



OFFICE OF LEGAL AFFAIRS  
EXTERNAL OPINION

External Opinion # EX-2003-1001

**To:** Joseph R. Bartylak, Executive Director  
Land of Lincoln Legal Assistance Foundation, Inc.

**Date:** January 13, 2003

**Subject:** Transfer, Subgrant and PAI Questions Involving Technology Grants

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This opinion formalizes the preliminary response that I provided to you on May 3, 2002 by e-mail regarding your inquiry of December 3, 2001 involving Technology Initiative Grants (TIGs) handled by your office. In that e-mail I addressed questions 1, 4, 5 and 6 to the extent that I could. Further relevant advice can now be found in the recently released Internal Opinion 2002-2008 regarding statewide websites.

This opinion contains responses to all six questions. Below are your questions followed by our analysis. As per our discussion on January 9, 2003, please contact me if you have further questions about any of these matters.

*1. Is LSC subgrant approval under Rule 1627 required for agreements between Land of Lincoln and the other two Illinois LSC recipients to compensate them for staff attorney work developing website content material taking into account that this work is not a normal, customary programmatic activity and the grant application described the grantee as "Land of Lincoln Legal Assistance Foundation, Inc. on behalf of all Illinois LSC funded programs?"*

*In these circumstances may the LSC recipients pay the staff attorney(s) an honorarium or bonus for this special work in addition to their regular compensation?*

A: IN-2002-2008 discusses content development, which LSC generally considers a programmatic activity subject to Parts 1610 and 1627. As to agreements between your program and other Illinois programs regarding TIG funded activities, it is my understanding that your program is the only one in privity of contract with LSC for these grants. As such, the Part 1610 transfer and Part 1627 subgrant regulations apply to any transfers of LSC funds between your program and other Illinois recipients that meet the definition of a Part 1610 transfer or a Part 1627 subgrant. §1627.6(a) (Part 1627 applies to subgrants from one recipient to another recipient).

As to compensation for staff attorneys, the LSC statutes and regulations do not address the specifics of how LSC recipients structure their compensation structure. As such, there are no LSC limitations that would prevent you from compensating your attorneys or subgrantees compensating their attorneys for work on TIG matters as you have proposed through an honorarium or bonus in addition to their regular compensation.

*2. Is LSC subgrant approval under Rule 1627 required for contracts between Land of Lincoln and non-LSC providers, individual non-LSC staff attorney(s) (after two years LSC employment), or private attorneys for work described in the foregoing paragraph taking into account that the work consists of PAI activities pursuant to Rule 1614? If subgrants are not required under these circumstances, is it sufficient if the subcontracts specify that the restrictions of Rule 1610 apply only to the LSC TIG grant payments?*

A: Part 1627 excludes from the definition of a subgrant any activities “covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient’s clients on a contract or *judicare* basis.” § 1627.2(b)(1). Generally this exception only applies to direct representation of clients by private law firms, attorneys or *pro bono* programs. To determine if this exception would apply to your situation, we would need further information about the specific activities in question and the nature of the organizations you would fund to perform them.

When LSC funds are used for private attorney involvement activities (PAI) pursuant to Part 1614, the prohibitions and requirements of Part 1610 apply only to the LSC funds transferred. § 1610.7(c). As such, TIG funds transferred to another organization solely for PAI purposes would be subject to all LSC restrictions, but they would not, in and of themselves, subject the rest of the other organization’s funds to LSC restrictions. Generally, under § 1614.3, PAI activities by private attorneys are either a) direct delivery of legal assistance to eligible clients and related administrative work or b) support to the recipient on a reduced fee or *pro bono* basis. To pursue this question further we would need additional information about the activities in question and the nature of the organizations you would fund to perform them.

*3. While it is unlikely that we will do so, may Land of Lincoln hire individual LSC staff attorneys or non-LSC lawyers as temporary part-time employees to perform that content development work unconstrained by 1610 and 1627 requirements?*

A: Any employees of an LSC recipient, including part-time employees, are subject to the LSC restrictions and requirements. TIG funds are not exempt from these requirements. As employees of an LSC grantee, these people would be directly subject to the restrictions irrespective of the Part 1610 transfer and Part 1627 subgrant requirements. Under Part 1610 they would be subject to certain LSC restrictions even if employed with non-LSC funds.

*4. It is our understanding that Land of Lincoln may contract with Chicago-Kent School of Law as a vendor of technical services to pay the personnel costs of ITC employees and certain non-personnel expenses for non-programmatic activities by transferring a proportionate share of the personnel costs budget line item in lump sums from LSC grant periodic payments without LSC subgrant approval. Is that correct?*

A: To the extent that your program hires another organization as a vendor of technical services (e.g., providing the hardware and/or administrative support for a computer network or web server), that arrangement would be within the exclusion to the definition of a “subrecipient” in § 1627.2(b) that “[s]ubrecipient activities would normally also not include the provision of goods or services by vendors or consultants in the normal course of business if such goods or

services would not be expected to be provided directly by the recipient itself, such as auditing or business machine purchase and/or maintenance." See also 1610.2(g) ("Transfer does not include any payment of LSC funds to vendors, accountants or other providers of goods and services made by the recipient in the normal course of business.") As such, payments for these technical non-programmatic services do not require subgrant approval under Part 1627.

While I am not clear what 'non-personnel expenses for non-programmatic activities' you refer to, I can state that the financial arrangement should be one in which your program is not overpaying for any goods or services. Overpayment could constitute a subsidy for purposes of § 1610.8.

You should also keep in mind that if the other organization engages in any restricted activities, then you will need to maintain § 1610.8 program integrity from that organization. The vendor relationship would be one factor in the program integrity analysis, just as would shared office space, shared equipment, etc. Similarly if your program underpays for these services, that could constitute a subsidy of your program by the other organization, which would be another program integrity factor.

*5. May Land of Lincoln transfer sums of less than 10% between budget line items without seeking LSC approval?*

A: I am not certain what you are asking about in this question, but I believe that you cannot transfer funds between separate LSC grants. I can provide more guidance on this if you provide more information about your situation.

*6. May the Land of Lincoln auditors conduct the TIG grant fiscal audit as part of its regular annual audit irrespective of which scenario is followed for contracting content development work?*

A: The Office of Inspector General currently sets the standards for audits. I consulted with the OIG and they informed me that a separate TIG audit is not required so long as the TIG funds are included in your regular annual audit pursuant to the audit guide and other applicable requirements.

I hope that this information and IN-2002-2008 address your concerns. I am available to further discuss these or other LSC matters. As per our discussion, I am looking into the subsidy analysis question that we discussed as a separate inquiry.

Very truly yours,

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