

July 1, 1999

Richard C. Woltmann, Executive Director
Bay Area Legal Services, Inc.
Riverbrook Professional Center, 2nd Floor
829 West Dr. Martin Luther King Jr. Boulevard
Tampa, FL 33603

Dear Mr. Woltmann:

This letter responds to your January 22, 1999 request for an opinion on whether Bay Area Legal Services, Inc. (BALS) may use its LSC funds to support a foundation formed solely to raise funds for BALS. In particular, you asked whether the fundraising effort would violate the program integrity regulations in 45 CFR 1610.8. According to your description, members of your community would form a separate 501(c)(3) foundation for the sole purpose of raising funds for BALS. The foundation would have its own board of directors and would not engage in any restricted activities. BALS would support the work of the foundation with staff time and payment of certain costs.

The Corporation has long permitted the use of LSC funds for fundraising activities. According to the prior versions of the LSC accounting guides, fundraising expenses were considered a normal operating expense for LSC programs as not-for-profit organizations. The 1981 and 1986 Guides addressed fundraising as a cost that should be reported as a supporting services. See 1981 Guide at 2-21; 1986 Guide at 2-1.10 (page 20). Although, fundraising is not addressed in the 1997 Guide, the AICPA Audit and Accounting for NPOs (June 1996)¹ and the Financial and Accounting Guide for NPOs (5th Ed.), which were sources used as references in the development of the Corporation's 1997 Guide, generally depict fundraising expenses as normal operating expenses for NPOs that should be reported separately in an NPO's financial statement as

¹ ANPO stands for ANonProfit Organization.

supporting services. In addition, the Corporation has had a long history of approving consultant contracts with regard to costs associated with fundraising under the prior version of 45 CFR Part 1630. *See* §1630.5(b)(3) of 1986 version of the rule. Finally, nothing in the current rule prohibits the use of LSC funds for fundraising.²

The use of LSC funds for fundraising, however, is subject to certain limitations. Part 1630 requires that expenditures of LSC funds be reasonable and necessary for activities under the LSC grant. *See* §1630.3(a)(2) and (4) and (b). It also requires that LSC funds be used in accordance with applicable law, including statutory restrictions. 45 CFR §1630.3(a)(4). These standards apply both to the *amount of funds* used, as well as the *use of the funds*. *See* §1630.3(a)(2) - (4), (b) and (c). Thus, a recipient may use a reasonable amount of LSC funds to manage its own fundraising effort in-house. It may also enter into a contract with a consultant to use a reasonable amount of LSC funds to raise money for the program. However, Part 1630 makes it clear that neither the recipient nor any consultant hired by the recipient may use LSC funds to raise money for other organizations. LSC funds may only be used for activities authorized under the LSC grant and such activities do not include raising funds for other organizations. Based on the above, BALS may use LSC funds to support the fundraising activities of the foundation because the foundation's sole purpose is to raise funds for the recipient.

In response to your question on program integrity, there is also no problem with the program integrity requirements of Part 1610 (*see* §1610.8) because the foundation does not engage in any restricted activities. 1610.8. The program integrity rules apply only to a recipient's relationship with another organization that does restricted activities. *Id.*

In summary, BALS may use its LSC funds to pay for staff time devoted to the work of the foundation and to help pay costs of the work of the foundation, as long as the amount of the funds used is reasonable according to applicable accounting standards. *See* §1630.3(a)(2) and (b). If the purpose or activities of the foundation should change from the description you provided, you should inform the Corporation to ensure that BALS remains in compliance with the LSC grant restrictions.

² See also the preamble to Part 1612 which states that the term "fundraising" was deleted from the purpose section A in order to clarify that this part does not restrict efforts by recipients to engage in resource development activities. 62 FR 19400 (April 21, 1997).

I hope this adequately responds to your inquiry. Please let me know if you need any additional assistance.

Sincerely,

Suzanne B. Glasow
Senior Assistant General Counsel