

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS

OPERATIONS AND REGULATIONS COMMITTEE

Friday, June 29, 2001

2:20 p.m.

Sheraton Harborside Portsmouth  
250 Market Street  
Portsmouth, New Hampshire

COMMITTEE MEMBERS PRESENT:

John T. Broderick, Jr., Chair  
Hulett "Bucky" Askew (*via telephone*)  
LaVeeda Morgan Battle  
Douglas S. Eakeley (*ex-officio*)

BOARD MEMBERS PRESENT:

John N. Erlenborn  
Edna Fairbanks-Williams  
F. William McCalpin  
Maria Luisa Mercado  
Ernestine P. Watlington

STAFF AND PUBLIC PRESENT:

John McKay, President  
Randi Youells, Vice President for Programs  
Mattie Condray, Senior Assistant General Counsel

## STAFF AND PUBLIC PRESENT (CONT'D):

Victor Fortuno, Vice President for Legal Affairs, General  
Counsel & Corporate Secretary

Laurie Tarantowicz, Assistant Inspector General & Legal  
Counsel

Elizabeth Cushing, Communications Specialist & Board Liaison

John C. Eidleman, Program Counsel III

Linda Perle, National Legal Aid & Defender Association  
Gerry  
Singsen, National Legal Aid & Defender Association

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## P R O C E E D I N G S

2 CHAIR BRODERICK: Let's start with the Ops & Regs  
3 Committee meeting, and the first item on the agenda is the  
4 approval of the agenda.

5 All those in favor.

6 (Chorus of ayes.)

7 CHAIR BRODERICK: All those opposed.

8 (No response.)

9 CHAIR BRODERICK: The agenda is approved.

10 The second item is the approval of the minutes of  
11 the Committee's meeting on November 10th, which is in the  
12 packet. I have had a chance to review them. I don't know  
13 whether you have. I assume you have.

14 And if someone is prepared to make a motion to  
15 accept them, that would be appreciated.

16 M O T I O N

17 MS. BATTLE: I move we adopt the minutes as  
18 written.

19 MR. ASKEW: I'll second that.

20 CHAIR BRODERICK: All right. All those in favor.

21 (Chorus of ayes.)

1 CHAIR BRODERICK: Motion passes.

2 The third item on the agenda is consider and act on  
3 draft final Property Acquisition and Management Manual,  
4 affectionately known as PAMM. And what I would like to do is  
5 to ask Mattie Condray and Victor, if he chooses to, to come  
6 to the table.

7 And I think I'll have Elizabeth move the phone, but  
8 before I do that, what I would like Mattie to do is to give  
9 us a little and brief history of how we got to where we are  
10 today, and then we'll take the next step beyond that. But  
11 obviously if any committee member would like to ask any  
12 questions of Mattie during her brief presentation on that  
13 point, feel free to do so.

14 And I think what I'll do, Bucky, is have Elizabeth  
15 move the telephone so you can hear Mattie's presentation.

16 MR. ASKEW: Great. Don't drop me, Elizabeth.

17 (Laughter.)

18 MS. CONDRAY: And if you can't hear me, I'll be  
19 astonished because no one has ever said volume was a problem  
20 for me.

21 MR. ASKEW: I hear you perfectly.

1           CHAIR BRODERICK:  Mattie, if you could kind of give  
2 us a brief history of how we got to today on this particular  
3 regulation.

4           MS. CONDRAV:  Well, the current property manual  
5 dates back to 1981 and the current revision process has been  
6 going on since about 1998.  Through the period of '98 through  
7 November of 1999, there were a lot of meetings, both formal  
8 and informal, with LSC staff, representatives of the field  
9 and the committee, working towards the development of a draft  
10 proposed property manual.

11           At the November 1999 board meeting, the committee  
12 and then the board approved for publication a proposed  
13 property manual, and that proposal was the product, as I have  
14 noted, of well over a year's worth of negotiations and  
15 discussion.

16           It actually took a little while to get published  
17 from the November board meeting, in part because of some  
18 staff turnover and then in part when I picked it up I noticed  
19 that there were just some -- in the various rewrites there  
20 were a couple of internal inconsistencies and just a couple  
21 things that needed to be taken care of to make the draft

1 really appropriate for publication. We did that.

2           That came back up for the committee's review. The  
3 committee gave its approval, and the notice of the proposed  
4 PAMM was published in the Federal Register on September -- I  
5 believe it was 28th of 2000, with a comment period.

6           We received five or six comments, both from CLASP,  
7 NLADA, as well as a handful of individual grantees. And we -  
8 - we being staff -- then put together a proposed final  
9 version, or I'll call it the draft final version, which is in  
10 your packets.

11           The draft notice itself has a fairly extensive  
12 discussion in the preamble of all of the comments we received  
13 and what we chose and what we didn't choose to take. There  
14 is also a separate publication in the board books which is,  
15 by itself, simply just a summary of the comments we received  
16 and the staff response to those comments.

17           I will say, on the whole, the comments fell into a  
18 number of types of comments. There were the comments that  
19 asked for clarification; they didn't ask us to do anything  
20 different but they asked us to clarify what we had written in  
21 the proposed version. A lot of those were well taken, and we

1 clarified the language in certain respects. A couple of  
2 places we thought the language was clear enough but we  
3 discussed the request for the clarification in the preamble.

4           And then there were comments that asked us to  
5 change what we had proposed in some way. Some of those we  
6 thought just reflected a misunderstanding of what we had  
7 originally written, so we tried to clarify that in the  
8 preamble where that was necessary.

9           Some of the comments were very well taken and  
10 raised issues that we hadn't really thought about before, or  
11 pointed out ways that perhaps we could meet the same ends  
12 that we all wanted to meet in a way that provided a little  
13 more flexibility to our grantees. And we adopted a number of  
14 those types of changes.

15           And then finally, there were just some changes that  
16 were proposed that we understand why they're being -- why the  
17 commenters were seeking change, but for various reasons,  
18 mostly due to enforcement needs and a need to -- I'll say a  
19 need to know that we are, in fact, being the proper shepherds  
20 of the federal money that we disburse, and knowing that that  
21 money is going towards the purposes for which Congress

1 appropriated it, so there were some changes that we felt, on  
2 the whole, we couldn't adopt.

3           So the proposed version that is in front of you  
4 represents staff's recommendation for what the final version  
5 of the Property Acquisition Management Manual should be. And  
6 I think that is a pretty thorough summary for a short period  
7 of time.

8           CHAIR BRODERICK: And the current rule that's in  
9 front of us in final draft form was not a part of the new  
10 protocol? That fell outside the protocol?

11           MS. CONDRAY: That's correct. It technically falls  
12 outside the protocol for two reasons, one of which is just  
13 simply timing, as the whole process started before we even  
14 had the protocol; and secondly, because technically this is  
15 not a regulation, the rulemaking protocol technically applies  
16 to our regulations as set forth in 45 CFR 1600-1644, I  
17 believe.

18           Nonetheless, to the extent that this was still in  
19 process contemporaneously with the adoption of the rulemaking  
20 protocol, in terms of publication and notification and  
21 comment periods and distribution to the board and the

1 committee, we have been more or less following the rulemaking  
2 protocol as regards treating this as if it were notice and  
3 comment rulemaking.

4           CHAIR BRODERICK: All right. What I would like to  
5 do is to ask -- first of all, Bucky, I don't know if you can  
6 hear me.

7           MR. ASKEW: I can barely hear you, John, but that's  
8 fine.

9           CHAIR BRODERICK: All right. Maybe Mattie can  
10 summarize what I'm saying, but I was going to ask in the  
11 first instance whether you and LaVeeda had any specific  
12 questions of Mattie, and then I intended to ask others in the  
13 room who may have some questions, comments or concerns about  
14 the draft final proposal if they would like to come forward  
15 and speak to those.

16           But before I did that, I wanted to give members of  
17 the subcommittee a chance to ask any questions or express any  
18 concerns they may have.

19           MR. ASKEW: May I, John?

20           CHAIR BRODERICK: You certainly may.

21           MR. ASKEW: I apologize for not being there, and I

1 only have a short time on the conference call because I have  
2 to go back to my meeting in about 45 minutes. But if you  
3 don't mind, John, let me just say some things about a couple  
4 of issues here in the PAMM and then leave it for the  
5 committee to deal with because I have to get off the  
6 telephone.

7           First of all, Mattie, in terms of the memo that you  
8 sent us that was in the board briefing book, I found that to  
9 be very helpful and helped me understand the changes and the  
10 issues and the comments. And I think if that is a model for  
11 how we are going to be doing this in the future, I think it  
12 was very well done and very helpful.

13           MS. CONDRAV: Thank you.

14           MR. ASKEW: One thing I did wrestle with while  
15 reading it, however, was that there were several instances in  
16 there where you referred to the fact that if we adopt this,  
17 this will be a change in current policy or practice. And I  
18 thought that was a very important thing to point out because  
19 it helped us understand that this will be different if we do  
20 it this way.

21           But I also had the feeling -- and I may have been

1 wrong about it -- that on occasion there were some things in  
2 there where it might have been changing current policy or  
3 practice or changing something else, but that wasn't  
4 necessarily pointed out.

5           And the only thing I would say about that in the  
6 future as you do these, if there is an instance with a  
7 regulation or something like this where, if we adopt this, it  
8 does result in a change, that it always be highlighted for us  
9 so that we will understand that this will be different if we  
10 do it this way.

11           But on the whole, I found the material you send us  
12 to be quite helpful. There are four things I would like to  
13 mention, two of which, depending on the answer I get from  
14 Mattie, I may well make a motion on, and the other two I just  
15 want to seek a clarification about.

16           The first is the issue of the capitalized  
17 threshold, which falls under the issue of the definition of  
18 real or personal property, and that is on page 20 of the  
19 materials, or page 7 of Mattie's memo to us.

20           The issue is -- which is highlighted very well in  
21 Mattie's memo -- whether the threshold should be \$1,000 or

1 \$5,000, and this is Section 2(g) of the new manual.

2           The OMB 110 circular says \$5,000, other federal  
3 grantees say \$5,000, but the LSC accounting guide says  
4 \$1,000. And the staff recommendation to us is to opt for the  
5 \$1,000 threshold.

6           The memo, or all the comments, don't give us any  
7 examples of what sort of expenses or any abuses in the past  
8 that we are concerned about here, and it is the statement  
9 that Mattie just made that we, in terms of our fiduciary  
10 responsibility for federal funds, our oversight  
11 responsibility, that the staff has chosen to recommend the  
12 \$1,000 limit rather than the \$5,000 limit.

13           I disagree with that, and part of that is based on  
14 my experience working for the Corporation in a regional  
15 office -- frankly, so long ago it's hard to remember. But  
16 it's in days where money was worth a lot less and so there  
17 were fewer -- and programs had less money, and so there were  
18 fewer instances of these sorts of purchases.

19           But in my opinion, this would have been quite  
20 burdensome on the Corporation back in those days to have a  
21 \$1,000 threshold. It would have put us into approving or

1 being engaged with programs on a whole lot of approvals and  
2 review of purchases or leases on matters that we were going  
3 to go ahead and approve anyway and really were not of great  
4 moment to us.

5           So I think, on a practical level, this will be  
6 quite burdensome on the Corporation, and of course programs  
7 have complained that it's going to be burdensome on them.

8           It seems to me that the \$5,000 limit is more  
9 legitimate in the sense that it is consistent with federal  
10 practice; it's consistent with what OMB requires in their  
11 circular; and it makes more practical sense. And it just  
12 seems to me that \$1,000 is too small an amount for us to get  
13 in the business of having to approve program expenditures of  
14 that level.

15           CHAIR BRODERICK: Bucky, if I can interrupt you --  
16 I didn't mean to do that, I thought you were done -- I was  
17 just going to have Mattie respond to that.

18           MR. ASKEW: Okay.

19           MS. CONDRAY: Let me say a couple of things. One,  
20 your points are well taken. Your points about pointing out  
21 as we write future rules where there are changes, that is

1 something I do intend to do, and if I missed some here, I  
2 apologize.

3 MR. ASKEW: Well, I'm not certain you did. I was  
4 just -- thought that may have happened.

5 MS. CONDRAY: But with respect to the  
6 capitalization threshold, I kind of want to point out a  
7 couple of things. One, the current property manual has a  
8 \$1,000 threshold for what is considered property. The  
9 proposal to -- or the desire to increase it to \$5,000 would  
10 be a change from what we have now.

11 MR. ASKEW: Okay.

12 MS. CONDRAY: So the \$1,000 is what we currently  
13 have, and we are not proposing in either the proposed version  
14 of the PAMM or this draft final version for LSC to have to  
15 approve all expenditures of over \$1,000. The prior approval  
16 requirement would still only go to those aggregate purchases  
17 of \$10,000 or more; it's just what would be considered  
18 property and subject to these standards at all.

19 I think where this issue really comes up as a  
20 practical issue is at the point of disposition of property.

21 MR. ASKEW: Yes.

1 MS. CONDRAY: And we're looking at -- so the  
2 difference would be when a grantee wishes to dispose of  
3 property, whether that property has a fair market value at  
4 the time of disposition of over \$1,000 or over \$5,000, where  
5 the point should be that the property manual kicks in in  
6 terms of assuring that the disposition requirements that are  
7 set forth in the manual would be followed for that particular  
8 piece of property.

9 And while we certainly acknowledge that the \$5,000  
10 threshold is the one that is used generally throughout the  
11 federal government -- and I don't mean to suggest that we  
12 think that there is rampant fraud going on, because I  
13 personally don't think that we mean to make that suggestion;  
14 at the same time, I don't think that following disposition  
15 requirements, at least to the extent that there are current  
16 disposition requirement for property that is already subject  
17 to the 1981 property manual for property with a current  
18 market value of over \$1,000 is currently proving to be  
19 terribly burdensome. I don't think either of those extremes  
20 are the case, which provides a certain amount of flexibility  
21 for us.

1           The concern and why the staff recommendation was to  
2 leave it at \$1,000 was the Office of Compliance and  
3 Enforcement was very concerned that while any particular  
4 disposition of a piece of property that is maybe \$1,500, in  
5 and of itself is not a particularly big deal, but in the  
6 aggregate -- and I don't mean any aggregate disposition, I  
7 mean looking generally. You know, somebody used to say a  
8 million here and a million there, and soon you're talking  
9 real money. That we would eventually lose sight, lose track  
10 of a lot of where our money is eventually going. If you have  
11 a lot of dispositions of property worth \$2,000, \$3,000,  
12 \$4,000, eventually someone over on the Hill may well call us  
13 up and say, you know, we've been giving you \$330 million and  
14 people are buying property with it, and now we have no idea  
15 where that money is.

16           So that was the concern, and we just felt that that  
17 was, given the current climate, an important threshold for us  
18 to be able to monitor where our money is going, particularly  
19 to make sure that it does not indirectly end up subsidizing  
20 specifically prohibited activities.

21           So that was staff's concern there, and I then leave

1 that to you for your considered judgment.

2 CHAIR BRODERICK: Bucky, you had one other concern?

3 MR. ASKEW: Yes.

4 CHAIR BRODERICK: Or do you want to respond to  
5 Mattie?

6 MR. ASKEW: No. I mean, I don't know if I  
7 misunderstood the requirements of 2(g) about prior approval  
8 for purchases over \$1,000. If Mattie is saying that's not  
9 what means, then obviously that concern is no longer there.  
10 I thought it did require prior approval. Although I do know  
11 in Section 3 it talks about aggregate acquisitions of over  
12 \$10,000 and requiring prior approval, and you clarified that,  
13 I think, in the body of the report, saying that -- and I just  
14 wanted to check on that -- that there is a difference between  
15 where competitive bidding is required as opposed to prior  
16 approval.

17 MS. CONDRAV: Correct.

18 MR. ASKEW: And I thought that might be helpful  
19 since there was confusion about that, if there is some way to  
20 clarify that along the lines of what you say in your memo,  
21 just to make sure that there is no confusion, that we're not

1 talking about prior approval in the case that you describe  
2 there.

3           But if I was mistaken in the original thing, then  
4 that's fine, although I do think \$1,000 is still a very low  
5 threshold, even for disposition, just because there are so  
6 many things these days that can cost \$1,000 that it could get  
7 to be quite burdensome.

8           The third issue that I had was this issue of  
9 disposal of property to staff and board members, and only  
10 property over \$1,000 is subject to the restriction, as I  
11 understand it.

12           MS. CONDRAY: That's correct.

13           MR. ASKEW: Rather than all property.

14           MS. CONDRAY: Because the PAMM, by its own terms,  
15 defines property as that property which has a value of over  
16 \$1,000.

17           MR. ASKEW: Okay, okay. All right, well, that  
18 clarified that issue for me.

19           The last one is the issue in Section 7, which is on  
20 page 16 of your memo, Mattie, and on page 29 of the  
21 committee's materials, which is the disposal of real property

1 issue. And I think, from my understanding, the debate is  
2 whether LSC is going to recoup, when real property is sold,  
3 its original investment or its original investment plus the  
4 increase in the value of the property as a percentage of its  
5 original investment.

6           And I think our prior policy has been that we would  
7 only recoup, or some instances require the transfer, of the  
8 original value of whatever the LSC investment was. And this  
9 is a change now to say that if the property increases in  
10 value and we initially put in 10 percent of the value, then  
11 we are going to require the program give us back 10 percent  
12 of whatever the fair market value is when it is sold, rather  
13 than the actual amount of dollars that we invested in it in  
14 the first place.

15           Now, did I get that right?

16           MS. CONDRAV: Yes, that's correct. We're looking  
17 to recoup a percentage --

18           MR. ASKEW: Okay, well then I would disagree with  
19 that, and I would suggest that we only recoup what our  
20 original investment was. And it seems to me that is more  
21 appropriate in terms of what we are trying to do here, that

1 if we put in \$20,000 and the program used our \$20,000 to buy  
2 a building and used \$20,000 from other sources, and then when  
3 it finally sold it the value of the building had increased in  
4 value, then I think what we want back from that program is  
5 what our original investment was, and not some factor based  
6 on the increase in value of the program in terms of the  
7 building in terms of its market price.

8           CHAIR BRODERICK: Bucky, can I interrupt you for a  
9 second? I was going to ask Mattie to respond whether that is  
10 an accurate statement that you have been making, and if so --  
11 which I think it is --

12           MS. CONDRAY: I believe it is.

13           CHAIR BRODERICK: Why the change?

14           MS. CONDRAY: Well, again, a number of the changes  
15 got to the issue of there is a very limited pool of funds  
16 available for the purposes for which we exist, and it was  
17 considered that if we were going to be making an investment,  
18 as it were, in real properties with LSC dollars, at the time  
19 that the recipient ceases to become -- ceases to be a  
20 recipient, that an appropriate way for us to recoup our  
21 investment would be to recoup it back on a ratio basis, on a

1 percentage basis, rather than a strict dollar basis.

2           You know, it's interesting because we did not -- we  
3 received some comments that basically suggested that LSC  
4 should not recoup any funds from the disposition of property,  
5 which we disagreed with. We did not receive a bunch of  
6 comments taking the position that you're taking, Bucky, that  
7 the strict dollar in/dollar out amount would be more  
8 appropriate rather than a percentage.

9           I think we were more concerned about the indirect  
10 enrichment of a former recipient who is perhaps going on to  
11 do prohibited work, work that would otherwise have been  
12 prohibited had they remained a recipient, through the  
13 proceeds, as it were, from our investment, which is why if we  
14 put in what was originally 10 percent, getting back what is  
15 now 10 percent was seen as recouping for LSC and for other  
16 LSC recipients that which was for that purpose.

17           CHAIR BRODERICK: Bucky, can I ask you, in view of  
18 the fact that we are talking about taxpayer dollars which are  
19 being invested, what would be, in your view, our  
20 justification to the Congress for not getting back some  
21 return on the people's money?

1 MR. ASKEW: Not getting back?

2 CHAIR BRODERICK: Yes. I mean, if we just get back  
3 every dollar we put in but we don't get an appreciated value  
4 back.

5 MR. ASKEW: Right.

6 MS. CONDRAY: Or, technically, we could get back a  
7 depreciated value if the real estate market was in the tank,  
8 too, this way.

9 CHAIR BRODERICK: In the situation where it went  
10 the other way and the 10 percent was now worth 35,000 and  
11 we're insisting that we get 20,000 back, what is your sense  
12 of the justification for that?

13 MR. ASKEW: Well, I don't understand why we -- I  
14 mean, we're not trying to make money off of our money. We're  
15 not trying to earn money off of our grants. And by requiring  
16 a program that may have owned a building for 10 or 20 years  
17 and is now, for whatever reason, selling that building to pay  
18 us part of the profit that was made, assuming that they are  
19 going to reinvest that money back into the provision of legal  
20 services to poor people or, you know, to an associated  
21 activity, then I don't see the reason why the Corporation

1 would want to take that money back into itself rather than  
2 leave it there in the local area to work on behalf of poor  
3 people.

4           The other thing I would also say, which nobody may  
5 have commented on, is if we take \$20,000 back from Atlanta,  
6 for instance, when it sells a building, then I think that  
7 money should probably go back into Atlanta to serve poor  
8 people, rather than come back into some general fund for the  
9 Legal Services Corporation to distribute.

10           Those funds were originally appropriated, set aside  
11 and granted to serve poor people in Atlanta, and I think they  
12 probably should stay for the service of poor people in  
13 Atlanta.

14           Now, that doesn't mean we give our own grantee the  
15 right to decide how they use that money and dispose of it.  
16 Perhaps that is for the Corporation to do. But I would argue  
17 that those funds should be going back into that same service  
18 area for the service of people in that area.

19           And in that same vein, I would say we're not trying  
20 to profit off the money that we've invested; we just simply  
21 want or require that our original investment be returned to

1 us so that we can then put it back to work for poor people in  
2 that service area.

3           CHAIR BRODERICK: Bucky, LaVeeda would like to make  
4 a comment.

5           MR. ASKEW: Okay.

6           CHAIR BRODERICK: And maybe if you can't hear her  
7 we could move the telephone.

8           MR. ASKEW: I think I can hear her.

9           CHAIR BRODERICK: All right.

10          MS. BATTLE: How are you, Bucky?

11          MR. ASKEW: Good.

12          MS. BATTLE: Good. The question I have, Mattie, is  
13 I think that it's helpful and instructive to the committee to  
14 understand as we set out the fundamental theories for some of  
15 the changes that we have in the property manual whether they  
16 come from one of the three federal sources that you set out  
17 at the onset of your discussion on this, if there is an  
18 overall federal guideline about real estate that breathes  
19 some life into how you have come to make this determination  
20 that there ought to be some pro rata return, then that would  
21 be helpful, to me at least, in making the determination as to

1 whether it is appropriate or not to get anything other than  
2 the original investment or whether some pro rata amount is  
3 the general standard in the federal government.

4 Did you hear that, Bucky?

5 MR. ASKEW: Yes, I did. Thanks.

6 MS. CONDRAY: That's a really good question, and  
7 one to which I do not know the answer at this moment.  
8 Unfortunately for me, I stepped into this after all of the  
9 initial negotiations had already taken place so I personally  
10 don't know, when we drew on OMB Circular A-110 and some of  
11 the other sources, I am not always necessarily sure, unless I  
12 had it written down in front of me, where each particular  
13 piece came from. So I can go back and look that up, but I  
14 don't have that answer sitting right in front of you.

15 CHAIR BRODERICK: I do think that would be helpful.

16 MS. CONDRAY: But I can certainly get that.

17 CHAIR BRODERICK: I would ask you to do that,  
18 Mattie. What I would like to do, only because of Bucky's  
19 abbreviated stay with us -- I know it's been enjoyable for  
20 you, Bucky.

21 MR. ASKEW: Yes.

1           CHAIR BRODERICK: But what I would like to do --  
2 and I wouldn't do this otherwise -- but with respect to the  
3 issues we have discussed, if there are others in the room at  
4 the moment who have concerns that they would like to address  
5 on the issues we have discussed to this point, I think I  
6 would ask them to do that so Bucky can hear the comments and  
7 maybe engage in some exchange.

8           MS. CONDRAY: That's fine. And I have two other  
9 points that respond directly to some of the stuff that Bucky  
10 had, too.

11          CHAIR BRODERICK: Why don't you do that right now,  
12 then.

13          MS. CONDRAY: Okay. One is I guess with respect to  
14 the pro rata versus direct dollar share, I don't know that  
15 this is an issue of utmost importance for the staff, compared  
16 to some of the issues that are in the property manual. I  
17 think we think it's important that because there is a limited  
18 amount of money that when that money is invested and the  
19 recipient no longer is a recipient that some of that money  
20 come back to us so that we can then redistribute it and make  
21 sure it is staying within the LSC community, fulfilling the

1 purposes for which it was appropriated by Congress.

2           I don't know that we have a strong need to have a  
3 pro rata share versus an absolute dollar share. I think the  
4 principle that was most important to us was that it's not  
5 just money going out into the world that we never see again.

6           With respect to the money staying within the  
7 service area that it came from, the analogy that I would make  
8 -- and while this is certainly in all of your prerogative to  
9 decide how you want to handle that, obviously -- the analogy  
10 I am going to make, though, is the excess fund balance money.

11           Typically, when there is excess fund balance money,  
12 it is my understanding is that it comes back to the  
13 Corporation, if necessary, and then it remains within the  
14 Corporation's discretion to redistribute that extra money as  
15 the Corporation believes will most benefit the national  
16 population that needs our services. And that may or may not  
17 be the original service area from which it came.

18           Again, obviously this is your prerogative, although  
19 I would personally recommend that the board, the committee  
20 and the board, not tie the Corporation's hands by insisting  
21 that this money go back to the initial service area, but

1 treat it the same way that excess fund balance money is  
2 treated where the Corporation retains the ability to put it  
3 where the Corporation thinks it is needed the most, whether  
4 it is that initial service area or another one.

5 CHAIR BRODERICK: Mattie, thank you. Bucky?

6 MR. ASKEW: Yes.

7 CHAIR BRODERICK: In response to my invitation, two  
8 individuals have come to the table, and I am going to ask  
9 them for the record just to identify themselves, and then I  
10 would ask them to keep their comments at this point at least  
11 to the issues that have been discussed to this point.

12 MS. PERLE: Thank you. I am Linda Perle. I am  
13 with the Center for Law and Social Policy, and I am counsel  
14 to the National Legal Aid and Defender Association and I  
15 represent the Civil Policy Groups Regulations Committee,  
16 which is the group that wrote the comments that were  
17 submitted.

18 I have asked Gerry Singsen, who is a member of that  
19 committee and was a member of the staff of the Legal Services  
20 Corporation and is now a consultant to many Legal Services  
21 programs around the country, to join me because Gerry has a

1 lot more familiarity and expertise on some of the specific  
2 issues that arise under the property rule that governed the  
3 Corporation in the past and he has done a lot of -- he's done  
4 a lot of work on this issue presently.

5           CHAIR BRODERICK: All right. Bucky, can you hear  
6 those comments?

7           MR. ASKEW: Yes. What were their names, again?

8           (Laughter.)

9           MR. ASKEW: I know them both.

10          CHAIR BRODERICK: The only caveat I would like to  
11 make at the outset is -- and I appreciate that you're here  
12 and appreciate the comments that you've made and circulated -  
13 - but I also appreciate the time and effort the staff has  
14 made here. So I don't want to start at the reinventing the  
15 wheel stage; I really would like to get to the point where  
16 you say, "I understand the comments that Bucky Askew has  
17 made, I want to address those," so we can really focus this  
18 very directly and very specifically on these comments.

19           But with that said, however you would like to  
20 proceed on it.

21          MS. PERLE: Okay. Well, I understand the comments

1 that Bucky Askew made, and I actually agree with Bucky's  
2 initial concern about the capitalization threshold. And  
3 although the disposition issues are important issues that are  
4 affected by the capitalization threshold, it doesn't apply  
5 only to the disposition provisions; it applies to all of the  
6 other requirements in terms of --

7 MS. CONDRAY: Right. It applies to all of them,  
8 but I was saying as a practical matter I think that certainly  
9 from our standpoint from a compliance issue, we think it's  
10 most important when it comes to disposition. And my  
11 understanding from reading the comments was that that was, in  
12 part, a lot of the big issue about why it was -- why it was  
13 of moment where the capitalization threshold was.

14 But obviously once you've got the capitalization  
15 threshold, all of the PAMM applies to it. I was merely  
16 making a point about what I thought -- what I understood to  
17 be the practicalities of the situation.

18 MS. PERLE: I think that there are practical  
19 implications from the disposition, and I certainly agree with  
20 Mattie that that is an area of great importance. And I  
21 believe that it should apply -- the \$5,000 rather than \$1,000

1 should apply.

2           But it also affects all of the earlier processes in  
3 terms of acquisition and management, and I think it imposes  
4 unnecessary regulation on programs.

5           CHAIR BRODERICK: The comment was made that the  
6 \$1,000 is currently in the manual?

7           MS. PERLE: It is, but it has been there for a long  
8 time.

9           CHAIR BRODERICK: No, I understand that. But it is  
10 not a change.

11           MS. CONDRAY: That's right. Leaving it at \$1,000  
12 would not be a change from the current situation.

13           MS. BATTLE: And let me just ask a question about  
14 that just for clarification's sake. Was that \$1,000 adopted  
15 at a point in time that the standard throughout the federal  
16 government was \$1,000, and has that standard now changed to  
17 \$5,000?

18           MS. CONDRAY: I don't know what the OMB standard  
19 was when the property manual was adopted in 1981, but clearly  
20 the federal standard now is \$5,000.

21           MS. BATTLE: Okay, I just needed clarification.

1 MS. CONDRAV: That's correct.

2 CHAIR BRODERICK: Can I just ask a question? I  
3 keep interrupting you. I ask this of Mattie. Why is the  
4 Corporation -- is there any legal requirement that the  
5 Corporation have a different standard than the current OMB  
6 standard of \$5,000?

7 MS. CONDRAV: No.

8 CHAIR BRODERICK: Is it merely a matter of policy  
9 that you are suggesting we should?

10 MS. CONDRAV: That's correct.

11 CHAIR BRODERICK: All right. Gerry Singesen, you  
12 had a comment?

13 MR. SINGSEN: Let me briefly add a couple of pieces  
14 of information, if I might. We've got two different uses of  
15 this \$1,000 in this conversation. There is the \$1,000 in the  
16 accounting guide, which is the level at which you capitalize  
17 a purchase at the time of the purchase, and the federal  
18 standard has moved to \$5,000. The Corporation adopted the  
19 \$1,000 in 1995 after ten years of discussion whether it  
20 should go to \$1,000 from 500. It took ten years to catch up  
21 that time. The federal government, meanwhile, has gone to

1 5,000. This is an accounting guide question, and the  
2 capitalization level in the accounting guide should almost  
3 certainly go to 5,000. That's not on the table in the  
4 property management manual.

5           The property management manual 1,000 is applicable  
6 to when the procedures come in that you have to do various  
7 process for sale of or disposal of property -- 5,000 -- I  
8 honestly don't know what the federal standard is for disposal  
9 procedures to kick in. This is an LSC rule. That's the only  
10 way that I know it. But it's a different question. It's the  
11 question of when you want to have these procedures followed  
12 for disposing of property that has got a current market value  
13 less than the purchase price.

14           MS. PERLE: The procedures with respect to the  
15 purchase of property is governed by the 1630 reasonableness  
16 standards in 1630, which say that you have to use a  
17 reasonable process.

18           MR. SINGSEN: And the purchase is \$10,000 in 1630;  
19 it's not 5,000 or 1,000. The purchase of personal property.

20           MS. CONDRAY: Requiring prior approval.

21           MS. PERLE: Prior approval, right. But the

1 reasonableness standard applies to all purchases. So I'm not  
2 going to go into a lot of detail because I think that the  
3 basic thing is that there is no reason that the Corporation  
4 should exercise more control on --

5           CHAIR BRODERICK: I understand. Do you have other  
6 comments on other issues that Bucky raised or that Mattie  
7 raised in her initial presentation?

8           MS. TARANTOWICZ: I'm sorry, if I might just on  
9 this issue, Laurie Tarantowicz, Counsel to the OIG. I would  
10 just -- we actually recommended the \$5,000 threshold back  
11 when we commented, although I am not sure in the actual what  
12 the draft looked like at that time since it has gone through  
13 so many versions and it has been, frankly, a long time and I  
14 don't remember.

15           And the only thing I would ask you to consider is I  
16 know the federal standard is 5,000. As I said, we  
17 recommended that. I am not sure what the federal standard is  
18 on whether it is a single item or if that is aggregate 5,000;  
19 in other words, if you are selling a number of computers or  
20 something, so I just would ask you to consider what the  
21 federal standard is on that. Unfortunately, neither Mattie

1 or I know at this point.

2 MS. CONDRAY: And I just want to respond to say I  
3 think rational people can make good arguments for both 1,000  
4 and 5,000, and you can decide what you want. I understand  
5 their arguments for 5,000, whether or not they come from A-  
6 110, whether or not that is the federal standard, I think one  
7 could make a reasoned argument that a \$1,000 threshold is too  
8 low and that \$5,000 is appropriate.

9 On the other hand, to say that there is no reason  
10 for it to be less than the federal standard I think is a bit  
11 of an unfair characterization. We are under -- we spend a  
12 lot of -- our grantees spend a lot of small amounts of  
13 dollars, which together account for a large amount of the  
14 money that we are appropriated from Congress.

15 So I just felt like I don't want to say that I  
16 don't think there -- there is no reason. There was very much  
17 a reason why staff is recommending what it recommended, and  
18 there are equities on both sides of the issue. And so you  
19 can kind of take it from there.

20 CHAIR BRODERICK: Mattie, thank you. Gerry.

21 MR. SINGSEN: The question has been raised twice.

1 I think we ought to take cognizance of your audit  
2 requirements. All the property purchased that is capitalized  
3 is inventoried every other year by your regulations, is  
4 audited every year, is shown and depreciated on the audited  
5 financial statements; it's quite fully accounted for, so it's  
6 not going to be lost in process. Approval is about whether  
7 the judgment of the purchaser is wise and whether the  
8 procedures have been wise, and I think there is perfectly  
9 good question about the level of which, as a regulatory  
10 agency, LSC wants to kick in its oversight of those choices  
11 by programs. I don't think you're at any risk of losing  
12 control of property or where it is or how it's being used.

13 MS. CONDRAY: Well, at the time of disposition,  
14 though, that's not true. If the property is worth between  
15 \$1,000 and \$5,000 and we remain -- if we go to a \$5,000  
16 threshold, at the time the grantee stops being a grantee, if  
17 the threshold is raised to \$5,000, a piece of property worth  
18 \$2,000 could be disposed of without any further accounting to  
19 the Corporation, without any further acknowledgement to the  
20 Corporation of that money and where it's going. That was our  
21 main enforcement point, not that we think people are running

1 out and buying bad things with their \$2,000; it's just that  
2 we don't know where the money is going at the point that  
3 someone ceases to be a grantee. That's the real concern for  
4 the agency.

5 MS. PERLE: That money goes into the fund balance.

6 CHAIR BRODERICK: LaVeeda.

7 MS. BATTLE: Can I just suggest something? And  
8 this follows the concern that was raised by Bucky, and that  
9 this is: I think in order for me to make an informed  
10 decision around this particular issue, it would be important  
11 for me to know if we established the \$1,000 as a reflection  
12 of our honoring at that time what the federal standard was  
13 back in 1981, and if in fact today we're looking at \$5,000  
14 because that is the federal standard today, you have the same  
15 argument back when the standard was set at \$1,000 about what  
16 was happening to property that was \$500; in other words, that  
17 at any point that you set the standard there is going to be a  
18 threshold, but I think it's important for us to have the same  
19 kind of fiduciary oversight and review as is set in the  
20 federal guidelines where you have federal dollars being sent  
21 in a number of different places, the same kind of

1 congressional oversight for those federal dollars, and a  
2 standard that the federal government has become comfortable  
3 with as what the threshold ought to be. So, from my  
4 standpoint of view, knowing that will help me to make an  
5 informed decision about whether five is a good number for the  
6 capitalization threshold.

7 MS. CONDRAY: You're the collective history here,  
8 and I don't know the answer. I also just would caution that  
9 we should be careful what we ask for. If we go too far down  
10 the road of saying, well, we have to do what the federal  
11 standard is, boy, we buy a lot of inflexibility that I don't  
12 think any of us at the table want.

13 MS. PERLE: I agree with Mattie on that point.

14 MS. BATTLE: That may be true, but all I'm saying,  
15 when it comes to developing more restrictive guidelines,  
16 certainly we ought to be guided by where the guidelines are  
17 set for the federal government in determining what is  
18 appropriate.

19 CHAIR BRODERICK: Can I ask, because we'll be here  
20 till sundown, there were a few other issues that were raised  
21 by Bucky and Mattie, and I am going to give you an

1 opportunity to just address those briefly, if you could.

2           MS. PERLE: Okay. With respect to the issue of  
3 whether LSC's investment is recouped or investment-plus --  
4 potentially minus, but generally plus -- I think we did  
5 address that in our comment. And actually, we did suggest --  
6 in our first comment, not -- I don't know that we addressed  
7 it in the April comment but we addressed it in the comment  
8 that was submitted in response to the original -- to the  
9 original proposal.

10           And we suggested that the Corporation -- whatever  
11 the Corporation recoups should be limited to the  
12 Corporation's actual investment.

13           CHAIR BRODERICK: And succinctly stated, the reason  
14 for that is what?

15           MS. PERLE: I think the reasons that Bucky  
16 explained, that the Corporation shouldn't be looking to make  
17 money off of the money that it puts in. If that money hadn't  
18 been used to purchase but had been used to lease the  
19 equipment or the property, there wouldn't be any return from  
20 the Corporation's investment.

21           And then I think that as much money as possible

1 needs to stay in the community. And, you know, the  
2 Corporation is -- we heard this morning a lot about state  
3 justice communities and efforts to include all of the -- we  
4 didn't hear about it this morning -- we've heard over the  
5 years of -- about efforts to ensure that the Corporation  
6 grantees are part of the larger legal services community that  
7 services people, and that's LSC-funded and non-LSC-funded. I  
8 think there is acknowledgment in the Corporation that, no, we  
9 don't want current LSC funds to be used to subsidize  
10 restricted activities, but to the extent that entities that  
11 provide services that may be restricted at part of this  
12 larger community, I don't think there should be a major  
13 effort by the Corporation to pull back all of that money.

14           CHAIR BRODERICK: I don't want to get too much into  
15 a back-and-forth here, but I just want you folks to be able  
16 to complete your presentation, if there are other issues that  
17 you want us to know about.

18           MR. SINGSEN: I have one.

19           MS. PERLE: Go ahead.

20           MR. SINGSEN: To some degree, I think we have  
21 misconceptualized the question about real estate and its

1 disposition. I invite you to compare what would happen if  
2 someone had a piece of real property and sold it in December,  
3 the last month that they were an LSC grantee, as opposed to  
4 what would happen in February or January, when they were no  
5 longer an LSC grantee.

6           In December, the proceeds of the sale -- the  
7 proportion, actually, which is LSC derivative income under  
8 1630.12 -- goes into the LSC fund balance. There is an audit  
9 at the end of December, and there is a procedure for the  
10 finishing out of LSC-eligible cases in which there is a  
11 negotiation with the Corporation about how the remaining LSC  
12 fund balance should be used, either returned to the  
13 Corporation, which is the Corporations' right about any fund  
14 balance, not just an excess fund balance at the end of a  
15 grant; or, and this is the common agreement, how it can be  
16 used to finish cases, finish work which is LSC-type work.

17           Now, I think we ought to think about a solution  
18 here in which January or February is similar to December;  
19 that the money we're talking about should be in a fund  
20 balance context, should be accounted for to the Corporation,  
21 should be used for LSC-permissible purposes or returned to

1 the Corporation, as any fund balance would be returned to the  
2 Corporation; but that we shouldn't take it out of the  
3 community without figuring out how that money, which  
4 represents a grant from at least the prior year, perhaps from  
5 a year before that, could stay in the community and be used  
6 for the clients it was intended for, the clients in that  
7 community.

8           Because the significant problem here is,  
9 particularly where there is appreciation, a substantial  
10 amount of money, by the wisdom of the program's governing  
11 structure and management has been earned for use for those  
12 clients, perhaps as a result of a state planning decision,  
13 the organization is going to not be an LSC recipient. But as  
14 long as it is going to continue providing eligible clients  
15 with eligible services, we shouldn't take it away from those  
16 clients.

17           CHAIR BRODERICK: Any other issues that you would  
18 like to focus on?

19           MS. PERLE: Well, there were a number of issues  
20 that were -- that we discussed in the April comment.

21           CHAIR BRODERICK: And we have your memo.

1 MS. PERLE: And you have the memo.

2 CHAIR BRODERICK: If there is anything -- and I  
3 think all board members have it. I know certainly the  
4 committee members have it. If there is something  
5 specifically you want to try to explain or expound on, feel  
6 free to do that, but we have reviewed it and we appreciate  
7 it.

8 MS. PERLE: I think just sort of part and parcel of  
9 Gerry's last point is that there are additional requirements  
10 on the disposal -- in other words, places in the PAMM where  
11 the Corporation is asserting the ability to recoup funds that  
12 are not now --

13 MS. CONDRAY: That's true.

14 MS. PERLE: -- that are not now in the rules. This  
15 reduces the flexibility for the Corporation to approve other  
16 uses of property and buildings.

17 In other words, there are lots of situations. For  
18 example, I mean an example is a situation where the -- I'm  
19 sorry -- that the real property could be transferred to  
20 another -- to another non-profit serving poor persons in the  
21 area. I'm sorry, that's -- our suggestion was that that be

1 permitted where it's not permitted now, although that does  
2 provide for compensation for the Corporation.

3 I'm sorry, I'm having a little trouble here. Go  
4 ahead.

5 MR. SINGSEN: There's one other issue that was  
6 briefly mentioned. It wasn't one of Bucky's four comments.  
7 It was mentioned in a response from Ms. Condray.

8 Do you want to hear that now or do you want to hold  
9 that?

10 CHAIR BRODERICK: Sure, why don't you do it now.  
11 Bucky, are you still with us?

12 MR. ASKEW: Yes.

13 CHAIR BRODERICK: All right.

14 MR. SINGSEN: This will only take a moment. There  
15 is an issue about aggregate versus individual item purchases  
16 at \$10,000. And the problem there, at least in part, is  
17 confusion; that the 1630 rule was changed by this board four  
18 or five years ago to specify that individual item purchases  
19 in excess of \$10,000 needed prior approval from LSC. The  
20 proposed Property Acquisition and Management Manual speaks  
21 about an aggregate set of purchases, rather than an

1 individual item purchase as the test.

2           And the confusion was exemplified, I think  
3 actually, in an accidental remark that Ms. Condray made when  
4 she mentioned aggregate but meant individual.

5           MS. CONDRAY: Prior approval is required by  
6 regulation -- and that is not changed by this PAMM because we  
7 can not change the regulation by the PAMM -- for purchases of  
8 individual items of over \$10,000.

9           What we did want to do was that single and  
10 aggregate purchases of over \$10,000 have to be done by  
11 competitive bidding or competitive quote, which we just don't  
12 think is really all that onerous.

13           We did get some of those comments -- we did receive  
14 comments regarding the aggregate level, and I believe we  
15 tried our best to clarify them to make it as clear as  
16 possible what applies to what, both in the language of the  
17 draft PAMM and in the preamble, so that hopefully someone who  
18 wants the final version as adopted reads it carefully, they  
19 will in fact not make that slip of the tongue because they  
20 will have read it carefully and not be trying to talk about  
21 three things at the same time.

1           MS. PERLE: My point on that is that there isn't  
2 any reason in our view for having inconsistent treatment  
3 between prior approval and the application of all of these  
4 other requirements, and that this committee and the board  
5 went through a very long and detailed discussion of the issue  
6 with respect to prior approval when they redid 1630, and the  
7 arguments that were made at that time for why it was  
8 appropriate to only -- to use a higher threshold in terms of  
9 the applicability.

10           CHAIR BRODERICK: Bucky?

11           MR. ASKEW: Yes.

12           CHAIR BRODERICK: I didn't mean to interrupt Linda,  
13 but Edna has a question and Maria Luisa has a question, so  
14 I'm going to ask Edna to ask her question.

15           MS. FAIRBANKS-WILLIAMS: Well, you're talking about  
16 aggregate together if you're buying 17 computers and you get  
17 a better price for buying 17 altogether but those computers  
18 are going to be outdated in three years, are you going to  
19 expect that program, if they go out of business, to give you  
20 the full value of the aggregate for the 17 computers, or one  
21 by one, since they're going to be outdated anyway in three

1 years' time?

2 MS. CONDRAY: Well, for one thing, it would be the  
3 current market value at the time of the disposition, so the  
4 computers would not probably be worth \$17,000 at the time of  
5 disposition three years later if they were outdated. So  
6 that's not -- that's probably not really a problem.

7 MS. FAIRBANKS-WILLIAMS: But it's not spelled out  
8 very well.

9 MS. CONDRAY: The aggregation goes to competition.  
10 The staff believes that expenditures of over \$10,000,  
11 whether it's on one -- at a given time, whether it's on one  
12 item, you know, a \$10,000 copier, or seven laptops, that that  
13 same expenditure, that's a significant expenditure of  
14 Corporation dollars and we don't think it's really  
15 unreasonable to expect contracts for \$10,000 to be subject to  
16 some sort of competition rules. That's all.

17 CHAIR BRODERICK: Before I have Maria ask her  
18 question, Bucky?

19 MR. ASKEW: Yes.

20 CHAIR BRODERICK: I want to make sure we close out  
21 this issue before you need to run. How much more time do you

1 have?

2 MR. ASKEW: I've got less than ten minutes.

3 CHAIR BRODERICK: All right. Maria.

4 MS. MERCADO: Yes. Actually, the whole aggregate  
5 amount is a little confusing for me because you could almost  
6 say you have a hundred items you're going to buy that are  
7 going to equal \$10,000, and you're going to have a box of  
8 copying paper that's going to be bid, you're going to have  
9 a copier that's going to be bid, you're going to have a  
10 typewriter that's going to be bid and an adding machine  
11 that's going to be bid because, in the aggregate, if  
12 you're wanting to have supplies for -- you know, either you  
13 have new staff or you're replacing equipment or anything  
14 else, you can technically have probably even 10,000 items  
15 and, you know, X amount of dollars.

16 And then you're asking for it to be bid on every  
17 one of those items? Because, aggregately, that expense  
18 equals \$10,000. That makes no sense.

19 MS. CONDRAY: I understand your point, and I don't  
20 disagree that that is the sort of thing that could happen,  
21 but I don't think -- that's not what we're really looking

1 for. We're talking about a rule of reason here, I think; the  
2 same way if you're going to go -- if a grantee is going to go  
3 --

4 MS. MERCADO: Can I finish my comment?

5 MS. CONDRAY: I'm sorry, I thought you were  
6 finished.

7 MS. MERCADO: No. And so, consequently, what you  
8 are doing is that you are setting someone up who actually  
9 will have a hundred items that will aggregately or a thousand  
10 items that aggregately will equal \$10,000 for a fall in your  
11 compliance and enforcement mechanism because, technically,  
12 they should have bid all those thousand items that equal  
13 \$10,000, and they didn't.

14 And under that guideline, then under enforcement  
15 and compliance or the OIG or anybody else is going to say you  
16 didn't follow this regulation, those thousand items that you  
17 bought for \$10,000 you didn't bid each one of them and you  
18 are now not in compliance.

19 Now, do we want to have rules set up, procedures  
20 that bind our grantees in being able to do their work, or do  
21 we want to set them -- and the only reason that this whole

1 comment about what is the federal minimum threshold because -  
2 - not because we want to follow the whole feds, but because  
3 if anyone is concerned about tax dollars and how they get  
4 spent, it's all the federal agencies and federal government.  
5 And if we are much more restrictive than the federal  
6 government, it certainly isn't helping our grantees with the  
7 work that they have to do.

8 MS. CONDRAV: Okay. Are you done?

9 MS. MERCADO: Yes.

10 MS. CONDRAV: Thank you.

11 CHAIR BRODERICK: That's a yes or no, Mattie. I'm  
12 only kidding. (Laughter.)

13 MR. ASKEW: Mattie, let me ask you a question.

14 MS. CONDRAV: Go right ahead.

15 MR. ASKEW: I thought this didn't cover supplies or  
16 office supplies.

17 MS. CONDRAV: That's correct. That was going to be  
18 one of my comments.

19 MR. ASKEW: Okay. Secondly, we're not talking  
20 about prior approval for the purchases.

21 MS. CONDRAV: That's correct.

1           MR. ASKEW: We're only talking about whether you  
2 have to get a competitive bid on these purchases that  
3 individually would cost -- or in the aggregate would cost  
4 over \$10,000?

5           MS. CONDRAY: That's correct. And --

6           MR. ASKEW: And thirdly, you have expanded the  
7 competitive bidding thing to say that you can get quotes out  
8 of catalogues, quotes off the Internet, quotes from magazines  
9 -- I mean, whatever it happens to be, just to make sure that  
10 the price you're paying is competitive within the  
11 marketplace.

12          MS. CONDRAY: That's correct.

13          MR. ASKEW: Okay. Well, I am going to have to run,  
14 so let me say one thing. To back up to the issue of  
15 capitalized threshold, the implication of LaVeeda's remarks,  
16 with which I agree, I think, would be that we would have to  
17 go -- we go back and ask Mattie and the staff to get us the  
18 data or the information on what were the capitalized costs  
19 back in '81 when this rule was initially adopted and forward,  
20 so that we can compare what was \$1,000 then to what is \$5,000  
21 today.

1           And I guess the implication of that would be that  
2 we'd put off approval of the Property Acquisition Manual in  
3 order to do that, although you all haven't gotten to the  
4 point of discussing that, and I won't be around when you do.

5           CHAIR BRODERICK: Bucky, I wanted you on the call  
6 when we did that. I was going to suggest before your  
7 comment, that in view of the comments here today and the  
8 discussion and the issues that have been raised, although I  
9 think they are precious few in number, by and large I think  
10 the consensus is the amendments are fine.

11           But I do think because of the issues that have been  
12 raised, I think it's advisable that we not approve this or  
13 attempt to approve it today. I think Mattie is fine with  
14 that. She can get the additional information and we'll have  
15 time to digest some of the comments and answers to the  
16 comments, and presumably we can take care of this business at  
17 our meeting in September.

18           Is that something that you can do?

19           MS. CONDRAY: Oh, absolutely. Before you leave,  
20 Bucky, since you were concerned about the proportionality  
21 issue versus absolute dollars, I will note that in our

1 Regulation 1630.12, applicability to derivative income,  
2 derivative income resulting from an activity supported in  
3 whole or part with funds provided by the Corporation shall be  
4 allocated to the fund in which the recipient's LSC grant is  
5 recorded in the same proportion that the amount of  
6 Corporation funds expended bears to the total amount expended  
7 by the recipient to support the activity.

8           So there is some notion of proportionality within  
9 our derivative fund expenditures regulations, and I will go  
10 back and double-check to see how that issue is dealt with in  
11 A-110 as well.

12           MR. ASKEW: Okay, great. Well, I appreciate you  
13 all putting up with my situation here and doing this on my  
14 schedule. I have found it to be a useful discussion and I'll  
15 look forward to dealing with it in September.

16           CHAIR BRODERICK: And Bucky Askew?

17           MR. ASKEW: Yes?

18           CHAIR BRODERICK: Before you run, I want to see if  
19 you can hang for 30 seconds more. LaVeeda wanted to make one  
20 comment.

21           MR. ASKEW: Okay.

1 MS. BATTLE: And I just wanted to say, first of  
2 all, that I think, Mattie, you have done a yoeman's job on  
3 this regulation, coming in in the middle of it and having to  
4 pick it up after significant work has already been done.  
5 It's very well written. I am just echoing what Bucky said at  
6 the beginning. It is extremely well written. It's easy to  
7 read. It's really great for us to have the kind of expertise  
8 that you have brought to this committee, and I want to start  
9 by saying this.

10 MS. CONDRAV: Thank you.

11 MS. BATTLE: And then I also want to make some  
12 overall policy observations from my standpoint of view, one  
13 of them being that part of the statement that I have made so  
14 far, when I read what you had done and you talked about three  
15 guides that you used for pulling this together, of course  
16 looking back over the previous property manual that had been  
17 done in 1981, then you talked about the Federal Acquisition  
18 Regulation, the Federal Property Management Regulation, and  
19 OMB Circular A-110 as at least the three guiding kinds of  
20 documents that you looked to to see whether or not there was  
21 something already out there in the federal government.

1 MS. CONDRAV: Right.

2 MS. BATTLE: My thought is this, that as we go back  
3 through and as you look at this entire regulation that we  
4 look to those forms of guidance to see where the federal  
5 government is in setting standards and that the standards  
6 that we set be no more restrictive than that, for this  
7 reason: I think those standards are time-tested and true for  
8 assuring that taxpayer dollars are well spent, and so we  
9 should be able to have a certain comfort level that the  
10 federal government honors, for example, this issue we've been  
11 talking about, whether or not this capitalization threshold  
12 ought to be 1,000 or 5,000. Really, if the government has  
13 spoken as to what is reasonable on that kind of a ground, it  
14 makes sense for us to look at it.

15 And I also think I had about four or five other  
16 things I'll just real quickly go through that as it relates  
17 to the development of new standards where we have not had  
18 standards in the past, that we ought to kind of look across  
19 the federal government to see where the standards are on  
20 leased personal property. I understand that that's  
21 relatively new here, being utilized in our guide.

1           And also, there is some provision in here about LSC  
2 -- when you're using LSC funds or something has been  
3 purchased with LSC funds, well, we're now encouraging all of  
4 our programs to go out and secure other funds. And if we  
5 become a minority funder so that LSC is actually contributing  
6 less than 50 percent, then we ought to have something in our  
7 guidelines that says, look, if you've gone out and the  
8 majority of the funds that you're using have some guidelines  
9 that require you to do things in a certain way, we're going  
10 to honor that and not impose conflicting guidelines on the  
11 use of those -- of that property or how it ought to be  
12 accounted for. And we ought to give some thought to that.  
13 And in my view, that's like a conflict resolution kind of  
14 issue that addresses when we're less than 50 percent of the  
15 package how we're going to respond to that in terms of our  
16 regulations compared with somebody else's.

17           MS. CONDRAY: Right. And is it appropriate to  
18 apply some sort of minimum -- you know, if it's \$2 million,  
19 even if we're only providing, you know, \$800,000, we're a  
20 minority funder, but that is still a big chunk of change.

21           MS. BATTLE: Yes, it is a big chunk of change. But

1 if our regulations conflict with some requirement --

2 MS. CONDRAY: Right. Where the appropriate line is  
3 to be drawn, right.

4 MS. BATTLE: Then we're going to have to take the  
5 position that says we're going to continue to support going  
6 out and getting these additional funds, and we'll take a --  
7 we're going to have to take a position that is below that of  
8 the primary funder.

9 MS. CONDRAY: Right.

10 MS. BATTLE: The other issue has to do with this  
11 business about single acquisition as opposed to aggregate. I  
12 think Bucky kind of outlined what you're really talking about  
13 is competitive bid. I would like for us to come up with a  
14 standard that makes sense as it relates to that as well in  
15 terms of whether our concern about what needs to be bid -- I  
16 know at least in Alabama, \$10,000 is for a single item,  
17 \$10,000, that's the standard that we have for competitive bid  
18 requirements on a state level. But it may be for some reason  
19 that you've got a different standard for a different reason,  
20 and we need to just kind of look at it prismically to make  
21 sure that it can have some realistic application in our

1 environment if we're going to make a change in that area as  
2 well.

3 MS. CONDRAY: Okay.

4 MS. BATTLE: And so that is my overall -- again,  
5 I'm saying I think you did an outstanding job. And there are  
6 not many -- there are lots of lawyers out there, but not many  
7 that can write regs, so my hat is off to you.

8 MS. CONDRAY: Thank you.

9 CHAIR BRODERICK: Bucky?

10 MR. ASKEW: Yes, sir.

11 CHAIR BRODERICK: Thank you for hanging in here. I  
12 really appreciate it. I appreciate your comments.

13 MR. ASKEW: Thank you all. I'm going to hook back  
14 up tomorrow morning for the breakfast meeting.

15 CHAIR BRODERICK: Wonderful.

16 MR. ASKEW: Thank you.

17 CHAIR BRODERICK: And unless somebody here feels  
18 the need to make any further comments, we can move. We're  
19 going to pass this. Mattie is going to come back to this  
20 committee and we will reconsider this thing, hopefully and  
21 conclude it, in September. But I have appreciated the

1 comments both in writing and here today, and I thank you for  
2 it.

3 MS. CONDRAY: Thank you.

4 CHAIR BRODERICK: The remaining items on our agenda  
5 I do not think will take very long. And maybe -- is Victor  
6 here? Maybe Victor would like to come to the table on item  
7 four, which is Status Report on the Work of the Regulations  
8 Review Task Force.

9 MR. FORTUNO: Good afternoon, everyone. For the  
10 record, I am Victor Fortunio. And the committee may recall  
11 that last fall staff reported that we had undertaken an  
12 effort to review all of the regs top to bottom to see if  
13 there were regs or provisions thereof that were in need of  
14 revision because they were either outdated, duplicative,  
15 unnecessary.

16 And that was an in-house project. It has moved  
17 along. We were hoping, and at that point had projected,  
18 coming back to the committee at this meeting with a  
19 recommendation. We are very close to recommendations -- we  
20 do have a draft -- however, travel schedules and other  
21 conflicts have prevented the management team from being able

1 to devote the kind of attention to it, since it's a fairly  
2 extensive report, that really seems warranted.

3           So we do not have the draft yet ready to share with  
4 you, but we expect to have it done, passed on by management  
5 and management's comments incorporated, before the next  
6 meeting so that it can be taken up at the next meeting in  
7 September.

8           CHAIR BRODERICK: There was some discussion, I  
9 know, at one of our earlier meetings about so-called low-  
10 hanging fruit that we should address.

11           MR. FORTUNO: Yes.

12           CHAIR BRODERICK: And can you give us an update on  
13 that?

14           MR. FORTUNO: Yes. What we have done is two of the  
15 rules that are being considered by the task force -- the task  
16 force has been considering all regs. Two were identified as  
17 low-hanging fruit, if you will: 1611, our eligibility rule,  
18 and our alien representation rule.

19           Those two were identified as matters that could be  
20 taken up in the short run, would not have to wait for the  
21 full review to run its course and for recommendations to be

1 made on rules generally.

2           And in fact, I would go ahead and let Mattie report  
3 on that since she is the one who has done the work on it.  
4 But those two were discussed with Alan and Linda from the  
5 Center for Law and Social Policy, and Linda is here and can  
6 correct me if I'm wrong, but I think that Randi and I met  
7 with them and agreed that these would be two appropriate ones  
8 for action before the remaining rules are taken up.

9           MS. PERLE: That's correct.

10          CHAIR BRODERICK: Under our protocol, Mattie, where  
11 do we stand exactly with those?

12          MS. CONDRAY: Under the protocol, in January the  
13 board identified, acting on that recommendation, identified  
14 1611 and 1626 as appropriate subjects for rulemaking;  
15 thereafter, the Office of Legal Affairs developed a  
16 rulemaking options paper for each of those.           And I  
17 don't remember the exact date, but not that long ago, but  
18 prior to the meeting, the rulemaking options paper which had  
19 been signed off on by management was sent to the committee  
20 and to you, and it is now at the stage where, after you  
21 consult with your committee members, you and John McKay, or

1 if you don't do it before the end of the week, you and John  
2 Erlenborn, make a decision about whether to proceed as  
3 recommended by the staff in the rulemaking options paper.

4           And so from my point of view, we are waiting to  
5 hear back from you on that.

6           CHAIR BRODERICK: And we need not do anything at  
7 this meeting.

8           MS. CONDRAV: That's correct.

9           CHAIR BRODERICK: But we need to do something  
10 quickly.

11          MS. CONDRAV: Correct.

12          CHAIR BRODERICK: All right. Any questions of  
13 either Mattie or Victor on either the regulations review task  
14 force, which Victor tells me we will have a report to review  
15 at our September meeting, or on these two regulations, which  
16 I would presume -- and I would be interested in input  
17 obviously from the members of the committee -- and I would  
18 have to speak to either John McKay or John Erlenborn -- but I  
19 would sense that it was the sense of the committee would be  
20 to do it in a negotiated rulemaking format. I can't imagine  
21 why we would not, unless someone has a different view of

1 that.

2 MS. BATTLE: I have the copy of this with a great  
3 big question mark on it because I was trying to figure out  
4 just what it was. This is the rulemaking -- the ROP? Is  
5 that what it's called?

6 MS. CONDRAV: Yes.

7 MS. BATTLE: Rulemaking Options Paper.

8 CHAIR BRODERICK: Yes, which we have been provided  
9 with. And the decision we need to make now -- and I should  
10 make it in consultation with the president, working through  
11 this committee -- is whether or not we should go forward on a  
12 negotiated rulemaking or notice and comment rulemaking. My  
13 personal preference would be to do the former, which would be  
14 a pretty inclusive process.

15 MR. FORTUNO: And, in fact, that is the  
16 recommendation of staff.

17 MS. CONDRAV: And that's the recommendation. Just  
18 -- I'll go back for a second. Under the protocol, after the  
19 board identifies an issue as an appropriate subject for  
20 rulemaking, we develop a Rulemaking Options Paper, which is  
21 basically, you know, an internal staff decision-making paper.

1 It lays out issues and scope and things that we see coming  
2 down the track so that the decision-makers can decide how to  
3 proceed. And it includes a recommendation of whether we, the  
4 staff, believe it should move forward -- a particular  
5 rulemaking should move forward as a negotiated rulemaking or  
6 just a simple notice and comment. And then under the  
7 protocol, it's the chair of the committee, in consultation  
8 with the president, who would make a final decision  
9 transmitted back to staff whether to move forward as the  
10 Rulemaking Options Paper recommends or not. And once that  
11 happens, then we publish -- we put out notices that we are  
12 going to be doing a rulemaking, this is what it's going to be  
13 about, this is how we're conducting it. And if it is a  
14 negotiated rulemaking, the president and the chair of the  
15 committee work to solicit nominations and put together a  
16 working group to actually do the work on rulemaking.

17 CHAIR BRODERICK: It's a very inclusive process.

18 MS. BATTLE: Okay. I guess the only question I  
19 have is, given our short time frame for trying to complete  
20 this, can we, using the negotiated procedure, complete it by  
21 September so that we could --

1           MS. CONDRAY: I would highly doubt it. But I'm not  
2 it would be completed by September in a notice and comment  
3 rulemaking, quite honestly, either, because we would have to  
4 have all the time to do the informal work, to do the drafting  
5 of the notice of proposed rulemaking, get that approved by  
6 the committee, publish it for comment, presumably you want to  
7 leave a good amount of time for -- if it hasn't gone through  
8 a notice -- a negotiated rulemaking, you want to increase the  
9 time that that is available for comment.

10           MS. BATTLE: I guess what I'm saying is negotiated  
11 rulemaking, given our short time on the board, may make more  
12 sense than the notice and comment because of the statutory  
13 time frames for getting it in the Federal Register and all  
14 that.

15           Is that --

16           MS. CONDRAY: Well, it's not a statutory time  
17 frame; it's just as a practical matter the rulemaking is not  
18 going to be completed between now and September, no matter  
19 what you do -- not and have any sort of product that any of  
20 us want to put our names on.

21           CHAIR BRODERICK: My sense is I'd like to proceed

1 and speak to either John McKay or John Erlenborn relative to  
2 that, unless --

3 MS. BATTLE: I have no objection to it. My only  
4 concern is that at the point in time that this committee has  
5 to make a decision, I like to hear and make sure that I'm  
6 fully informed at that juncture as to what all the issues are  
7 so we can make an informed final decision on it.

8 CHAIR BRODERICK: That will definitely happen.  
9 Absolutely. Under our protocol, it's required.

10 MS. CONDRAV: That's right.

11 CHAIR BRODERICK: All right. If there are no other  
12 questions, the last issue I want to raise before we consider  
13 and act on other business and receive any public comments is  
14 item number five. I'm going to have Victor address that, or  
15 Mattie.

16 MS. CONDRAV: You know, this is we're finally  
17 getting around to cleaning up 1639 in light of the Velazquez  
18 decision. We don't -- without predisposing what the final  
19 rule would be, because we will have a rulemaking process, my  
20 own personal feeling is that it's not going to require a  
21 really extensive rulemaking; and even if we don't have a

1 rulemaking, the effect of the decision is that the language  
2 which was voided by the Supreme Court can not be enforced,  
3 and we just last week sent out a program letter basically  
4 stating that of what the effect is on 1639 pending any  
5 rulemaking to clean it up.

6           But just because the Supreme Court kind of changes  
7 our rule for us, I think it's just appropriate to go back  
8 then and actually clean up the rule itself.

9           CHAIR BRODERICK: What action are you looking for?

10           MS. CONDRAY: So we're asking for the committee to  
11 recommend to the board that the board identify 1639 as an  
12 appropriate subject for rulemaking so that we can undertake  
13 the action to actually clean up the reg.

14           CHAIR BRODERICK: All right. Maybe there will be a  
15 motion.

16   M O T I O N

17           MS. BATTLE: So moved.

18           CHAIR BRODERICK: I'll second it. There are only  
19 two of us, so I'd say it passes unanimously.

20           MR. EAKELY: Aye.

21           MS. BATTLE: He's just letting you know he's ex-

1 officio.

2           CHAIR BRODERICK: Mr. Chairman, my apologies. But  
3 it does pass, so thank you.

4           With respect to item seven, if there are no other  
5 questions of Mattie or Victor, I thank you. And I just want  
6 to echo the comments that were made earlier on the property  
7 manual. I know it took a lot of time. I know you parachuted  
8 into it, and we appreciate the fine work you did on it.

9           And the comments, notwithstanding which were few in  
10 number, is not a reflection in any way on the work or the  
11 work product. So we look forward to working with you and  
12 getting that squared away.

13           But with respect to item seven, consider and act on  
14 other business, I know of none unless someone wants to raise  
15 something.

16           (No response.)

17           CHAIR BRODERICK: If not, we'll go to public  
18 comment. And I know of the thousands of people remaining in  
19 the room there are probably a few who would like to speak.

20           (Laughter.)

21           CHAIR BRODERICK: If not, I would entertain a

1 motion to adjourn.

2

M O T I O N

3

MS. BATTLE: I will so move, Mr. Chairman.

4

CHAIR BRODERICK: I will second that.

5

All those in favor?

6

(Chorus of ayes.)

7

CHAIR BRODERICK: Anyway, thank you. The committee

8 is adjourned.

9

(Whereupon, at 3:45 p.m., the Operations and

10 Regulations Committee was adjourned.)

11

\* \* \* \* \*