



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-0500

OFFICE OF GENERAL COUNSEL

Index Number: 1.250  
Subject: Funding of Legal Expenses Under Grant Agreement

CIM-0126

August 11, 2003

MEMORANDUM FOR: Renee' D. Greenman, ITAG/OTAG Audit Resolution Task Force, H

FROM: John J. Daly, Associate General Counsel for Insured Housing, CI

SUBJECT: Request for Legal Opinion

HUD Inspector General (IG) Audit, Case Number 2002-SF-1006, issued  
September 30, 2002, of Legal Aid Society of Hawaii (LASH)

(Grant FFOT98006HI, 1998 NOFA – Fed. Reg. – Vol. 63, No. 83 –  
Thursday, April 30, 1998)

This memorandum responds to your June 26, 2003 request for legal advice related to the captioned Inspector General Audit of Legal Aid Society of Hawaii (LASH). The audit stated that, in order to clear Recommendation 1A, a legal determination should be obtained about whether the use of OTAG funding for tenant legal representation is appropriate under the OTAG program.

We have reviewed Section 514 of MAHRA, the 1998 Notice of Funding Availability (NOFA), the Outreach and Training Grant (OTAG) Agreement with LASH, 24 C.F.R Parts 84 and 85, and the application from LASH. The NOFA defined the purpose of the OTAG program as one to provide funds to conduct outreach and training development for HUD tenants in properties eligible to participate in the Mark-to-Market (M2M) program so the tenants can participate in the M2M program and affect decisions about the future of their housing. The NOFA provided the following list of what was included in the definition of "eligible activities."

1. Identifying residents and resident groups living in eligible properties;
2. Providing outreach and training to tenants to explain the M2M program, the possible financial changes, the possible project repairs, access and community resources and effective methods for communicating the organization's position;
3. Organizing residents of eligible low-income housing so the tenants can effectively participate in the M2M process;
4. Performing outreach, training, and counseling, which may include teaching sound housing management, maintenance, and financial management to residents and resident groups living in eligible M2M properties;

5. Delivering training programs on M2M and/or resident homeownership options;
  6. Establishing M2M clearinghouses as a resource to resident organizations, community groups, and potential purchasers;
  7. Creating informational materials about the M2M process for distribution;
  8. Providing support for HUD approved activities proposed by the grantee that would further the M2M program and others considered eligible at HUD's discretion; and
  9. Educating parties outside HUD about the M2M process.
- 63 Fed. Reg. 23943 (1998).

None of activities listed above includes the provision of legal representation for tenant groups or individual tenants. In addition, no evidence has been provided to us to indicate that the grantee proposed, or HUD approved, the provision of legal representation under the Grant (which might have rendered such activities eligible under item 8. above).

HUD regulations provide that a budget plan is the financial expression of the project or program as approved during the award process and shall be related to performance for program evaluation purposes. See 24 CFR 84.25(a). Grant recipients are required to report deviations from budget and program plans and request prior HUD approvals for revisions. See 24 CFR 84.25(b). Since the original budget plan did not provide for legal representation and there is no record of a request for revisions or HUD approval of deviations, we do not think there is a basis under these regulations for the billing of such costs and their payment by HUD.

The Grant Agreement does not list eligible activities separately, but by its terms, the agreement incorporates the grant application (submitted by the grantee prior to award). We have reviewed the application, which describes LASH's proposed activities as "identifying residents, providing outreach and training, organizing residents, performing counseling, and delivering area-wide training programs" but does not discuss providing legal representation to tenants. Therefore, we do not believe there is a legal basis for such activities to be eligible for payment under the Grant.

Please contact Deborah Brain at ext. 5240 if you have any questions about this memorandum.

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**Concurrence:**

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Brain

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Collotta

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Potts