

OFFICE OF LEGAL AFFAIRS

INTERNAL OPINION

Internal Opinion # IN-2002-2008

To: Randi Youells, Vice President for Programs
From: Mark Freedman, Assistant General Counsel
Through: Victor M. Fortunato, General Counsel and Vice President for Legal Affairs.
Date: December 13, 2002
Subject: Transfer, Subgrant and Subsidy Considerations for LSC Grantees Participating in Statewide Websites using LSC funds.

QUESTION PRESENTED

LSC actively encourages Technology Initiative Grant (TIG) recipients to participate in partnerships with other state justice community stakeholders toward the development and ongoing maintenance of statewide websites. At the same time, because of statutory and regulatory limitations on the use of LSC funds, it is vital that certain precautions be taken to ensure that recipients do not run afoul of these restrictions. This analysis is intended to provide information to the Office of Program Performance (OPP) to assist recipients and other state justice community stakeholders in participating in statewide websites in a manner that is effective, efficient and consistent with applicable law and regulations.

Under Parts 1610 (Program Integrity) and 1627 (Subgrants) of the LSC Regulations, a transfer or subgrant of LSC funds carries LSC restrictions. Part 1610 also requires that LSC funds not subsidize any restricted activities and that LSC grantees maintain physical and financial separation from organizations that engage in restricted activities. OPP has asked if LSC recipients can participate in statewide websites without subjecting the other organizations in the websites to the LSC restrictions. This opinion addresses the following three questions:

- 1) What statewide website related activities, if any, can an LSC grantee pay another organization to do with LSC funds without such payment constituting a transfer or subgrant?
- 2) What website content development activities, if any, can an LSC grantee pay another organization to do with LSC funds without such payment constituting a transfer or subgrant?
- 3) In what ways, if any, can an LSC grantee contribute to a statewide website without subsidizing the website or the other partners in the website?

CONCLUSIONS

- 1) An LSC grantee can use LSC funds to pay another organization to perform certain administrative and ministerial functions for a statewide website without such payment constituting a transfer or subgrant, so long as there is also no subsidy with those funds.
- 2) Use of LSC funds to pay for website content development by another organization is a transfer or subgrant. Some content-related work though, such as purchasing content or translating content may not rise to the level of a transfer or subgrant.
- 3) An LSC grantee can contribute to and participate in a statewide website without creating an LSC subsidy of the website or other partners if it can demonstrate that it realizes benefits from the website in at least equal proportion to its contributions.

BACKGROUND

Starting in FY 2000, Congress has given LSC a separate line item appropriation for “client self-help and information technology.” Pub. L. 106-113, 113 Stat. 1501 (1999) (\$5,000,000 in FY 2000); Pub. L. 106-553, 114 Stat. 2762 (2000) (\$7,000,000 in FY 2001); Pub. L. 107-77, 115 Stat 748, (2001) (\$4,400,000 in FY 2002). Starting with FY 2000, LSC has provided Technology Initiative Grants (TIG) to distribute these funds. One type of TIG supports the development of statewide websites, which LSC describes as websites that must serve an entire state, with all LSC programs participating, and must include portions for clients, advocates, *pro bono* attorneys, and providers of other legal and social services in the state. See Notice of Availability of Funds, Legal Services Corporation, Technology Initiative Grants (2001 and 2002 notices) at 5.¹ These statewide website grants will be for up to \$50,000, which includes up to \$10,000 for implementation of a statewide website template and up to \$40,000 “for providing content for the website and securing a coordinator responsible for implementation.”²

LSC expects that statewide websites will be the product of a Statewide Website Stakeholders Committee made up of at least one LSC recipient and other non-LSC entities such as the courts and other legal aid providers.³ Some of the other entities might engage in LSC restricted activities. The circumstances and arrangements for statewide websites in each state will be different. In each state there will be various components to the website including structural decision-making, content development, web formatting, computer hardware and software, etc. LSC expects that LSC recipients will not subsidize statewide websites and will get at least as much out of these websites as they contribute.

¹ This opinion does not reach any matters regarding the scope of LSC’s authority to fund these or similar projects.

² OPP does not contemplate that these websites will themselves engage in restricted activities. Any question regarding website activities that might implicate restrictions not addressed in this opinion should be referred to the Office of Legal Affairs.

³ Different questions would be raised by websites entirely run by an LSC grantee; this opinion does not reach that situation.

Content for a statewide website may include documents, forms, interactive web pages, videos and other technology that enable eligible clients to better represent themselves formally or informally. Acquisition of such materials may range from purchase or licensing of existing materials to creation of entirely new materials.

Recipients will be limited in providing LSC funds to other organizations for website coordination to funding the following administrative and ministerial functions. For these purposes ‘content’ includes legal information, referral information and other substantive information that the website is designed to provide.

- Putting content onto the website that was given to the coordinator by the LSC funded program, the stakeholder committee, a subject matter committee or other website participants.
- Arranging for content to be translated into other languages as needed.
- Reminding the appropriate party when the designated expiration date for a piece of content comes up.
- Ensuring that parties providing content do so as decided by the stakeholder committee for public areas of the website including materials for sections on “calendar,” “information and referral” and “news.”
- Providing technical information and demonstrations of the web site as part of outreach efforts by the Stakeholders Committee and/or website partners.

ANALYSIS

LSC has two general requirements that affect the provision of LSC funds from an LSC grantee to another entity. The first is the requirement that LSC funds not be used contrary to the LSC Act.⁴ The second is the requirement that recipients of LSC funds not engage in activities contrary to the 1996 LSC appropriation, incorporated by reference in the current appropriation, regardless of the source of funding. These two requirements are embodied in Parts 1610 and 1627 of the LSC regulations.⁵

Section 1610.7 provides that recipients of a § 1610.3(g) transfer of LSC funds are subject to all of the requirements of the LSC statutes and regulations as described in Part 1610. Section 1610.8 provides that a recipient must maintain objective integrity and independence (program

⁴ This includes some Act restrictions on grantee use of funds that are non-LSC, non-public and non-tribal (public and tribal funds must be used for the purposes for which they were provided).

⁵ 45 C.F.R. § 1610.1 provides that “[t]his part is designed to implement statutory restrictions on the use of non-LSC funds by LSC recipients and to ensure that no LSC-funded entity shall engage in any restricted activities and that recipients maintain objective integrity and independence from organizations that engage in restricted activities.” 45 C.F.R. § 1627.1 provides that Part 1627 is designed “to promote accountability for Corporation funds and the observance of the provisions of the Legal Services Corporation Act and the Corporation’s regulations adopted pursuant thereto”

integrity) from any organization that engages in restricted activities.⁶ Program integrity requires satisfaction of four requirements: 1) being legally separate entities, 2) no transfer of LSC funds to the other organization, 3) no use of LSC funds to subsidize restricted activities, and 4) physical and financial separation between the organizations.⁷ Part 1627 addresses when payments of LSC funds are subgrants requiring LSC approval and subject to LSC audit and accounting requirements and LSC oversight regarding compliance with LSC rules and restrictions.

Transfers and Subgrants

The definition of a Part 1610 ‘transfer’ mostly tracks the definition of a Part 1627 subgrant.⁸ The apparent intent of Part 1610 was that the terms would be interchangeable and, at this time, there appears to be no reason to treat them differently.⁹ In both cases LSC wants to ensure that funds provided by LSC are not used improperly, even by entities that receive these funds through LSC grantees.

Based on the language of these two provisions, we can summarize that a payment of LSC funds is a transfer or subgrant if it is provided for a purpose that is ‘related to a recipient’s programmatic activities,’ including:

- (1) programmatic activities themselves that normally might be otherwise expected to be conducted by the recipient, such as the representation of eligible clients, and
- (2) the provision of direct support to the recipient’s legal assistance activities.

Examples of such activities include client involvement, training or state support activities.¹⁰ Transfers and subgrants do not include the provision of goods or services by vendors or

⁶ Any organization that an LSC recipient does not maintain objective integrity and independence from is considered within the scope of the LSC restrictions. This opinion assumes that all non-LSC recipients participating in a statewide website do not want to be subject to the LSC restrictions.

⁷ The requirements that recipients be legally separate from, and maintain physical and financial separation from, entities engaging in restricted activities are not addressed in this opinion. The legally separate requirement applies to both the other organizations and to the website itself. The physical and financial separation requirement applies to the totality of the relationship between the recipient and other entities including the structure of the website itself, which should clearly indicate the extent and limits of LSC funded contributions and LSC recipient involvement. Other OLA opinions and recent OIG audits address this question in other contexts.

⁸ See §§ 1610.2(g) and 1627.2(b).

⁹ In presenting the transfer provisions of 1610 to the LSC Board, OLA Senior Assistant General Counsel Suzanne Glasow explained that “this language is taken really from the core definition, out of 1627, which defined a subrecipient.” Transcript, Operations and Regulations Committee, September 29, 1996, 308-309 (preliminary rule). See also, Transcript, Operations and Regulations Committee, March 7, 1997, 107 (the 1610 transfer provision definition “is consistent with the definition of a subgrant that we have had for years in 1627.” (Glasow)) and 108 (the 1610 transfer provision “language . . . has a history which is grounded in 1627 regarding subgrants” (Vice President for Programs John Tull)) (final rule).

¹⁰ The language of § 1627.2(b) is unclear about whether these three activities are examples of programmatic activities, examples of direct support activities, or if they are a third category. The board transcripts regarding adoption of the definition of ‘transfer’ in § 1610.2(g) indicate that these are not a third category and were not

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. This language comes from both Parts 1610 and 1627, and is intended to provide a functioning definition encompassing both Part 1610 transfers and Part 1627 subgrants.

The underlying policy for these regulations is that LSC must ensure that LSC funds are used consistent with the LSC statutes, regulations and other applicable law. The question for the provision of these LSC TIG funds is whether they lose their LSC character, and LSC accountability, when transferred to a non-primary grantee for certain purposes.

Past Office of Legal Affairs (OLA) opinions offer some guidance on these terms. In an Internal Opinion dated August 1, 1984,¹¹ shortly after the original adoption of Part 1627, OLA determined that a contract for the development and operation of a “computerized accounting, reporting, check writing service and other support for the [grantee’s] judicare program” is not a Part 1627 subgrant. OLA concluded that these services are “not direct support of legal assistance activities . . . [t]hey are rather administrative in nature, as described in the exception [for goods and services].” The contracted services were 1) development of a computer program, 2) maintenance of an account for payments to the judicare attorneys at the grantee’s direction, 3) opening and closing case files at the grantee’s direction, 4) development of appropriate forms, and 5) provision of reports on these activities including IRS reports.

By contrast, in an Internal Opinion dated February 19, 1985, OLA determined that the provision of office space and secretarial services by a grantee at no cost to a separate provider of legal services is subject to the Part 1627 subgrant provisions. This opinion focused on the question of whether the provision of LSC funded space and services triggers Part 1627 the same way as would the direct provision of LSC funds. The opinion concludes that “[i]t is immaterial whether the subject of the transfer are [sic] the funds themselves or the funded item(s).” As such, it interpreted Part 1627 as applying to subsidies with LSC funds, not just payments of LSC funds.

This opinion requires further explanation to harmonize it with the August 1, 1984 opinion, which it did not purport to overrule. Office space and secretarial services clearly are no less ‘administrative in nature’ than computerized accounting and assignment management. Payment for office space to a landlord by a recipient does not constitute a subgrant. Similarly payment to a secretarial agency for a person to do secretarial work for the recipient would not constitute a subgrant. The distinction relevant to the 1985 opinion is that the space and services were being provided to another organization, not the recipient. The ‘normal course of business’ does not include providing office space and support services to another entity.¹² Similarly, a

included in Part 1610 for simplicity in drafting. Transcript, Operations and Regulations Committee, September 29, 1996, 308.

¹¹ There are two opinions on this date. This one is regarding the Legal Aid Society of Charleston.

¹² Otherwise the logic of the 1985 opinion completely fails. The definition of a subrecipient is an entity that receives LSC funds to conduct activities that are “related to the recipient’s programmatic activities.” So the analysis requires determining if 1) LSC funds were provided to another entity and 2) if that entity was to use them for work related to the primary recipient’s programmatic activities. The 1985 opinion makes no reference at all to the work performed

recipient could not, without implicating Parts 1610 and 1627, simply pay for the web hosting of other organization's website in a way that does not benefit the recipient at all. Any subsidy of a statewide website, even a subsidy involving provision of in-kind goods or services, would trigger the Part 1627 subgrant requirements.

The regulations describe payments of LSC funds to other entities as transfers or subgrants when they are 'related to the recipient's programmatic activities' but not when they are 'payments to vendors for goods and services in the normal course of business.' Paying for the goods and services of another organization is providing a subsidy for the activities of the other organization. Subsidizing another organization's activities may fall within the meaning of 'related to the recipient's programmatic activities' as a way of furthering the recipient's programmatic goals.¹³

The key issue in this part of the analysis is whether or not the recipient realizes the direct benefits of the good or services it pays for.¹⁴ If it does not, then paying for those goods or services to benefit another organization is a transfer or subgrant, but further analysis of the totality of the circumstances is needed.¹⁵ In the statewide website situation, the recipient is a participant in the statewide website and one of the beneficiaries. The statewide website is a shared resource and the recipient's contributions can be attributed to benefits realized by the recipient. Thus, if a recipient is not subsidizing another organization, as discussed further below, payments for goods or services that may benefit the other organization are not necessarily a transfer or subgrant.

Another illustrative opinion involves the administration of a PAI referral program. In an External Opinion on March 8, 1994, OLA determined that a grantee's provision of LSC funds to a separate PAI program constitutes a Part 1627 subgrant. The PAI program received referrals, mostly from the grantee, screened them for legal merit and financial eligibility, referred them to volunteer attorneys, and occasionally handled a few cases itself. The grantee provided \$20,000 in LSC funds and over \$5,000 in LSC funded in-kind services "including office space and equipment, a full-time paralegal and part-time secretary, a contract attorney for each referred case who remains available to the [volunteer attorneys] for advice and counsel, use of its library, and other support services."

by the putative subrecipient. Rather, it erroneously states that the office space and secretarial services are "related to the recipient's programmatic activities" because "the transferor [primary recipient] is a provider of [LSC funded] pro bono legal services" This analysis mistakenly looks to the primary recipient's instead of the purported subrecipient's functions, contrary to the Part 1627 definitions. Furthermore, it would lead to absurd results. Under this analysis, a recipient would need subgrant approval to sublease office space or to even allow other parties to use its copier on a pay-per-page basis.

¹³ If the other organization's activities are outside of the recipient's priorities, than such a subsidy would most likely be a disallowed cost under Part 1630.

¹⁴ Of course this analysis does not apply when the recipient is reimbursed for benefits to another organization. For example, a recipient might purchase a shared copier and the other organization pays the recipient for its portion of the cost.

¹⁵ A variety of factors can affect this determination such as quantity, employment situations, etc. For example, allowing another organization to make a dozen free copies using a LSC funded copier is not a subgrant; allowing another organization to make 120,000 free copies on such copier may be a subgrant.

OLA determined that these are activities “that are related to the programmatic activities” of the grantee. In particular, OLA stated that the administration of the program of referrals to private attorneys involves “a wide range of programmatic functions, including case screening and referrals to private attorneys.” The question arose again in an Internal Opinion dated June 25, 1999, in which OLA stated that the activities of administration of a judicare program involving “recruitment of attorneys, intake, screening and referral” are programmatic. It is worth noting that that these opinions were in the context of whether PAI administration fell within the exception in § 1627.2(b)(1) for ‘fee-for-service’ activities such as direct representation of clients by private attorneys.

These opinions show that two primary factors involved in these determinations are the nature of the activity in question and the scope of the work done. The nature of the activity can range from core programmatic such as representation of eligible clients to clear goods and services such as an office phone system. The scope of the work can range from a small clearly delineated task to an entire self-contained project.

Website Coordination

Depending on the nature of statewide website coordination activities, and the funding structure of the non-LSC based website, such activities could be non-programmatic administrative functions like setting up and running a database and payment system, or they could be like the management of a PAI program which is related to the recipient’s programmatic activities. They also might be comparable to the § 1627.2(b)(1) examples of client involvement, training and state support activities. LSC’s understanding of the programmatic purposes for these TIG funds is vital to determining which aspects of these grants in these situations are related to programmatic activities and subject to Parts 1610 and 1627.

The overall purpose of recipient participation in statewide websites is programmatic. Recipients are receiving TIG funding to develop improved delivery of legal information and other programmatic services. Recipients could not simply provide the entire TIG grant for website participation to another entity without subjecting that entity to the LSC restrictions. OPP is limiting the website coordination activities that recipients can use TIG funds to hire other organizations to do. OPP considers these limited administrative activities, described above, as both non-programmatic and as not subsidizing the other partners in the statewide websites.

The five administrative and ministerial functions that OPP is allowing recipients to provide TIG funds for do not meet the regulatory definition of ‘related to programmatic activities.’ These functions might be best described as ‘implementation’ activities which could be provided by a commercial website hosting and development service. They are most like the computerized accounting functions described in the August 1984 OLA opinion discussed above. Even when all done by one entity, they do not rise to the level of running an activity that would be comparable to administration of a PAI referral program as described in the March 1984 OLA opinion. They are unlike the provision of office space and services in the 1985 OLA opinion because the recipient is realizing benefits from funding these activities (if, as described below, these functions are not be subsidizing the other organizations).

OPP has correctly designated activities that, under the website structure OPP expects recipients to follow, recipients can pay other organizations to perform without triggering the transfer and subgrant requirements. Nonetheless, if an entity receiving funds for these activities also receives LSC funds for other related website activities, the totality of work that is LSC funded could rise to the level of ‘related to programmatic activities.’ In these situations LSC will look at the entirety of the funding relationship between a recipient and another organization.¹⁶

Content Development

LSC-funded content development is generally related to programmatic activities. The provision of legal information is one of the services that LSC clearly intends recipients to provide with TIG funding for client information and self-help. While there are no prior OLA opinions on this question, it appears clear that preparing such materials is ‘related to’ the programmatic activity of providing them. Equally clear is the fact that a recipient can purchase prepared materials without implicating the author in Parts 1610 or 1627. Prepared materials that are available for purchase generally and not underwritten by the grantee qualify as goods purchased in the normal course of business.¹⁷

Nonetheless, some situations raise questions of whether the scope of a content development activity falls within the regulation. A grantee may be able to contract out some portion of content development without the arrangement rising to the level of programmatic or direct support thereof. For example, a grantee might want to develop a videotape on handling a security deposit case *pro se*. The entire project is related to programmatic activities, but that may not necessarily be true for every element of it. The videographer, as an independent contractor, would be a non-programmatic activity, and LSC would not expect to continue to monitor how the videographer uses the LSC payment received. It is not clear if the scriptwriting alone, if done by an outside contractor, would be sufficiently related to the programmatic activity. Part of the question would be whether the scriptwriter was working from legal information she developed herself or if it came from another source and she was merely ‘scripting’ it.

Similarly, translating content into other languages, editing and formatting content for presentation on the web, and other non-substantive work with content may be work that is not considered ‘related to programmatic activities.’ This aspect of the issue has not been fully put before OLA. Recipients should seek LSC guidance before deciding to fund other organizations without subgrant approval to do content-related work not addressed in this or other OLA opinions.

¹⁶ Unrelated activities are considered separately for transfer/subgrant purposes. Section 1627.2(b)(1) provides that a “single entity could be a subrecipient with respect to some activities it conducts for a recipient while not being a subrecipient with respect to other activities it conducts for a recipient.” Additionally, all activities involving another entity and a recipient are considered in the § 1610.8(a)(3) physical and financial separation analysis.

¹⁷ For example the NoLo Press sells a book entitled “California Tenants’ Rights” that a grantee could purchase copies of with LSC funds and distribute without LSC considering the NoLo Press a subrecipient or a recipient of a Part 1610 transfer. Similarly West Publishing is not reached by Parts 1610 or 1627 by virtue of selling books and Westlaw access to grantees.

Subsidy

Section 1610.8(a)(2) requires that “LSC funds do not subsidize restricted activities.”¹⁸ For the purposes of the program integrity requirement, a ‘subsidy’ is

a payment of LSC funds to support, in whole or in part, a restricted activity conducted by another entity, or payment to another entity to cover overhead, in whole or in part, relating to a restricted activity. A recipient will be considered to be subsidizing the restricted activities of another organization if it provides the use of its LSC-funded resources to the organization without receiving a “fair market price” for such use.

62 Fed. Reg. 27698 (May 21, 1997) (preamble to final rule). These requirements must be met if an LSC recipient wants to participate in a statewide website without subjecting the other participants in the website to the LSC restrictions.

In the statewide website context, any contributions of LSC-funded resources to a statewide website (such as direct payments of funds towards the hiring of a website coordinator or in-kind contributions of content to the website) could, potentially, amount to a subsidy of other partners on the website if the LSC recipient does not realize at least a commensurate benefit from the contributions of those other website partners. Thus, LSC recipients must ensure that statewide website partnership arrangements are structured such that the LSC-funded contributions do not subsidize partner organizations engaged in restricted activities. LSC cannot determine ahead of time what arrangements would constitute a subsidy. LSC is providing the following analysis that each LSC recipient should engage in to ensure that its participation in, and contributions to, a statewide website are proportionate to the benefits accruing to it from that website.

Producing and maintaining any statewide website involves many individual ‘pieces,’ such as decision-making responsibility for content and participation, the development of content, administrative website coordination services, computer hardware and software, office space and associated overhead, promoting and advertising the website, etc. While certain aspects of the ‘pieces’ of the website are fairly easy to value in dollars (e.g., salary for website coordinators, cost of office space rental and overhead, cost of server space, etc.), the value of other aspects of the website are harder to determine (e.g., the cost of developing content). In addition, there is a value to the partners, albeit difficult to quantify, associated with resources saved by use of the website by others. For example, if clients are able to obtain assistance or referral information needed by accessing information on the website without having to consult with LSC recipient attorneys, those attorneys are freed up to provide other assistance to other clients.

Thus, each LSC recipient must ensure that its individual contributions to a statewide website are commensurate with, and do not exceed, its individual benefits from it. Statewide websites are designed to create a greater joint benefit than the participants could realize

¹⁸ Any organization that receives a subsidy with LSC funds is within the scope of the LSC restrictions as described in Part 1610.

separately. The measure of the benefits to an LSC recipient is not what the recipient could have produced on its own with the same investment of resources elsewhere (the statewide websites are designed to provide benefits that could not be otherwise realized). Rather, the LSC recipient must have at least a share of the joint benefits of the website commensurate with its share of the total contributions. A subsidy would occur where an LSC recipient contributes resources to the website in a proportion that is greater than the proportion of benefits that it receives. While the preferred approach to this question, as indicated in the preamble to Part 1610 discussed above, is through determination of a fair market value, LSC recognizes that in this extraordinary situation it may not be possible to make a fair market value determination of the benefits of a statewide website.¹⁹ As such, in this situation, the subsidy analysis required in the regulation can be accomplished through reasonable estimates of the relative values of the contributions and benefits.²⁰

The following are examples of the types of contributions that partners could make:

- Participation in the coordination function;
- Contribution of hardware, software, or server space;
- Participation in managing the web site through the stakeholder group (or substantive law subcommittees of the group);
- Content relevant to the goals of the statewide website; and
- Participation in outreach efforts for the website - including: presentations, written materials publicizing the site; and links to the web site from other web sites.

In making this determination, the following framework applies for each LSC recipient:

1. Determine the totality of contributions to the statewide website (regardless of source or nature of activity).
2. Determine which contributions come from the LSC recipient using LSC-funded resources.
3. Determine what percentage of the total contributions is from the LSC recipient using LSC-funded resources ('contribution percentage').
4. Determine the totality of the benefits of the statewide website (regardless of source or nature of activity).²¹

¹⁹ Of course, if it is possible to do so, an LSC recipient may certainly use a strict dollar value as the basis for the analysis. If this is done, the dollar values assigned to the various benefits and contributions must be reasonable and based on fair market prices.

²⁰ Any questions regarding other situations in which a fair market value may be difficult to determine should be referred to OLA for review.

²¹ Content on restricted activities will have less 'value' to the LSC recipient than to those organizations that perform such activities. However, the placement of such content or referral information on the website may still have a value to the LSC recipient in terms of resources saved in having to make referrals. There is part of the intrinsic benefit to all participants of having more organizations contributing to a comprehensive statewide access to justice website.

5. Determine what benefits the LSC recipient realizes (including benefits coming from the recipient's contributions).
6. Determine what percentage of the total benefits is realized by the LSC recipient ('benefits percentage').

If the contribution percentage is less than or equal to the benefits percentage, then there is no subsidy of LSC funds.²² There is no requirement of a partner-by-partner analysis for the non-LSC funded participants.²³

A feature of statewide websites is that the benefits overlap. For example, tenants' rights information may benefit multiple partners. The subsidy analysis should reflect the ways in which this kind of information furthers the various organizations' goals and target audiences. Thus the benefits of the tenants' rights information might be distributed as 70% for the LSC recipient and 30% for other partners (perhaps 20% for the bar foundation, 10% for other various small programs, and nothing for organizations with no landlord-tenant focus such as child abuse programs). The tenants' rights information might then be factored as 10% of the benefit of the overall website. As such, the recipient would realize a net benefit from such information of 7% (10% of 70%). While this is one conceptual example of allocating benefits, recipients should make these determinations in ways that best express how the statewide website in their state works. Estimates may be appropriate, and different recipients may use different approaches.²⁴

One way to help ensure that the relative contributions of the partners will not result in subsidization is to have the Statewide Website Stakeholders Committee clearly set forth a statement in writing of what each party is expected to contribute towards the development and maintenance of the website and what the overall benefits of the website are expected to be. If the LSC recipient believes that statement to be fair and accurate, it could use that statement to produce a written subsidy analysis specifying what proportion of the contributions it will provide and what proportion of the overall benefits will inure to it.

An example would be as follows:

New State will have a statewide website. The participants in developing and running the site are New State Legal Services (NSLS) (an LSC recipient), the New State court system, and three non-LSC legal aid organizations, two of which engage in LSC

²² If the percentages are equal, then there is no subsidy from or to the LSC recipient. If the contributions percentage is less than the benefits percentage, then the LSC recipient is being subsidized. This is not prohibited, but it will be one factor in the overall physical and financial separation analysis under § 1610.8(a)(3) discussed *supra* at footnote 7.

²³ Some partner-by-partner analysis could be required in two situations. First, if the LSC recipient does subsidize the statewide website with LSC funded resources, then all participants in the website will be within the scope of the LSC restrictions except for those that can show that they are in fact not being subsidized by the website. Second, if the LSC recipient is being subsidized by the statewide website (as describe in footnote 22) then all participants in the website will be considered to be subsidizing the LSC recipient except for those that can show that they are in fact not subsidizing the website.

²⁴ Similarly even a fair market value is often an estimate of what someone might pay for an item, but with a reasonable margin of error.

restricted activities. These organizations meet as the Statewide Website Stakeholders Committee. They can determine what the overall contributions to the website will be. Some of these may have little or no relevance to NSLS. They or NSLS can then determine what percentage of the overall contributions will come from NSLS. In New State, NSLS's contributions are 40% of the entire contributions. They then can determine the overall benefits of the website, some of which may have little or no relevance to NSLS. They or NSLS then determine what percentage of the benefits are ones that are relevant to, and realized by, NSLS.

- If NSLS receives 40% of the benefits, then there is no subsidy to or from NSLS.
- If NSLS receives less than 40% of the benefits, then they are subsidizing the statewide website. The website and any subsidized partners would be subject to the LSC restrictions. This subsidy reaches all other partners except those that can demonstrate that they are not subsidized by the website.²⁵ NSLS would be in violation of Part 1610 with respect to the entities engaging in restricted activities.
- If NSLS receives more than 40% of the benefits then it is not subsidizing the other parties. Rather, they are subsidizing NSLS.²⁶

In doing this analysis, it is important to note how to treat contributions and benefits that do not fully relate to the LSC recipient. An example is content relating to restricted activities contributed by a non-LSC participant. This content is part of the overall contributions to the website and part of the overall benefits of the website. It is not part of the benefits of the website realized by the LSC recipient except in indirect ways such as referral value as discussed in footnote 21. As such, it is considered in parts 1, 3 and 4 of the analysis, but not in part 2 and only as a limited factor in parts 5 and 6.

As with any program integrity question, this analysis is subject to LSC review to ensure that these estimations of relative contributions and benefits are reasonable. LSC recognizes that the LSC recipient involved and the relevant Statewide Website Stakeholders Committee will have the best understanding of the nature of the statewide website and the relative contributions and benefits. While LSC does not expect numeric precision, it will require involved LSC recipients to each provide an analysis that reasonably specifies compliance with the subsidy requirement, as described herein, with consideration of the LSC funds involved and the nature of the statewide website.

²⁵ See footnote 23.

²⁶ See footnote 22 regarding physical and financial separation issues raised by subsidization of the LSC recipient.