

DSWD OPINION NO. 61 S. 2024

DRN: LS-L-LO-24-07-32617-C

MEMORANDUM

FOR : EDMON B. MONTEVERDE
Director IV, Program Management Bureau

FROM : THE ASSISTANT SECRETARY FOR GASSG AND
CONCURRENT OFFICER-IN-CHARGE, LEGAL SERVICE

SUBJECT : LEGAL OPINION ON THE IMPLEMENTATION OF AKAP
AND AICS PROGRAM IN LANA DEL SUR UNDER
BANGSAMORO AUTONOMOUS REGION IN MUSLIM
MINDANAO THROUGH TRANSFER OF FUNDS

DATE : 13 AUGUST 2024

This pertains to your Memorandum¹ requesting for legal opinion on the implementation of [i] Ayuda Sa Kapos Ang Kita Program (AKAP) and [ii] Assistance to Individuals in Crisis Situations (AICS) Program, specifically on the Transfer of Fund (TOF) modality of the programs.

As specifically mentioned in your Memorandum, the DSWD Field Office (FO) X has been servicing clients from the Province of Lanao Del Sur due to its regional proximity. However, due to the increase in the volume of clients from the said province, its current workforce is unable to cater to its clients. Thus, DSWD FO X² is exploring the TOF modality of the said programs directly to the said province. However, the said office is contemplating if the initiative is permissible taking into consideration that Lanao del Sur is part of the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM). Attached to your request is the Memorandum from Regional Director Ramel F. Jamen who proposed the aforesaid recommendations.

Please consider our comments below:

The recommendation for the TOF Modality under AKAP is based on Item V-B of DSWD Memorandum Circular (MC) No. 30, series of 2024, or the "Consolidated Implementation Guidelines of Ayuda sa Kapos ang Kita Program" which provided that one of the modalities in providing assistance is the implementation through LGUs by giving financial assistance called "rice assistance" to qualified beneficiaries because it shall be used for purchasing rice to meet the nutritional requirements of beneficiaries for sustenance. For the said purpose, the DSWD shall enter into a Memorandum of Agreement (MOA) with the qualified LGUs, detailing the terms and conditions for the transfer of funds, liquidation, and program implementation in adherence to MC No. 04, series of 2024, including pertinent budgeting, accounting, and auditing rules and regulations.

On the other hand, DSWD MC No. 16, series of 2022 or the "Revised Guidelines on the Implementation of the Assistance to Individuals in Crisis Situation" provides that the Department may resort to either of the modes of providing Financial Assistance

¹ Annex "A" – Memorandum from the PMB

² Annex "B" – Memorandum from DSWD FO X for the Secretary dated 08 June 2024

enumerated under Item IX (C)³. Clearly, under the existing policies and rules, both AICS and AKAP may be implemented through LGUs using TOF as a modality.

Upon consultation with the Financial Management Service (FMS), it is respectfully submitted that the funds from **AKAP or AICS program may be transferred to BARMM**, specifying therein that the purpose of the transfer is to serve the AKAP and/or AICS beneficiaries from the Province of Lanao del Sur.

Furthermore, Sections 10, 11, and 13 of Republic Act (RA) No. 11054, or the "Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao" provides:

"Section 10. Bangsamoro Government and its Constituent Local Government Units. - The authority of the Bangsamoro Government to regulate the affairs of its constituent local government units shall be guaranteed in accordance with this Organic Law and a Bangsamoro local Government code to be enacted by the Parliament. **The privileges already enjoyed by local government units under Republic Act No. 7160, otherwise known as the "Local Government Code (LGC) of 1991," as amended, and other existing laws shall not be diminished.**

Section 11. Bangsamoro Participation in National Government. - As far as practicable, the **Bangsamoro Government shall be represented in the departments, offices, commissions, agencies and bureaus of the National Government that implement and enforce policies, programs, and projects of the National Government in the Bangsamoro Autonomous Region.**

Section 13. National Programs and Projects. - **The National programs and projects such as the Pantawid Pamilyang Pilipino Program, Health Facility Enhancement Program, School Building Program, retained hospital of the Department of Health, PhilHealth, social pension for senior citizens, and the Task Force Bangon Marawi shall continue to be funded by the National Government, without prejudice to the power of the Bangsamoro Government to provide for supplemental funding for such programs and projects."**

A clear reading of the above-cited provisions allows the transfer of funds to the local government of Lanao Del Sur for the implementation of the AKAP and AICS. While acknowledging its participation in the implementation and enforcement of policies, programs, and projects of the National Government in the Bangsamoro Autonomous Region, **the said authority of BARMM to regulate the affairs of its constituent local government units does not prejudice the continuance of the funding and/or implementation of the programs and projects of the National Government.**

Further, may we emphasize that the transfer, in order to be valid, **must strictly comply with the applicable Commission on Audit (COA) rules and procedures on**

³ "IX. MODES OF PROVIDING ASSISTANCE

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- C. Other Disbursement Strategies – The DSWD may resort to other expeditious means of distribution by engaging partners/service providers that are able and willing to assist the Department.

As may be authorized and if applicable, the following disbursement strategies may be considered:

1. Payment through electronic or digital means;
2. Cash card payments;
3. Transfer of funds to other National Government Agency/ies or LGU/s; or
4. Any other modes to expedite the distribution of assistance

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transferring of funds, such as, but not limited to, COA Circular No. 94-013⁴, COA Circular No. 2012-001⁵, COA Circular No. 2016-002⁶, and COA Circular No. 2017-002⁷. These provisions must be taken into consideration when transferring funds to other government agencies. Particularly under COA Circular No. 94-013, the following must be complied:

1. the transfer is properly taken up in the books of both agencies;
2. the transferred funds are used only for the intended purpose, and that
3. proper accounting and reporting is made on the utilization of the funds. (Item 1 of the Circular)

Consequently, COA Circular No. 2012-001 also requires for a "*Certification by the Accountant that funds previously transferred to the Implementing Agency (IA) has been liquidated and accounted for in the books*" (Item 3.1.1 of the COA Circular No. 2012-001, as amended) before making a fund transfer. Thus, the Department should ensure the compliance of BARMM with the **liquidation of previously transferred DSWD funds thereto**, otherwise, no subsequent transfer to BARMM shall be effected.

In relation to the above COA guidelines, please see Section 2 of Article 12 of RA 11054, which provides for COA's authority over the Bangsamoro Government and its constituents local government units:

"Section 2. Auditing. - Pursuant to the Constitution, the Commission on Audit shall be the exclusive auditor of Bangsamoro Government and its constituents local government units. The Bangsamoro Government shall established an auditing body which shall have internal auditing responsibility in accordance with Republic Act No. 3456, otherwise known as the " Internal Auditing Act of 1992,"as amended. The Bangsamoro Government shall implement transparency and accountability mechanism consistent with open government practices and generally accepted financial management principles."

In sum, we respectfully submit that the TOF modality under AKAP and AICS may be coursed **through the local government of Lanao del Sur**, as constituent LGU of BARMM, subject to the conditions and procedures under existing policies on the implementation of AKAP and AICS and applicable rules and regulations of the COA on transferring funds. The intended purpose thereof must also be clearly indicated therein to ensure that the funds are to be used properly and efficiently.

It would also be prudent to consult or seek the advice of FMS considering their technical expertise on financial and budgeting matter and for further guidance on fund transfer, booking, recording, and transfer.

⁴ Rules and Regulations in the Grant, Utilization and Liquidation of Funds Transferred to Implementing Agencies

⁵ Prescribing the Revised Guidelines and Documentary Requirements for Common Government Transactions


⁶ Updates on Prescribing the Revised Guidelines and Documentary Requirements for Fund Transfers

⁷ Clarification of Commission on Audit (COA) Circular No. 2016-002 dated May 31, 2016 on the Updates on Prescribing the Revised Guidelines and Documentary Requirements for Fund Transfers in relation to COA Circular No. 2012-001 dated June 14, 2012, on the Revised Guidelines and Documentary Requirements for Common Government Transactions

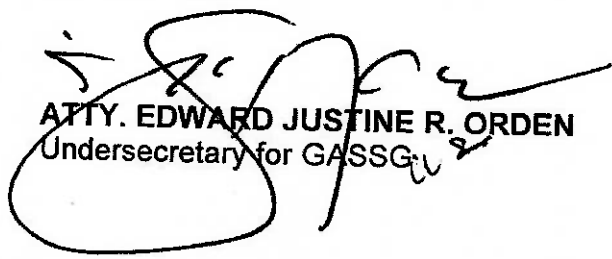
Please be informed that the foregoing legal opinion is based solely on the information provided by your office, and may vary based on additional information or document/s or when the facts are changed or elaborated.

Kindly fill out the attached Customer Feedback Form and return the same to the Legal Service.

For your consideration. Thank you.


ATTY. GINA V. WENCESLAO
CMUGA/DA/AF/10065

Approved by:


ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASSG