



OFFICE OF LEGAL AFFAIRS

EXTERNAL OPINION

External Opinion # EX-2008-1004

To: Rhodia D. Thomas, Executive Director
MidPenn Legal Services
213-A North Front Street
Harrisburg, PA 17101

Date: September 10, 2008

Subject: Part 1610 Program Integrity Inquiry

SUMMARY

You have requested an OLA opinion regarding the Part 1610 program integrity implications of a proposed arrangement between MidPenn Legal Services ("MidPenn") and Regional Housing Legal Services ("RHLS"). The information that you have submitted indicates that you would maintain program integrity from RHLS under these circumstances. Our opinion is limited to the facts presented; actual compliance can only be determined by a full LSC review.

FACTS

The following facts are based on the information that you have provided; OLA has not conducted an independent assessment of them, but relies on them for this opinion letter. MidPenn is an LSC grantee. RHLS is a statewide program providing legal and other services to needy clients. It is a 501(c)(3) non-profit organization separately incorporated from MidPenn. RHLS might engage in restricted activities, and thus MidPenn wishes to ensure that it maintains program integrity from RHLS. Currently MidPenn and RHLS do not share any staff, space, equipment or other resources. MidPenn employees 102 people in over 14 offices distributed among 18 counties in Central Pennsylvania. In Gettysburg, MidPenn has a staff of four people, including two attorneys. RHLS has 12 employees in three offices in Pittsburgh, Glenside (near Philadelphia) and Gettysburg.

RHLS has asked MidPenn about sub-leasing an office in Gettysburg for one attorney. RHLS would pay rent and utilities at a fair market value. There would be no other exchanges of funds between the two entities. MidPenn does not intend to subsidize any activities of RHLS, and the two entities will have entirely separate administrative, financial and timekeeping systems. RHLS would supply its own computer system, phone line, and office supplies. The RHLS office would be completely separate from the MidPenn offices including closing off that office from MidPenn's offices, installing locks on the office doors, establishing separate entrances for the two entities, and installing separate signs for the two entities. The RHLS attorney will not represent any clients. The RHLS attorney will work with legal aid offices

throughout the state on housing issues, including working with MidPenn. This work will include administering a mortgage assistance program, disseminating housing law information to legal aid offices, working with legal aid offices on housing law issues, and helping to plan and coordinate the activities of the statewide housing law group of the Pennsylvania Legal Aid Network, of which MidPenn is a participant.

LEGAL BACKGROUND

45 C.F.R. §1610.8 sets out three separate requirements for a grantee to have program integrity from an organization engaging in restricted activities. All three requirements must be met: 1) “The other organization is a legally separate entity.” §1610.8(a)(1); 2) “The other organization receives no transfers of LSC funds, and LSC funds do not subsidize restricted activities.” §1610.8(a)(2); and 3) “The recipient is physically and financially separate from the other organization.” §1610.8(a)(3). The physical and financial separation requirement “will be determined on a case-by-case basis and will be based on the totality of the facts.” While separate accounting and timekeeping is a factor, “[m]ere bookkeeping separation of LSC funds from other funds is not sufficient.” The separation factors include, without limitation, separate personnel, separate accounting, separate timekeeping, separation from facilities in which restricted activities occur, the extent of restricted activities and the extent of signs and forms of identification distinguishing the recipient from the other organization. *Id.* Determinations taking into account the physical and financial separation standards “must ensure that there is no identification of the recipient with restricted activities and that the other organization is not so closely identified with the recipient that there might be confusion or misunderstanding about the recipient’s involvement with or endorsement of prohibited activities.” 45 CFR Part 1610 Final Rule, 62 Fed. Reg. 27695, 27698 (May 21, 1997) (Supplementary Information for the current rule).

ANALYSIS

As presented, this arrangement meets all three requirements of program integrity. The two entities are legally separate, there is no transfer of LSC funds to RHLS, there is no LSC funded subsidy of RHLS restricted activities, and there is physical and financial separation between the two entities. The legal separation, transfer and subsidy issues are all self-evident from the facts presented. Physical and financial separation requires a case-by-case determination. Under these facts there is no significant overlap or sharing between the organizations. The sublease arrangement is planned as an arms length transaction at fair market value. You have proposed steps to provide physical separation, financial separation, staff separation and signage. Both entities will participate in housing issues regarding low income people, and that collaboration, as described, appears to also be an arms length relationship. The totality of the facts, as presented, does not undermine the actual or apparent separation between the two entities in a way that would cause confusion or misunderstanding about the recipient’s involvement with or endorsement of any prohibited activities by RHLS. Nonetheless, please pay careful attention to your implementation of your proposal. For example, the proposed physical separation of the office should be tailored to the kind of building involved, whether it is a traditional office building or a former residential structure.

CONCLUSION

The proposed arrangement between MidPenn and RHLS, as described, would maintain program integrity between the two entities. This analysis is based on the facts provided and not on any specific restricted activities of RHLS. Please contact us if you have any further questions.

Very truly yours,



Victor M. Fortuno
Vice President & General Counsel
Office of Legal Affairs