



## OFFICE OF LEGAL AFFAIRS

### ADVISORY OPINION AO-2015-003

To: Hannah Lieberman, Executive Director  
Neighborhood Legal Services Program (D.C.)

From: Ron Flagg, General Counsel *R.F.*  
Mark Freedman, Senior Associate General Counsel *M.F.*

Date: November 9, 2015

Re: D.C. Housing-Initiative Coordinator

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### ISSUE PRESENTED

You contacted LSC for review of a proposed, new staff position for a coordinator (Coordinator) of the multi-organization, D.C., Right-to-Housing Initiative (Initiative). As a non-LSC-funded employee of Neighborhood Legal Services, the Coordinator would “coordinate and support the work of” four work groups comprising housing advocates from various D.C. entities (Work Groups). The Coordinator and Neighborhood Legal Services would not participate in any LSC-restricted activities. Nonetheless, some of the non-LSC entities involved in the Work Groups would likely engage in LSC-restricted activities (e.g., lobbying or class actions). You asked whether Neighborhood Legal Services could structure the Coordinator’s position to fully comply with the LSC restrictions, and how to do so.<sup>1</sup>

### BRIEF ANSWER

Neighborhood Legal Services can structure this position so that the Coordinator could support these Work Groups without violating any LSC restrictions. Doing so would require that Neighborhood Legal Services adhere strictly to LSC requirements limiting its own work and that of the Coordinator to ensure that they do not participate in any LSC-restricted activities of the non-LSC entities participating in these Work Groups.

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<sup>1</sup> Jim Sandman, LSC President, recused himself from consideration of this question because he serves on the Right-to-Housing Initiative’s Advisory Committee and the D.C. Access-to-Justice Commission.

## BACKGROUND

Recipients of LSC funding (LSC grantees) may not participate in LSC-restricted activities (*e.g.*, class actions and lobbying); these restrictions affect both LSC and non-LSC funds of the grantee. *See e.g.*, 45 C.F.R. Parts 1610 (applicability of LSC restrictions to non-LSC funds of LSC grantees with limited exceptions for tribal funding) and 1612 (limited lobbying exceptions involving non-LSC funds). LSC grantees must also: (1) maintain “objective integrity and independence from any organization that engages in [LSC-]restricted activities” and (2) “not subsidize restricted activities” with LSC funds. *Id.* at § 1610.8(a) (program integrity).

A group of Washington, D.C. legal services providers, the D.C. Access-to-Justice Commission, and the D.C. Bar Pro Bono Center developed the Right-to-Housing Initiative to foster and implement broad-based, coordinated strategies to address a variety of serious, city-wide, housing problems; those efforts could also provide a foundation for a future effort to seek a right to housing in the District of Columbia. These entities participate in four “Work Groups” to pursue improvements in four “Focus Areas” of critical housing-rights issues: (1) security of tenure, (2) affordability, (3) accessibility (fair housing), and (4) adequacy of emergency shelter. Each group considers issues involving one Focus Area under the leadership of an experienced housing advocate. The Work Groups consist of housing advocates from legal services providers and may include representatives from public-policy centers or community organizations as well as community members themselves. The Work Groups set their own goals, priorities, and projects. A Steering Committee—comprising representatives from D.C. legal services providers, the D.C. Access-to-Justice Commission, and the D.C. Bar Pro Bono Center—oversees the Initiative as a whole and has the ultimate authority for determining whether a particular project falls within the scope of the Initiative (the Work Groups make the primary determinations and may proceed without Steering Committee review). A community representative may join the Steering Committee in the future.

The Steering Committee determined that a paid, full-time Coordinator could provide the administrative support and coordination needed for maintaining this coordinated approach to addressing these interrelated issues by a variety of organizations.<sup>2</sup> The Coordinator would provide administrative and organizational

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<sup>2</sup> Originally, the Steering Committee proposed a Project Manager employed at the Washington Legal Clinic for the Homeless to provide substantive oversight and guidance to the Initiative. The proposed Project Coordinator in this analysis does not have those substantive responsibilities for any work involving LSC-restricted activities.

support as identified in the sample list of duties and responsibilities appearing at the end of this memo. The Coordinator would provide reports to the Steering Committee. The Steering Committee asked if Neighborhood Legal Services could employ the Coordinator using non-LSC funds (covering all direct and indirect costs relating to the Coordinator and her activities).<sup>3</sup> Neighborhood Legal Services would oversee the work of the Coordinator.

The participating entities will engage in projects chosen by the Work Groups regarding the Focus Areas. Those projects could involve LSC-permissible or LSC-restricted activities (*e.g.*, representation of LSC-eligible clients or participation in LSC-restricted lobbying, respectively). *The Coordinator and all other employees of Neighborhood Legal Services would not manage, supervise, direct, oversee, or otherwise participate in any LSC-restricted activities. Any time that a non-LSC entity engages in an LSC-restricted activity as part of an Initiative Work Group, the Coordinator will affirmatively recuse herself from any involvement with that activity.*

## ANALYSIS

This scenario raises three LSC-compliance issues:

1. ensuring that Neighborhood Legal Services does not participate in any LSC-restricted activities,
2. preventing subsidization of LSC-restricted activities with LSC funds or payment of LSC funds to an entity engaging in restricted activities, and
3. maintaining Neighborhood Legal Services' objective integrity and independence from entities engaging in LSC-restricted activities.

### *Participation in LSC-Restricted Activities*

LSC grantees may not participate in LSC-restricted activities. *See e.g.*, 45 C.F.R. Parts 1610 (restrictions on non-LSC funds), 1612 (lobbying) and 1617 (class actions). Thus, for example, an LSC grantee cannot commence a class action or seek to have a group of clients certified as a class under court rules for class actions. Nonetheless, an LSC grantee may represent individuals, or groups of individuals, with common claims. The LSC grantee may also advise those individuals about the advantages of a class action and assist in locating counsel to pursue that option

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<sup>3</sup> The Public Welfare Foundation provided a grant to cover the costs and expenses for this position. Neighborhood Legal Services will use other non-LSC funds for any additional costs related to this position.

without further involving the grantee. Similarly, the Coordinator employed at Neighborhood Legal Services may support and assist the Work Groups and the Steering Committee without involving herself in any LSC-restricted work. Generally, participation in an LSC-restricted activity begins when the work necessarily involves the restricted activity. The Coordinator must recuse herself from support of, or involvement with, any LSC-restricted activities. She may continue to monitor the progress of those activities, just as any LSC grantee can keep informed about the activities of other entities, regardless of whether those activities are LSC-restricted. Similarly, like all LSC grantees, the Coordinator may monitor legislative activities and the lobbying efforts of other entities, and, in specific and limited circumstances, even use non-LSC funds for lobbying. *See e.g.*, 45 C.F.R. §§ 1612.5 & 1612.6.

Neighborhood Legal Services must provide clear and explicit information to all entities participating in the Initiative about the limitations of the Coordinator's work. It should document those communications, ensure that other organizations are reminded periodically of those limitations, and consider entering into a memorandum of understanding or similar document among the organizations specifying the Coordinator's roles, responsibilities, and limitations. It must also monitor the Coordinator's work to ensure that she fully adheres to those restrictions.

#### *Subsidization of LSC-Restricted Activities*

LSC grantees must ensure that "LSC funds do not subsidize [LSC-]restricted activities" and that any entity engaging in restricted activities "receives no transfer of LSC funds . . ." 45 C.F.R. § 1610.8(a)(2). The Coordinator's position does not implicate that restriction so long as Neighborhood Legal Services uses only non-LSC funds for the direct and indirect expenses of the Coordinator's work (including support work by other staff). Also, Neighborhood Legal Services does not propose transferring LSC funds to any of the other entities participating in the Initiative.

#### *Program Integrity*

To maintain program integrity, Neighborhood Legal Services must "have objective integrity and independence from any organization that engages in restricted activities" based on a three-part test. 45 C.F.R. § 1610.8(a). Under this scenario, Neighborhood Legal Services would maintain the legal separation required by § 1610.8(a)(1) and the financial separation required by § 1610.8(a)(2), as discussed in the preceding paragraph. For the third requirement, Neighborhood Legal Services must operate "physically and financially separate from the other organization" that engages in restricted activities. *Id.* at § 1610.8(a)(3). That determination requires a

“case-by-case analysis” involving “the totality of the facts” in which “the presence or absence of any one or more factors will not be determinative.” *Id.*

As described, the Initiative and the Coordinator’s role would not involve physical or financial integration of Neighborhood Legal Services with any of the other entities in a way that would undermine program integrity. The Coordinator would provide support to the Steering Committee and Work Groups and assist in coordination among the Work Groups, but she would not work directly on client services or other implementation activities. Furthermore, the Coordinator’s work would not lead others to think that the grantee and any of the other entities operate as one organization. Rather, the Coordinator’s responsibilities explicitly involve coordination among *separate and independent* entities.

Nonetheless, Neighborhood Legal Services must take careful steps to maintain program integrity. It must pay close attention to the description of the Coordinator’s role and her involvement in the activities of the other entities. These limitations overlap with the precautions necessary for preventing participation in restricted activities, as discussed above. Neighborhood Legal Services should tailor the scope and description of the Coordinator’s work to the planned responsibilities. Furthermore, Neighborhood Legal Services must monitor her work to ensure that it maintains objective integrity and independence from the other organizations that might engage in restricted activities.

## CONCLUSION

Neighborhood Legal Services can hire a Coordinator to provide coordination and support activities for the Steering Committee and Work Groups in the Right-to-Housing Initiative, subject to the constraints and limitations specified herein. If Neighborhood Legal Services pursues this opportunity, then it should work with LSC on structuring the job description, implementation, and oversight to maintain its compliance with the LSC requirements.

SAMPLE DUTIES AND RESPONSIBILITIES  
D.C. HOUSING-INITIATIVE COORDINATOR

- Assist in convening the Work Groups, engaging appropriate stakeholders in their work and ensuring forward momentum
- Support the coordination of the Work Groups through regular communication about each Work Group's goals and activities and new developments in the housing arena
- Attend meetings for all Work Groups
- Establish an evaluation tool for the project
- Identify additional resources to further specific projects
- Connect pro bono resources to the Work Groups
- Identify and engage community representatives and organizations for participation in the activities of the Work Groups and for particular projects
- Remain informed about housing work undertaken outside of the Initiative
- Remain informed about new developments in the housing arena, including but not limited to new legislation, new case law or actual and potential changes in communities
- Identify connections among the goals and projects of the Work Groups and help the Work Groups shape collaborative strategies, when appropriate
- Identify systemic housing issues from the work group projects, community engagement, and developments in the housing arena
- Regularly report on Work Group activities to the Steering Committee
- Alert the Steering Committee to potentially high profile, controversial, legislative, or complex projects under consideration by any of the Work Groups
- After the project is underway, explore how similar projects may work elsewhere and bring that information to the Work Groups and Steering Committee