

Memorandum

MEMORANDUM FOR ROBERT D. BANEY
FROM: RICHARD H. HOPF
ACTING DIRECTOR, OFFICE OF
MANAGEMENT AND ADMINISTRATION



March 2, 2001

Proposed Revision to Personal Property Letter 970-1 (PPL)

**Department of Energy
Washington, DC 20586**

This is in response to your memorandum dated April 9, 2001, in which you expressed the concerns of your office and several of your constituent Community Reuse Organizations (CRO) regarding the implications of a proposed change contained in a preliminary draft of the Personal Property Letter (PPL) No. 95-06.

As you are aware, the proposed requirement that CROs retain for 18 months all excess personal property that they received pursuant to Section 3155 of the National Defense Production Act of 1994 (Act) was being vetted internally within the Department of Energy (DOE) and only among the Organizational Property Management Officers (OPMO). The change had been recommended based on a growing recognition within the OPMO community that DOE property is being used by some CROs as fungible asset which is readily convertible to cash. It has been suggested that the revenue stream generated from the CRO sale of excess DOE personal property has been used to pay CRO salaries, subsidize other business operations and generate profits or fees. This perception of how DOE property is being used by some CROs seems to have been confirmed by both your April 9th, letter to the Director, Office of Resource Management and numerous letters from the CROs that were mailed directly to my staff.

I want to assure you that it was never the intent of this office to unreasonably impact the Department's efforts to create and administer worker and community transition programs at defense nuclear facilities. To the extent that the various citations referenced in your letter have clearly delineated the parameters of those programs and those programs have been consistently applied, we have worked effectively with the Office of Worker and Community Transition over the years. However, in the last two years, we have become increasingly concerned about a shift in the local interpretation of those authorities. We believe there has been a move away from the use of excess DOE property assets as the critical and unique equipment around which "start-up" businesses are established to one which encourages asset sales in lieu of diminished levels of DOE grant funding. We questioned whether this broader reading of the statutory authorities is consistent with the original premise of the program, and the statute which authorizes it.

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While I recognize the authority of your organization to lead the Department's efforts to redirect and stimulate the local economies, we have certain responsibilities with regard to the management, control and disposition of DOE personal property. Under Public Law No. 95-91, Section 647, and under delegations from the Secretary of Energy, my staff is charged with the responsibility for the acquisition, management and disposal of property held by the Department for official use. In that regard, the proposed change to the PPL was prompted by our concern that the immediate conversion of excess DOE property to cash by CROs for vague purposes was inconsistent with the apparent intent of economic development as originally enacted by Congress. Specifically, the imposition of an 18 month requirement for the retention of claimed property would have encouraged the CRO direct use of property in the establishment of new businesses as opposed to other purposes.

Unfortunately, there seems to be no clear guidance available to any of us as we consider what is the proper use for excess property under section 355 of the Act. The wording of the legislation is so general as to give negligible direction as to specific uses for property transferred to CROs. In addition, we have been told by the Office of General Counsel that there is almost no floor language which would be useful in interpreting appropriate property utilization options.

Upon considering your comments, those of the CROs and in the absence of definitive Congressional intent on this matter, we will remove the proposed change from the draft PPL. We are taking this action in recognition of the current role of the Office of Worker Transition as the responsible program manager for local economic development activities conducted under the Act. Accordingly, we will defer to the interpretation by your office. However, we recommend that WT: (1) work with the Office of General Counsel and the Office of Congressional and Intergovernmental Affairs to gain a better understanding of the permitted uses of excess property under the Act, (2) issue further clear and unambiguous guidance on the appropriate use of economic development property, and, (3) conduct training on the implementation of the Act.
