LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPERATIONS AND REGULATIONS COMMITTEE

Friday, September 7, 2001

2:20 p.m.

Hilton Alexandria Mark Center
5000 Seminary Road
Alexandria, Virginia

COMMITTEE MEMBERS PRESENT:

John T. Broderick, Jr., Chair
Douglas S. Eakeley (ex-officio)
Hulett H. Askew
LaVeeda M. Battle

BOARD MEMEBERS PRESENT:

Edna Fairbanks-Williams
F. Wm. McCalpin
Maria Luisa Mercado
Thomas F. Smegal, Jr.
Ernestine P. Watlington

STAFF AND PUBLIC PRESENT:

Randi Youells, Vice President for Programs
Mauricio Vivero, Vice President for Government Relations & Public Affairs
Michael A. Genz, Director, Office of Program Performance
David L. Richardson, Treasurer & Comptroller
Leslie Q. Russell, Director, Office of Information Technology
Leonard J. Koczur, Acting Inspector General
Laurie Tarantowicz, Acting Inspector General and Legal Counsel
Robert D. Gross, Senior Program Counsel III/State Planning
Julie Clark, NLADA
Don Saunders, NLADA
Victor M. Fortuno, Vice President for Legal Affairs, Corporate Secretary & General Counsel
Mattie C. Condray, Senior Assistant General Counsel

C O N T E N T S

P R O C E E D I N G S

MR. BRODERICK: We're a little late. I apologize to everyone for that, but welcome to the Operations and Regulations Committee meeting.

The first item on the agenda is one of my favorites. It's the approval of the agenda, and I assume there's no controversy on that, and so we can at least cross that off. I didn't notice any votes.

MR. MCCALPIN: I don't have a voice.

MR. BRODERICK: I know you don't.

MS. BATTLE: I will so move that we approve the agenda as written.

MR. BRODERICK: Thank you. All those in favor.

BOARD MEMBERS: Aye.

MR. BRODERICK: Motion passes. Item number two on our agenda is approval of the minutes of the committee meeting of June 29, 2001. I've reviewed those and they certainly square with my recollection, but maybe the members have comments or corrections.

MS. BATTLE: None. I would move that the minutes be approved as written.

MR. EAKELEY: Second.

MR. BRODERICK: Motion passes. The third item on the agenda is consider an act on the draft Final Property Acquisition and Management Manual. And I guess what I would like to do is to ask Mattie Condray to come forward and perhaps tell us -- and follow up to our New Hampshire meeting what issues she understood were alive and well and what further examination or inspection those have received.

And then I think at some point along the process here, Victor, if you would like to come to the table. I didn't mean to overlook you by any means. And at some point in this discussion, assuming there will be a discussion, there may be others out here that would be interested in talking to us, and I'd like to recognize them.

But, Mattie, maybe you could bring us up to date on where we left off in your view in New Hampshire and what's transpired since then.

MS. CONDRAY: Sure. The discussion -- a number of the discussion points in New Hampshire centered around what is kind of -- there was one historical point about what the threshold for the property definition was in 1981 federally when the current version of the Property Manual was adopted, and then there were several questions relating to what current federal grants management and procurement practice is.

And I was tasked with basically finding the answers out to those questions that I didn't have off the top of my head and putting together a memo, which is in your materials; the first item after the minutes, which covers those issues as I understood them to be. There were four issues. One was the 1981 Property Management and Procurement Dollar Thresholds from Circular A110, and the answer -- well, there were a couple of answers, but the basic answer with respect to disposal of property was that there was separate standards for disposal for items with a unit cost of less than a thousand dollars and non-expendable property with an original unit cost of a thousand dollars or more.

And so that -- the basic answer was, yes. In 1981 for many things the cutoff point was a thousand dollars, and that's where -- in part where ours came from. Anyway.

MR. BRODERICK: We'll do that. I'm happy to have questions, but I'd just like Mattie to be able to just go through the issues --

MS. MERCADO: Sure. That's fine.

MR. BRODERICK: -- and then we'll go back.

MS. CONDRAY: Yeah. The next question, as I understood it, was what the current federal policy is concerning the proceeds from property sales, and there were two issues imbedded in that. One was whether in federal grants' management there is money recouped from a property sale whether that money goes back in a proportional manner to the agency or in a direct manner relating to the amount of the original federal investment.

The basic answer is it's proportional across the board in A110 and all of the implementing regulations. Agencies who had a federal interest in a particular piece of property in their grantees and the grantee sells it off the recoupments due back to the granting agency is in a proportional manner.

The secondary issue regarded the distribution of the funds by the agency once they were returned. There was a concern about whether we should have our funds be required to be returned to the service area from which they originally came. Nothing in A110 or any other federal grants' management policy requires an agency receiving a reimbursement to return those funds to the same grantee or geographic area from which they came.

And I noted in the memo just for everybody's edification that, likewise, funds that are currently recovered by LSC through the recovery of excess fund balances or through the disallowance of improper costs or as proceeds from real-property sales are returned to the grant's funds. And that happens as a matter of law. I mean, LSC, even we wanted to use them for something other than the grant fund, we could not by federal appropriations law.

So those moneys are returned to the grant funds and redistributed to the field. They are typically redistributed in the form of special grants or emergency grants. My understanding that the practice of LSC has been to return those funds to the same service area from which they originally came where that is possible, but that neither management nor the board has ever had a formal policy requiring that. In part so that there's an ability to, in fact, respond to emergencies wherever they might arise. But the funds that come back in go back out to the field.

The next issue that I understood was on peoples' minds had to do with current federal policy concerning competition requirements and the aggregation of purchases. The basic federal policy is to promote open and free competition to the maximum extent possible, depending on whether you're looking at A110 applicable to non-profit organizations, what's known as the common-grant rule, and a circular, which is applicable to state and local governments or just federal direct purchasing requirements there are different competition standards.

But I think the point -- the point I want to make that addresses the concern of the committee in New Hampshire was that in each of these -- in each of the cases in the federal procurement what they look at is total contract value. When they look to see what competition requirements are placed on the grant recipient or the federal agency doing direct purchasing, the inquiry is into what the total contract value is, not the individual unit prices.

So although through the federal government they do not use the phrase aggregate purchase, that is, in fact, essentially what happens. If you have a contract for $100,000 and it's a $100,000 item or if it's a contract for, you know, four $25,000 items that are being bought at the same time under that same contract, the issue is the value of the final conversation, and that's what dictates which competition requirements are required, whether it's something that falls under the small-purchase procedure or it must be set aside or it must be fully bid out with competitive bids and requests for proposals.

So those are the basic issues that I understood the committee to have from New Hampshire. I put into your books -- I recopied the proposed draft of the Acquisition Property Management Manual that staff had prepared. It doesn't have any changes in it, because we weren't directed to make any changes at the time. It was merely -- I just wanted to make sure everybody had it in front of them for this discussion without having to schlepp out their old materials.

MS. BATTLE: It would be helpful to tell us specifically where those three issues arise in the final that you've got in here.

MS. CONDRAY: Sure. Hang on a second. Let me just make sure I'm saying the right ones. Well, certainly, the threshold for the definition of property would come into play during the definitions where we have section 2G, property means any real or personal property having a market value greater than $1,000 and a useful life of more than one year.

Sections -- as it notes in sections six and seven in that definition, they're also affect, which is the disposal of property standards, they are similarly affected by the definition of property.

MR. BRODERICK: May I interrupt you for a minute. Looking at our -- at the recopied but not altered proposed manual in our book, at page seven we find section 2G. I just want to make sure we're all on the same --

MS. BATTLE: Actually, it's page 18.

MS. CONDRAY: It's page 18.

MR. BRODERICK: Is the actual regulation?

MS. CONDRAY: Is the actual draft of the text. Page seven would be the discussion of it in the preamble materials.

MR. BRODERICK: All right. Page 18, 2G.

MS. CONDRAY: Right.

MR. BRODERICK: You mentioned a couple of other areas where --

MS. CONDRAY: 2G mentions section six and seven, and so section six is on page 23 and 24 and the beginning of 25, and section seven is on page 25 and 26.

MR. BRODERICK: All right, thank you.

MS. CONDRAY: Those are -- although those sections don't have a -- you won't see the number 1,000 in those sections, those are part of the issue around what the dollar threshold is.

MR. BRODERICK: All right.

MS. CONDRAY: Section 3A, the acquisition procedures for personal property, that's going to be implicated in the issue related to aggregate purchasing and the application of competition requirements.

And section six and seven are the ones that are of note related to the disposition of property and the disposition of proceeds from the sale of property, whether personal, which is section six, or real property, which is section seven.

MR. BRODERICK: Can I ask just a couple of clarifying questions. With respect to the $10,000 aggregates, do I understand the way that works is if there's a single item purchased for $10,000 or more I need pre-approval and I need to go through a more rigorous competitive bidding process?

MS. CONDRAY: LSC's regulations -- the pre-approval requirement comes from -- I think it's 1630; 1630.5B2. So the purchase -- the acquisition of a single item of greater -- with a unit cost of greater than $10,000 requires LSC's pre-approval, and that's by regulation.

That requirement is restated here in the PAM, because one of the whole points of doing this, rewriting the manual, was to try to have all of those sorts of requirements in one place. And we specifically note that that requirement comes directly out of the regulations, not just simply out of the PAM.

The section 3A of the PAM is what places a particular competition requirement, and the competition requirement itself is merely that the recipient has to consider three quotes from at least three potential sources for the property, and that would apply to either individual purchases -- let me state that very specifically. That would apply to either purchases of items that are individually worth $10,000 or more or to an aggregate purchase at one time of items that -- in that contract are $10,000 or more.

MR. BRODERICK: So the only difference between these two, aggregated or individual, is in the aggregated case I don't need pre-approval?

MS. CONDRAY: That would be correct.

MR. BRODERICK: But everything else would be the same?

MS. CONDRAY: That would be correct.

MR. BRODERICK: And in terms of getting three quotes or three bids, how generous is that?

MS. CONDRAY: I think it's fairly generous, because we're allowing people to use -- it says, "A recipient may make individual requests for quotes," so if you had an item that you particularly wanted to bid out with a request for quotes or a request for proposals, if you're looking for services, you could do that. Or we're happy if the recipient looks for quotes listed in suppliers on-line or printed catalogs posted on websites or contained in other publicly available materials.

So not everything that would come under this competition threshold we're not requiring a whole RFP or a request for bid's process for all of those items. The point here is merely that if you're spending more than $10,000 of the corporation's money at any one time we think it's a pretty good idea that you shop around a little.

MR. BRODERICK: Now, let me ask you with respect to the pro-rata share of property, which is disposed of, and the definition of property, I guess, would be anything with a then current value of a thousand dollars or more?

MS. CONDRAY: That's correct. At the time of disposition, you're looking at the then market value of the property that's being disposed of, not the original acquisition cost.

MR. BRODERICK: The issue that I recall coming up the last time -- and I think Bucky Askew may have raised this issue -- was a concern that we were not mandating that the funds returned to the corporation upon disposition of that asset, whether it's real or personal, we were not mandating that it go back to the service area from which it originated.

And I seem to remember you saying that is true. It's not mandated. But based on your remarks here today, it sounds like what you're saying is that generally is the case, but because it's used for special emergency grants it may not always be the case?

MS. CONDRAY: That's correct. That's correct. My understanding of LSC practice has been that current money that is recouped from other places where we recoup money, whether it's excess fund balances or disallowed costs, that that money is used for making special and emergency grants that goes back out to the field that where possible there's a preference to return that money to the service area whence it came. But that there has not been a desire to require that, because sometimes exigencies really kind of dictate that the money would be best used somewhere else.

If we got money from -- I don't know -- Orange County, Florida -- I'm thinking of the tape we saw this morning -- it might be that returning that money to Orange County would be an excellent thing to do. It might be that a hurricane blew across South Florida and wiped out half the building of a property in South Florida, and they were really in desperate need of extra emergency funds to get their service back up and running, and at that particular moment is the best use of the funds.

So I think -- the policy has been to try to return it to the service area but to have the discretion not to if circumstances dictate otherwise, because to the extent that the corporation has a responsibility under the act to use its funds in the most expeditious manner possible.

MR. BRODERICK: In connection with what you've described as a policy -- and I'm not doubting for a moment that is the policy -- is that reduced to writing, or would I just have to ask people at the corporation?

MS. CONDRAY: I believe that is not reduced to writing anywhere. We could do that. We could certainly incorporate that in writing in our draft; put down what our current policy is so that everybody understands what that policy is.

MR. BRODERICK: Generally speaking and in most cases money received on disposal of property from a service area would be returned to that service area in some form?

MS. CONDRAY: Preferably.

MR. BRODERICK: But not always because --

MS. CONDRAY: Preferably but not always.

MR. BRODERICK: -- there may be special circumstances?

MS. CONDRAY: Right. There are special circumstances that might arise, especially, relating to emergencies relating to natural disasters.

MR. BRODERICK: Now, one last question and I'll let other members of the committee and then other members of the board ask questions. And maybe this is unfair and I don't mean to pit one side against another here, but -- because I understand that the -- some members of the staff, the corporation, are of perhaps a different view than you might have on this 1,000, $5,000 threshold.

So for the moment let me ask for your view relative to that issue. It seemed to me some members of this committee were of the view that it should be raised to 5,000 and not 1,000, and I'm wondering from your perspective does the world end or does some unseemly event occur if we do that?

MS. CONDRAY: Personally, I do not think so. The reason it's in 1,000 -- that we've got the 1,000 level in the draft as it's explained in here and the concern came greatly from our compliance and enforcement people was that you've got -- particularly, at the time of disposition of property.

If you've got property that at the time of disposition has a value of under $5,000, if the threshold was, indeed, $5,000, that, you know, any one disposal of property at the $4,000 level in and of itself not a big expenditure of money, but that in the aggregate over the course of time and over the course of a particular recipient's grant that that could add up to a substantial amount of money that property is disposed of and the grantee reaps the proceeds from that. And if they're not subject to these property standards, LSC does not recoup any of that money in any sort of proportional manner and that the grantee then retains those proceeds.

In the aggregate it's a lot of money, not that it's a lot of money in any one case. That was the interest that the staff draft was trying to uphold.

MR. BRODERICK: Is Mr. Richardson is here? I know he's back. I'm going to ask him to come up, if he would, on this issue and articulate perhaps a different view than the one you've articulated. But before he does that, I want to ask you has anyone been able to quantify how much money we're talking about? If we went from 1,000 to 5,000 on this recoupment issue, if we change the definition, does anyone have a sense of how much money we're talking about, or can someone give us a range?

MS. CONDRAY: That I do not.

MR. RICHARDSON: No one in my office has studied it at this point, because it's -- over the vast majority of grantees we don't have that type of information, other than what we currently use, which is the $1,000.

MR. BRODERICK: Mr. Richardson, if you could just tell us -- I understand the staff for whom you speak here today have a different view of this 5,000, $1,000 issue, and your view is that you remain at a thousand dollars.

I wonder if you can briefly tell us why you feel that way and why changing it to $5,000 would be unwise in your view.

MR. RICHARDSON: Okay. Let me first of all state that -- bring it down to a level that I understand as far as an accountant. That's the way I look at it. And trying to look at how the property is reported for insurance purposes and then your financial statements.

Under a thousand-dollar guideline, any piece of equipment that is purchased -- for instance, take a random office. If we have a desk in that office that's $1500 and you have a computer that's $2500 and you have a color laser printer, which is very popular for reports and so forth, $3500, you would have under a thousand-dollar capitalization approach. You would have $7,500 in assets that you would report on your financial statements, and then you would depreciate those over the expected life.

The corporation uses a five-year term for copiers and computers and for furniture, such as a desk, we use 10 years, and that's sort of the standard in the industry at this point.

However, if you go on and have other equipment in the office like bookcases, lateral files and you add to that and you think about how much equipment is in an office, if you adopt the $5,000 level, if somebody asked you how much capital equipment do you have in the office, the answer is zero, because you're looking at anything purchased under $5,000 as a supply type item would not fall under the parameters of the property management manual.

So my concern would be that you'd lose that control element there, the reporting element in the financial statement, and then -- the records are going to have to be kept one way or other because of insurance reasons. If, for instance, there's a disaster -- we've had some flooding recently -- we provide financial statements to support our insurance application, and we match our equipment to that.

If there is a flood or something happens, those records are going to have to be kept, so that the insurance can cover the loss. So it may -- I don't know what additional burden it would have upon the grantees, because they're going to have to keep the records anyway.

MR. BRODERICK: Any questions of Mr. Richardson or Mattie on this 1,000, $5,000 issue?

MS. BATTLE: I have several. First, you raised a depreciation issue in a not-for-profit environment. I'm trying to understand the significance of depreciating equipment first -- first of all, because it's a figment that you use for tax purposes, isn't it? So what -- you're depreciating.

And, secondly, I guess, would be items that you mentioned. If it's a record-keeping issue, I really agree that we should keep records, because if there is a loss, you need to be able to quantify what the loss is. So I don't disagree with the need to keep records.

But, fundamentally, to distinguish between one and five, based on a depreciation figment -- record keeping I agree with. Depreciation I'm not sure I understand, so help me understand how that plays into this.

MR. RICHARDSON: Well, under any non-profit accounting environment when you're buying equipment, you are going to depreciate them over an expected life.

MS. BATTLE: And that's for determining an asset is what you're saying? Really that's for purposes of determining what your assets are in the --

MR. RICHARDSON: That's correct.

MS. BATTLE: -- not for profit. Okay. Now, one point -- when Mattie initially talked about where we started out and how we started out with this $1,000 as the figure that we used when the manual was initially done in 1981 was by using the standard that was set for how to account for property by the feds in the A110 circular.

And I understand in a footnote two on page two of her memo to us that in contrast the current version of that A110 defines equipment as non-expendable personal property with a useful life of more than one year and a unit acquisition cost of $5,000 or more.

So what I'm trying to determine is given the same concerns about federal dollars that everyone would have in circular A110 and for accounting for it and for keeping up with it if A110 has moved from 1981 to the year 2001 to $5,000 why do we have a significantly different interest in how we would account for it?

MR. RICHARDSON: It's mainly for accountability. I will tell you this. The corporation uses $500. We have not moved from that. As a matter of fact, when I came in in 1987 they were using $50. Their cap was in any calculator that they bought for $75.

We have moved to 500 and we have -- in the last two years, internally we've looked at changing that to a thousand. But when you look at the standard office that you would be setting up, basically, you would have no capital purchases, because everything that we would purchase outside of a major Xerox machine or copier costs under $5,000 per unit; a desk. I mean, the most expensive desk that we've ever bought is like $2500. That would be a supply.

MS. BATTLE: Sure. And, I guess, the other issue I have of concern with that, given that the amount of technology we have in equipment, if you buy a color printer today you spend a thousand dollars on it. Within three weeks there's some new technology out there. Attempting to recoup some differential on that and figure out a value and make sure the LSC gets its $2.00 back on what it's worth, you know, five months from now, adds an administrative burden.

And, I guess, the concern I'm trying to determine is of the value that would be ultimately to us. Certainly, in today's market $5,000 is a substantial purchase for which over a life of five years or 10 years, by the time you get rid of it, it may have some significant value.

But attempting to value something that you purchased for $1500 when it's time to dispose of it sometime later, come up with some sort of fair-market value for it when it's a technology-based piece of equipment I think -- I'm starting to have some concern about weighing the administrative burden versus the benefit to LSC. That's a piece of where I am, at least, in seeing how this would play out.

MS. CONDRAY: If I may just point out, although I think your points are well taken, one, just so that we're all on the same page that we're talking about the disposal of real property at the point the grantee ceases to be an LSC grantee. So that's not an everyday occurrence.

MS. BATTLE: Sure.

MS. CONDRAY: So that's one thing. And I would also remind everybody that we're talking about -- since we're talking about the fair-market value at the time of disposal, if something -- if you -- leaving it at a thousand dollars that is also a thousand dollars at the time of disposal. So if you purchase something for 1500, at the time of disposal it had a market value of less than 1500 it wouldn't even fall under these categories.

Although I certainly -- I mean, I think the point you make about determining the fair-market value of technology is a good one. Of course, regardless of where you set the threshold you have to make that determination.

MS. BATTLE: Sure.

MS. CONDRAY: It just may be where the number of items that would fall under the purview with 5,000 is obviously going to be -- is going to be different than the number of items who have a fair-market value of less than a thousand.

MR. BRODERICK: To go back, if I can --

MS. CONDRAY: But you have to make the valuation choice regardless.

MR. RICHARDSON: In effect, when we dispose of equipment -- for instance, you have a piece of equipment that's $2,000 and you're going to depreciate over five years and after two years you determine that, okay, this is obsolete, the book value of that is $1200. But when you look on the Internet and you look at the fair value, we look at it and say, okay, the fair value is $300 because of obsolesce, replacement, bigger and better equipment, we then write that particular piece of equipment off, using both depreciation and now fair-market value to justify the exclusion of it from financial records. So that's still available.

MS. BATTLE: That part of it is helpful. And one final issue in section seven, you know, we discussed the fact that we have a practice of returning to a service area, particularly, under the circumstances that you just mentioned. If you're really only talking about disposal when you've got a grantee that's going -- no longer going to be a grantee, I would suspect that under those circumstances the need is probably greater for the start-up grantee to have funds available for property purchases and a lot of the other things that it's going to need.

If we, in fact, have a policy of doing that wherever possible, Mr. Chairman, I think it does us well to put that policy and to use the wherever possible language right here, so that when all the players are gone, the institutional memory is right here in the document.

MR. BRODERICK: Let me ask. On that issue I just want to ask, Mattie, if you have any language --

MS. CONDRAY: Yes.

MR. BRODERICK: -- since you said earlier you might agree that we should reduce that to writing? Do you have any proposed language you might read to us?

MS. CONDRAY: Indeed, I do. This would be added to both six and seven. In six it would come under section "F." The first paragraph of section "F" would be renumbered F1, and the sub-paragraphs one, two, and three and four would become "A," "B," "C," and "D." And I would add a paragraph two to "F" and a paragraph two to section 7C. Their complementary sections on real and personal property.

"Funds returned to LSC upon the disposition of property under this section shall be used by LSC to make emergency or other special grants to recipients. Wherever possible such grants shall be made to the same service area the return funds originally supported."

MS. BATTLE: That meets with the concern that I have for reducing this very good policy to writing somewhere that everybody can find it.

MR. BRODERICK: I think --

MS. CONDRAY: And, I think, that's in accordance with this whole exercise of trying to put all of that information in one place.

MR. BRODERICK: Yes. We'll get back to that, but, I think, that language will be very helpful. Mr. President.

MR. ERLENBORN: Thank you, Mr. Chairman. And I'm just reminded of some meetings I've attended recently where semantics became a very important thing.

MR. BRODERICK: I can't imagine what meetings those would be.

MR. ERLENBORN: I'm not saying. But as I recall from the way you read that, you said, "Whenever possible." I think you might look at the use of that word. That might mean it's physically you're able to transfer the money. That's possible. You see then you can make that possible. So I would really encourage you to consult a semantist or your dictionary and see if you can't find a word that might be better to that situation.

MS. CONDRAY: Do you have a suggestion?

MR. BRODERICK: Mr. President, what if we said it shall be returned absent a compelling interest? We could try that. I understand. But for the moment I think it was a good first effort and may carry the day, but, I think, the president has a good point. I wanted to recognize Maria Luisa unless -- maybe I should recognize a committee member first, Mr. Askew, and then I will come to you.

MR. ASKEW: Just clarification, Mattie, to make sure I've got this straight. The $1,000 definition is only going to apply in section six to 6F when a grantee has ceased to be an LSC grantee? It doesn't apply to any of the circumstances above where an ongoing grantee wants to dispose of property, wants to transfer property? That $1,000 definition does not apply or affect that? Is that what you said?

MS. CONDRAY: Well, it would but I don't think it really has a very harsh, practical impact. For example, during the term of an LSC grantor contract, recipients may dispose of personal items -- okay -- property leased in accordance with the terms of the lease. Yes, that would -- the $1,000 threshold would cover that but -- at least in a lease -- the terms of the lease are going to dictate either way.

But looking at "C," during the terms of LSC grantor contract, recipients may dispose of items of personal property purchased with LSC funds by --" and there's a list of things they can do.

MR. ASKEW: Right.

MS. CONDRAY: That $1,000 threshold would apply to those things, but I don't think the options available are particularly onerous or troublesome. That the threshold would make a difference one way or the other.

MR. BRODERICK: I just want to ask because I wasn't clear, and maybe I misunderstand this. But LaVeeda had asked a question earlier, which was if $5,000 is good enough for the rest of the federal government why are we holding ourselves to a standard that the defense department doesn't hold them self to? I just -- maybe someone could explain that.

Why are we being such a wonderful citizen when the federal government across the board is not mandated to reach that standard? I'm having trouble with that. Could somebody -- maybe Mr. Richardson address that.

MR. RICHARDSON: I look at it on a basis of materiality. I mean, a $4,000 purchase to us as far as equipment and reporting it in the financial records a number of those could be a significant item. If you're transferring all of that to a supply type item, you're immediately writing it off. You're not accounting for it through the capital-purchases area, and you have other reporting mechanisms, such as your financial records and insurance that you've got to maintain the records in anyway.

So we have chosen to merge the two so that we don't have to keep two sets of books on this. One that is capital assets; one that we are keeping on the books, and then other assets that are in the corporation that we don't report for financial-statement purposes.

MR. BRODERICK: Just to go back to my broader question. I mean, I hear what you're saying, but why are we holding the corporation and its grantees to a different standard than is mandated across the board by the federal government? I understand what you're saying, but I don't understand why we're unique.

MR. ASKEW: May I take a shot at that?

MR. BRODERICK: Sure.

MR. ASKEW: And I'm looking forward to Mattie's memo to us, because there is someplace in the memo where

Mattie reflected, I think, the opinion of compliance and enforcement that -- and I was looking for the exact sentence, but it really is a policy choice.

MR. RICHARDSON: It is. It's page 32.

MR. ASKEW: Page 32.

MR. RICHARDSON: It's mentioned in two places. I'm sorry. Twenty-eight and then again on 29. There is one key sentence.

MS. CONDRAY: In the draft notice regarding the management manual, I guess I would look towards page seven of that -- the memo's internal pagination, page 27 in the book generally -- that's one place -- there's general discussion there, and then there are discussions on a couple of other pages where this came up.

Are you looking for the sentence, "Well, any single purchase in this range the difference between a thousand and 5,000"?

MR. ASKEW: Right.

MS. CONDRAY: "Any single purchase in this range does not represent a significant amount of LSC dollars. The aggregation of these purchases does. In the absence of standards for the acquisition, use, and disposal of property under such circumstances, LSC would not be able to insure accountability for a significant proportion of its funds. In particular, LSC is concerned that the definitional threshold was raised to $5,000.

Almost all property dispositions, except for dispositions of real property, would not longer be subject to any standards. Under such circumstances, LSC would lose its ability to exercise effective oversight over the use of these funds. Accordingly, LSC is retaining the proposed definitional threshold of $1,000 for property in the final -- "

MS. BATTLE: May I ask a question to see if that --

MS. CONDRAY: I think that encapsulates the concerns of OCE.

MR. ASKEW: But that's true of every federal agency? I mean, that segment could apply to every federal agency.

MS. CONDRAY: Well, this is true.

MR. ASKEW: I thought there was a statement in here that tried to distinguish LSC from other federal agencies to the extent of why we needed a thousand versus 5,000. I can't find it in here, but it's essentially that we have reached the conclusion that because of the kind of agency that we are and because of the amount of funds that we're dealing with that we should have a lower standard, and that's really the policy choice that we're making here, as opposed to this language, which is very good, but would apply to everybody.

MS. CONDRAY: That's true. And part of it is also because there's the $1,000 -- as Dave alluded to -- in the --

MR. ASKEW: Audit guide.

MS. CONDRAY: -- audit guide. And then having those be equivalent. I will also note that A110 -- and this, I think, points -- speaks to both sides of the argument. It's A110 permits --

MS. BATTLE: Yeah, that's right.

MS. CONDRAY: -- agencies to set a different threshold, although nobody has. You know, I'm probably not the best person to sit here and make this argument on this paper. But the only other thing I will note for the purpose of the discussion is I think we are well served by knowing what the federal government standard is and taking that into account.

MS. BATTLE: We are not required to follow it.

MS. CONDRAY: But we are not required to follow it, and there may be any number of times and places where we want to distinguish ourselves and take the flexibility we have and run with it and be careful about, you know, what we buy with that apple if we say we're dictated by federal policy.

But that said, I think, there is an argument to be made looking at being guided by federal policy in this case, which is why I don't have a particularly good answer to your global question.

MR. BRODERICK: I was just curious, you know, given the amount of money that we distribute annually. If we were using a $5,000 threshold, as opposed to a $1,000 threshold -- talking about recoupment here -- are we talking about losing immediate control over $500,000 or five-million dollars or 50-million dollars? I'm just trying to get some range of how much we're talking about in this debate. Does someone have an educated --

MR. RICHARDSON: I do not have the records to indicate how much, for instance, is being spent by each of the grantees or a total of the grantees as far as capital equipment and supplies.

MR. ASKEW: May I offer this. My guess is up until today it's been a very small amount of money, because it only applies in those situations -- at least the recoupment only applies to those situations where a grantee has ceased to become a grantee and is disposing of property and it is over the threshold and, therefore, we're recouping.

So that -- and so over the last 10 years that's been very few. We haven't had many grantees in that situation. However, as we go forward, we may see more because of merger consolidation; grantees going out of business having property they have to deal with in terms of whether they're going to transfer it to the new entity, whether they're going to use it for some other purpose.

So, I think, this may be an issue going into the future, much more than it's been in the past. But my guess would be it's been a very small amount of money over the last 10 years, if I'm understanding this policy correctly.

MS. CONDRAY: I don't know for a fact, because I don't have the statistics either. I can tell you from our intra-staff discussions where we kind of came up with this. It was my impression from the compliance shop that -- because our grantees -- with the exception of -- I mean, our grantees make some large purchases, you know, big-ticket items; real estate being the biggest of the ticket items obviously but, occasionally, some equipment, you know, really big expensive equipment, but that a lot of our grantees property acquisitions are relatively small acquisitions.

They're not buying buses. They're not buying tanks. They're not buying jet fighters. And so that the majority of their dispositions are small-item dispositions. And so the fear for the compliance office was that, in fact, dropping the threshold -- a fair-market-value threshold at disposition from $5,000 to $1,000, although I don't have a dollar figure about what that would come to, would, in fact, cover a large number of the dispositions that actually happened. That more of our dispositions -- our grantees' dispositions are property of under $5,000 than they are of over $5,000.

MR. BRODERICK: I just want to -- Maria Luisa I know has been patient, waiting to ask some questions.

MS. MERCADO: No. Some of the points have been covered by the other board members, but I still want to emphasize that continually the policy of this board for the last almost eight years has been in making sure that whatever policies and guidelines that we set for our grantees nationwide are not such that they encumber and create more hurdles for them, you know, to deal with on a day-to-day basis.

And so my bottom line like our chairman here is if the minimum threshold for all the other federal agencies, regardless of how much money they get, whether they get a hundred times more money than we get or less, is a minimum threshold of $5,000 that what is the overriding need or concern of LSC to do that. To say that because the audit guide is a thousand dollars, then you revise the audit guide to comply with the A110 circular.

I mean, I don't know why we would think that our grantees are going to be more thieves than the Department of Defense or some other agency that gets a whole lot more money than we get in their requirement. And it would seem that because we are going to have a greater amount of grantees that probably will fall under this, because of reconfigurration, because a lot of them won't be able to take in all the equipment or property that they have, you know, the different areas that they're configuring to, then we need to set some standards that are not onerous on our grantees and yet still comply within the federal guidelines that we are, in fact, complying with A110 and that we are not out there squandering money of our taxpayers and Congress out there.

MS. BATTLE: If I can, Mr. Chairman.

MR. BRODERICK: Yes.

MS. BATTLE: I'd like to move that we reconsider the $1,000 figure on, I think, it's page 18 under property and move it to conform to the A110 circular present value of $5,000. And that that be reverberated wherever appropriate throughout this particular property manual.

MR. BRODERICK: Which would include the audit guide?

MS. BATTLE: Yes.

MR. BRODERICK: Is there a second to that motion?

MR. ASKEW: Second.

MR. BRODERICK: Any further discussion on it?

(No response.)

MR. BRODERICK: If not, all those on this committee in favor of that motion please say aye.

COMMITTEE MEMBERS: Aye.

MR. BRODERICK: All those opposed.

(No response.)

MR. BRODERICK: The motion carries. You were still an eloquent advocate, Mr. Richardson. Don't take it personally.

MR. RICHARDSON: Not a problem.

MS. CONDRAY: If I may -- this is going back to our semantics' issue. Would you prefer the phrase "to the maximum extent feasible"? Do you think feasible is a better word than possible?

MR. ASKEW: I don't know. I guess we have to look at thesaurus first and the dictionary.

MR. BRODERICK: Can I suggest -- could I suggest this. Of course, I made a suggestion on another task force and it didn't go anywhere either. Might we say "will generally be returned"?

MS. CONDRAY: Excuse me. I'm sorry. Will generally --

MR. BRODERICK: You said wherever possible. Why don't we just say "will generally be returned." Does that word sufficiently --

MR. ERLENBORN: Good word.

MS. BATTLE: That's what we need --

MR. BRODERICK: I didn't get up at 4:30 in the morning for nothing, although it often appears that way I admit.

MR. ASKEW: John, let me -- before we're about to conclude this, let me give an example and see if Mattie agrees with me that this is the way this would operate in terms of sale of real estate.

A grantee purchased a building in 1979 for $40,000 and most of these buildings were purchased back during that time in the late '70s because that's when programs had fund balances and the corporation was actively encouraging grantees to purchase buildings where they could, and so a lot of these buildings bought back then and say that building today has a fair-market value of $100,000, which would not be extraordinarily difficult to imagine.

Now, that program that bought that building is part of a consolidation going on within the state. And the new program decides, either we don't need an office in that city or we need a smaller office in that city, so, therefore, we need to sell that building. Under the policy -- and another fact. When the building was bought in 1979, it was with 100-percent LSC funds, because that's all the money they had back then, and that was typical of most of our grantees. It was all the money they had.

So under the policy the way it's written today, that entire $100,000 sale -- the 40,000 initial investment plus the 60,000 profit -- comes back to LSC for distribution however it sees fit, although it has to remain in the grant fund. And what we're saying is to the extent possible we'll give that money back to that service area, but we're not committing to that.

Now, is that correct the way I've stated it so far?

MS. CONDRAY: Well, I will make one correction to that, which is actually if the recipient is ceasing to receive LSC funding because the recipient has merged with or succeeded by another recipient -- and I'm looking at section 7D, which is actually on the next page.

If the cessation of funds is because of a merger or a succession, then the recipient may transfer the property to the merger or successor recipient provided that the recipient and the merger-successor recipient execute a successor-in-interest agreement approved by LSC.

So in those special situations we actually have a special situation to account for that. In the general situation where it was -- somebody was just ceasing -- they lose the next round of competition, in that case, yes. What would happen would be they would cease to become an LSC grantee. They could dispose of the property in one of these three ways, whether it's selling it or retaining title or transferring title provided that LSC was reimbursed in a proportional amount to the amount of the original LSC investment.

This is looking for federal guidance what happens in any other federal property disposition using federal grant funds. The agency is reimbursed in a proportional manner, and we're going on with our next sentence. To immortalize what our current process is to prefer to funnel those funds back to that service area where possible or generally.

MR. ASKEW: Okay. The first situation is the one I'm concerned about, and that's where there's a merger, a successor-in-interest agreement is executed, a new grantee -- the old grantee is out of business, the new grantee now has the building through a successor-in-interest agreement, but it makes that same decision. Now that we've merged we don't need an office in Johnson City. We own a building there. It was transferred to us. We're going to sell that building. Under the manual now, they still would have to return that $100,000 to LSC.

MS. CONDRAY: What would happen then is if they are a current LSC recipient -- right -- that would be covered by 7A and 7B. 7A, "During the term of an LSC contract or grant, recipients may dispose of real property acquired with LSC funds by selling the property or by transferring another property -- or by transferring the property. And during -- " under "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 according to the requirements of 45CFR part 1630.12 and 45CFR Section 1628.3, and those are the cost regs and the excess-fund-balance regulations.

So they can keep the money in accordance with the regulatory scheme that is going to apply anyway.

MR. ASKEW: Okay, great. Thank you.

MR. BRODERICK: With respect to the issues we that talked about, I indicated -- well, let me say this. I don't know whether there are additional questions beyond the areas that have been identified, some of which we haven't directly dealt with yet. But if there are, I would welcome you to ask them. Mattie had summarized what was in controversy. When we last met, I think, she accurately summarized it, but if there are additional questions before we go back and resolve those issues, now would be a good time to address them.

MR. ASKEW: No. I had questions on the original conference call -- I was on my conference in June -- about the aggregate purchasing, and I thought it needed clarification. I think it has been clarified, although the language in the PAM hasn't been changed, but the narrative documents have clarified that and I'm satisfied with that. And that was the only other issue I had.

MS. BATTLE: That was 3A for using more than $10,000?

MS. CONDRAY: Yes, that would be section 3A.

MR. BRODERICK: It would seem to me that what Mattie described, which is the current policy, makes a good deal of sense. $10,000 aggregate purchases do not require pre-approval.

MS. CONDRAY: That's correct.

MR. BRODERICK: But they are subject to the same competitive bidding and the competitive bidding process is pretty generous it seems to me. It's not request for proposals from three different parties. It's looking at the Internet or at catalogues. It lends itself to a user-friendly environment.

MS. CONDRAY: We hope so.

MR. BRODERICK: But -- are there any other questions on any other areas of the manual?

(No response.)

MR. BRODERICK: If there are not, I don't know if there's anybody sitting out there who would like to come to the table and just address the issues that we've been talking about or any issues on this manual that we haven't been talking about. So if you could just identify yourself for the record.

MS. PERLE: I'm Linda Perle from -- representing NLADA from the Center to Promote Social Policy. I appreciate the committee's decision to change the threshold level from a thousand dollars to $5,000. I think that addresses a number of the concerns that we had, because it does then apply many of these things, in addition to disposal, the questions to the number -- to far few purchases and disposal situations.

I still do have some concern about the real property -- the disposal of real property in a situation where the LSC -- the former recipient who has purchased property, which over, you know -- at an earlier period of time, which over a long period of time has increased in value and then is forced to give up basically its entire value to the corporation, because they used LSC funds initially.

I mean, I think that Mattie is right that the rules with respect to those that are merged or consolidated and become part of another LSC recipient the PAM takes care of that.

MR. BRODERICK: So you would -- I'm sorry. In a situation where a building was acquired and 30 percent of it was LSC money and the building cost $100,000 and then eight years later the building is worth $300,000, you would say Legal Services should get back $30,000. Why would you say that?

MS. PERLE: I think that, you know -- I mean, every time I see this notion of investment I keep thinking -- LSC thinks it's the World Bank. I see that LSC has put in certain amounts of resources, which are then used in the community, and I guess I have some trouble with their notion that LSC has made an investment and expects to get a return on their investment beyond the services that are provided in the community at the time that the grants are made.

MR. BRODERICK: My thought on that is that -- and I'd be happy to open it up to discussion here, because I think we ought to talk about that. I mean, I think that would be a very hard issue to sell, you know, to Congress.

I mean, we're taking taxpayer dollars, using it for public purposes, and because the value of those dollars has inflated over time because of appreciation the dollars come back to the Legal Services Corporation but are to be used for the purpose of the Legal Corporation. It's not as if, you know, they're coming back and being distributed in bonuses. I mean, it's going to a big pot, which is being used to provide legal services around the United States.

I think, personally, it would be a position that would be near impossible to justify if we were on Capitol Hill and someone was asking us. Tell us again why we, having invested $30,000, should not see a dime of appreciation, which we could then reuse in the mission of the Corporation. I mean, I understand your point of view, but I just think from a practical, political point of view it would be a poison pill.

MS. PERLE: You know, these resources are going to be still used in the Legal Sservices community and the state justice community that is the focus of so much of our state planning efforts. I just think that to a certain extent that forcing those programs that decide that they're going to become a different part of the state justice community -- not an LSC funded -- and it's not just those that lose the competition. There are many programs that have decided for a variety of reasons that they don't want to be LSC grantees. They have other resources that they can use.

MR. BRODERICK: Let me just -- I know LaVeeda -- I mean, Maria had a question, but I want to ask committee members first if they have question or comment.

MS. BATTLE: I just wanted to test the application of this disposal issue a little bit more by asking this question. Let's say you buy a building, and at the time you buy it, it's a fixer upper, and the program has non-LSC funds that they get through some local grant to help them to really fix that building up, to help them to even expand the building, redesign it, so that it's, you know, now prime office space.

When it comes time, if that grantee is no longer a recipient of LSC to dispose of it, do the enhancements -- are the enhancements taken into account in determining the proportionate value that should go back to LSC? If the initial purchase -- let's just use an example. The initial purchase is made 100 percent with LSC funds. All of the upgrades to the property are made with local United Way funds. What happens then?

MS. PERLE: And that is, in fact, a situation that I'm aware of where a program put in $25,000 of LSC funds and $100,000 of non-LSC funds to renovate the property.

MS. BATTLE: To renovate a property. I'm just --

MS. CONDRAY: Under what's written here, which parallels what is A110 and found throughout the federal property, it's the percentage of the current fair-market value of the property attributable to the federal participation in the project.

So if this was a federal grant under A110 as proposed in the PAM, the answer would be if you originally acquired the building using 100 percent of LSC funds then it's a hundred percent of LSC proposal. I mean, I can see -- but I can also make the argument that if you didn't have our $25,000 in the first place you wouldn't have had the building.

MS. BATTLE: Oh, I'm not -- I'm trying to understand --

MS. CONDRAY: In this particular interest what we're proposing is exactly what is used in A110 and throughout the federal government. So I might pose back the global question that the chair posed on the $5,000, you know, the question of if everybody else is doing it one way why do we have to do it differently. Can we articulate a reason.

So I suppose I might ask back philosophically if everyone else in the federal government recoups proportionally why are our funds so different that we distinctly don't want to do that. We don't want to get the benefit of that to continue our mission.

I also might point out, although some providers -- former recipients will certainly stay in the Legal Services fold, there's nothing to guarantee that that happens, and there's a concern that -- take the example of the $30,000 initial investment, which turns into $90,000. If the former grantee now turns around and engages in restricted activities, I think critics could claim that we're subsidizing that activity.

MS. BATTLE: Let me just read three, and you can tell me whether or not my example has any different application, based on the way that I read. Three under section 7C says, "The recipient may sell the property and compensate LSC for the 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 -- selling and fix ups --"

MS. CONDRAY: I stand corrected. I stand corrected.

MS. BATTLE: So in my example the fix-up expenses would be deducted out; is that correct?

MS. CONDRAY: You're right. I misread this, and I misunderstood and I stand corrected.

MS. PERLE: Fix-up expenses I think of as expenses that you incur to sell.

MS. BATTLE: That's really the question I'm asking. I'm trying to determine are fix-up expenses --

MS. CONDRAY: That -- unfortunately -- to the extent that this mirrors things we're already looking at with the proceeds of sale of real property I guess I would want to ask -- currently, the property manual does not account for real property. We already do disposition of real-property sales.

MR. BRODERICK: I assume --

MS. CONDRAY: I wish -- do you know the answer to this question?

MR. RICHARDSON: I know we have one circumstance that Linda is talking about that we're dealing with now.

MR. ASKEW: How many -- does anybody know how many programs in the last three or four years have we -- have not -- gone out of the business of LSC grants in which we have faced this situation? I mean, it's not more than a handful of programs, is it?

MR. RICHARDSON: I know of only one right now, and that has been some --

MR. ASKEW: Over the last three or four years how many programs have given up their LSC grants and not merged or consolidated or continued in the family in some way where this has become an issue?

MS. PERLE: I don't know the answer to that. I mean, I think there are several, and, I think, there may be some additional as a result of the ongoing reconfigurations.

MS. BATTLE: Okay. I've raised it because I think that these are ultimately, in terms of implementation, not going to be simple, straightforward kinds of issues that come up.

MR. BRODERICK: But in terms of concept -- in terms of concept -- and this isn't so far fetched, because it happened in my state in 1990 where the real estate market collapsed. The real estate market in New Hampshire in 1990 fell through the floor. So that as I understand it now if they bought a building in 1980 and Legal Services put in 50 of the $100,000 it took to buy the building and then it went up to $200,000 in value, if it had been sold at that time, we get $100,000 of the 200,000, minus, I guess, fix-up expenses.

But we don't get our original contribution back, if as a percentage of the sale price, it's lower than the actual sale price. We might lose money so to speak on the way out if the market crashed. And so conceptually that seems fair too. It seems fair on both sides to me, and I go back -- you know, Bucky raises a good point.

I don't know whether we're defining something that happens almost never. I mean, we may be arguing about something that happens so rarely. But, I think, as a matter of public policy for all the reasons that have been recited, the one that Mattie alluded to, which is you're using money potentially for restricted activities, I think it would be impossible to say to the Congress of the United States you can only lose, you can never gain.

So if the property drops, we drop too. If the property goes up, we can never ride the elevator up. It's federal tax money. It comes back into the corporation. It goes back out into the field. And it probably doesn't happen that often in any event, but I would be adverse to changing it unless there's some sort of feeling -- Edna, I think you might have had a question earlier. I didn't acknowledge. I apologize.

MS. FAIRBANKS-WILLIAMS: Oh, that was the same subject that I was going to bring up. I can't see why if it sold for a higher price why we should lose our share. I think it should come back to Legal Services and be dispensed out to somebody else. If -- as you say that the fixing-up money came from somewhere else and that is deducted and the property is sold, we should have our share.

MR. BRODERICK: Right. We don't get a piece of the fixing-up money. That's a deduct.

MS. FAIRBANKS-WILLIAMS: That's a deduction.

MR. BRODERICK: I understand. That seems logical to me.

MS. MERCADO: I guess what's not clear to me is if, in fact, the property values have gone down and you bought the building for $50,000 and now it's worth $25,000 is -- what's going to go back to the corporation is going to be the $50,000 that was originally invested or only what the current value is now?

MR. BRODERICK: If we put in $50,000 into a $100,000 building and the building is ultimately sold for $50,000, we'd get $25,000 back.

MS. MERCADO: So it would just be proportionate.

MR. BRODERICK: It would be proportional both ways, and that seems very fair. It makes great sense to us.

Unless there's further discussion on that issue -- now, that I've lost total control of this meeting -- I'd like to close that issue out, unless there's some view among the committee members that we should amend the way that currently works. I don't sense that that's the case, and so I guess I would move beyond that issue.

And I would ask if there needs to be any further discussion on the PAM or whether with the modifications as moved and passed here we are in a position as a committee to recommend its adoption by the board. And before I do that, I guess, I'd look to the table and see if there's anything further you'd like to say or add?

MS. CONDRAY: Absolutely not.

MR. BRODERICK: Linda, is there anything you would like to say or add?

MS. PERLE: I mean, there were some smaller points that were made in here that, I think, in a certain sense could be maybe dealt with by just making things parallel. The point -- let's see. Where is it?

The point about whether you can dispose of property by giving it to another non-profit that will make it parallel to the way it is in other provisions. I'm sorry. I don't have it right here. I mean, I have it in front of me. I just can't find it at the moment. And I'm just wondering whether we might have an opportunity to just go through some of those things and if we --

MS. CONDRAY: Well, I don't know, because since I don't know what you're referring to I don't know whether you're actually choosing to make a substantive change to policy that staff in this draft chose not to make.

MS. PERLE: Let me see if I can find the particular point. On the disposal of real property, we urge that LSC permit a recipient to transfer titles of real property to another non-profit serving the poor in the area after compensating LSC for its property interest. It doesn't seem like there's any reason why they shouldn't be allowed to do that.

MS. CONDRAY: Well, I guess -- I don't know why section seven -- are you talking about in the case in which they cease to become a recipient?

MS. PERLE: Yes. But why if LSC is compensated wouldn't it be permissible to transfer the title to --

MS. CONDRAY: Well, presumably, if they're transferring the title and LSC is being compensated, what they're actually doing is selling the property. And if they're selling the property, they're --

MS. PERLE: Not if they're not getting -- if they're transferring it to another entity. But my point is why wouldn't LSC -- why shouldn't that be something that they could do if LSC is getting its property interests back in the same way that they would if they were selling it? The committee doesn't -- we're not engaging the committee in this, so this isn't very fair.

MR. BRODERICK: I feel like I'm watching a soccer match.

MR. ASKEW: David Richardson made a point to me, which, I think, is valid, which is we might want to think -- and in this manual is not the time to do it probably -- but we might want to think of the implication of returning money back to the grantee and creating immediate fund balance in the grantee. It then becomes subject to the fund-balance reg. It ends up with this money going back and forth.

And maybe the way to deal with that is through the fund-balance reg in some way that if this situation occurs where we are returning money back to a grantee after the sale of property or to a new grantee after the sale of property that we don't immediately create a problem for them by giving them a large chunk of one-time money that creates a fund balance in the program that is then subject to recapture by the corporation once again.

But I don't know that we can deal with that here in the Property Management. It's a timing issue in a way, but it's just something I wanted to raise as we go through the regs possibly finding a way to deal with.

That being said, Mr. Chairman, I'd like to make a motion.

MR. BRODERICK: Yes, Mr. Askew.

MR. ASKEW: That we approve the Property Management Manual as presented with the exception of the change in the language that we discussed regarding the 1,000 versus the 5,000 and the change in the audit guide to reflect that 1,000 versus 5,000.

MS. CONDRAY: And the additional language.

MR. ASKEW: And the additional language suggested by Mattie about return of funds to a grantee wherever possible.

MR. BRODERICK: Is there a second to that motion?

MS. BATTLE: I'll second.

MR. BRODERICK: Any further discussion?

MS. BATTLE: I would just like to say once again that I think that Mattie did an excellent job of giving us the background information that we needed to be able to make an informed decision about the particular issues that we discussed last time. You did outstanding work on directing this.

MR. BRODERICK: I would share that view and I appreciate the work that's gone into it. I'd like to take a vote on the motion. All in favor signify by saying aye.

BOARD MEMBERS: Aye.

MR. BRODERICK: All those opposed.

(No response.)

MR. BRODERICK: Motion carries. Thank you, Mattie. The next item, I think, on our agenda is consider an act on the final report of the Regulations Review Task Force, and, I guess, maybe I'll ask Mattie to stay where she is, and I'll ask Victor and whomever else needs to come forward to come forward.

Victor, I guess, what I would ask either you or Mattie to do, if you can, within a minute or two is just to give us for the record a brief history of this assignment and perhaps who was on this task force and what this recommendation is about.

MS. CONDRAY: The task force was a staff task force that was asked to conduct a comprehensive review of the regulations kind of just in support of the Operations and Regulations Committee generally.

MS. BATTLE: Is there a written report?

MS. CONDRAY: Yes, that was mailed out to you separately prior to the mail out of the board meeting materials.

The task force was chaired by Vic and Randi Youells and the members of the task force were myself, John Eidleman, program counsel for the Office of Program Performance; John Meyer, acting director of the Office of Information Management; Bertram Thomas, program counsel with the Office of Compliance and Enforcement; myself; and Laurie Tarantowicz, assistant inspector general and legal counsel served as the OIG liaison to the task force.

A summary of kind of what we did and what is in front of you is we looked at all of our regulations. We tried to look at them in a big-picture way, looking at things like, okay, basic, are our regs in compliance with the statutes? Are there, you know, statutory changes that need to be included in our regulations? But bigger than that, we tried to look at how do our regulations work with one another? Are there places where our regulations affect each other that our regulations could be written in a better way? Are our regulations carrying out our policies in the way we want them to, not just the strict, statutory are we implementing our statutory requirements but do our regulations implement them in a way that we like our relationships with the grantees to work.

I think one of the areas where you see some of those bigger policy questions is the way we've tried to include issues of diversity in our regulations. So do our regulations reflect our diversity policies?

Do our regulations reflect how we actually would like -- how we actually do business, because oftentimes in the day-to-day world, things go on and business gets done and it may or may not be -- it may not exactly be in opposition to what our regulations say but that our regulations no longer reflect the way we actually do things. And it's better to have them actually reflect that in a more workable way.

Are our regulations organized in a way such that they are easily usable by recipients. So those are the big-picture items that we looked at.

Then what we did for each regulation there's kind of a snapshot of what the regulation does, when it was last amended, and what we, as the staff, saw as some of the issues that were extent about the regulations; whether there were proposed regs that had never been acted on, whether we're aware of concerns from the field or whether we're aware of concerns internally from compliance and enforcement or our program counsel, whether we have a large body of legal opinions interpreting the regulation, which tells us maybe we need to fix the regulation. So we looked at those things and touched on those issues.

And then we categorized our regulations into four broad categories. Those things which we did not think at this time really merited a lot of effort for change. Those things which the task force considered unnecessary items in our regulations and could be deleted in their entirety. I believe there's only one thing that falls into that -- one reg falling into that category. And then everything else where we thought probably could use some attention divided between -- what we saw as higher-priority items and lower-priority items.

So there's a discussion of each of these, and then the attachments got the rule-making protocol, because it's hard to talk about our regulations without knowing what our protocol is. And then the attachment "B" and "C" contain the same information. It's just presented visually differently. One of them it's tabulated by our analysis, whether we thought they were higher or lower priority; and then the other chart it's tabulated by the regulatory part. So you could go to any particular part and see what our thinking was on that issue.

In terms of action we're not actually making any recommendations that the committee specifically do anything, i.e., recommend to the board an actual identification of any subjects for rule making or setting of an actual rule-making priority list. Rather we're coming before you to present this to you and to answer any questions that you may have about it with an eye to if you're comfortable enough with accepting our staff report as a staff report that you would act on it to say we say accept this report and we recommend to the board that the board accept the report.

MR. BRODERICK: Mattie, let me ask you this. There's reference in this report to the fact that comments were solicited from LSC grant recipients and other interested parties. How was that done?

MS. CONDRAY: We published a notice in the Federal Register, announcing that this effort was underway and had an open comment period. There was one meeting prior to the release of the interim report, one face-to-face meeting with Randi and Vic with, I believe, it was Linda Perle and Allan Houseman. Plus, they have in the past provided us some really detailed written materials on some of the things that they'd like to see. So that was in there.

We also as a staff from the staff point of view encouraged the members of the task force to the extent that they dealt with members of the field in an informal basis, you know, informally gather information from the people who maybe didn't want to say something on paper but wanted to say something privately.

And, internally, we also gathered things, you know, issues come up, I got to say, over the last several months as other people within the office of legal affairs were working on legal opinions. Every now and then they'd come down to me and say, "You know, I was working on this legal opinion, and this made me think this about 'X' regulation." And my response was always, "Send me an E-mail, and it's going in that file," so that we can either account for it in here, if it was a big enough item, and then for items that are really detailed oriented. I've got a file and at the point that the board decides to engage in rule making on any number -- on any of these particular issues, we have the kind of back-up supporting file.

MR. BRODERICK: Let me ask you two brief questions. They're both very general. Would the areas -- and I think there were nine areas here that were identified as higher priority -- would that have been essentially, although not in every case I realize, but essentially the unanimous view of the task-force members? Was it a very strong consensus on these recommendations in terms of prioritizing?

MS. CONDRAY: Yes. There's only one place where there was not consensus, and that was on 1628, and there's a footnote in the text, noting the dissenting opinion of the vice-president for programs.

MR. BRODERICK: And I'm going to ask you the same question with respect to comments received from LSC recipients or other interested parties. And I know nothing is a hundred percent, but would your answer be essentially the same that the areas of priority you have identified or the task force has identified would be largely shared by those comments received from recipients and other interested parties, or was there some measure of divergence with you?

MR. FORTUNO: I think we would each have trouble answering that question just because this was -- a fair amount of this was a staff initiative, and it was thought that it would be helpful to get some input from the public. It wasn't a very highly structured system, so it's -- while we did get input, I think it's best characterized as informal.

So I don't know that we are able to say in each of the categories that we make a recommendation that that is --

that recommendation is also shared by the field or members of the public. I think it would be -- I think it's beyond us to say that. I don't think we can. I don't mean to suggest that there was conflict. I just think it wasn't that open a process and it wasn't that formal and structured a process.

MR. BRODERICK: So what you are really doing is asking us to accept this task force report, pass it along to the board for whatever further action the board may wish to take?

MR. FORTUNO: And it is simply the reflections and recommendations of LSC -- several LSC staff members, who gave this some time and some thought and I'd like to think solicited some input from others outside the organization who had some valuable input, but it is a staff recommendation.

MS. CONDRAY: I would also say that I think to the extent that we are aware of issues from the field I think we try to fairly mention those throughout the report, although I don't know -- I agree that I don't know that we would feel comfortable agreeing -- saying -- putting words in the mouths of the field about prioritization, as opposed to concerns of out there with particular regs.

MR. BRODERICK: I hear you. Now, let me ask you -- first of all, do any members of the committee have any questions and then other members of the board? Questions, comments or --

MR. ASKEW: I have a comment, not a question. From reading this, it appears to me that staff did what we asked them to do, and the question for me is what do we do with this from here. And what I would suggest that we do is that we schedule a discussion of this for our next committee meeting, assuming we meet again in November.

And between now and then we ask the staff to circulate it widely to seek reactions, comments, suggestions back to this, and we set a date for receiving those comments. It would give an opportunity to circulate those comments out to the committee so we'd have a chance to review them before the committee meeting.

That we schedule a time in November to review those comments and the staff reaction and have a full discussion of it. And then decide at that point what we're going to recommend to the board in terms of regulatory review from there, whether we want to start work on these and particular ones whatever. I'd also like to note high priority or a low priority. Because this says no action is necessary, and there's apparently --

MS. BATTLE: There's a footnote in there that describes it; a footnote in the written section --

MR. ASKEW: Oh, okay.

MS. CONDRAY: -- that talks about consolidations and mergers and whether the 25-percent fund-balance excess can be waived to allow for money to be available for start up.

MR. ASKEW: Right.

MR. BRODERICK: LaVeeda, did you have any questions or comments?

MS. BATTLE: I agree with Bucky. I think this is a very thorough, very thoughtful document. I'm just getting my copy and breezing through it as I say that, but I think certainly before we actually begin to set a -- or make recommendations to the board as to how we ought to proceed that we ought to take it through the process that Bucky suggested.

MR. BRODERICK: Any questions or comments from other board members?

MR. EAKELEY: I just had one other followup. I was pleased to receive the report too. It might be helpful to give the board or this committee some sense of -- or maybe the committee already knows it, and I'm speaking out of turn and out of sync. But it might be helpful to get a sense of how much time and effort would be involved in moving forward with each of the higher-priority items.

Are some more complicated than others to wrestle with but what would be a proposed time line for dealing with the priority items? When do you anticipate, if there were concurrence by the board and by the new board for that matter, getting to the next -- which goes along which route for development.

MS. CONDRAY: I'd be hard pressed to give you an answer off the top of my head.

MR. EAKELEY: No. I'm looking for that to be worked into coming back for the November meeting.

MS. CONDRAY: Oh, I'm sorry. Yeah. Certainly. And I will tell -- in addition to having sent this out to the board, we do have it posted to our websites and then taking the extra step of having it published in the Federal Register with a specific notice, seeking comment on it is easily done.

MS. BATTLE: And my only ditto to what Doug just said is is there anything that we did that we need to correct before we leave? If something bubbles up that, oops, you know, you didn't really -- we didn't really do this to be consistent with what we thought we were doing, then I think that that might be --

MR. EAKELEY: It would save the next board a lot of time.

MS. BATTLE: Time and effort trying to figure out what in the world we were doing to start with.

MR. BRODERICK: I want to recognize Maria.

MS. MERCADO: I know I'm the ad-hoc committee member. I think, though, I know that the task force looked at all of those, and I thought that the recommendations on them were fairly much on point. But I do believe that in the 45CFR part 1628 that I agree with our vice-president of programs. That when we look nationwide at a lot of the mergers and consolidations that there is some serious issues and, particularly, with salary, you know, and rural programs coming up to speed with urban programs.

For example, in Colorado I think they had like over 400 or 500,000 difference they would have in the budget in a year to deal with. And so that that is a real factor that we need to look out there in those regions -- I mean, in those states. So I would hope that maybe we could sort of re-look at that, you know, when we're coming back up again when we have a November meeting. Because I think that that is critical in a whole variety of different ways, but, in particular, I think in salaries more than anything else.

MR. FORTUNO: I would ask -- we're certainly happy in effect. I think we concur in the idea of publishing this for comment. Because we're short of time we'll get this out this week. The question is how long a comment period would you like?

MR. BRODERICK: Twenty-four hours.

MR. FORTUNO: That can be arranged.

MR. ASKEW: Well, the board meeting is scheduled for what? November 7th?

MR. MERCADO: No, on November 15th or something like that.

MR. FORTUNO: I think it's just before Thanksgiving. The weekend before Thanksgiving.

MR. ASKEW: So if we got comments back by the end of October or toward the end of October -- the last week in October so that we'd have a couple of weeks as a board to review those comments before we get together it would be very helpful.

MR. FORTUNO: No. Actually, what I'm talking about is how much time -- obviously, this is fairly involved, and how much time can we give the public in order for them to comment, so that we can factor that into some document that we then circulate to the report, summarizing the comments of the public.

MR. BRODERICK: Well, let me ask you. How much time do you think you'll need?

MR. FORTUNO: Actually, the question might be better directed at Linda Perle. She might give us an idea as to how much time she thinks that the field would need, and --

MS. CONDRAY: Can I ask a question. Is the committee looking for us to develop a document, summarizing the comments and providing you with the comments and a summary of them so you'd have them and our original document or are you looking for us to then perhaps if we want to change what's in here on the basis of the comments? Obviously, the latter takes longer, because then we have to reconvene everybody on the task force to digest the comments --

MR. BRODERICK: I think it would be better if you were able to distill the comments and make available comments to us. Kind of do an executive summary of the comments, but I don't think we're going to have enough time to do what you described.

MS. CONDRAY: Okay. Because, certainly, if it's a matter of getting the public comment and distilling it down and providing it, that really then is just a matter of how that you need to write all the comments you want.

MS. PERLE: I think that, you know, you send this out publicly and the members of the community can write whatever comments they wish, and we will certainly alert them to the fact that it is out there for comment, which is something that we do all the time.

In terms of having comments from NLADA, you know, we have our process, and it does take sometime to do that. So I would just say that I understand the need for you to have enough time to digest whatever comes back, and I would just say just give us as much time as you can reasonably do consistent with that need. Someone suggested the end of October. I think we could -- we'll do what we can and get it back.

I mean, there hasn't been a lot of discussion about this. I mean, we did meet and we did discuss, but we really -- I think that meeting we're really talking about only identifying those -- the low-hanging groups at that time. So we really didn't have --

MR. BRODERICK: Given the overall objective, I think, you can coordinate the time. The other thing I would ask -- and I may be asking too much -- but my memory is there were nine areas where you felt there was a higher, as opposed to a lower priority. And I wondered if somebody pushed to the next level, which is among the higher priorities, could you identify the two or three highest priorities.

I think it would be helpful for us to know that, and if not us, perhaps the next board. I think if you can give us some weight on those recommendations, it would be even more helpful. I think that would be helpful. So with that said, I think -- I want to thank you for all the effort and the task force members that went into this and look forward to -- hopefully, we look forward to receiving additional information at the next meeting.

I'd like to jump to the next agenda item, if I could. I don't think it will be a very lengthy one, and ask Victor or Mattie, whomever, to address that item on the current rule making on 45 CFR part 1626 and 14 CFR 1639.

MS. CONDRAY: Sure. I'll do that. As of the last meeting, we were -- we had the go ahead in terms of rule-making options, papers, recommendation that we move ahead with negotiated rule makings for 1626 and 1611 were approved.

We have just sent to the Federal Register a notice formally soliciting comment -- sorry -- formally soliciting participation in the working group. So what the notice does is say, hey, we've got these rule makings, we're going to have a working group, if you are interested in participating in the working group, let us know.

I do not have a date back from the Federal Register that it will appear. I expect it will happen sometime in the next week, considering that it went out earlier in the week -- earlier this week to the Federal Register.

So as soon as that is out, that has a 15-day window of saying if you want to participate let me know.

I can tell you informally that I've already gotten indications from a few people, expressing interest. So I've kind of got a little file on that. Once we get the expressions of interest, then we will be sharing that information and the president in consultation with the committee chair will actually make the formal appointments to the working group, bearing in mind that appointments of organizations are the appointments of the organization, and then it's the organization's responsibility and right to pick who the specific person is.

And then once we do that and get a facilitator on board, then we'll schedule a meeting and hit the ground running in those two. So that's where we are on that.

In terms of 1639 the amendments to the Welfare Reform regulation to account for Valasquez the rule-making options paper has been approved, which proposed going ahead to make those changes on a notice-and-comment-only basis. It was a simple enough change that we weren't expecting that we needed or should go through the expense or time of a negotiated rule making on it.

Having received that approval, we will begin to work on a draft of an OSA proposed rule making. I would have every expectation that that draft will be ready for the committee to look at at the next board meeting.

MR. BRODERICK: Thank you. Any questions or comments?

(No response.)

MR. BRODERICK: The next agenda item consider and act on other business. Is there any other business to consider and act on?

(No response.)

MR. BRODERICK: Apparently not. And the last item is public comment. Is there anyone who would like to make any public comment?

(No response.)

MR. BRODERICK: If not, I would entertain a motion to adjourn.

MS. BATTLE: So moved.

MR. ASKEW: Second.

MR. BRODERICK: All those in favor.

BOARD MEMBERS: Aye.

MR. BRODERICK: The committee is adjourned. Thank you.

(Whereupon, at 3:55 p.m., the above-entitled meeting was adjourned.)

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