

OFFICE OF LEGAL AFFAIRS

ADVISORY OPINION
AO-201308

SUBJ: Recipient Use of Tribal Funds to Represent Clients Without Verifying Citizen or Eligible Alien Status

DATE: November 5 2013

Question Presented

Whether LSC-funded recipients may use funds received from a tribe to represent individuals without verifying the individuals' citizenship or eligible alien status.

Brief Answer

Section 1010(c) of the LSC Act and section 504(d)(2)(A) of Public Law 104-134 ("Section 504") authorize LSC-funded recipients to use tribal funds to provide assistance to clients in accordance with the purposes for which the funds were received. 42 U.S.C. § 2996i(c); Pub. L. 104-134, Title V, § 504 (Apr. 16, 1996). Neither statute places any additional limitations on the use of tribal funds by LSC-funded recipients from prohibitions on the use of non-LSC funds to carry out activities that would violate restrictions (including restrictions on the representation of aliens) contained in either law.

LSC adopted rules implementing these statutory provisions in 45 C.F.R. Part 1610, Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity. 62 Fed. Reg. 27698 (May 21, 1997). Section 1610.4(a) authorizes recipients to use tribal funds for the specific purposes for which they were received. Within section 1610.4, subsection (a), covering use of tribal funds, is unique in its lack of additional restrictions. Each of the three subsequent subsections, 45 C.F.R. §§ 1610.4(b)(d), permits the use of other categories of LSC funds but, in each instance, explicitly precludes the use of such funds for any activity that is prohibited by the LSC Act or prohibited by or inconsistent with Section 504.

Given the language of the LSC Act, Section 504, and the LSC regulations, and applying standard canon of statutory and regulatory interpretation, we conclude that recipients may use tribal funds to represent individuals without verifying citizenship or alienage.

Background

OCE conducted a site visit at the Montana Legal Services Association (MLSA) in 2012. During that visit, OCE discovered that MLSA maintained case files that lacked citizenship

attestations or verification of alien eligibility to receive L-80 ded legal assistance. The

(b) A recipient may receive public or IOLTA funds and use them in accordance with the specific purposes for which they were provided, *if the funds are not used for any activity prohibited by or inconsistent with Section 504.*

(c) A recipient may receive private funds and use them in accordance with the purposes for which they were provided, *provided that the funds are not used for any activity prohibited by the LSC Act or prohibited or inconsistent with Section 504.*

(d) A recipient may use non-LSC funds to provide legal assistance to an individual who is not financially eligible for services under part 1611 of this chapter, *provided that funds are used for the specific purposes for which those funds were provided and are not used for any activity prohibited by the LSC Act or prohibited by or inconsistent with Section 504.*

45 C.F.R. § 1610.4(a) (emphasis added).

Section 1610.2 defines the purposes and activities prohibited by the LSC Act and Section 504, respectively. 45 C.F.R. § 1610.2. Specifically, section 1610.2(b)(7) includes assistance to ineligible aliens as a prohibited activity under Section ~~504~~ § 1610.2(b)(7). Before providing assistance to an individual, LSC's regulations require that a recipient verify either that the individual is a citizen or has an alien status that makes him or her eligible receive LSC-funded services. Id. §§ 1626.6 (requiring verification of citizenship); 1626.7 (requiring verification of eligible alien status).

Analysis

Unlike the other provisions placing restrictions on the use of LSC funds, section 1010(c) of the LSC Act and Section 504(d)(2)(A) place no restrictions on the use of tribal funds

evidence in the applicable statutes that Congress intended for the general restrictions on recipients' use of funds to extend to recipients' use of purely tribal funds to provide legal assistance, as long as the funds are being used in accordance with the purposes for which they were provided. In this case, where MLSA reports that it is using only tribal funds to provide assistance, and where the assistance MLSA is providing is in accordance with the purpose for which the tribal funds were provided, MLSA does not need to verify citizenship or eligible alien status under 45 C.F.R. §§ 1626.6 and 1626.7.

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