to program clients;

(ii) Trends in funding and program staffing levels in relation to space needs; and

(iii) Whether the property will replace or be in addition to existing program offices;

(2) a brief analysis comparing:

(i) The estimated average annual cost of the planned acquisition over the life of the financing of the acquisition, including the costs of maintenance, utilities, and taxes; with

(ii) The estimated average annual cost of leasing or purchasing other, similar property over the same period of time;

(3) A current, independent appraisal of a type sufficient to secure a mortgage;

(4) Documentation of board approval consisting of either a board resolution or board minutes demonstrating approval of the acquisition;

(5) A statement of handicapped accessibility sufficient to meet the requirements of 45 CFR 1624.5(c);

(6) A copy of an acquisition agreement, contract, or other document containing a description of the property and the terms of the acquisition; and

(7) An explanation of the anticipated financing of the acquisition including:

(i) The estimated total cost of the acquisition, including renovations, moving, and closing costs;

(ii) The source and amount of funds to be applied toward a down payment;

(iii) The source of funds to be applied toward a monthly mortgage payment, if any;

(iv) The monthly amount of principal and interest payments on debt secured to finance the acquisition, if any; and

(v) The source and estimated amounts of funds needed to cover moving, renovations, and closing costs.

(e) At the time of approving a recipient's use of LSC funds to acquire real property, LSC and the recipient shall enter into a written LSC property interest agreement, which shall include, at a minimum:

(1) Provisions consistent with Sections 5(a), 7(a) and 7(b) herein;

(2) An agreement by the recipient not to encumber the property without prior approval of LSC;

(3) An agreement by the recipient to record, in accordance with appropriate and applicable state law, LSC's interest in the property.

(f) Expenditures for capital improvements require LSC's prior approval pursuant to 45 CFR 1630.5(b)(4).

(1) When requesting LSC's prior approval of such expenditures, recipients shall provide to LSC in writing, the following:

(i) A statement of need explaining how the improvement will further the delivery of legal services to eligible clients;

(ii) A brief description of the improvement, including the nature of the work to be done, the name of the contractor performing the work, and the total expected cost of the improvement; and

(iii) A brief description of the contractor selection process, including the names of the contractors who submitted quotes, the amounts of the quotes, and a brief explanation of the reason(s) for selecting a particular contractor to perform the work.

(2) If an expenditure for capital improvements must be made on an emergency basis (i.e., to repair major structural elements of a building after a hurricane or earthquake, flooding, etc.), a recipient may seek an approval to move ahead with the project prior to providing the information provided in paragraph (f)(1) of this section. If such approval has been granted, the recipient must follow up with LSC by providing the required information in a timely manner.

Section 5 Retention and Use of Property Acquired With LSC Funds

(a) Subject to the requirements herein, recipients may use LSC funds to acquire and use personal and real property for the primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts and LSC regulations. Title to personal and real property purchased in whole or in part with LSC funds vests in the recipient subject to the conditions set out in paragraphs (b) through (f) of this section.

(b) Recipients may retain personal and real property purchased with LSC funds for as long as they continue to receive LSC funding. When a recipient ceases to receive LSC funding, property purchased with LSC funds shall be disposed of in accordance with the requirements of sections 6(d) or (e) and 7(c) or (d) herein, as appropriate.

(c) Recipients may retain personal property obtained through a lease using LSC funds for as long as they continue to receive LSC funds, subject to the terms of the lease. When a recipient ceases to receive LSC funding, property leased with LSC funds shall be disposed of in accordance with Section 6(b) herein.

(d) When using personal or real property acquired in whole or in part with LSC funds for the performance of an LSC grant or contract, recipients may use such property for other activities, provided that such other activities do not interfere with the performance of the LSC grant or contract, and provided that such other uses meet the requirements of paragraphs (e) and (f) of this section.

(e) If a recipient uses personal property acquired in whole or in part with LSC funds to provide services to another organization which engages in activity restricted by the LSC Act, regulations, or other applicable law, the recipient shall charge the other organization a fee which shall not be less than that which private non-profit organizations in the same locality charge for the same services under similar conditions.

(f) If a recipient uses real property acquired in whole or in part with LSC funds to provide space to another organization which engages in activity restricted by the LSC Act, regulations, or other applicable law, the recipient shall charge the other organization an amount of rent which shall not be less than that which private non-profit organizations in the same locality charge for the same amount of space under similar conditions.

(g) Recipients may copyright any work that is subject to copyright and was developed, or for which ownership was obtained, under an LSC grant or contract, provided that LSC reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use work copyrighted by recipients, when the work is obtained or developed in whole or in part with LSC funds.

Section 6 Disposal of Personal Property Acquired With LSC Funds

(a) During the term of an LSC grant or contract, recipients may dispose of items of personal property leased with LSC funds in accordance with the terms of the lease.

(b) When a recipient ceases to receive LSC funding, the recipient shall dispose of items of personal property leased with LSC funds in accordance with the terms of the lease.

(c) During the term of an LSC grant or contract, recipients may dispose of items of personal property purchased with LSC funds by:

(1) Trading in the property at the time of acquiring replacement property;

(2) Selling the property at a reasonable negotiated price, without advertising for quotes, where the property item has a current fair market value not exceeding $15,000;

(3) Selling the property after having advertised for and received quotes, where the current fair market value of the property item exceeds $15,000;

(4) Transferring the property to another recipient of LSC funds; or

(5) With the approval of LSC, transferring the property to another nonprofit organization serving the poor in the same service area.

(d) Recipients shall not dispose of items of personal property by sale, donation or other transfer of the property to the recipients' board members and employees.

(e) During the term of an LSC grant or contract, recipients selling personal property purchased with LSC funds may retain and use income from the sale according to the requirements of 45 CFR 1630.12 and 45 CFR 1628.3.

(f)(1) Except as provided in paragraph (g) of this section, when a recipient ceases to receive LSC funding, subject to the approval of LSC, recipients shall dispose of individual items of personal property purchased with LSC funds according to one of the following methods:

(i) The recipient may transfer the property to another recipient of LSC funds, in which case the recipient transferring the property shall be entitled to compensation in the amount of that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by non-LSC funds;

(ii) The recipient may transfer the property to another nonprofit organization serving the poor in the same service area, in which case LSC shall be entitled to compensation for that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by LSC funds;

(iii) The recipient may sell the property and retain the proceeds from the sale after compensating LSC for that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by LSC funds;

(iv) The recipient may retain the property, in which case LSC shall be entitled to compensation from the recipient for that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by LSC funds.

(2) Funds returned to LSC upon a disposition of property under this section shall be used by LSC to make emergency and other special grants to recipients. Such grants will generally be made to the same service area the returned funds originally supported.

(g) When a recipient ceases to receive LSC funding because the recipient has merged with or is succeeded by another recipient, the recipient may transfer the property to the merged or successor recipient, provided that the recipient and the merged or successor recipient execute a successor in interest agreement, approved by LSC, which requires the merged or successor recipient to use the property for the purpose of providing legal services for primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts, and LSC regulations.

Section 7 Disposal of Real Property Acquired With LSC Funds

(a) During the term of an LSC grant or contract, recipients may dispose of real property acquired with LSC funds by:

(1) Selling the property after having advertised for and received offers, in which case the recipient may retain and use the proceeds from the sale of the property for the purpose of delivering legal services to eligible clients; or

(2) Transferring the property to another recipient of LSC funds, in which case the recipient transferring the property shall be entitled to compensation in the amount of that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by non-LSC funds.

(b) During the term of an LSC grant or contract, recipients selling real property acquired with LSC funds may retain and use income from the sale of the property according to the requirements of 45 CFR 1630.12 and 45 CFR 1628.3.

(c)(1) When a recipient owning real property acquired with LSC funds ceases to receive funding from LSC, the recipient shall, with the approval of LSC, dispose of the real property according to one of the following methods:

(i) The recipient may transfer title to the property to another recipient of LSC funds, in which case the recipient transferring the property shall be entitled to compensation for that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by non-LSC funds;

(ii) The recipient may retain title to the property without further obligation to LSC after the recipient compensates LSC for that percentage of the property's current fair market value which is equal to the percentage of the property's acquisition cost which was borne by LSC funds;

(iii) The recipient may sell the property and compensate LSC for that percentage of the property's current fair market value which is equal to the percentage of the property's acquisition cost that was borne by LSC funds, after the deduction of actual and reasonable selling and fix-up expenses, if any.

(2) Funds returned to LSC upon a disposition of property under this section shall be used by LSC to make emergency and other special grants to recipients. Such grants will generally be made to the same service area the returned funds originally supported.

(d) When a recipient ceases to receive LSC funding because the recipient has merged with or is succeeded by another recipient, the recipient may transfer the property to the merged or successor recipient, provided that the recipient and the merged or successor recipient execute a successor in interest agreement, approved by LSC, which requires the merged or successor recipient to use the property for the primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts, and LSC regulations.

Section 8 Documentation and Recordkeeping Requirements

(a) Recipients shall account for personal property acquired with LSC funds according to the requirements of Sections 2–2.4 and 3–5.4(c) of the Accounting Guide for LSC Recipients.

(b) Recipients acquiring real property with LSC funds shall keep such records as are customary for the retention of real property in the jurisdiction where the property is located.

(c) Recipients shall account for income earned from the sale of real or personal property purchased with LSC funds in accordance with the requirements of 45 CFR 1630.12.

(d) Documentation of real property acquisitions shall consist of the acquisition contract, evidence of a market survey, cost or price analysis, and an explanation of the reason(s) for selecting a particular source, a copy of an independent appraisal of the property's market value, evidence of board approval of the acquisition, a statement of handicapped accessibility sufficient to meet the requirements of 45 CFR 1624.5(c), and a copy of the LSC property interest agreement required by Section 4(e) herein.

Section 9 Recipient Policies and Procedures

Recipients shall develop written policies and procedures which implement, at a minimum, the requirements of Sections 3 and 4 herein.

Victor M. Fortuno

General Counsel and Vice President for Legal Affairs

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