



OFFICE OF LEGAL AFFAIRS  
EXTERNAL OPINION

External Opinion # EX-2000-1018

**To:** Connie Boyles Lane  
Executive Director  
Legal Advice & Resource Center  
P.O. Box 4147  
Concord, NH 03302-4147

**Date:** August 25, 2000

**Subject:** **LARC/NHLA Board Integration**

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You requested an advisory opinion as to whether the proposed integration of the Boards of Directors of Legal Assistance & Resource Center and New Hampshire Legal Assistance, as evidenced in your August 11, 2000, letter and the proposed Memorandum of Understanding (MOU) you provided, is consistent with the LSC program integrity requirements of 45 CFR Part 1610. We have reviewed the proposed MOU and find that the proposed plan, as currently described, meets the Part 1610 requirements.

Under the LSC program integrity standard, a recipient “must have objective integrity and independence from any organization that engages in restricted activities.” 45 CFR §1610.8. A recipient will be found to have objective integrity and independence from another organization if:

- (1) The other organization is a legally separate entity;
- (2) The other organization receives no transfer of LSC funds, and LSC funds do not subsidize restricted activities; and
- (3) The recipient is physically and financially separate from the other organization. Mere bookkeeping separation for LSC funds from other funds is not sufficient. Whether sufficient physical and financial separation exists will be determined on a case-by-case basis and will be based on a totality of the facts. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include, but will not be limited to:
  - (i) the existence of separate personnel;
  - (ii) the existence of separate accounting and timekeeping records;

- (iii) the degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
- (iv) the extent to which signs and other forms of identification which distinguish the recipient from the organization are present.

45 CFR §1610.8(a). Consistent with that standard, a recipient and such an organization may have overlapping Boards of Directors, provided that the relationship between the recipient and the other organization otherwise exhibits the characteristics set forth above. *See Legal Services Corporation, Final Rule on Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity*, 62 Fed. Reg. 27695, 27697 (May 21, 1997).

Under the proposed LARC/NHLA arrangement, each of the regulatory factors is satisfied. Although each Board would have some of the same members, LARC and NHLA would remain legally separate entities, with separate and independent Boards of Directors. MOU at 2. The Boards plan to meet independently and maintain separate records. *Id.* The organizations would not share personnel or office space (further, LARC and NHLA do not have offices in the same cities). Letter from C. B. Lane, LARC, to V. Fortuno, LSC, dated August 11, 2000. Likewise, financing and accounting between the two agencies would remain separate and there would be no transfer of LSC funds from LARC to NHLA or LARC subsidy of NHLA restricted activities. *Id.*

In addition to these structural elements, the MOU contains additional safeguards which appear designed to ensure that the LSC program integrity standards are met and maintained. For example, the MOU specifies that “the Boards will ensure” that LARC complies “with all regulations of Legal Services Corporation.” MOU at 3. The MOU further provides that

[i]f the Boards receive any indication that the continued funding of LARC by LSC or the continued ability of NHLA to undertake activities permitted by LSC is jeopardized by the integration of the membership of the two Boards envisioned by the Memorandum or any other aspect of the integration of the membership of the two Boards, the Boards will immediately take whatever steps are necessary to remedy such situation . . .

Accordingly, we believe that LARC may proceed with its plan to integrate its Board with the Board of NHLA as set forth in the LARC/NHLA MOU and as described in the August 11, 2000 letter, consistent the “objective integrity and independence” required by 45 CFR Part 1610. Of course, should any material changes to the plan occur (prior to or after implementation) it is possible that those changes could have a bearing on the ability of LARC to continue to meet the Part 1610 standards. We would encourage LARC to consult with LSC on the impact of any such changes.

We hope you find this information helpful. If we can be of any further assistance, please do not hesitate to contact us.

Very truly yours,

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