



**Inspector General**  
Kirt West

September 25, 2006

The Honorable Michael B. Enzi, Chairman  
Committee of Health, Education, Labor and Pensions  
United States Senate  
Washington, DC 20510

The Honorable Charles E. Grassley, Chairman  
Committee on Finance  
United States Senate  
Washington, DC 20510

The Honorable Chris Cannon, Chairman  
Subcommittee of Commercial and Administrative Law  
House Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

Dear Chairmen Enzi, Grassley, and Cannon:

I am pleased to present the Legal Services Corporation (LSC) Office of Inspector General (OIG) report on certain fiscal practices at LSC.

On March 3, 2006, I received your request that I review allegations concerning fiscal practices, conflicts of interest and general mismanagement at LSC. The letter refers allegations made in two anonymous complaints and also asks that I investigate both LSC President Barnett and the LSC Board regarding allocation of resources involving the use of taxpayer dollars for trips to foreign countries, first-class travel, travel from vacation homes, travel on non-LSC related business, and conferences held in well-known resort spots such as Puerto Rico. The letter also asks that I review whether the Board is paying excessive bonuses to President Barnett and whether the Board is allowing her to continue her involvement with lobbying organizations; further, the letter asks for a review of any and all payments made to the LSC President. Additionally, the letter requests that I review LSC's practice of hiring consultants and the resultant cost to the taxpayers, as well as LSC's settlement agreements with departing LSC employees and the cost associated with such settlements. Finally, the letter requests a review of possible conflicts of interest at LSC, including the activities of several current executive

directors of LSC grantees who performed duties at LSC as Special Assistant to the LSC President.

During the course of this review, the OIG received additional allegations identifying other potential irregularities warranting review. These were received from various sources, including Congressional staff, current and former LSC employees (many of whom requested whistleblower status), and members of the public.

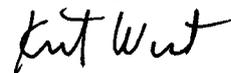
This report presents an objective and thorough review of the fiscal issues outlined in the request and the additional fiscal-related allegations received. During the course of the review, the House Committee on Appropriations indicated a preference for LSC to apply federal government policies to its operational practices. House Report 109-520, Title IV, p. 136 (June 22, 2006). For this reason, although federal spending policies do not apply directly to LSC, we have identified the federal policies applicable to the issues reviewed and the report includes the relevant policies in an appendix. Finally, the report also includes recommendations for improving LSC fiscal policies.

We provided a draft copy of this report to the LSC Board and management. I am pleased to notify you the Board and management responded positively to our report. They have agreed to implement in substance all of the report's recommendations. In some cases, they have already taken steps to do so, as noted in the final report.

The OIG is continuing its work on the allegations concerning potential conflicts of interest and general mismanagement. We will report the results of that work upon its completion.

I hope you find this report responsive to your request regarding LSC's fiscal practices. Our goal, as always, is to provide information so that LSC can more effectively and efficiently carry out its mission and so that the Congress, LSC and the American public can be assured of the appropriate use of the federal dollars supporting legal assistance to the poor.

Sincerely,

  
Kirt West  
Inspector General

Enclosure

cc: The Honorable Melvin L. Watt  
The Honorable Edward M. Kennedy  
The Honorable Max S. Baucus  
LSC Board of Directors  
LSC President Helaine Barnett

**LEGAL SERVICES CORPORATION**

**OFFICE OF  
INSPECTOR GENERAL**

**REPORT ON CERTAIN FISCAL  
PRACTICES  
AT THE  
LEGAL SERVICES CORPORATION**

**September 25, 2006**

# TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	1
BACKGROUND .....	4
METHODOLOGY .....	5
I. BOARD MEETINGS .....	6
Costs Associated with Board Meetings/Selection Process .....	6
D.C. Board Meetings at Melrose Hotel.....	10
Board Dinners .....	10
Board Meetings in Resorts.....	11
RECOMMENDATIONS.....	12
II. TRAVEL.....	13
LSC President's Travel .....	13
First Class Travel .....	14
Chauffeured Car Services.....	16
Lodging Waivers .....	18
RECOMMENDATIONS.....	18
III. FOOD AND ENTERTAINMENT .....	19
Coffee/Soft Drinks/Water .....	19
Holiday Dinner Cruises, Holiday Parties, Picnics, and Excursions .....	20
Food Purchases .....	21
Meals for Others/Business Entertainment.....	22
RECOMMENDATIONS.....	22
IV. OTHER COSTS.....	24
Settlement Agreements with Departing Employees .....	24
RECOMMENDATIONS.....	25
Bonuses to the President/Locality Pay.....	25
RECOMMENDATION .....	26
Acting Special Counsel Costs .....	27
APPENDIX I.....	28
A. Background on City Pair Contract and GSA Regulations.....	28
B. Expenses Associated with President's Travel to and from Multiple Residences.....	29

# TABLE OF CONTENTS

(Continued)

C. Expenses Associated with President’s Outside Activities .....	31
D. Violation of Fly America Act Regulations .....	33
APPENDIX II.....	35
A. Board Meetings .....	36
1. Using Rented Space to Hold Meetings .....	36
2. Contracting Practices .....	36
3. Per Diem Allowance.....	38
4. Paying for Guests.....	47
B. Travel.....	49
1. Airline Travel .....	49
2. Fly America Act .....	50
3. Car Service .....	54
4. Premium Travel.....	56
5. Travel Expense Waivers .....	58
C. Food and Entertainment.....	61
1. Working Meals .....	61
2. Business Entertainment .....	62
3. Coffee, Water and Miscellaneous Items .....	63
4. Picnics and Holiday Parties.....	64
D. Other Costs .....	66
1. Severance Pay.....	66
2. Locality Pay.....	67
APPENDIX III – CONFIDENTIAL ATTACHMENT	

## **EXECUTIVE SUMMARY**

In response to a Congressional request, the Office of Inspector General (OIG) initiated a review of allegations concerning fiscal practices, conflicts of interest, and general mismanagement at the Legal Services Corporation (LSC). This report presents our findings with respect to certain LSC fiscal practices, including allegations of fiscal abuse and wasteful spending. Other matters identified for review will be addressed in subsequent reports.

With respect to many of the allegations, our review found spending practices that may appear excessive and inappropriate to LSC's status as a federally-funded non-profit corporation, particularly in light of its mission in distributing taxpayer dollars to fund legal services for the poor. We also found a number of transactions which did not follow LSC's own policies and a number which would be impermissible under the rules governing federal agency spending. While generally those rules are not directly applicable to LSC, they provide a familiar reference point for Congressional overseers and the public. Our principal findings and recommendations are summarized below:

- We found the cost of food at Board of Directors meetings appeared excessive in some instances and should be reduced. In nine of the eleven Board meetings that we were able to examine, we found that the total cost of food was equivalent to more than 200 percent of the applicable per diem food allowance. We found lunch costs at the January 2006 Board meeting to be more than \$70 per person, afternoon snack breaks costing as much as \$27 per person, and a total hotel food cost (breakfast, lunch, and snacks) of \$8,726 for the entire two-day meeting. We also found the contracting process for Board meetings was not in compliance with LSC's own policies. LSC did not generally follow its competitive contracting practices in selecting a hotel venue for Board meetings or properly document the selection process or the justification for the selection. Finally, we found LSC could save thousands of dollars by holding its local, Washington, D.C., Board meetings at its headquarters rather than at a hotel.
- We found that the LSC Chairman's authorization to allow the LSC President to travel to or from any of her homes in connection with official travel was contrary to the terms of the General Services Administration (GSA) travel contract and LSC's obligations as a mandatory user thereunder. We also found that the LSC President's use of a foreign air carrier violated GSA's regulations implementing the Fly America Act, which LSC is contractually bound to follow. Further, we question the use of LSC funds to pay expenses associated with the LSC President's continued service in various capacities with outside organizations with which she was involved prior to her selection as LSC President.

- We found that LSC officials traveled first or business class in three instances. In one instance in 2005, the LSC Chairman traveled first class round trip from Atlanta, Georgia, to Washington, D.C. The first class ticket was less than a government ticket on the same flights. In a second instance in 2005, the LSC President traveled one-way first class to an international legal aid conference in Ireland at an additional cost to LSC. Instead of using the government fare initially booked, the President was ticketed full fare coach, allowing her to secure an immediate first class upgrade as a frequent flyer member, which would not be available immediately with a government ticket. Finally, an LSC Vice President traveled business class round trip to Melbourne, Australia, to attend the 2001 International Legal Aid Conference. As the trip was well in excess of 14 hours, it appears that business class would have been authorized for this trip under the Federal Travel Regulation.
- We estimate that LSC spent over \$100,000 on coffee, holiday parties and picnics, working lunches, and business entertainment, going back as far as August 2000. These expenditures did not violate LSC policy. While LSC is generally not subject to federal spending practices, these expenditures would be impermissible under those practices and we question whether many of them were reasonable and necessary, and whether they were appropriate for LSC.
- We found LSC has spent over \$1 million in the past ten years in settlement agreements with departing employees.

We concluded that some of the allegations were unfounded, or could not be substantiated. Specifically:

- We found no evidence of excessive or undisclosed bonuses or of other confidential or indirect payments by LSC to the LSC President. We found no evidence of any “secret deal” between the LSC President and the LSC Board of Directors.
  - We did find, however, that the LSC President has been receiving a “Locality Pay” supplement at a rate that is 1 percent of salary greater than that received by any other LSC employee, all of whom work in Washington, D.C. (The Inspector General also received locality pay with a 1 percent differential for the first four months of his employment. This ended December 2004.) We questioned the propriety of such a payment. Locality pay rates by their nature are geographically based; under the federal system there would be no variation for an individual payee within a given area.
- We did not find unreasonable LSC’s justification for holding a Board meeting in Puerto Rico. LSC stated that it was appropriate to visit the largest LSC grantee and meet with various judicial officials and members of the bar who are involved

in promoting the delivery of legal services to low-income individuals in Puerto Rico.

- We did not find wide-spread first-class travel and found only one instance of questionable first-class travel.
- We did not find LSC spending practices violated any laws. However, we did find that LSC is not adhering to its contractual obligations under the GSA City Pair Contract, as well as instances where it is not following its own controls and procedures regarding spending, contracting, and travel.

Our overall recommendations to the LSC Board and LSC management include the following:

- Undertake a comprehensive review to bring LSC's spending policies and practices, particularly in the areas of travel, meals, meetings, and entertainment, in line with those applicable to federal agencies, and require that the Board review and approve any deviation from federal practice.<sup>1</sup>
- Review the overall cost of LSC Board meetings to determine whether there are ways to reduce costs. Also, require that LSC's competitive requirements are followed in contracting for Board meeting locations.
- Provide training and education for LSC staff to ensure that all LSC policies are followed, particularly in the areas of contracting and the Federal Travel Regulation related to the GSA City Pair Contract.
- Review LSC employment policies and practices to determine if there are opportunities to reduce its potential liability, and review its settlement policies and practices to determine whether costs can be reduced and whether they are in the best interest of the corporation and appropriate expenditures of public funds.

LSC Response: The LSC Board and management responded positively to a draft copy of this report. They have agreed to implement substantially all of the report's recommendations. In some cases, they have already taken steps to do so, as noted in the specific recommendations within the report.

---

<sup>1</sup> We note that this recommendation is consonant with the language in the House report accompanying LSC's appropriation bill for fiscal year 2007, in which the Committee on Appropriations stated it "...expects LSC to carefully review all of its operating procedures to determine if they are, in fact, in line with other Federal agencies. If discrepancies emerge during this review, the Committee expects LSC to proactively make modifications to its procedures." House Report 109-520, Title IV, p. 136 (June 22, 2006).

## **BACKGROUND**

LSC is a private, non-profit corporation established by Congress in 1974 to help provide equal access to the system of justice in our nation to those who otherwise would be unable to afford adequate legal counsel by making financial support available to provide high quality civil legal assistance. In establishing LSC, Congress explicitly recognized “providing legal assistance to those who face an economic barrier to adequate legal counsel will serve best the ends of justice, assist in improving opportunities for low-income persons,” and that the availability of legal assistance “has reaffirmed faith in our government of laws.”<sup>2</sup> LSC has said, “The goal of providing equal access to justice for those who cannot afford to pay an attorney remains the reason for LSC’s existence and the benchmark for its efforts.”<sup>3</sup>

LSC’s statutory mission is to provide “financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance.”<sup>4</sup> Pursuant to its mission, LSC funds 138 non-profit legal aid organizations across the United States and its territories to address the most basic and critical civil legal needs of the poor. Controlling statutes require that LSC choose grantees to provide such legal assistance to the poor through a process of competitive bidding,<sup>5</sup> and also require LSC to ensure grantee compliance with applicable laws and implementing regulations and guidelines, and to ensure the maintenance of high quality service.<sup>6</sup> LSC is required to ensure that grant dollars are provided so as to make the most economical and effective use of its taxpayer-provided resources in the delivery of legal assistance to eligible persons.<sup>7</sup>

LSC is wholly funded through taxpayer dollars; its 2006 annual appropriation was \$326.6 million, including \$12.7 million to support LSC headquarters operations (not including the OIG). Given its mission as the principal provider of federal funds for legal assistance to the poor and its status as a quasi-federal agency, it is reasonable to expect that LSC management should conform to the highest standards with respect to fiscal responsibility and accountability. Indeed, LSC, “[a]s a matter of principle, [is] committed to being a careful and frugal steward of taxpayer funds [and declares that it has] strict policies in place to ensure LSC funds are spent wisely and appropriately.”<sup>8</sup>

---

<sup>2</sup> LSC Act, 42 USC § 2996.

<sup>3</sup> *Documenting the Justice Gap in America: A Report of the Legal Services Corporation* (2005), p.1.

<sup>4</sup> LSC Act, 42 USC § 2996b(a).

<sup>5</sup> Pub. L. 104-134, § 503 (2005), incorporated by reference in Pub. L. 109-108 (2005).

<sup>6</sup> LSC Act, 42 USC §§ 2996d(b)(1)(A); 2996f(a)(1).

<sup>7</sup> LSC Act, 42 USC § 2996f(a)(3).

<sup>8</sup> Press Release - Legal Services Corporation (LSC) Response To Issues in CBS and AP News Stories. August 17, 2006; p. 1.

## **METHODOLOGY**

During the course of its review, OIG staff examined LSC documents and records. OIG staff also interviewed LSC staff, LSC Board members, LSC contractor officials and officials at selected Federal agencies. OIG staff researched applicable policies. As required by professional standards, the OIG work was conducted with integrity, objectivity and independence. Before this report was released, it was put through a rigorous quality assurance process called independent referencing to ensure there is documentary evidence supporting the report. A draft version of this report was provided to LSC for comment and many comments have been incorporated into the report.

Because of the different issues included in the Congressional inquiry, we reviewed documents that best matched the timeframe contained in the request. In addition, when a specific timeframe was not included in the Congressional request, we exercised judgment in selecting the timeframe to review.

In order to identify spending practices of LSC, we reviewed actual invoices, expense transactions recorded in LSC's financial data bases; LSC's own documents and manuals; information supplied by LSC to Congress; and had discussions with LSC Board members, LSC staff and other individuals as appropriate. We exercised judgment and made estimates where adequate, detailed information was not available. In some instances, we relied on the information contained in LSC's accounting data bases for fiscal years 2003, 2004, 2005, and 2006 (through May 31, 2006), rather than conducting a detailed review of all vouchers. We then relied upon representations by the LSC Comptroller as to the reasonableness of the information contained in the accounting data bases.

The OIG received full cooperation from both LSC management and the LSC Board in terms of document and interview requests. There were understandable delays in receiving documents from LSC management because LSC management was assembling a large number of documents pursuant to a separate request from Congress. The OIG also received copies of all documents submitted to Congress. Although unavoidable, these difficulties contributed to delaying the issuance of this report.

We have analyzed the various allegations and will be reporting on them in four categories: Board Meetings; Travel; Food and Entertainment; and Other Costs.

## **I. BOARD MEETINGS**

### **Costs Associated with Board Meetings/Selection Process**

The LSC Board of Directors is required to hold four meetings per year.<sup>9</sup> The annual meeting is typically held in Washington, D.C., in January. For the period January 2004 through July 2006, the OIG reviewed the cost of the Board of Directors meetings and reviewed LSC's process for selecting the hotel venues for the meetings. The Board held the three annual meetings occurring during the review period in Washington, D.C.; the Board held the other nine meetings reviewed in various locales throughout the country. Each Board meeting is normally two days long. The OIG reviewed the twelve meetings of the Board of Directors occurring during this period.<sup>10</sup>

LSC management is responsible for arranging the logistics for Board meetings. LSC management presents the Board with a proposed list of meeting locations for its input and approval. Because the LSC Board does not have any full time staff, its members rely on management to make the final arrangements for the meetings once the Board approves the meeting location. After receiving Board approval, LSC management under the direction of President Barnett makes all necessary arrangements, including selecting the hotel; finalizing the contract; and selecting the menu for the meals and snacks/beverages to be provided during the meeting.

Once a hotel venue is selected for the Board meeting, LSC generally contracts for the hotel to provide breakfast and lunch to attendees as a group. Dinner for members of the Board is arranged by LSC, generally at an off-site restaurant. When meals are provided, LSC policy requires a reduction of the applicable per diem expense that LSC travelers may request as reimbursement.<sup>11</sup> Federal agency travelers follow similar rules. See Appendix II, § A.3.

- The cost of food at Board meetings appeared excessive in some instances, greatly exceeding the applicable LSC per diem allowance, and could be reduced.

---

<sup>9</sup> 42 USC § 2996(h)

<sup>10</sup> The OIG did not review meetings solely of Board Committees, nor did we review telephonic Board meetings.

<sup>11</sup> According to LSC policy, when meals are provided to a traveler by a host or a hotel, the meal allowance should be reduced by \$5 per meal. For example, if the meal allowance for a location is \$45 and both breakfast and lunch is provided to the traveler, the reduced meal allowance for that day would be \$35. As of July 2006, LSC amended the Administrative Manual to adopt the meal allowance reductions used by the federal government.

- The total cost of food at Board meetings, including Board dinners, exceeded the per diem allowance by as much as \$120 per person per day. In nine of the eleven Board meetings that we were able to examine,<sup>12</sup> we found that the total cost of food was equivalent to more than 200 percent of the applicable per diem allowance. See Chart on page 9.
- The daily cost of hotel food per person, not including dinners, ranged from \$20<sup>13</sup> to \$133. The cost of the particular food items selected contributed to the high cost per person. For example one lunch meal cost \$70.80 per person (including a 20 percent service charge). For another lunch, the cost was \$60.50 per person. In two instances, the cookie and beverage service for the afternoon break cost more than \$1,000, with per person costs of approximately \$21 and \$27.<sup>14</sup>
- The overall costs of hotel food and beverages have been generally rising since the January 2004 meeting, ranging from \$4,661 and reaching a peak in the first two meetings in 2006, \$8,726 in January and \$9,035 in April 2006. Several factors contributed to these costs, including the cost of the menu item served, the number of people attending the meals, and the inclusion of snack food with the afternoon beverage break. LSC did significantly reduce the overall food cost of its July 2006 Board meeting, spending \$4,000 less than it did in April 2006, although the cost per person was still equivalent to approximately 200 percent of the applicable per diem.
- The contracting process for Board meetings generally was not in compliance with LSC policy.
  - LSC policy requires the competitive selection of contracts for those over a specified minimum amount. Although the cost of Board meetings exceeded that specified amount, our review of contracting records indicated there was often a failure to conduct adequate competition or to document the reasons for the lack of competition, as required by LSC policy.

---

<sup>12</sup> The OIG was unable to conduct a detailed review of the food costs for the September 2004 Board meeting because LSC did not provide adequate data to permit the necessary calculations. The September 2004 meeting, therefore, is not included in this analysis.

<sup>13</sup> The reason for the low cost in this case was that for the day in question, the hotel only provided breakfast beverages for a bus ride in connection with an early-morning visit to an LSC grantee.

<sup>14</sup> Typically at Board meetings, 30 to 40 persons are in attendance.

- Even when LSC obtained quotes on the cost of sleeping rooms, the lowest price was not selected in some instances, as required by LSC policy.<sup>15</sup> LSC did not document the rationale as to why the low quote was not selected, except in one instance. Our review of the selection process for the Board meetings disclosed that LSC did not solicit quotes in four instances and we could not determine whether LSC solicited quotes in two other instances. In the six instances LSC did solicit quotes, the lowest quote was selected three times,<sup>16</sup> the lowest quote was not selected in two instances, and in one instance, a hotel that did not submit a quote was selected.<sup>17</sup>

Other LSC contracting policies were not followed. Since February 2005, LSC policy requires that prior to contract award, contracts are provided to the Comptroller and the Office of Legal Affairs for review. LSC officials did not, except in one instance, provide the contracts to the Treasurer and Comptroller (Comptroller) for review prior to selecting the hotel.

Federal agency contracting practices for similar acquisitions are found at Appendix II, § A.2.

---

<sup>15</sup> Prior to February 2005, LSC policy required the selection of the lowest bidder or a documented justification if the lowest bidder was not selected. Since that date, policy requires the selection on the basis of best value to LSC and requires documenting the basis for contractor selection. LSC did not meet either requirement.

<sup>16</sup> In one instance the lowest quote was not selected because only one hotel was available for the preferred meeting dates. We counted this as one of the three instances that the lowest quote was selected.

<sup>17</sup> When comparing the rate received to the rates quoted by the other hotels, the hotel who received the contract would have submitted the second highest quote of the four received.

**Total Daily Food Costs to LSC, Including the Cost of Board Dinners,  
Compared to GSA M&IE Rate**

<b>Location</b>	<b>Meeting Date</b>	<b>Name of Hotel</b>	<b>Total Daily Food Costs per Person<sup>18</sup></b>	<b>GSA M&amp;IE Rate</b>	<b>Amount per Person Over GSA M&amp;IE rate</b>	<b>Total Daily Food Costs Compared to GSA M&amp;IE Rate</b>
Washington, DC	1/30/04	Melrose Hotel	\$134.55	\$51.00	\$83.55	263.82%
Washington, DC	1/31/04	Melrose Hotel	\$116.42	\$51.00	\$65.42	228.27%
Baltimore, MD	4/30/04	Hyatt Regency	\$58.63	\$47.00	\$11.63	124.74%
Baltimore, MD	5/1/04	Hyatt Regency	\$154.39	\$47.00	\$107.39	328.50%
Omaha, NE	6/4/04	Hilton of Omaha	\$69.74	\$43.00	\$26.74	162.19%
Omaha, NE	6/5/04	Hilton of Omaha	\$64.64	\$43.00	\$21.64	150.33%
Cincinnati, OH	11/19/04	Westin Hotel	\$133.67	\$51.00	\$82.67	262.11%
Cincinnati, OH	11/20/04	Westin Hotel	\$151.81	\$51.00	\$100.81	297.66%
Washington, DC	2/4/05	Melrose Hotel	\$159.60	\$51.00	\$108.60	312.94%
Washington, DC	2/5/05	Melrose Hotel	\$125.40	\$51.00	\$74.40	245.88%
San Juan, PR	4/29/05	Caribe Hilton	\$136.53	\$57.00	\$79.53	239.53%
San Juan, PR	4/30/05	Caribe Hilton	\$145.74	\$57.00	\$94.74	255.68%
Monterey, CA	7/28/05	Hyatt Regency	\$158.06	\$47.00	\$111.06	336.30%
Monterey, CA	7/29/05	Hyatt Regency	\$114.92	\$47.00	\$67.92	244.51%
Monterey, CA	7/30/05	Hyatt Regency	\$128.40	\$47.00	\$81.40	273.19%
Boise, ID	10/28/05	Grove Hotel	\$95.91	\$49.00	\$46.91	195.73%
Boise, ID	10/29/05	Grove Hotel	\$96.21	\$49.00	\$47.21	196.35%
Washington, DC	1/27/06	Melrose Hotel	\$124.20	\$64.00	\$60.20	194.06%
Washington, DC	1/28/06	Melrose Hotel	\$158.80	\$64.00	\$94.80	248.13%
St. Louis, MO	4/28/06	Chase Park Plaza	\$179.12	\$59.00	\$120.12	303.59%
St. Louis, MO	4/29/06	Chase Park Plaza	\$161.70	\$59.00	\$102.70	274.07%
Providence, RI	7/28/06	Westin Hotel	\$113.56	\$54.00	\$59.56	210.30%
Providence, RI	7/28/06	Westin Hotel	\$121.59	\$54.00	\$67.59	225.17%

<sup>18</sup> Total daily food costs per person includes the cost of snack/beverage breaks. These are not normally charged against the M&IE for individuals attending a conference under federal per diem rules. The purpose of this chart is to reflect all of LSC funds that were spent on food items.

## **D.C. Board Meetings at Melrose Hotel**

The LSC Board of Directors typically holds its annual meeting (one of four required quarterly meetings) in Washington, D.C. For the period of our review, calendar years 2004-2006, the LSC Board has held the annual Board meeting at the Melrose Hotel. Although LSC has stated that the Melrose is convenient to LSC's headquarters, it has been selected without competitive process, and costs have increased significantly. LSC could save thousands of dollars by holding its annual Board meeting at its Washington, D.C., headquarters, and should consider doing so. Federal agencies are authorized to use appropriated funds to rent non-Government space when other suitable space can not be found. See Appendix II, § C.4.

The costs at the Melrose have steadily increased over the past three years primarily due to food costs. LSC's food costs at the Melrose have risen from \$4,661 in 2004 to \$8,726 in 2006, an 87 percent increase. Lunch menu selections have increased in cost from a daily total average of \$1,218 (\$40.48 per person) in January 2004, to a daily total average of \$2,413, (\$55.80 per person) in January 2006. (Under the federal per diem system, the current meal allocation in the Washington, D.C., area for lunch is \$18.) The cost of an afternoon break has risen from a daily total average of \$545 (\$18.18 per person) in January 2004, to a daily total average of \$996 (\$26.90 per person) in 2006. We question whether these expenditures are reasonable and necessary, and appropriate for LSC.

The OIG also questions LSC's stated justification for why it cannot hold its annual Board meeting in its headquarters building.<sup>19</sup> In a June 30, 2006, letter to Congress, LSC stated that the space in the LSC headquarters "does not have the same array (in both size and number) of meeting rooms as a full-service hotel, and lacks the kind of privacy for executive session meetings that is available at the Melrose." For all three years, both LSC Board committee meetings and the LSC Board meeting were held in a 1,158 square foot room (Potomac I and II) at the Melrose. However, LSC headquarters has a slightly larger 1,200 square foot conference room, along with several other smaller conference rooms. LSC also stated that the LSC headquarters building "lacks ovens, stoves and other appliances used in connection with the catering of meals." However, LSC has held catered events in its headquarters building.

## **Board Dinners**

In February 2005, LSC instituted a policy that automatically granted members of the Board of Directors a waiver from the normal per diem limitation for meals, allowing them to claim reimbursement for actual cost of up to 200 percent of the per diem rate when attending a dinner with a number of Board members. While

---

<sup>19</sup> The September 2005 and 2006 Finance Committee meetings were held at LSC's headquarters. The September 2006 meeting was followed by a full Board meeting.

the policy only addressed the members of the board, LSC's practice was to apply the increased meal rate to all individuals who attended the dinner, even those who were not entitled to per diem. In unusual circumstances federal travelers are eligible for a waiver of up to 300 percent for food as well as lodging. See Appendix II, § A.3. For example, some individuals who have attended Board dinners were LSC staff not in a travel status, non-LSC personnel, and family of Board members, none of whom normally are entitled to reimbursement.

During the period June 2004 through January 2006, LSC paid for 15 dinners at eight Board meetings at a cost of \$9,471. For 12 of the 15 dinners, documentation supporting travel expense reports identified who attended the Board dinners. For those 12 dinners we calculated that:

- LSC paid for Board members (including the LSC President) \$2,187 more than would have been paid under a single per diem ceiling; and
- LSC paid an additional \$1,487 for Board family members, non-LSC officials, LSC officials who were not in travel status, and LSC officials in travel status whose expenses exceeded the per diem allowance.

Expenditures for family members and guests are generally not authorized under Federal appropriations. See Appendix II, § A.4.

In July 2006, LSC eliminated the 200 percent provision for Board dinners and Board members now receive the same per diem as other LSC staff.<sup>20</sup>

### **Board Meetings in Resorts**

The only location where the current LSC Board has met in a location that likely could be described as a well-known resort area is the May 2005 meeting in Puerto Rico. The LSC has justified its selection of Puerto Rico for a Board meeting on the basis that the Board had not previously visited the Puerto Rico program, the largest LSC grantee, and the Board had the opportunity to meet with various judicial officials and members of the bar who are involved in promoting the delivery of legal services to low-income individuals. We do not find LSC's justification unreasonable.

---

<sup>20</sup> During the course of this review, LSC management notified Congress that it is eliminating the 200 per cent provision. In its notification, LSC management cites GSA regulations that allow reimbursement of up to 300 percent of per diem for actual expenses when meals are arranged at a prearranged place, such as a hotel where a conference is held. It is our opinion that Board dinners held during the period of our review would not fall into this category for two reasons. First, LSC has total control over the Board meetings unlike attending a conference arranged by an outside organization. Second, the Board dinners were not usually held at the hotel where the Board meeting was held. We do not believe that the GSA provisions were enacted to allow travelers to eat expensive meals simply because they so choose. Rather, we believe the provisions are to aid travelers, who when situations are out of their control, must spend more than the standard rates allow.

## RECOMMENDATIONS

1. LSC management should consider lower-cost options for food in connection with Board meetings, and consider the need for and appropriateness of such expenditures.
  - LSC Management has indicated that steps have already been taken to reduce costs and that this recommendation will be implemented.
2. The LSC Board should consider holding its annual Board meeting at LSC headquarters.
  - LSC agreed to implement this recommendation. On September 22, 2006, the LSC Board voted to hold its January 2007 Board meeting at LSC headquarters. Management indicated that it will evaluate the results and report to the Board.

## II. TRAVEL

### **LSC President's Travel**

The following summarizes the OIG examination of a number of issues involving travel by the LSC President. The detailed analysis can be found in Appendix I.

- The LSC Board Chairman's authorization allowing President Barnett to travel to or from any of her homes in connection with official travel was contrary to the terms of the GSA City Pair Contract and LSC's obligations as a mandatory user thereunder.<sup>21</sup> Under the Federal Travel Regulation travel includes only local travel (for LSC, the D.C. area) or travel to and from a temporary duty location, which is a place away from an employee's official station. See Appendix II, § B.1 for airline travel rules. Any travel by President Barnett to or from any of her homes outside Washington, D.C., would be deemed personal travel and not official travel (unless she was performing a temporary duty assignment in the location of that other home). The Chairman did not have the authority to negotiate a contract that is contrary to LSC's obligations under the regulations and its contracts with Omega World Travel and GSA. As a result, LSC's actions did not adhere to the terms of the GSA City Pair Contract when the Chairman authorized personal travel at contract rates. See Appendix I, § A, Expenses Associated with President's Travel to and from Multiple Residences.

President Barnett has announced that beginning April 1, 2006 she has requested and will continue to request reimbursement for her return from business trips on a Friday evening or Saturday, regardless of which residence she returns to, only in an amount equivalent to the cost of a government rate return to Washington, D.C., but no more than what she personally paid to return to her residence. In view of this, no recommendation on this issue is being made.

- From January 2004 through March 2006, the LSC President traveled 21 times to and/or from a residence other than her Washington, D.C., residence. For 8 of the 21 trips, the President completed a cost comparison at the time of the trip and reimbursed LSC for any increased costs incurred.<sup>22</sup> At the time of the trip, cost comparisons were either not completed or not documented in the travel files for the remaining 13 trips. As a result, LSC may have incurred additional travel costs that would not have been incurred had all trips been based on travel to and from her Washington, D.C., residence.

---

<sup>21</sup> LSC has been a mandatory user of the GSA City Pair program and as a participant in the program has contractually agreed to follow applicable GSA travel regulations.

<sup>22</sup> LSC has indicated that cost comparisons on all 21 trips have subsequently been completed and submitted in response to a request from Congress.

- President Barnett's trip returning from Ireland on a foreign air carrier appears to have been in violation of the regulations implementing the Fly America Act which LSC is required to follow as a mandatory user of the City Pair Contract. See Appendix I, § C, Violation of Fly America Act Regulations.
- President Barnett's employment contract contains a provision that authorizes her to continue to serve in various capacities with several organizations with which she was involved prior to her selection as LSC President, but it does not authorize payment of expenses in connection with these activities. The Chairman authorized reimbursement of all travel expenses associated with the President's approved outside activities. While permitting the President to spend some ancillary time on outside activities certainly may be appropriate, paying expenses for her work for such activities (e.g., the Historical Society of the Court of the State of New York) would seem to stretch the limits of the purpose of Congressional appropriations for LSC.<sup>23</sup> A fundamental precept of federal appropriations law is that funds may be spent only for the purposes for which they were authorized and appropriated. 31 U.S.C. §1301(a). The OIG believes that a direct LSC business need should be used to determine whether or not travel expenses for a specific trip should be reimbursed. While some of the trips may have a direct LSC business reason, for example, if the President is representing LSC's position on matters coming before the organizations, some may not. LSC's Administrative Manual states, "Only travel which is appropriate to accomplish LSC business shall be authorized and approved." See Appendix I, § B, Expenses Associated with President's Outside Activities.

### **First Class Travel**

LSC policy requires coach class travel unless approved in advance by the LSC President or Inspector General, as applicable. LSC's contractual obligations under the GSA contract allow first class travel when the agency specifically approves the accommodation under specified criteria. See Appendix II, § B.4. LSC has reported to the Congress on all known first/business class trips. Three trips were identified:

- Chairman Frank Strickland—First Class Travel to/from Atlanta, Georgia.
- LSC President Helaine Barnett—First Class Travel to Shannon, Ireland.
- Former Vice President Randi Youells—Business Class Travel to/from Melbourne, Australia.

---

<sup>23</sup> President Barnett is currently affiliated with only two of the organizations originally cited in her employment contract: the American Bar Association and the Historical Society of the Court of the State of New York.

Chairman Strickland. A round-trip first class ticket was purchased for Chairman Strickland to travel from his home city, Atlanta, to Washington, D.C., on LSC business; the fare for the trip was less than the available government fare. According to email correspondence, Chairman Strickland initiated the events that led to the purchase and use of a first class ticket. He was uncomfortable with the only seats available on flights that LSC initially found for him through the GSA contract. He requested that LSC call the airline on his behalf to request an upgrade. LSC found that an upgrade was not available and that only window and center coach seats were available; LSC had window seats assigned for the round trip. In the meantime, Chairman Strickland found that through the Internet he could book a first class ticket on the same flight at less cost than the original coach class government ticket—\$508.40 for first class compared to \$540.40 at the government coach fare. He communicated this information to an LSC official who noted that the coach class tickets had not been purchased. LSC then asked the Chairman whether he wanted to purchase the first class tickets directly or have LSC do it. The Chairman responded in a subsequent email that he purchased the tickets (later reimbursed by LSC) and that the airline did not charge for the change in seating; LSC cancelled the coach class reservations at no charge.

President Barnett. President Barnett traveled on an upgraded first class ticket from Washington, D.C., to Killarney, Ireland, to attend the International Legal Aid Group Conference on June 8-10, 2005. Although President Barnett was initially booked at a government fare for her trip to Ireland, President Barnett did not fly at a government airfare for this trip. Rather, a full fare coach, non-government ticket was purchased for President Barnett, allowing her to secure an immediate first class upgrade as a Continental Airlines OnePass frequent flyer member, which would not be available immediately with a government ticket. The full fare coach ticket was more expensive than the government fare, resulting in additional cost to LSC. President Barnett incurred over \$1,000 in additional costs which appeared unnecessary or excessive in connection with her trip to Ireland. These will be reported on in detail as part of a separate investigative report on matters relating to that trip. Although that report has not yet been completed, President Barnett has committed to personally paying any reasonable estimate the OIG provides of the additional costs to LSC.

Former Vice President Randi Youells. Vice President Randi Youells traveled on a round-trip, business class ticket from Washington, D.C., to Melbourne, Australia, to attend and speak at the International Legal Aid Group 2001 Conference. Travel was from June 9–20, 2001 and the business class ticket cost \$8,183.26. Under the GSA City Pair Contract, business class airline accommodations may be used when the agency specifically approves the accommodation under specified criteria. One of the specified reasons is when the origin and/or destination are outside of the continental United States, and the scheduled flight time, including stopovers and change of planes, is in excess of 14 hours. Flying time to Melbourne, Australia from Washington, D.C., is over 20

hours. It appears that at the time of the trip to Australia, business class would have been authorized.

## RECOMMENDATIONS

3. LSC should follow the federal policies with respect to first class or business class travel, and should ensure its policies and practices are consistent with its GSA contract obligations.
  - Management has indicated that criteria similar to those by which federal agencies decide when to approve first class or business class travel will be added to LSC's policy.

### Chauffeured Car Services

LSC reported that, in the past year, it has paid for the use of chauffeured car services<sup>24</sup> by LSC officials on the following occasions:

- Four round trips by the LSC Board's Vice Chair between Charlottesville, Virginia and Washington, D.C., to attend meetings at costs ranging from \$480 to \$558 per trip.
- One day of chauffeured car service for the Chairman and LSC President to attend meetings and memorial services in the immediate Washington, D.C., area at a cost of \$424.
- One day trip by the LSC President from Washington, D.C. to Harrisburg, Pennsylvania, to attend a memorial service for a former LSC Board member at a cost of \$400.
- One day in New York City during which the LSC President and LSC officials used a car service for two local trips to attend meetings and an award ceremony at a cost of \$49.

The Comptroller approved in advance a request, including a justification for use, for the chauffeured car service for the Vice Chairman's first Charlottesville, Virginia-to-Washington, D.C. trip, as required by LSC policy. The Comptroller did not approve in advance the car service for her three subsequent Charlottesville, Virginia-to-Washington, D.C. trips, however LSC officials did indicate that they analyzed the cost of the car services using the same parameters as were used to justify the first request (cost comparison with airfare). When interviewed, the Vice Chairman stated that other less-expensive modes of transportation were

---

<sup>24</sup> "Chauffeured car service" refers to hiring a car and driver from what are typically called limousine companies. We are not referring here to the use of taxis or equivalent in the normal course of business.

considered but not selected because of safety concerns with driving at night in an unfamiliar major city and the need to work during the trips. The request and analysis only compared the cost to airfare. There was no documented information about other, less-expensive modes of transportation, such as Amtrak, as required by LSC policy.

In arranging local transportation for the Chairman to attend meetings with Congressmen and memorial services for a former LSC President in the immediate Washington, D.C. area, LSC management officials did not follow LSC's policy on local travel. The cost of buses, streetcars, subways, taxicabs, and personal automobiles are reimbursable for local travel. The use of conveyances other than those specifically mentioned in the directive, which chauffeured car services is not, must be approved in advance by the Comptroller. In this case, LSC officials did not seek advance approval by the Comptroller.

The purpose of the President's one-day trip to Harrisburg was to attend and speak at the funeral of LSC's longest serving Board member as a representative of LSC and the Board. In arranging transportation for this trip, neither a request for approval nor information about less expensive modes of transportation was submitted in advance to the Comptroller as required by LSC policy. Management has indicated that the information was provided at the time a request for reimbursement was submitted, and that it was not questioned by the Comptroller. In addition, the President recently indicated to the Inspector General that she is not comfortable driving long distances and that she never has been.

The LSC and comparable Federal policies on using car services are found at Appendix II, § B.3.

## **RECOMMENDATIONS**

LSC should:

4. Specifically, address the use of chauffeured car services in LSC's Administrative Manual by:
  - a. Providing examples of the limited circumstances when chauffeured car services may be permissible; and
  - b. Requiring that approval requests be submitted in advance of the trips and that they document why less costly modes are not used.
    - Management has stated that the limited circumstances under which car services can be used will be addressed in its Administrative Manual.

## Lodging Waivers

LSC travel rules limit Board members to the same lodging rates applicable to all LSC employees. LSC policy permits the maximum rate limitation to be waived under special circumstances. Federal agency travelers also can receive waivers. See Appendix II, § B.5. In the last 5 years, 29 waivers have been granted for lodging costs related to Board meetings.<sup>25</sup> These waivers authorized the incurrence of over \$13,500 in lodging costs in excess of the GSA maximum<sup>26</sup> for these meeting for Board members, LSC employees, and invited guests. However, only 5 of the 29 waiver requests were submitted to the Comptroller prior to the start of travel as required. In addition, only one of the waiver requests explained the circumstances justifying the requested waiver, as required by LSC policy.

### RECOMMENDATIONS

LSC should take the following actions:

5. Revise its Administrative Manual to provide guidance regarding the circumstances under which a lodging waiver request would be appropriate and that the circumstances be documented.
  - LSC management has indicated that the requirement for more information for lodging waivers has been implemented and that this practice will be included in the Administrative Manual.
6. Enforce the requirements for obtaining pre-approvals for lodging waivers.
  - In July 2006, management announced its intention to enforce requirements for pre-approval for lodging waivers and has stated that the policy has been rigorously enforced since then.

---

<sup>25</sup> The 29 waivers were for 27 trips. Waiver requests listed all individuals staying at the same hotel. On two trips, Board members stayed at separate hotels which required separate waiver requests.

<sup>26</sup> The \$13,500 represents the amount of lodging costs that exceeded the greater of LSC's or GSA's maximum rates. This methodology was used because prior to February 2005 LSC's maximum lodging rate was set at or below \$115 per night, which was typically lower than GSA's rates. We believe the higher GSA rates generally reflected a more reasonable cost of lodging for the period prior to February 2005, and the use of the higher of the two rates would produce a more reasonable estimate of the extra cost of lodging due to waivers.

### III. FOOD AND ENTERTAINMENT

The OIG examined LSC expenditures regarding the general area of the purchase of food and payment of entertainment expenses. None of the expenditures reported below violated LSC policy, although a number of such expenses would not be authorized under federal appropriations law. We question whether many of these expenses are reasonable and necessary, and appropriate in light of LSC's mission in distributing federal funds to support legal services for the poor.

#### **Coffee/Soft Drinks/Water**

LSC spent over \$47,000 from October 2002 through May 2006 to provide coffee, tea, hot chocolate, related supplies and paper products for all LSC staff (including OIG staff); soft drinks and water for the executive offices; and flowers, plants, and fruit baskets to express support for employees. These expenditures are generally not authorized under federal appropriations. See Appendix II, § C.3.

- Coffee and Supplies for Employees. LSC spent approximately \$43,300 on coffee, tea, hot chocolate, and related supplies (cups, paper plates, sweeteners, cream, and plastic-ware), for use by all LSC staff.
- Soft Drinks and Water for Executive Offices. From October 2002 through May 2006, \$1,055 was spent buying soft drinks and water for personnel in the executive offices. During an interview on the subject with the Comptroller, we discovered that additional soft drinks and water were purchased for the executive offices using petty cash funds. We did not attempt to quantify the amount purchased using petty cash because of the extensive review that would have to be made of all petty cash vouchers to identify the specific purchases.
- Plants, Flowers, and Fruit Baskets. LSC charged \$2,730 for plants, flowers and fruit baskets from October 1, 2002 through May 31, 2006, according to the financial records. The flowers and fruit baskets were for the most part purchased as expressions of support for employees who had a significant personal event such as surgery or a death in the family. While this practice may not be unusual for private corporations and is certainly well motivated, we note that such expenditures ordinarily are not permitted under federal spending rules; within the federal government, these expenses are usually handled through voluntary employee contributions.

## Holiday Dinner Cruises, Holiday Parties, Picnics, and Excursions

LSC has spent over \$40,000 over a six-year period on holiday dinner cruises, holiday parties, picnics, and trips to amusement parks for LSC staff, OIG staff and family/guests.<sup>27</sup> While these activities are intended to be morale boosting, they have no direct connection to providing funding or oversight for the delivery of legal services. The cost figures shown do not include the cost of duty time to plan and attend these events (some apparently took place during working hours). In addition, these expenditures are generally not authorized under federal appropriations. See Appendix II, § C.4.

Holiday parties have gone down in cost since December 2002 (the last dinner cruise). Holiday party costs for 2004 were \$1,238.60<sup>28</sup> (including \$780 for umbrellas given to staff as holiday gifts) and for 2005 were \$1,015. These costs do not include employee contributions. The last picnic was August 2003.

For the period August 2000 through December 2005, LSC has spent approximately \$40,800 on holiday events and picnics (see attached schedule).

- Holiday Dinner Cruises/Holiday Parties \$23,226
- Picnics/Excursions \$17,649  
(including visits to Six Flags and Kings Dominion)

The figures shown above are based on the numbers reported to us by management and our review of the supporting invoices, also provided by management. See Chart on page 21.

---

<sup>27</sup> For trips to amusement parks and picnics, LSC paid the cost for staff and for one family member/guest per employee. Additional family members/guests were paid for by the employee.

<sup>28</sup> In the fall of 2004, the new Inspector General learned that LSC had budgeted \$5,000 for the December holiday party for a banquet at a local hotel. He raised his concern with LSC President Barnett that such expenditure might not be appropriate. President Barnett discussed the issue with the LSC Holiday Party organizing team; they elected to have a potluck lunch at LSC headquarters. President Barnett, the Inspector General, and other members of LSC staff personally contributed money to help defray costs of the party. As a result, LSC expended far less in taxpayer funds than the \$5,000 that originally had been allocated.

### HOLIDAY PARTIES AND PICNICS

Date	Description	Holiday Parties	Picnics
08/15/00	2nd Annual Softball and Volleyball Tournament		\$6,589.22
12/14/00	Holiday Dinner Cruise on the "Spirit of Washington"	\$6,365.00	
06/21/01	LSC picnic at Six Flags of America		\$1,581.84
12/20/01	Holiday Dinner Cruise on the "Odyssey III"	\$9,281.25	
08/29/02	Picnic at Kings Dominion		\$4,039.74
12/19/02	Holiday Reception at the Hotel Washington 6-8pm	\$4,478.00	
08/21/03	Picnic at High Point Farm (Egan Barbecuers)		\$5,438.77
12/11/03	Holiday Reception at the LSC HQ 3rd Floor	\$848.98	
12/16/04	Holiday Luncheon	\$1,238.60	
12/15/05	Holiday Luncheon	\$1,015.04	
	<b>Totals</b>	<b>\$23,226.87</b>	<b>\$17,649.57</b>
	<b>GRAND TOTAL</b>		<b><u>\$40,876.44</u></b>

### Food Purchases

LSC is spending thousands of dollars purchasing food for its employees and others for working lunches and for meetings, conferences and seminars.<sup>29</sup> These expenditures are generally not authorized under Federal appropriations. See Appendix II, § C.1. The rate of such expenditures has been increasing over the last two years.

- According to the description in the accounting data bases, for the period October 2002 through May 2006, LSC spent over \$14,000 on food for breakfasts, lunches, and snacks for LSC staff members not in a travel status, and for consultants and other individuals attending meetings. In reviewing accounting data base records that either indicated that food was purchased or that items were purchased from a specific restaurant, LSC spent:
  - \$11,255.33 for LSC employees' working lunches and for food expenses for LSC employees at seminars and conferences at LSC offices;
  - \$1,294.63 for individuals who attended LSC sponsored conferences who were neither employees nor contractors; and
  - \$1,497.77 for food for consultants.

<sup>29</sup> To the extent we were able to identify in the accounting data bases food purchases associated with events such as Black History Month, Asian-American Month, Take a Child to Word Day, and similar events, we excluded those expenditures from our totals.

### Food Purchases by Fiscal Year

Fiscal Year	Number of Occurrences	Total Annual Cost
2003	31	\$ 2,790.74
2004	30	\$ 2,573.44
2005	33	\$ 4,223.53
2006	22	\$ 4,460.02
(thru May 31, 06)		
Total	116	\$14,047.73

**NOTE:** Two of the purchases were for the OIG—one for food costs of \$104.68 in FY 2004 for an open house for all LSC employees to become familiar with the new IG and to start building relationships with the LSC staff. The other was for \$68 in June of FY 2003 associated with the move to 3333 K St.

#### Meals for Others/Business Entertainment

Congress specifically requested the OIG to look at the expenditures by the LSC President. From January 2004 through March 2006, the LSC President submitted claims on Travel Expense Reports on 34 occasions for meals provided to others. The total amount claimed was \$3,697. The number of people attending the meals ranged from 2 to 11. Attendees at the meals included such people as LSC employees, local bar officials, jurists, LSC grantee staff, and in two instances, spouses of grantee staff members. Approximately \$2,639 was incurred for meals for non-LSC officials and LSC employees who were not in LSC travel status and for which an LSC business purpose would be required. Although there is nothing to suggest the expenses were not for a business purpose, except in two cases documentation supporting the claims did not clearly indicate the purpose. These expenditures did not violate LSC policy. However, these expenditures are generally not authorized under federal appropriations. See Appendix II, § C.2. Although we did not look at the expense reports of past LSC Presidents, we would note that past Presidents have also incurred such expenses.

### RECOMMENDATIONS

7. LSC should undertake a comprehensive review to bring LSC’s spending policies and practices, particularly in the areas of travel, meals, meetings, and entertainment in line with those applicable to federal agencies.
  - LSC management has stated that it has already informed the House and the Senate Appropriations Committees that it will undertake a review of LSC policies to see where they differ from federal policies and that it will make appropriate modifications.

8. The Board should require that it be advised of and specifically approve any policies and practices in those areas which are different from federal practice.
  - LSC has indicated that the Board will determine the nature of the review it will conduct and/or whether it wants a briefing by management on the areas where LSC policies and practices differ from federal. (The OIG believes the Board and management have indicated their awareness of the nature of matters requiring particular attention and their willingness to address them appropriately.)

#### IV. OTHER COSTS

##### **Settlement Agreements with Departing Employees**

In the past ten years, LSC has paid departing employees \$1,062,000 in settlement agreements to forestall potential employment litigation. (**NOTE:** *Some of these matters include settlements between the OIG and OIG employees.*)

LSC, as a D.C. non-profit corporation, is subject to the laws of the District of Columbia, which provide an array of rights and remedies with respect to employment actions in addition to those available under federal law.

LSC is an at-will employer, and may therefore terminate the employment of a staff member at any time for any reason not prohibited by law. Even so, LSC developed a severance pay policy, with a formula that is based on the employee's length of service with LSC as well as the age of the employee. The severance policy makes severance pay available to an employee whose position is cancelled or who leaves as a result of a reduction-in-force. In addition, LSC policy allows LSC to offer severance pay or other financial incentives to employees facing termination when doing so is in LSC's interest. In practice, LSC uses the severance formula as a basis for negotiating settlement agreements with departing employees so as to avoid potential litigation. Severance pay expenditures are authorized under federal appropriations; however, the severance pay generally is not authorized for negotiating settlement agreements. See Appendix II, § D.1.

Using the formula as a guideline, we reviewed the settlement agreements entered into over the last ten years. Twenty-seven LSC employees entered into settlement agreements with LSC upon termination of their employment relationship with LSC. These settlements total approximately \$1,062,000. Twelve employees received as settlements the dollar amounts computed using LSC's severance formula. Twelve employees received amounts in excess of the severance formula. Three employees received amounts less than the severance formula.

For 6 of the 12 employees who received settlements in excess of the severance formula, the settlements were significantly higher than the formula amount. These were four Vice-Presidents, an Inspector General and an LSC President. It is our understanding that, traditionally, LSC has paid executives other than the President six months of salary as severance pay.

For the remaining six employees who received settlements above the formula, the settlements were between \$9,000 and \$41,000 above the severance formula.

- The two highest payments above the severance formula, \$33,000 and \$41,000, involved matters in which the employees were represented by counsel and LSC made the determination that it was prudent to settle the cases for amounts in excess of the severance formula rather than incur litigation costs and risk an adverse decision.

The remaining four payments ranged from \$9,000 to \$25,000 above the severance formula and involved employees with relatively short service with LSC whose severance formula called for payments between \$4,000 and \$8,000. LSC officials involved in those settlement discussions indicated that the severance package was so small that LSC could not negotiate a settlement unless it offered more money than the severance formula called for.

A schedule of individual settlements is provided at Appendix III. At the request of LSC, this Appendix is being provided to Congress under separate cover on a confidential basis.

## **RECOMMENDATIONS**

LSC should:

9. Review its employment policies and practices to determine whether it can reduce its potential liability.
10. Review its settlement policies and practices to determine (a) whether costs can be reduced, and (b) whether they are in the best interest of the corporation and appropriate expenditures of public funds.
  - Management has indicated that it has been doing these things and will continue to do so. They also note that the potential cost of litigation must be taken into account in evaluating whether a settlement agreement is in the best interest of the Corporation.

### **Bonuses to the President/Locality Pay**

We reviewed the allegation that the LSC President may be receiving excessive bonuses. We found no evidence of excessive or undisclosed bonuses or of other confidential or indirect payments by LSC to the LSC President. It is possible that this allegation stemmed from a misunderstanding regarding the nature of certain payments the President receives as “locality pay.” Most LSC employees receive locality pay as part of their semi-monthly pay checks. Federal employees also receive locality pay. See Appendix II, § D.2. However, because of the LSC pay cap, the LSC President, Inspector General, and approximately 14 other officers,

directors, and managerial employees receive their locality in two equal payments on January 15<sup>th</sup> and July 15<sup>th</sup>.<sup>30</sup>

We do note that the LSC President has been receiving locality pay at a rate that is 1 percent higher than the locality rate paid the rest of LSC employees. (Pursuant to instructions from the LSC Chairman, the Inspector General was also paid locality pay at a rate that was 1 per cent higher for his first four months of employment with LSC (September through December 2004. This ceased when the Director of Human Resources determined that the IG should be paid the same locality pay as the highest paid LSC Vice President.) President Barnett received a locality pay supplement of 10 percent, 11 percent, and 12.6 percent of her annual salary for calendar years, 2004, 2005, and 2006, respectively. The rest of LSC employees received a locality pay rate of 9 percent, 10 percent, and 11.6 percent for calendar years 2004, 2005, and 2006, respectively.

The LSC Chairman explained his rationale for increasing the LSC President's compensation via her locality pay in an August 2, 2005, letter amending the LSC President's employment contract, stating, "The salary of the President of LSC is limited by Congressional Act to Level 5 of the Executive Salary Schedule. The limit has caused salary compression within the LSC salary structure. As a method of alleviating the compression and increasing compensation without increasing the President's salary, LSC has chosen to utilize locality pay in a similar manner, though at a reduced rate, as the federal government."

Locality pay rates by their nature are geographically based. Since the LSC President's official duty station is the same as the rest of the employees in LSC, it appears questionable to establish a locality pay rate for her that is different from other LSC employees in the same location. Under the federal system, there is no variation by individual payee within a given area. Further, the Chairman's stated purpose of using a putative locality pay differential to address salary compression issues and to avoid specific limitations on the President's salary would seem to contravene the pay limitation statute.

## **RECOMMENDATION**

11. LSC should determine whether it is proper and appropriate to have a locality rate for the LSC President that is higher than the locality rate established for all other LSC employees.

---

<sup>30</sup> The authority to pay locality pay over the LSC pay cap is unclear. The LSC Act states no officer or employee shall be compensated in excess of the rate of level V of the Executive Schedule. The provision of locality pay to the LSC President notwithstanding the statutory pay cap is based on an October 2, 2003 internal opinion (# IN-2003-2009) from the Office of Legal Affairs which concluded locality pay is not considered basic rate of pay as defined in 5 C.F.R. §531.202 (applicable to General Schedule employees). This opinion reversed a December 28, 1999 Office of Legal Affairs opinion that had concluded that locality pay was not available to the LSC President.

- On September 22, the LSC Board voted to place the issue of locality pay on its agenda for the January 2007 Board meeting.

**Acting Special Counsel Costs**

The OIG is continuing to look into the issues relating to the Acting Special Counsels. In the interim, we are reporting the costs associated with each assignment.<sup>31</sup> Jonathan Asher held the position as Acting Special Counsel from October 18, 2004, through July 17, 2005. Luis Jaramillo held the position as Acting Special Counsel from November 7, 2005 through May 8, 2006. The numbers reported by LSC in response to a Congressional request are slightly lower. The OIG included business-related travel reimbursements. Congress did not ask LSC to report such reimbursements.

	Asher	Jaramillo
Salary	\$102,012.59	\$51,333.30
Lodging	17,486.12	23,039.70
Travel	14,739.70	4,862.78
<hr/>		
Total	\$134,238.41	\$79,235.78

---

<sup>31</sup> The table is based on a review of documentation submitted by LSC management in response to the Congressional inquiry. We reviewed the documentation and discovered that some costs were not included in the summary information provided to Congress. Also, management submitted a revised figure for Mr. Jaramillo’s lodging costs that included an additional \$639.95. We have included this amount in Mr. Jaramillo’s housing costs in the table above. In addition, the supporting documentation provided to us by LSC management included nine trips by Mr. Asher and five trips by Mr. Jaramillo that were not included in management’s response. The cost of these additional trips are reflected in the schedule above and resulted in additional travel costs of \$2,618.35 for Mr. Asher and \$4,442.88 for Mr. Jaramillo.

## APPENDIX I

### A. Background on City Pair Contract and GSA Regulations

LSC has been a mandatory user of the General Services Administration's City Pair Contract at least as far back as 1990. LSC has a memorandum of understanding with Omega World Travel, a travel agency that handles bookings under the GSA City Pair Contract.<sup>32</sup> The City Pair Contract states that the Federal Travel Regulation, sections 41 CFR 301-10.107 through 301-10.143, govern the use of the City Pair Contract. Since LSC is a mandatory user of the City Pair Contract, it has agreed to follow the terms of the contract, including complying with the applicable provisions of the Federal Travel Regulation.<sup>33</sup>

We note that since July, 2004, LSC has also implemented an Internet travel program designed to save LSC money. An internal LSC study indicates a significant cost savings with the program.<sup>34</sup> The Internet travel program is not inconsistent with use of the City Pair Contract as long as LSC meets the purchase restrictions associated with reduced fares.

A 1995 OIG inspection report<sup>35</sup> described the requirements associated with LSC use of the City Pair Contract as follows:

Through an arrangement with the General Services Administration (GSA), LSC was allowed to use Government contract travel rates. LSC's Memorandum of Understanding (MOU) with Omega World Travel, Incorporated (Omega), required

---

<sup>32</sup> The GSA City Pair Contract is a competitive government contract with various airlines to obtain favorable government airfares. The airfares are established by bidding on a fixed price between two cities—a city pair. The airline with the most favorable bid for the city pair is awarded the government contract for that city pair and the government agrees to use that airline for official travel only. Some of the benefits to the government are last-seat availability, no change or cancellation fees, fully refundable tickets, no blackout periods, no advance purchase requirements, and no minimum/maximum stay requirements.

<sup>33</sup> We note that GAO, in a 1998 unpublished “nondecision letter” regarding LSC employees’ personal use of frequent flyer miles, stated that the GSA regulations, by their terms, applied only to employees of government agencies. The letter noted that the contract then in question was silent on the issue of frequent flier miles and did not otherwise reference the travel regulations, and so concluded that “[w]ithout more” they would not apply the regulations to LSC employees. In contrast, the GSA City Pair master contract now explicitly refers to the regulations: “The use of GSA air passenger transportation services is governed by 41 CFR 301-10.107 through 301.10.143 and 41 CFR 301-73.200 through 301-10.73.202.” (Section B.2.) As mandatory users under the City Pair Contract LSC employees are subject to the travel regulations. (“[M]andatory users for coach class service are . . . (6) Employees of the Legal Services Corporation (except grantees);” (Section B.4.A.)) Moreover, LSC’s MOU with Omega World Travel also references the GSA master contract and incorporates GSA policy on personal travel found at 41 CFR 301-10.110.

<sup>34</sup> The OIG has not audited the Internet program to validate LSC’s calculation or to determine whether the program is being implemented consistent with the City Pair Contract.

<sup>35</sup> OIG Inspection Report “Contract Service and Related Expense Payments” 95-056 July 1995

that, if personal travel were combined with official travel, the traveler would be responsible for any increased costs associated with the arrangements. The GSA-Omega contract prohibited use of contract fares for any personal travel, including those instances where portions of personal travel are substituted for a leg of an officially authorized trip. [(Footnote omitted).] Moreover, Chapter 6 of the LSC Administrative Manual prohibited personal travel at Government contract rates.<sup>36</sup>

## **B. Expenses Associated with President's Travel to and from Multiple Residences**

The issue of authorizing the LSC President to use the government rate for travel to a non-Washington, D.C. residence first arose in early 2005. The LSC President requested the Comptroller review the GSA Travel Contract and the Federal Travel Regulation concerning what was described as the Chairman's desire that LSC interpret the regulations broadly to allow her to purchase airline tickets at the Government rate when traveling to or from one of her non-Washington, D.C. residences. In a January 2005 memorandum, the Comptroller informed the President that the Federal Travel Regulation only allows the purchase of government rate tickets for travel that is official LSC business and prohibit the use of the government rate for personal travel. LSC indicates that the President has never used the government rate for routine commuting to or from her non-Washington, D.C. residences.

A similar issue arose in late May 2005, shortly after the new Chief Administrative Officer was appointed. This issue concerned whether the President could use government fares for traveling to or from one of her non-Washington, D.C. residences as part of an official LSC business trip. In a June 2005 email to the Chief Administrative Officer, the Comptroller stated that according to the Federal Travel Regulation the government fares should not be used for personal travel segment of trips. However, the Chief Administrative Officer disagreed with the Comptroller and prepared a draft memorandum for the Chairman's signature which would permit LSC to pay for travel to or from any of her homes.

For purposes of the Federal Travel Regulation, travel includes only local travel (for LSC, the Washington, D.C. area) or travel to and from a temporary duty location, which is a place away from an employee's official station. The official station is the location of the employee's permanent work assignment.<sup>37</sup> For the LSC President, the official station is LSC's headquarters in Washington, D.C. An application of this is found in the discussion of whether a agency can pay expenses relating to transportation between an employee's home or official station and the airport in section 301-10.420(b). Upon return from a temporary duty assignment, this section permits transportation expense reimbursement only to the residence or place of business at the person's official duty station.

---

<sup>36</sup> Similar language can be found in Chapter 5 of the current Administrative Manual.

<sup>37</sup> See Glossary of Terms at 41 CFR Part 300.

LSC's Administrative Manual is consistent with GSA policy. The manual states that a Washington, D.C.-based LSC traveler who departs from or arrives in a city other than the Washington, D.C. commuting area for personal convenience rather than for a business purpose would be prohibited from using Government contract rates and would be personally responsible for the additional transportation cost. In addition, Chapter 5, Part V, paragraph C, requires that all travelers combining LSC business travel with personal travel must charge the personal travel to a personal credit card at the time travel reservations are made.

On October 28, 2005, based on advice from the Chief Administrative Officer (which was contrary to the views expressed by the Comptroller), the Chairman authorized the LSC President to fly to or from any of the President's residences<sup>38</sup> to conduct official business and have all such travel be considered official business. This authorization was based on a draft memorandum prepared by the Chief Administrative Officer in July 2005. This exception to LSC policy was limited to the LSC President, although other LSC staff may have multiple residences and might also desire to travel to or from any of those residences.<sup>39</sup>

When interviewed about this authorization, the LSC Chairman stated he felt the President traveling to or from multiple residences was covered in discussions that were held with the President and her representative during contract negotiations in 2003 and thus it was reasonable under the circumstances to issue the October 28, 2005 letter authorizing travel from multiple residences to document the discussions held during contract negotiations. The Chairman also stated that he did not believe that he discussed his decision to issue the authorization with the Board as a whole. However, he also stated the issues were items on which he would have at least sought input from several Board members.

The Chairman stated he did not remember receiving advice on this specific matter from the Comptroller or the LSC General Counsel. The Chairman further stated he was not even aware of the GSA City Pair Contract until very recently. When interviewed about this, the Comptroller stated he was not asked by the Chairman for, nor did he provide any input to the Chairman on this matter during contract negotiations, nor was he afforded the opportunity to advise the Chairman before the Chairman issued the October 28<sup>th</sup> letter.

There was no provision regarding LSC paying for travel to or from multiple residences in the President's original contract; the contract only permits reimbursement for legitimate business expenses consistent with the LSC Administrative Manual. The President's employment contract states the following:

---

<sup>38</sup> The LSC President maintains multiple residences. The only residences outside of Washington, D.C., for which she has sought reimbursement have been those in New York and Florida.

<sup>39</sup> LSC has represented that in the past other LSC employees have been reimbursed for travel to and from residences other than Washington, D.C.

[Y]ou will be entitled to the following: reimbursement for all reasonable, legitimate and suitably documented business expenses incurred by you in the course of your employment as President to which you may be entitled under the provisions of LSC's Administrative Manual, as revised from time to time.

There is no provision in the LSC manual permitting the use of multiple residences as the official duty station. Additionally, travel to or from multiple residences is not permitted under GSA's Federal Travel Regulation. The Chairman did not have the authority to negotiate a contract that is contrary to LSC's obligations under the regulations and its contracts with Omega and GSA.

Moreover, in 1995, OIG Inspection Report 95-056 noted:

Management takes the position that a trip paid for by LSC pursuant to an employment contract, even if the travel was personal in nature, is official travel. LSC cannot make a personal trip official simply by deeming it so. Otherwise, it could bind itself to pay for all nature of employee personal travel and all such travel at Government contract rate in violation of the MOU with GSA and the GSA contract with air carriers.

This remains the case today, yet the Chairman's authorization of reimbursement for personal travel essentially attempts to do just that: make what is a personal expense into a business expense. (As noted, this was done apparently on the advice of the Chief Administrative Officer.)

As a result, LSC has not adhered to the terms of the GSA City Pair Contract when the Chairman authorized the use of government contract air fares for personal travel and increased travel expenses for the corporation. Because traveling to and from residences outside of Washington, D. C. was not required by the President's official duties, but rather for personal reasons, this authorization was also a deviation from the provisions of the Administrative Manual which prohibited paying additional costs or allowing the use of the GSA contract airfares for personal travel.

Note: President Barnett has announced that beginning April 1, 2006 she has requested and will continue to request reimbursement for her return from business trips on a Friday evening or Saturday, regardless of which residence she returns to, only in an amount equivalent to the cost of a government rate return to Washington, D.C., but no more than what she personally paid to return to her residence.

### **C. Expenses Associated with President's Outside Activities**

President Barnett's employment contract contains a provision that authorizes her to continue to serve in various capacities with several organizations with which she was involved prior to her selection as LSC President. Historically, the contracts of LSC Presidents have contained similar provisions, not to authorize them to use LSC funds to

engage in these outside activities, but rather to identify and limit the outside activities permitted consistent with their obligation to devote their full professional time and attention to the affairs and business of LSC.

In a January 13, 2005, memorandum to the LSC President, the Comptroller stated that the President's contract provides approval for her continuing in various public service activities, but it does not indicate that LSC will pay the costs for the President to engage in the activities. The memorandum suggested that the LSC President seek clarification from the Chairman regarding the Board's intent on these issues.

The March 15, 2005, response from the LSC President to the Comptroller stated:

I spoke to the LSC Board Chairman, Frank B. Strickland, on Monday, February 28, 2005 regarding this issue. He has confirmed that I should continue as I am presently doing, with the expenses related to my involvement with the public service activities listed in my contract being paid for by LSC, and with the time spent on these activities not chargeable as vacation. These involvements provide an opportunity for me to reach out and interact with the leaders of the bench and the bar and the legal community in New York and across the country and enhance my ability to further the interests of the Corporation and is part of my role as serving as ambassador of the organization.

The Chairman authorized travel reimbursement of all travel expenses associated with the President's approved outside activities.<sup>40</sup> In his interview, the Chairman explained his rationale for approving such travel expenses; he said that it was a mark of distinction for a legal aid attorney to be selected for a high ranking position within ABA, that it was important for the President to continue in these activities, and that it was not unreasonable for LSC to cover the cost of these type activities.

We question whether the justification is sufficient to permit, and whether it is proper, to use appropriated funds for LSC to pay travel costs for President Barnett to participate in all these activities. A fundamental precept of federal appropriations law is that funds may be spent only for the purposes for which they were authorized and appropriated.

---

<sup>40</sup> The LSC President's was authorized to participate in the following public service activities:

- ABA Commission on Governance
- Member of the ABA House of Delegates
- Officer and member of the Executive Committee of the Association of the Bar of the City of New York
- Co-Chair of New York State's Commission to Promote Public Confidence in Judicial Elections
- Board member of the Historical Society of the Courts of the State of New York
- Member of the National Equal Justice Library Board

In March 2005, the LSC President indicated that she resigned in December 2004 as an officer and member of the Executive Committee of the Association of the Bar of the City of New York, and that the last meeting of the New York State Chief Judge's Commission on Promoting Public Confidence in Judicial Elections in March 14, 2005. She further indicated that her remaining public service activities were with the ABA and the Historical Society of the Courts of New York.

31 U.S.C. §1301(a). While permitting the President to spend some ancillary time on outside activities certainly may be appropriate, paying expenses for her work for at least some of such activities (e.g., the Historical Society of the Court of the State of New York) would seem to stretch the limits of the purpose of Congressional appropriation for LSC.

We believe that a direct LSC business need should be used to determine whether or not travel expenses for a specific trip should be reimbursed. While some of the trips may have a direct LSC business reason, some may not. LSC's Administrative Manual states that, "Only travel which is appropriate to accomplish LSC business shall be authorized and approved." (Chapter 5, Part I, paragraph B.) This requirement reflects the principles of federal appropriations law, and we believe it is integral to proper stewardship of public funds.

#### **D. Violation of Fly America Act Regulations**

Title 41 CFR Sections 301-10.131 through 301-10.143 of the Federal Travel Regulation implement the "Fly America Act." With very limited exceptions, these regulations require the use of a U.S. flag air carrier when traveling to or from a foreign country.

On May 23, 2005, when President Barnett's executive assistant made reservations on Aer Lingus for her return trip from Shannon, Ireland, to New York, her executive assistant was advised by Omega World Travel that the itinerary violated of the Fly America Act. Omega World Travel records indicate that the executive assistant authorized the purchase of a ticket on Aer Lingus, notwithstanding the Fly America Act regulations.

The use of Aer Lingus for President Barnett's flight from Ireland to the United States does not appear to meet any of the exceptions set forth in the regulations. Section 301-10.136 sets forth exceptions to the Fly America Act requirement for travel between the U.S. and another country. It states that use of a U.S. flag air carrier is required where nonstop or direct service is offered unless such use would extend travel time by more than 24 hours.<sup>41</sup> President Barnett's original reservation on Continental had her leaving Shannon at 11:35 a.m. on Friday June 10<sup>th</sup>. On May 23<sup>rd</sup>, she changed that flight to Aer Lingus leaving Shannon at 2:15 pm on June 10<sup>th</sup>. Contrary to the requirements of Section 301-10.142, President Barnett did not provide a certification for using a foreign carrier nor was any reason provided for changing from a U.S. flag air carrier. On June 7<sup>th</sup>, President Barnett's booked a later Aer Lingus flight leaving at 4:35 pm so that she could chair a Quality Session at the conference on Friday morning.

Section 301-10.138 allows for use of a foreign air carrier when the agency's mission could not be accomplished. However, there is no record that the initial reservation on Aer Lingus was necessary to accomplish the LSC mission so that pursuant to section

---

<sup>41</sup> There are other exceptions where a U.S. flag air carrier does not offer nonstop or direct service to the United States, but they do not appear to be applicable since there are direct flights from Shannon, Ireland to the United States.

301-10.136 she would be required to fly on a U.S. flag air carrier unless there were no direct flights within 24 hours of her departure time on June 10<sup>th</sup>.

The remedy for a violation of these regulations is set forth in section 301-10.143. The traveler should not be reimbursed for any transportation cost in which the traveler improperly uses a foreign air carrier service. See Appendix II § B.2.

## **APPENDIX II**

### **CONTENTS**

#### **LSC and Comparable Federal Policies on Expenditures**

##### **A. Board Meetings**

1. Using Rented Space to Hold Meetings
2. Contracting Process
3. Per Diem Allowance
4. Paying for Guests

##### **B. Travel**

1. Airline Travel
2. Fly America Act
3. Car Service
4. Premium Travel
5. Travel Expense Waivers

##### **C. Food and Entertainment**

1. Working Meals
2. Business Entertainment
3. Coffee, Water, and Miscellaneous Items
4. Picnics and Holiday Parties

##### **D. Other Costs**

1. Severance Pay
2. Locality Pay

## **LSC and Comparable Federal Policies on Expenditures**

### **A. Board Meetings**

#### **1. Using Rented Space to Hold Meetings**

##### **LSC Policy**

No specific policy was noted; however, LSC has stated that “[f]or two-day meeting series, with breakouts into committees sometimes meeting concurrently, facilities at LSC’s headquarters building are less suitable than those at the Melrose. LSC’s headquarters building lacks ovens, stoves and other appliances typically used in connection with the catering of meals. It does not have the same array (in both size and number) of meeting rooms as a full-service hotel, and lacks the kind of privacy for executive session meetings that is available at the Melrose.” LSC further stated “[t]he Board has also preferred the convenience of meeting at the same location as where their lodging is located, especially since some Board members attend the Board and only their committee meetings and like to return to their meetings to do other work.” Memorandum from Victor Fortuno, General Counsel to President Barnett, transmitted by her to Senators Enzi and Grassley and Representative Cannon dated June 30, 2006, p. 8.

##### **Federal Policy**

Title 41 CFR 101-17.101-4 authorizes short-term use of conference and meeting facilities. The General Services Administration (GSA) will determine if suitable Government-owned facilities are available. If no suitable facilities are available, GSA will assist in arranging for the use of privately owned facilities.<sup>42</sup>

\* \* \*

#### **2. Contracting Practices**

##### **LSC Policy**

Prior to February 2005, LSC’s policy stated that contracts with a cumulative cost exceeding \$5,000 will normally be awarded by solicitation of bids. However, if bids were not obtained the reason for the exception was to be clearly documented for the file

---

<sup>42</sup> For general information about conference planning see the EPA Best Practices Guide for Conferences, Ch. 2, §D at <http://www.epa.gov/ogd/recipient/bestpractice.htm> that addresses using the agency’s own space (EPA also has rules for procuring “green” meeting space) and DOJ Conference Planning Guide at <http://www.ojp.usdoj.gov/ovc/publications/infores/res/confguid/>.

and approved by the Comptroller. The manual also required that in the event a contract is not awarded to the low bidder, a memorandum will be prepared for the file that clearly explains and justifies the awarding of the contract to another bidder. Administrative Manual, Chapter 3, Part II, paragraph 1.d (LSC policy in effect from January 1, 2002, until February 3, 2005).

The current LSC policy states that contracts shall be awarded based on the best value to LSC. Best Value is the most advantageous balance of price, quality, and performance achieved through competitive procurement methods in accordance with stated selection criteria. Competition is an integral component of this requirement and requires contracts for services with a cumulative cost exceeding \$10,500 must, except as otherwise provided herein, be subject to competition through the receipt of proposals submitted in response to a request for proposals (RFP). Administrative Manual, Chapter 1 (LSC policy in effect from February 3, 2005 until current).

Prior to the award of any contract, the originator of the contract must obtain the review of the Office of Legal Affairs, and the Comptroller and the approval of the Director of the originating Office for contracts under \$3,500, the Vice President or CAO for the originating Office of contracts greater than \$3,500 and of the President for contracts greater than \$10,500 as set forth in paragraph A.1 of this Part. Without these approvals the contract cannot be awarded and the Comptroller shall not issue a purchase order. In addition, the Administrative Manual sets forth recordkeeping requirements. At a minimum records relating to procurement and contracting activities shall include the basis for contractor/vendor selection and justification for lack of competitive bidding or proposals (as applicable). Documentation in the files shall be sufficient to constitute a complete history of the transaction. (Chapter 15, LSC Administrative Manual).

## **Federal Policy**

The Federal Acquisition Regulations (FAR) require full and open competition unless there are statutory exceptions. FAR §6.302. Agencies must use simplified acquisition procedures to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold of \$100,000. FAR §13.003. Each acquisition that has an anticipated dollar value exceeding \$2,500 (\$2,500 and less are treated as "micro-purchases) and not exceeding \$100,000 generally is reserved exclusively for small business concerns and must be set aside. FAR § 13.003(b)(1). The contracting officer must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government, considering the administrative cost of the purchase. FAR §13.104. The contracting officer must not solicit quotations based on personal preference or restrict solicitation to suppliers of well-known and widely distributed makes or brands. FAR §13.104(a). The contracting official should consider solicitation of at least three sources to promote competition to the maximum extent practicable. FAR §13.104(a)(1).

For purchases not exceeding the simplified acquisition threshold (\$100,000), contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available (e.g., urgency, exclusive licensing agreements, or industrial mobilization). FAR §13.106-1(b). The contracting officer must solicit quotations orally to the maximum extent practicable, if the acquisition does not exceed \$100,000 and oral solicitation is more efficient than soliciting through available electronic commerce alternatives and notice is not required; however, an oral solicitation may not be practicable for contract actions exceeding \$25,000 unless covered by an exception. FAR §13.106-1(c). If obtaining electronic or oral quotations is uneconomical or impracticable, the contracting officer should issue paper solicitations for contract actions likely to exceed \$25,000. FAR §13.106-1(d).

Before making an award, the contracting officer must determine that the proposed price is fair and reasonable. FAR §13.106-3(a). Documentation is to be kept to a minimum. Purchasing offices must retain data supporting purchases (paper or electronic) to the minimum extent and duration necessary for management review purposes. FAR §13.106-3(b). The contracting office should establish and maintain records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each. FAR §13.106-3(b)(1). For acquisitions not exceeding \$100,000, written records of solicitations or offers should be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data. FAR §13.106-3(b)(2). Additional statements generally should be included explaining the absence of competition if only one source is solicited and the acquisition does not exceed the simplified acquisition threshold or supporting the award decision if other than price-related factors were considered in selecting the supplier. FAR §13.106-3(b)(2).

Federal contracting officers can reject bids, including lowest bids, for any number of reasons. FAR §14.404-2. Low bids can also be rejected if received from concerns determined to be not responsible pursuant to FAR §9.1. FAR §14.404-2(i). The originals of all rejected bids, and any written findings with respect to such rejections, must be preserved with the papers relating to the acquisition. FAR §14.404-2(k).

\* \* \*

### **3. Per Diem Allowance**

#### **LSC Policy**

Generally reimbursement for travel expenses is based on the IRS Per Diem guidelines for standard meal allowances.

During the period under review, the policy governing Board of Directors per diem for meals was amended twice.

The January 1, 2002, Administrative Manual, effective until February 2005, at Chapter 6, Part III, paragraph C1b, states that reimbursement for meals is based on the IRS Per Diem guidelines for standard meal allowances. Further in paragraph C1, the Administrative manual states:

Meals provided to a traveler by a host or hotel should reduce the meal allowance by \$5.00 for breakfast, \$5.00 for lunch and \$5.00 for dinner. There is no meal allowance when all three meals are provided to the traveler.

The January 2002, Administrative Manual also contained a waiver provision for the maximum meal rate. The Comptroller was authorized to waive the maximum meal rate when circumstances indicated that additional allowances were necessary and appropriate to conduct LSC business. The waiver had to be requested in advance. Chapter 6, Part III, paragraph C.3.

On February 3, 2005 a new Administrative Manual was issued. The governing chapter for business travel became chapter 5. The meal per diem rate, the reduction per meal provided, and the waiver provisions remained essentially the same, with one major change. The reimbursement for meals was based on the IRS Per Diem guidelines for standard meal allowances "except as provided." Chapter 5, Part III, paragraph C.

The provision in effect from the February 3, 2005 in the LSC Administrative Manual revision until July 2006 read as follows:

An exception is hereby made to allow Board members authorization to have meals on an actual basis for one day or day(s) of the trip and on a per diem basis for other day(s) of the same trip under the following circumstances.

When attending a dinner with a number of Board members present, a waiver is granted for meals on an actual reimbursement up to 200 per cent of the remaining per diem. The Board member or LSC Corporate Officer paying the meal costs should include a list of all present and an itemized receipt of the meal on his/her Travel Expense Report. The individual paying will request reimbursement of the meal and each of the attending Board members should identify the purchaser if known or state that the meal was paid by someone else.

A July 24, 2006 revision was issued to Chapter 5 of the Administrative Manual, changing the reduction for meals provided to be the same as the reductions used by GSA and removing the provision for members of the Board of Directors to receive

200 percent of remaining per diem when attending a dinner with a number of Board members

**Federal Policy**

Federal per diem rules are authorized by 5 U.S.C. §5707 and found at 41 CFR 301-11. Selected sections are as follows:

## Subpart A—General Rules

§301-11.1 When am I eligible for an allowance (per diem or actual expense)?

When:

- (a) You perform official travel away from your official station, or other areas defined by your agency;
- (b) You incur per diem expenses while performing official travel; and
- (c) You are in a travel status for more than 12 hours.

§301-11.3 Must my agency pay an allowance (either a per diem allowance or actual expense)?

Yes, unless:

- (a) You perform travel to a training event under the Government Employees Training Act (5 U.S.C. 4101-4118), and you agree not to be paid per diem expenses; or
- (b) You perform pre-employment interview travel, and the interviewing agency does not authorize payment of per diem expenses.

§301-11.4 May I be reimbursed actual expense and per diem on the same trip?

Yes, you may be reimbursed both actual expense and per diem during a single trip, but only one method of reimbursement may be authorized for any given calendar day except as provided in [§301-11.305](#) or [301-11.306](#). Your agency must determine when the transition between the reimbursement methods occurs.

§301-11.5 How will my per diem expenses be reimbursed?

Per diem expenses will be reimbursed by the:

- (a) Lodgings-plus per diem method;
- (b) Reduced per diem method;
- (c) Conference lodging allowance method (see [§§301-74.7](#) and [301-74.22](#) of this chapter); or
- (d) Actual expense method.

§301-11.6 Where do I find maximum per diem and actual expense rates?

Consult this table to find out where to access *per diem* rates for various types of Government travel:

For travel in	Rates set by	For <i>per diem</i> and actual expense see
) Continental United States (CONUS)	General Services Administration	For <i>per diem</i> , see applicable FTR Per Diem Bulletins issued periodically by the Office of Governmentwide Policy, Office of Transportation and Personal Property, Travel Management Policy, and available on the Internet at <a href="http://www.gsa.gov/perdiem">http://www.gsa.gov/perdiem</a> for actual expense, see 41 CFR <a href="#">301-11.303</a> and <a href="#">301-11.305</a> .
) Non-foreign areas	Department of Defense ( <i>Per Diem</i> , Travel and Transportation Allowance Committee (PDTATAC))	<i>Per Diem</i> Bulletins issued by PDTATAC and published periodically in the Federal Register or Internet at <a href="http://www.dtic.mil/perdiem">http://www.dtic.mil/perdiem</a> . (Rates also appear in section 925, a <i>per diem</i> supplement to the Department of State Standardized Regulations (Government Civilians—Foreign Areas).)
) Foreign areas	Department of State	A <i>per diem</i> supplement to section 925, Department of State Standardized Regulations (Government Civilians—Foreign Areas).

### §301-11.7 What determines my maximum per diem reimbursement rate?

Your TDY location determines your maximum per diem reimbursement rate. If you arrive at your lodging location after 12 midnight, you claim lodging cost for the preceding calendar day. If no lodging is required, the applicable M&IE reimbursement rate is the rate for the TDY location. (See [§301-11.102](#).)

### §301-11.12 How does the type of lodging I select affect my reimbursement?

Your agency will reimburse you for different types of lodging as follows:

- (a) *Conventional lodgings*. (Hotel/motel, boarding house, etc.) You will be reimbursed the single occupancy rate.
- (b) *Government quarters*. You will be reimbursed, as a lodging expense, the fee or service charge you pay for use of the quarters.
- (c) *Lodging with friend(s) or relative(s) (with or without charge)*. You may be reimbursed for additional costs your host incurs in accommodating you only if you are able to substantiate the costs and your agency determines them to be reasonable. You will not be reimbursed the cost of comparable conventional lodging in the area or a flat “token” amount.
- (d) *Nonconventional lodging*. You may be reimbursed the cost of other types of lodging when there are no conventional lodging facilities in the area (e.g., in remote areas) or when conventional facilities are in short supply because of an influx of attendees at a special event (e.g., World’s Fair or international sporting event). Such lodging includes college dormitories or similar facilities or rooms not offered commercially but made available to the public by area residents in their homes.

### §301-11.18 What M&IE rate will I receive if a meal(s) is furnished by the Government or is included in the registration fee?

Your M&IE rate must be adjusted for a meal(s) furnished to you by the Government (including meals furnished under the authority of [Chapter 304](#) of this Title) by deducting the appropriate amount shown in the chart in this section for travel within CONUS and

the chart in [Appendix B](#) of this Chapter for meal deductions for OCONUS and foreign travel. The total amount of deductions made will not cause you to receive less than the amount allowed for incidental expenses.

Total M&IE	\$39	\$44	\$49	\$54	\$59	\$64
Breakfast	7	8	9	10	11	12
Lunch	11	12	13	15	16	18
Dinner	18	21	24	26	29	31
Incidentals	3	3	3	3	3	3

§301-11.23 Are there any other circumstances when my agency may reimburse me to return home or to my official station for non-workdays during a TDY assignment?

Your agency may authorize per diem or actual expense and round-trip transportation expenses for periodic return travel on non-workdays to your home or official station under the following circumstances:

- (a) The agency requires you to return to your official station to perform official business; or
- (b) The agency will realize a substantial cost savings by returning you home; or
- (c) Periodic return travel home is justified incident to an extended TDY assignment.

§301-11.24 What reimbursement will I receive if I voluntarily return home or to my official station on non-workdays during my TDY assignment?

If you voluntarily return home or to your official station on non-workdays during a TDY assignment, the maximum reimbursement for round trip transportation and per diem or actual expense is limited to what would have been allowed had you remained at the TDY location.

§301-11.25 Must I provide receipts to substantiate my claimed travel expenses?

Yes, you must provide a lodging receipt and either a receipt for any authorized expenses incurred costing over \$75, or a reason acceptable to your agency explaining why you are unable to provide the necessary receipt.

§301-11.26 How do I get a per diem rate increased?

If you travel to a location where the per diem rate is insufficient to meet necessary expenses, you may submit a request, containing pertinent lodging and meal cost data, through your agency asking that the location be surveyed. Depending on the location in question your agency may submit the survey request to:

For CONUS locations	For non-foreign area locations	For foreign area locations
General Services Administration, Office of Governmentwide Policy, Attn: Travel Management Division (MTT), Washington, DC 20405.	Department of Defense, Per Diem, Travel and Transportation, Allowance Committee (PDTATAC), Hoffman Building #1, Room 836, 2461 Eisenhower Ave., Alexandria, VA 22331-1300	Department of State, Director of Allowances, State Annex 29, Room 262, Washington, DC 20522-2902.

§301-11.30 What is my option if the Government lodging rate plus applicable taxes exceeds my lodging reimbursement?

You may request reimbursement on an actual expense basis, not to exceed 300 percent of the maximum per diem allowance. Approval of actual expenses is usually in advance of travel and at the discretion of your agency. (See [§301-11.302](#).)

#### Subpart B—Lodgings Plus Per Diem

§301-11.100 What will I be paid for lodging under Lodgings-plus per diem?

When travel is more than 12 hours and overnight lodging is required you are reimbursed your actual lodging cost not to exceed the maximum lodging rate for the TDY location or stopover point.

§301-11.101 What allowance will I be paid for M&IE?

(a) Except as provided in paragraph (b) of this section, your allowance is as shown in the following table:

When travel is		Your allowance is
More than 12 but less than 24 hours		75 percent of the applicable M&IE rate.
24 hours or more, on	The day of departure	75 percent of the applicable M&IE rate.
	Full days of travel	100 percent of the applicable M&IE rate.
	The last day of travel	75 percent of the applicable M&IE rate.

§301-11.102 What is the applicable M&IE rate?

For days of travel which		Your applicable M&IE rate is
Require lodging		The M&IE rate applicable for the TDY location.
Do not require lodging, and	Travel is more than 12 hours but less than 24 hours.	The M&IE rate applicable to the TDY site or the highest M&IE rate applicable when multiple locations are involved).
	Travel is 24 hours or more, and you are traveling to a new TDY site or stopover point at midnight.	The M&IE rate applicable to the new TDY site or stopover point.
	Travel is 24 hours or more, and you are returning to your official station.	The M&IE rate applicable to the previous day of travel.

Subpart D—Actual Expense

§301-11.300 When is actual expense reimbursement warranted?

When:

- (a) Lodging and/or meals are procured at a prearranged place such as a hotel where a meeting, conference or training session is held;
- (b) Costs have escalated because of special events (e.g., missile launching periods, sporting events, World's Fair, conventions, natural disasters); lodging and meal expenses within prescribed allowances cannot be obtained nearby; and costs to commute to/from the nearby location consume most or all of the savings achieved from occupying less expensive lodging;
- (c) Because of mission requirements; or
- (d) Any other reason approved within your agency.

§301-11.301 Who in my agency can authorize/approve my request for actual expense?

Any official designated by the head of your agency.

§301-11.302 When should I request authorization for reimbursement under actual expense?

Request for authorization for reimbursement under actual expense should be made in advance of travel. However, subject to your agency's policy, after the fact approvals may be granted when supported by an explanation acceptable to your agency.

§301-11.303 What is the maximum amount that I may be reimbursed under actual expense?

The maximum amount that you may be reimbursed under actual expense is limited to 300 percent (rounded to the next higher dollar) of the applicable maximum per diem rate. However, subject to your agency's policy, a lesser amount may be authorized.

§301-11.304 What if my expenses are less than the authorized amount?

When authorized actual expense and your expenses are less than the locality per diem rate or the authorized amount, reimbursement is limited to the expenses incurred.

§301-11.305 What if my actual expenses exceed the 300 percent ceiling?

Your reimbursement is limited to the 300 percent ceiling. There is no authority to exceed this ceiling.

§301-11.306 What expenses am I required to itemize under actual expense?

You must itemize all expenses, including meals, (each meal must be itemized separately) for which you will be reimbursed under actual expense. However, expenses that do not accrue daily (e.g., laundry, dry cleaning, etc.) may be averaged over the number of days your agency authorizes/approves actual expenses. Receipts are required for lodging, regardless of amount and any individual meal when the cost exceeds \$75. Your agency may require receipts for other allowable per diem expenses, but it must inform you of this requirement in advance of travel. When your agency limits M&IE reimbursement to either the prescribed maximum M&IE rate for the locality concerned or a reduced M&IE rate, it may or may not require M&IE itemization at its discretion.

Note: OMB Circular A-122 allows for the costs of meetings and conferences held to conduct the general administration of non-profit federal grantees. OMB Circular A-122 provides cost principles for non-profit organizations. It defines "reasonable costs" as follows:

A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award.
- b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length

bargaining, Federal and State laws and regulations, and terms and conditions of the award.

c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Federal Government.

d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

Although OMB Circular A-122 does not apply to LSC, its guidance in determining the reasonableness of expenses may be helpful in making such a determination.

\* \* \*

#### **4. Paying for Guests**

##### **LSC Policy**

LSC's Administrative Manual, Chapter 14 on Business Entertainment Expenses<sup>43</sup> addresses meals provided for others as follows:

This section is limited to the occasions when an LSC Officer, Director, or Vice President in his or her official capacity entertains another person or persons on LSC business. The purpose of the entertainment must be to conduct LSC business and must be approved by the President or designee whenever possible prior to the occasion. The cost of the business entertainment will be reimbursed to the authorized employee up to an amount per person entertained of the per diem allowed for the city in which the business entertainment occurs.

While this section of the policy states that the purpose of the entertainment must be to conduct LSC business, the Administrative Manual does not require that the business necessity or the nature of the business be documented.

##### **Federal Policy**

Title 31 U.S.C. §1345 prohibits the expenditure of appropriations for travel, transportation, and subsistence for meetings, except as specifically provided by law. As

---

<sup>43</sup> Prior to the February 2005 revisions to LSC's Administrative Manual, LSC did not have a business entertainment policy. However, the previous version of the Administrative policy did have a policy on petty cash funds that addressed "representative expenses." The policy required that the nature of the expense and the names and business relationships of the guests be stated but it did not require that the LSC business reason of the expense be documented.

a general proposition, agency appropriations are not available to pay for the travel, transportation and subsistence expenses of private parties. Matter of National Science Foundation Annual Awards Dinner, B-235163.11 (February 13, 1996).

Congress has long recognized that many agencies have a legitimate need for items that otherwise would be prohibited as entertainment, and has responded by making limited amounts available for official entertainment to those agencies that can justify the need. GAO Redbook, p. 4-135. With two major exceptions (at the Departments of State and Defense), most agencies follow a similar pattern and receive their entertainment funds, if they receive them at all, simply as part of their annual appropriations. The appropriation may specify that it will be available for “entertainment.” See, e.g., B-20085, Sept. 10, 1941. Far more commonly, however, the term used in the appropriation is “official reception and representation (R&R).” This has come to be the technical “appropriations language” for entertainment. GAO Redbook, p. 4-136.

An agency has wide discretion in the use of its R&R appropriation. 61 Comp. Gen. 260, 266 (1982); B-212634, Oct. 12, 1983. GAO Redbook, p. 4-138. Accordingly, R&R funds have been found available for a holiday party for government officials and their spouses or guests. 61 Comp. Gen. 260 (1982), *aff'd upon reconsideration*, B-206173(2), Aug. 3, 1982. Notwithstanding the discretion it confers, an R&R appropriation is not intended to permit government officials to feed themselves and one another incident to the normal day-to-day performance of their jobs. GAO Redbook, p. 4-140.<sup>44</sup>

Note: The Panel on the Nonprofit Sector recently recommended that with the exception of de minimis expenses of those attending an activity of the organization (such as a meal function), charitable organizations should not pay for nor reimburse travel expenditures for a spouse, dependents, or others who are accompanying an individual conducting business for the organization unless the additional person is also conducting business for the organization.<sup>45</sup> Like OMB Circular A-122, discussed above, this publication could be a useful guide to persons determining the reasonableness of various LSC expenses.

---

<sup>44</sup> The Comptroller General, the head of the Government Accountability Office (GAO), issues decisions in various areas of Federal appropriations law. These decisions are prepared by GAO's Office of General Counsel, and are identified by a numbering system beginning with B-(number); each decision carries its own B-number and date. Many of these decisions are referenced in GAO's Principles of Federal Appropriations Law, commonly called the “GAO Red Book” which can be found at <http://www.gao.gov/special.pubs/3rdeditionvol1.pdf>.

<sup>45</sup> [http://www.nonprofitpanel.org/final/Panel\\_Final\\_Report.pdf](http://www.nonprofitpanel.org/final/Panel_Final_Report.pdf)

## **B. Travel**

### **1. Airline Travel**

#### **LSC Policy**

Except as provided herein, travelers are required to use contract air carriers for all LSC air travel between cities designated "city-pairs" by the GSA. The Comptroller is authorized under the conditions set forth below to grant exceptions to the rule requiring the use of contract air carriers. A traveler requesting an exception to this rule must indicate accordingly on the Travel Request Form and provide an explanation of why a non-contract carrier must be used. (In emergencies, where the requisite authorization could not be obtained on the Travel Request Form and an amended Travel Request Form Revised as of February 3, 2005 was not processed pursuant to Part II of this chapter, the traveler must include a justification on the Expense Report and forward a photocopy of the Expense Report to the Comptroller.) Generally, the conditions for exceptions are:

- Space is not available in time to accomplish LSC business;
- Flight schedule would require additional overnight lodging;
- Flight schedule would require travel during other than LSC's normal working hours;
- On the basis of a comparison of total cost for each individual trip, the use of a standard coach fare is less than the contract fare at the time the reservation is made, considering such cost factors as actual transportation, subsistence, or lost work time. In comparing transportation costs, available "Super-Saver" or other promotional or restricted fares, shall not be used. Any such fare comparison must be based on a standard coach fare available without restriction to the general public, and not one which is restricted in any way or otherwise available only to travelers participating in the Federal Travel Program;
- Flight schedules do not meet LSC business requirements; or
- Flight origin and termination points result in excessive local travel time and costs.

LSC is conducting a Pilot Travel Coordination Program. Refer to Appendix VI for Memo from President Helaine M. Barnett dated July 16, 2004 and Appendix VII for Guidelines and Procedures dated July 30, 2004 for the procedure to make travel arrangements during the Pilot period. LSC Administrative Manual, Part IV.

#### **Federal Policy**

Federal and military travelers on official business are required to use the contract carrier unless a specific exception applies. This required use is the incentive necessary to obtain airline participation in the Airfares (City Pair Program) and allows the airlines the business volume necessary to offer discounted rates. Choosing not to use the contract

carrier because of personal preference, frequent flyer clubs, etc., is a violation of the contract.

Commercial airfares can be highly volatile, so an exception to the mandatory use requirement allows government travelers to take advantage of any low commercial fares offered by non-contract carriers, if the fares are also offered to the general public. Non-contract fares that are offered only to government travelers (sometimes called "DG" fares) are not included in this exception. Also, if the contract carrier for the particular market offers the lower fare, you still must use them, but at the lower fare. Travelers that use this exception would have to abide by the many restrictions that typically go along with lower commercial fares. Restrictions on discounted commercial fares usually include: non-refundability, change or cancellation fees, minimum or maximum stay requirements or extended calendar blackout periods.

Additional exceptions to the mandatory use requirement are contained in the Federal Travel Regulation at § 301-10.107):

- Space on a scheduled contract flight is not available in time to accomplish the purpose of your travel, or use of contract service would require you to incur unnecessary overnight lodging costs which would increase the total cost of the trip; or
- The contractor's flight schedule is inconsistent with explicit policies of your Federal department or agency with regard to scheduling travel during normal working hours; or
- Rail service is available, and such service is cost effective and is consistent with mission requirements; or
- Smoking is permitted on the contract flight and the nonsmoking section of the aircraft for the contract flight is not acceptable to you.<sup>46</sup>

\* \* \*

## **2. Fly America Act**

### **LSC Policy**

The Administrative Manual does not address the Fly America Act.

### **Federal Policy**

Fly America Act regulations are found at 41 CFR §301-10 and provide as follows:

---

<sup>46</sup> [www.gsa.gov/Portal/gsa/ep/contentView.do?faq=yes&pageTypeId=8211&contentId=9651&contentType=GSA\\_OVERVIEW](http://www.gsa.gov/Portal/gsa/ep/contentView.do?faq=yes&pageTypeId=8211&contentId=9651&contentType=GSA_OVERVIEW)

Sec. 301-10.132 Who is required to use a U.S. flag air carrier?

Anyone whose air travel is financed by U.S. Government funds, except as provided in Sec. 301-10.135, Sec. 301-10.136, and Sec. 301-10.137.

Sec. 301-10.133 What is a U.S. flag air carrier?

An air carrier which holds a certificate under 49 U.S.C. 41102 but does not include a foreign air carrier operating under a permit.

Sec. 301-10.134 What is U.S. flag air carrier service?

U.S. flag air carrier service is service provided on an air carrier which holds a certificate under 49 U.S.C. 41102 and which service is authorized either by the carrier's certificate or by exemption or regulation. U.S. flag air carrier service also includes service provided under a code share agreement with a foreign air carrier in accordance with Title 14, Code of Federal Regulations when the ticket, or documentation for an electronic ticket, identifies the U.S. flag air carrier's designator code and flight number.

Sec. 301-10.135 When must I travel using U.S. flag air carrier service?

You are required by 49 U.S.C. 40118, commonly referred to as the "Fly America Act," to use U.S. flag air carrier service for all air travel funded by the U.S. Government, except as provided in Sec. 301-10.136 and Sec. 301-10.137 or when one of the following exceptions applies:

(a) Use of a foreign air carrier is determined to be a matter of necessity in accordance with Sec. 301-10.138; or

(b) The transportation is provided under a bilateral or multilateral air transportation agreement to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act; or

(c) You are an officer or employee of the Department of State, United States Information Agency, United States International Development Cooperation Agency, or the Arms Control Disarmament Agency, and your travel is paid with funds appropriated to one of these agencies, and your travel is between two places outside the United States; or

(d) No U.S. flag air carrier provides service on a particular leg of the route, in which case foreign air carrier service may be used, but only to or from the nearest interchange point on a usually traveled route to connect with U.S. flag air carrier service; or

(e) A U.S. flag air carrier involuntarily reroutes your travel on a foreign air carrier; or

(f) Service on a foreign air carrier would be three hours or less, and use of the U.S. flag air carrier would at least double your en route travel time; or

(g) When the costs of transportation are reimbursed in full by a third party, such as a foreign government, international agency, or other organization.

Sec. 301-10.136 What exceptions to the Fly America Act requirements apply when I travel between the United States and another country?

The exceptions are:

(a) If a U.S. flag air carrier offers nonstop or direct service (no aircraft change) from your origin to your destination, you must use the U.S. flag air carrier service unless such use would extend your travel time, including delay at origin, by 24 hours or more.

(b) If a U.S. flag air carrier does not offer nonstop or direct service (no aircraft change) between your origin and your destination, you must use a U.S. flag air carrier on every portion of the route where it provides service unless, when compared to using a foreign air carrier, such use would:

(1) Increase the number of aircraft changes you must make outside of the U.S. by 2 or more; or

(2) Extend your travel time by at least 6 hours or more; or

(3) Require a connecting time of 4 hours or more at an overseas interchange point.

Sec. 301-10.137 What exceptions to the Fly America Act requirements apply when I travel solely outside the United States, and a U.S. flag air carrier provides service between my origin and my destination?

You must always use a U.S. flag carrier for such travel, unless, when compared to using a foreign air carrier, such use would:

(a) Increase the number of aircraft changes you must make en route by 2 or more; or

(b) Extend your travel time by 6 hours or more; or

(c) Require a connecting time of 4 hours or more at an overseas interchange point.

Sec. 301-10.138 In what circumstances is foreign air carrier service deemed a matter of necessity?

(a) Foreign air carrier service is deemed a necessity when service by a U.S. flag air carrier is available, but

(1) Cannot provide the air transportation needed; or

(2) Will not accomplish the agency's mission.

(b) Necessity includes, but is not limited to, the following circumstances:

(1) When the agency determines that use of a foreign air carrier is necessary for medical reasons, including use of foreign air carrier service to reduce the number of connections and possible delays in the transportation of persons in need of medical treatment; or

(2) When use of a foreign air carrier is required to avoid an unreasonable risk to your safety and is approved by your agency (e.g., terrorist threats). Written approval of the use of foreign air carrier service based on an unreasonable risk to your safety must be approved by your agency on a case by case basis. An agency determination and approval of use of a foreign air carrier based on a threat against a U.S. flag air carrier must be supported by a travel advisory notice

issued by the Federal Aviation Administration and the Department of State. An agency determination and approval of use of a foreign air carrier based on a threat against Government employees or other travelers must be supported by evidence of the threat(s) that form the basis of the determination and approval; or

(3) When you can not purchase a ticket in your authorized class of service on a U.S. flag air carrier, and a seat is available in your authorized class of service on a foreign air carrier.

Sec. 301-10.139 May I travel by a foreign air carrier if the cost of my ticket is less than traveling by a U.S. flag air carrier?

No. Foreign air carrier service may not be used solely based on the cost of your ticket.

Sec. 301-10.140 May I use a foreign air carrier if the service is preferred by or more convenient for my agency or me?

No. You must use U.S. flag air carrier service, unless you meet one of the exceptions in Sec. 301-10.135, Sec. 301-10.136, or Sec. 301-10.137 or unless foreign air carrier service is deemed a matter of necessity under Sec. 301-10.138.

Sec. 301-10.141 Must I provide any special certification or documents if I use a foreign air carrier?

Yes, you must provide a certification, as required in Sec. 301-10.142 and any other documents required by your agency. Your agency cannot pay your foreign air carrier fare if you do not provide the required certification.

Sec. 301-10.142 What must the certification include?

The certification must include:

- (a) Your name;
- (b) The dates that you traveled;
- (c) The origin and the destination of your travel;
- (d) A detailed itinerary of your travel, name of the air carrier and flight number for each leg of the trip; and
- (e) A statement explaining why you met one of the exceptions in Sec. 301-10.135, Sec. 301-10.136, or Sec. 301-10.137 or a copy of your agency's written approval that foreign air carrier service was deemed a matter of necessity in accordance with Sec. 301-10.138.

Sec. 301-10.143 What is my liability if I improperly use a foreign air carrier?

You will not be reimbursed for any transportation cost for which you improperly use foreign air carrier service. If you are authorized by your agency to use U.S. flag air carrier service for your entire trip, and you improperly use a foreign air carrier for any part of or the entire trip (i.e., when not permitted under this regulation), your transportation cost on the foreign air carrier will not be payable by your agency. If your agency authorizes you to use U.S. flag air carrier service for part of your trip and foreign air carrier service for another part of your trip, and you improperly use a foreign air carrier (i.e., when neither authorized to do so nor otherwise permitted under this

regulation), your agency will pay the transportation cost on the foreign air carrier for only the portion(s) of the trip for which you were authorized to use foreign air carrier service. The agency must establish internal procedures for denying reimbursement to travelers when use of a foreign air carrier was neither authorized nor otherwise permitted under this regulation.

\* \* \*

### **3. Car Service**

#### **LSC Policy**

According to LSC while it “has no policy specifically regarding the use of car services, its general policy is that ‘travel is to be completed by the means of transportation most beneficial to LSC and the traveler considering cost, time and other pertinent factors.’ (See LSC Administrative manual, Chapter 5, Part IV, A ....) Pertinent factors include what is necessary to accomplish the objective.” Memorandum from Victor Fortuno, General Counsel to President Barnett, transmitted by her to Senators Enzi and Grassley and Representative Cannon dated June 30, 2006, p. 5.

Part IV, A, of LSC’s Administrative Manual provides that travel is to be completed by the means of transportation most beneficial to LSC and the traveler considering cost, time, and other pertinent factors. In selecting a particular mode of transportation, consideration is given to the transportation cost using the contract carriers under the GSA contract, subsistence expenses, overtime and lost work time. All costs must be reasonable and necessary to the conduct of LSC business. The selection of a certain mode of transportation or a specific airline or flight is based on the benefits to LSC and not on the traveler’s personal preference or minor inconvenience.

According to Part IV, C of LSC’s Administrative Manual, local travel is defined as travel within the city/area where an individual is working either temporarily or permanently and where overnight lodging is not required. The cost of buses, streetcars, subways and taxicabs incurred for local LSC business travel will be reimbursed. Original receipts are required for any taxicab fares over \$15. If a personal automobile is used, reimbursement for mileage will be available at the established rate, as set forth in Appendix II. According to Part IV, J of LSC’s Administrative Manual, use of conveyances other than those mentioned above [buses, taxi, personal automobile, subways, air carriers], e.g. private airplane, must be approved in advance by the Comptroller.

#### **Federal Policy**

Federal agencies may authorize common carrier transportation (e.g., aircraft, train, bus, ship, or local transit system), Government vehicle, personally owned vehicle, or special conveyance (e.g., taxi or commercial automobile). Federal Travel Regulation §301-10.3. The agency must select the method most advantageous to the Government,

when cost and other factors are considered. Under 5 U.S.C. §5733, travel must be by the most expeditious means of transportation practicable and commensurate with the nature and purpose of the traveler's duties. In addition, the agency must consider energy conservation, total cost to the Government (including costs of per diem, overtime, lost work time, and actual transportation costs), total distance traveled, number of points visited, and number of travelers. FTR §301-10.4 Travel by common carrier is presumed to be the most advantageous method of transportation and must be used when reasonably available the most advantageous method of transportation. FTR §301-10.5

Federal agencies may authorize the use of taxicabs or any other special conveyance when determined to be advantageous to the Government. FTR §301-10.400 et seq. A traveler may use a taxi for local travel. When an agency authorizes/approves the use of a taxi for the following, local travel is reimbursable between places of business, between a place of lodging and a place of business at a temporary duty station, and to obtain meals at the nearest available place where the nature and location of the work at a temporary duty station are such that meals cannot be obtained there. Federal agencies will restrict or place a monetary limit on the amount of reimbursement for the use of taxicabs when suitable Government or common carrier transportation service, including shuttle service, is available for all or part of the distance involved; or courtesy transportation service is provided by hotels/motels between the place of lodging at the temporary duty station and the common carrier terminal. Federal agencies may authorize reimbursement of the usual taxicab fare from the traveler's home to the office on the day they depart the office on an official trip requiring at least one night's lodging and from the office to home upon return. In addition, the usual taxicab fare may be authorized between the traveler's office and home when they perform official business at their official station and they are dependent on public transportation for officially ordered work outside regular working hours and their travel between their office and home is during hours of infrequently scheduled public transportation or darkness.

Although the Federal Travel Regulation do not specifically address cars with drivers, the GSA contracting schedule provides for Ground Passenger Transportation, utilizing Shuttle, Limousine, and Driver Services, under the Transportation, Delivery and Relocation Solutions (TDRS), Schedule 48 (including time-definite pickup and delivery of government personnel, limousine services, and Very Important Person (VIP) transport)<sup>47</sup> and Ground Passenger Transportation Services: Shuttle, Limousine and Driver.<sup>48</sup>

\* \* \*

---

<sup>47</sup> [http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA\\_OVERVIEW&contentId=17666&noc=T](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_OVERVIEW&contentId=17666&noc=T)

<sup>48</sup> [http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA\\_BASIC&contentId=17510&noc=T](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=17510&noc=T)

## **4. Premium Travel**

### **LSC Policy**

LSC policy on first class travel, which is found in the LSC Administrative Manual at Chapter 5, Part IV.E, provides that only the LSC President and Inspector General have the authority to approve first class carrier accommodations. Written approval to use first-class accommodations must accompany the Expense Report. The policy does not differentiate between first-class and business-class travel.

In addition, LSC has stated “It is LSC policy to only pay for coach airfare. LSC Board members, officers and staff do not travel first or business class at LSC expense.” Letter from LSC President Barnett to Chairman Wolf, March 13, 2006.

### **Federal Policy**

The Federal Travel Regulation list several types of airline accommodations: coach, business, first and single. Coach class is the basic class of accommodations offered to travelers regardless of fare paid. The terms “tourist” or “economy-class” are sometimes used for this class of accommodation. When authorizing this class of accommodation, use of the contract city-pair fare is mandatory. Business class is a premium-class of accommodation offered by the airlines that is higher than coach and lower than first class, in both cost and amenities. This class of accommodation is generally referred to as “business, business elite, business first, world business, connoisseur, or envoy” depending on the airline. Not all city-pair fares are available in business-class, and even when use of business-class is authorized, the use of business-class city-pair fares is optional. This class of service may only be authorized in accordance with the provisions of FTR §301-10.124, set out below. Generally, first class is the highest class of accommodation offered by the airlines in terms of both cost and amenities and termed “first-class” by the airlines and any reservation system. This class of accommodation may only be authorized in accordance with the provisions of FTR §301-10.123, set out below. There are no contract city-pair fares for this class of accommodation. The term “single class” applies when an airline offers only one class of accommodations to all travelers. §301-10.122

For official business travel, both domestic and international, Federal travelers must use coach-class accommodations, except as provided under FTR §§301-10.123 and 301-10.124.

§301-10.123 When may I use first-class airline accommodations?

You may use first-class airline accommodations only when your agency specifically authorizes/approves your use of such accommodations, for the reasons given under paragraphs (a) through (d) of this section.

(a) No coach or business-class accommodations are reasonably available. "Reasonably available" means available on an airline that is scheduled to leave within 24 hours of your proposed departure time, or scheduled to arrive within 24 hours of your proposed arrival time.

(b) When use of first-class is necessary to accommodate a disability or other special need. A disability must be substantiated in writing by a competent medical authority. A special need must be substantiated in writing according to your agency's procedures. If you are authorized under §301-13.3(a) of this chapter to have an attendant accompany you, your agency also may authorize the attendant to use first-class accommodations if you require the attendant's services en route.

(c) When exceptional security circumstances require first-class travel. Exceptional security circumstances are determined by your agency and include, but are not limited to:

- (1) Use of other than first-class accommodations would endanger your life or Government property;
- (2) You are an agent on protective detail and you are accompanying an individual authorized to use first-class accommodations; or
- (3) You are a courier or control officer accompanying controlled pouches or packages.

(d) When required because of agency mission.

Note to §301-10.123: You may upgrade to first-class at your personal expense, including through redemption of frequent flyer benefits

§301-10.124 When may I use business-class airline accommodations?

Only when your agency specifically authorizes/approves your use of such accommodations, for the reasons given under paragraphs (a) through (i) of this section.

(a) Regularly scheduled flights between origin/destination points (including connecting points) provide only first-class and business-class accommodations and you certify such on your voucher; or

(b) No space is available in coach-class accommodations in time to accomplish the mission, which is urgent and cannot be postponed; or

(c) When use of business-class accommodations is necessary to accommodate your disability or other special need. Disability must be substantiated in writing by a competent medical authority. Special need must be substantiated in writing according to your agency's procedures. If you are authorized under §301-13.3(a) of this chapter to have an attendant accompany you, your agency also may authorize the attendant to use business-class accommodations if you require the attendant's services en route; or

(d) Security purposes or exceptional circumstances as determined by your agency make the use of business-class accommodations essential to the successful performance of the agency's mission; or

- (e) Coach-class accommodations on an authorized/approved foreign air carrier do not provide adequate sanitation or health standards; or
- (f) The use results in an overall cost savings to the Government by avoiding additional subsistence costs, overtime, or lost productive time while awaiting coach-class accommodations; or
- (g) Your transportation costs are paid in full through agency acceptance of payment from a non-Federal source in accordance with Chapter 304 of this title; or
- (h) Where the origin and/or destination are OCONUS, and the scheduled flight time, including stopovers and change of planes, is in excess of 14 hours. (In this instance you will not be eligible for a rest stop en route or a rest period upon arrival at your duty site.); or
- (i) When required because of agency mission.

Note to §301-10.124: You may upgrade to business-class at your personal expense, including through redemption of frequent flyer benefits.

Note: OMB Circular A-122 states that the difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

\* \* \*

## **5. Travel Expense Waivers**

### **LSC Policy**

According to LSC's Administrative Manual, The Comptroller is authorized to waive the maximum lodging rate when circumstances indicate that additional allowances are necessary and appropriate to cover expenses for the conduct of LSC business. For the Office of the Inspector General staff the Inspector General is the authorizing authority. A waiver of the maximum lodging rate must be requested in advance of travel. The Comptroller will return a copy of the approved request or an explanation of the denial. Administrative Manual, Part 5.III.C.

### **Federal Policy**

Maximum daily per diem, which includes lodging, may be waived as follows:

Subpart D—Actual Expense

§301-11.300 When is actual expense reimbursement warranted?

When:

- (a) Lodging and/or meals are procured at a prearranged place such as a hotel where a meeting, conference or training session is held;
- (b) Costs have escalated because of special events (e.g., missile launching periods, sporting events, World's Fair, conventions, natural disasters); lodging and meal expenses within prescribed allowances cannot be obtained nearby; and costs to commute to/from the nearby location consume most or all of the savings achieved from occupying less expensive lodging;
- (c) Because of mission requirements; or
- (d) Any other reason approved within your agency.

§301-11.301 Who in my agency can authorize/approve my request for actual expense?

Any official designated by the head of your agency.

§301-11.302 When should I request authorization for reimbursement under actual expense?

Request for authorization for reimbursement under actual expense should be made in advance of travel. However, subject to your agency's policy, after the fact approvals may be granted when supported by an explanation acceptable to your agency.

§301-11.303 What is the maximum amount that I may be reimbursed under actual expense?

The maximum amount that you may be reimbursed under actual expense is limited to 300 percent (rounded to the next higher dollar) of the applicable maximum per diem rate. However, subject to your agency's policy, a lesser amount may be authorized.

§301-11.304 What if my expenses are less than the authorized amount?

When authorized actual expense and your expenses are less than the locality per diem rate or the authorized amount, reimbursement is limited to the expenses incurred.

§301-11.305 What if my actual expenses exceed the 300 percent ceiling?

Your reimbursement is limited to the 300 percent ceiling. There is no authority to exceed this ceiling.

§301-11.306 What expenses am I required to itemize under actual expense?

You must itemize all expenses, including meals, (each meal must be itemized separately) for which you will be reimbursed under actual expense. However, expenses that do not accrue daily (e.g., laundry, dry cleaning, etc.) may be averaged over the number of days your agency authorizes/approves actual expenses. Receipts are

required for lodging, regardless of amount and any individual meal when the cost exceeds \$75. Your agency may require receipts for other allowable per diem expenses, but it must inform you of this requirement in advance of travel. When your agency limits M&IE reimbursement to either the prescribed maximum M&IE rate for the locality concerned or a reduced M&IE rate, it may or may not require M&IE itemization at its discretion.

## **C. Food and Entertainment**

### **1. Working Meals**

#### **LSC Policy**

Chapter 10, Meetings and Conference Rooms, of the current Administrative Manual states:

On those occasions when it is necessary for local meetings and conferences to extend through the lunch hour or evening meal time, LSC will pay for a modest meal for persons in attendance.

(LSC policy on meals is essentially the same both prior to and after the February 3, 2005 revision to the Administrative Manual.) Also, the current Personnel manual provides for a meal allowance of up to \$7.50 if an employee works until 8:00 pm or later on a business day or if an employee works at least 3 hours on a weekend or holiday. (Ref: Section 5, Appendix B, Paragraphs C3 and D3, March 8, 1997)

#### **Federal Policy**

It may be stated as a general rule that appropriated funds are not available to pay subsistence or to provide free food to government employees at their official duty stations (“at headquarters”) unless specifically authorized by statute. The “free food” rule applies to snacks and refreshments as well as meals. The question of food for government employees arises in many contexts and there are certain well-defined exceptions. In extreme emergencies, the government may furnish free food to employees at their official duty station. The exception, however, is limited. GAO Redbook, p. 4-102.

The Government Employees Training Act (Training Act) authorizes agencies to “pay ...for all or a part of the necessary expenses of training,” 5 U.S.C. § 4109, and to pay “for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made,” 5 U.S.C. § 4110, regardless of whether the event is held within the employees’ official duty station. The Comptroller General has interpreted and applied the Training Act to accommodate the day-to-day realities of governmental operations within the limits imposed by the statutes and has determined that the Training Act permits agencies to pay for the costs of meals and refreshments at meetings and training events under specific circumstances. The Government may pay for meals at meetings and conferences. For day-to-day routine business meetings, however, the Training Act does not provide authority to use appropriations to supply food items. “Day-to-day” business meetings are meetings that involve discussions of the internal procedures or operations of the agency. Meetings or conferences that are not routine involve topical matters of general interest that might appeal to governmental and nongovernmental participants. Attendance at routine agency-sponsored meetings will

generally be subject to the prohibition on furnishing free food to employees at their official duty stations. GAO Redbook, p. 4-107-115.

General operating appropriations also may be used to provide refreshments at award ceremonies under the Government Employees' Incentive Awards Act, 5 U.S.C. §§4501–4506. 65 Comp. Gen. 738 (1986); B-271551, Mar. 4, 1997. This Act authorizes an agency to use its operating appropriations to cover the “necessary expense for the honorary recognition of” the employee or employees receiving the awards. 5 U.S.C. §4503. The Act also directs the Office of Personnel Management to prescribe regulations and instructions to govern agency awards programs. 5 U.S.C. §4506. GAO Redbook p. 4-116-118.

\* \* \*

## **2. Business Entertainment**

### **LSC Policy**

LSC's Administrative Manual, Chapter 14 on Business Entertainment Expenses<sup>49</sup> addresses meals provided for others as follows

This section is limited to the occasions when an LSC Officer, Director, or Vice President in his or her official capacity entertains another person or persons on LSC business. The purpose of the entertainment must be to conduct LSC business and must be approved by the President or designee whenever possible prior to the occasion. The cost of the business entertainment will be reimbursed to the authorized employee up to an amount per person entertained of the per diem allowed for the city in which the business entertainment occurs.

While this section of the policy states that the purpose of the entertainment must be to conduct LSC business, the Administrative Manual does not require that the business necessity or the nature of the business be documented.

### **Federal Policy**

GAO has stated “[e]ntertainment” as a business-related expense is an established practice in the corporate sector. No one questions that it can be equally business-related for a government agency. The difference—and the policy underlying the rule for the government—is summarized in the following passage from B-223678, June 5, 1989:

---

<sup>49</sup> Prior to the February 2005 revisions to LSC's Administrative Manual, LSC did not have a business entertainment policy. However, the previous version of the Administrative policy did have a policy on petty cash funds that addressed “representative expenses.” The policy required that the nature of the expense and the names and business relationships of the guests be stated but it did not require that the LSC business reason of the expense be documented.

“The theory is not so much that these items can never be business-related, because sometimes they clearly are. Rather, what the decisions are really saying is that, because public confidence in the integrity of those who spend the taxpayers’ money is essential, certain items which may appear frivolous or wasteful—however legitimate they may in fact be in a specific context—should, if they are to be charged to public funds, be authorized specifically by the Congress.”

Another way of expressing this idea is found in the following passage from B-288266, Jan. 27, 2003:

“[R]eference to ‘common business practice’ is not in itself an adequate justification for spending public money on food or, for that matter, other objects. An expenditure of public funds must be anchored in existing law, not the practices and conventions of the private sector.”

GAO Redbook, p. 4-100.

There are some situations, however, in which the rule has not been applied, including government corporations similar to LSC. For example, the Corporation for Public Broadcasting, since it was established as a private non-profit corporation and is not an agency or establishment of the U.S. government (notwithstanding that it receives appropriations), could use its funds to hold a reception in the Cannon House Office Building. B-131935, July 16, 1975. GAO Redbook, p. 4-101

\* \* \*

### **3. Coffee, Water and Miscellaneous Items**

#### **LSC Policy**

No specific policy noted.

#### **Federal Policy**

GAO has stated that the “no free food” rule applies to snacks and refreshments as well as meals. For example, in 47 Comp. Gen. 657 (1968), the Comptroller General held that Internal Revenue Service appropriations were not available to serve coffee to either employees or private individuals at meetings. Similarly prohibited was the purchase of coffeemakers and cups. Although serving coffee or refreshments at meetings may be desirable, it generally is not considered a “necessary expense” in the context of appropriations availability. See also B-233807, Aug. 27, 1990; B-159633, May 20, 1974. GAO Redbook, p. 4-103. By way of contrast, it has long been conceded that drinking water is a necessity. See 22 Comp. Dec. 31 (1915); 21 Comp. Dec. 739 (1915). However, an agency may not use appropriated funds for bottled drinking water for the

use of employees where the public water supply of the locality is safe for drinking purposes. 17 Comp. Gen. 698 (1938). GAO Redbook, p. 4-119 fn. 70.

Purchase of decorative items for Federal buildings is covered in the Federal Property Management Regulations, 41 C.F.R. §101.26.103-2 (2003). The regulations authorize expenditures for pictures, objects of art, plants, flowers (both artificial and real), and other similar items. However, such items may not be purchased solely for the personal convenience or to satisfy the personal desire of an official or employee.

§ 101–26.103–2, restriction on personal convenience items, states:

Government funds may be expended for pictures, objects of art, plants, or flowers (both artificial and real), or any other similar type items when such items are included in a plan for the decoration of Federal buildings approved by the agency responsible for the design and construction. Determinations as to the need for purchasing such items for use in space assigned to any agency are judgments reserved to the agency. Determinations with respect to public space such as corridors and lobbies are reserved to the agency responsible for operation of the building. Except as otherwise authorized by law, Government funds shall not be expended for pictures, objects of art, plants, flowers (both artificial and real), or any other similar type items intended solely for the personal convenience or to satisfy the personal desire of an official or employee. These items fall into the category of “luxury items” since they do not contribute to the fulfillment of missions normally assigned to Federal agencies.

There does not appear to be any authority for Federal agencies to use appropriated funds to purchase flowers or other items for the death or illness of an employee or relative.

\* \* \*

#### **4. Picnics and Holiday Parties**

##### **LSC Policy**

No specific policy noted.

##### **Federal Policy**

Picnics and holiday parties generally would not be authorized under Federal appropriations law. GAO advises, however, that otherwise improper expenditures may be authorized under specific statutory authority and that Congress has long recognized that many agencies have a legitimate need for items that otherwise would be prohibited as entertainment, and has responded by making limited amounts available for official entertainment to those agencies that can justify the need. GAO Redbook, p. 4-135.

With two major exceptions (at the Departments of State and Defense), most agencies follow a similar pattern and receive their entertainment funds, if they receive them at all, simply as part of their annual appropriations. The appropriation may specify that it will be available for “entertainment.” See, e.g., B-20085, Sept. 10, 1941. Far more commonly, however, the term used in the appropriation is “official reception and representation (R&R).” This has come to be the technical “appropriations language” for entertainment. GAO Redbook, p. 4-136.

An agency has wide discretion in the use of its R&R appropriation. 61 Comp. Gen. 260, 266 (1982); B-212634, Oct. 12, 1983. GAO Redbook, p. 4-138. Accordingly, R&R funds have been found available for a holiday party for government officials and their spouses or guests. 61 Comp. Gen. 260 (1982), *aff'd upon reconsideration*, B-206173(2), Aug. 3, 1982. Notwithstanding the discretion it confers, an R&R appropriation is not intended to permit government officials to feed themselves and one another incident to the normal day-to-day performance of their jobs. GAO Redbook, p. 4-140.

## **D. Other Costs**

### **1. Severance Pay**

#### **LSC Policy**

Section 4.7 of the Personnel Manual provides that employees have no right to severance pay upon termination, except as required by law. However, the Corporation may offer severance pay or other financial incentives to employees facing termination when it serves Corporation interests to do so. Specific guidelines and procedures may be established for offering severance pay and related incentives. Current guidance is contained in this Section, Appendix B. Any specific offer(s) must be approved in advance by the President.

Appendix B states as follows:

#### **A. Calculation of Severance Pay:**

In the event severance pay is offered, it will be calculated as follows:

1. Regular employees with at least one year of service who are terminated because of a reduction-in-force or for a position being canceled, will be compensated one week's base pay for each full year of continuous service. Periods of leaves of absence will be included in the calculation of years of service.
2. Employees who are over 40 years of age upon termination are entitled to an age adjustment allowance. This allowance is equal to an additional ten per cent of the basic severance pay allowance for each year the employee's age exceeds 40 years. In computing the number of years of age over 40, the Corporation shall credit an employee with 25 per cent of a year for each three months that the employee's age exceeds age 40.
3. Severance pay will be paid in addition to compensation for any unused accrued vacation time. Accrued sick leave will not be compensated.
4. An employee who leaves the Corporation voluntarily or is terminated for other than cancellation of a position or a reduction-in-force will not be eligible for severance pay except in certain exceptional circumstances upon approval by the President.

Note: For OIG employees, the Inspector General is the approving official.

## **Federal Policy**

If an employee is otherwise eligible to separate as a result of a reduction-in-force and similar reasons, they are entitled to one week of pay at the rate of basic pay for the position held by the employee at the time of separation for each full year of creditable service through 10 years, and two weeks of pay at the rate of basic pay for the position held by the employee at the time of separation for each full year of creditable service beyond 10 years.

Note: OMB Circular A-122 advises that “[c]osts incurred in certain severance pay packages (commonly known as “a golden parachute” payment) which are in an amount in excess of the normal severance pay paid by the organization to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the organization’s assets are unallowable.”

\* \* \*

## **2. Locality Pay**

### **LSC Policy**

Although LSC’s current Personnel Manual does not specifically address “locality pay,” Section 5.5 (A) of the Manual discusses the concept of locality pay under the heading of “Comparability Adjustments” as follows:

In order to retain fair, equitable, and competitive salary rates, the compensation schedule will be reviewed annually by OADR. This review will take into consideration salaries paid comparable jobs in the Washington, D .C. labor market and other information. Based on this review, the Director of OADR may recommend to the President a comparability adjustment in the respective pay bands. If approved, this percentage change will, in turn, be reflected directly in all employee salaries. Thus, for example, a 2.1 percent comparability adjustment would automatically increase each employee’s salary by 2.1 percent.

A draft of the revised Personnel Manual was transmitted to the Inspector General from the Chief Administrative Officer on April 26, 2006. According to the transmittal memorandum the draft personnel manual includes revisions that incorporate current practices and new policy in a few areas. Section 7.4 (A) of the draft Personnel Manual addresses locality pay as follows:

“In addition to base salary, LSC pays locality pay, which is designed to help address a gap between Federal and non-Federal salaries in the Washington, D.C. metropolitan area.... The annual percentage of increase in locality pay for Federal employees is based on surveys of various metropolitan statistical areas throughout the U.S. LSC has adopted the use of locality pay to help bring its salaries in line with Federal government

and the private sector in the metropolitan area and to make it a more competitive employer. The percentage of locality pay paid to LSC employees is set by the President, however, locality pay for the President is set by the Board of Directors.”

### **Federal Policy**

The Federal Employees Pay Comparability Act of 1990 (FEPCA) established a locality pay system for General Schedule (GS) employees which was implemented in January 1994. It provides for pay adjustments based on survey comparisons with non-Federal rates on a locality basis. Its goal was to narrow the pay gap between Federal and non-Federal salaries over a nine-year period and is payable within each locality determined to have a pay disparity greater than 5 percent. Under FEPCA, all employees in an area receive the same percentage locality raise based on the difference between the average Federal salary and the average non-Federal salary in the area. In other words, the government combines information for grades and occupations to come up with one raise for all employees. Under that system, employees at some grades and occupations in an area will have salaries that are higher or lower than those of their non-Federal counterparts.

# # #

Office of Inspector General  
Legal Services Corporation  
3333 K Street NW, 3<sup>rd</sup> Floor  
Washington, DC 20007  
[www.oig.lsc.gov](http://www.oig.lsc.gov)