

DSWD OPINION NO. 65 S. 2024DRN: LS-L-LO-24-08-44862 -C**MEMORANDUM**

FOR : **MICHAEL CRISTOPHER R. MATHAY**
Director III, Disaster Response Management Bureau (DRMB)

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

SUBJECT : **LEGAL ADVICE ON THE REQUEST OF UNITED NATIONS**
CHILDREN'S FUND (UNICEF) TO LOWER THE CENTRAL
EMERGENCY FUND ANTICIPATORY ACTION (CERF AA)
PILOT THRESHOLDS PROVISION IN THE TRIPARTITE
MOU

DATE : **27 AUGUST 2024**

This pertains to your MEMORANDUM¹ requesting for legal advice on the proposal of the United Nations Children's Fund (UNICEF) to revise the Tripartite Memorandum of Understanding (MOU)² executed on 05 July 2022 between and among the DSWD, UNICEF, and Land Bank of the Philippines (LBP).

In the attached e-mail dated 08 July 2024³, through its representative Oyunsaikhan Dendevnorov, UNICEF is proposing the following changes to the aforementioned MOU:

1. Lowering the **readiness trigger** for the typhoon from Category 3 to Category 2 (greater than 154 kph windspeed at one minute interval or 136 kph at 10-minute interval, also known as Signal No. 3 in the PAG-ASA weather classification); projected to directly impact Regions 5 and 8. **Activation for readiness cutoff is 4 days prior to forecasted landfall.**
2. Lower the **activation trigger** on the probability of the projected number of affected populations from 95% chances that 5,000 households will be affected to **3,000 households**; and 50% chances that more than 80,000 households will be affected to **more than 60,000 households. Generated on or before 72 hours (3 days) prior to forecasted landfall.**

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To ensure all timelines are met and we can comply with our commitment to provide financial assistance to 4Ps beneficiaries ahead of the projected landfall, we are proposing to **revert to the earlier practice of generating standby**

¹ Annex "A" – Memorandum from DRMB

² Annex "B" – Tripartite MOU among DSWD, UNICEF, and LBP

³ Annex "C" – E-mail of UNICEF dated 08 July 2024

payrolls during the regular 4Ps quarterly payroll run to be uploaded to Land Bank's FINDES. xxx"

Meanwhile, in a Letter⁴ dated 26 July 2024, LBP expressed its concurrence to the above proposed amendments, with a comment that in order for LBP to enforce such changes, it must first formally accept said amendments in writing through its authorized representative.

This level reached out to your focal person, and as clarified by Ms. Simonette Berin, your office is seeking advice on the next steps in consideration of UNICEF's proposal.

In this regard, please consider our advice below.

Article 1306 of the New Civil Code of the Philippines provides that **"(t)he contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."** It is well-established that a **contract is the law between the parties**. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith, unless the stipulations in a contract are contrary to law, morals, good customs, public order, or public policy, the same are binding as between the parties. From the moment the contract is perfected, **the parties are bound not only to the fulfillment of its stipulations, but also the consequences** which, according to their nature, may be in keeping with good faith, usage, and law. In respecting the freedom to contract of the parties, courts cannot stipulate for them or amend their agreement. To do so would be to alter the real intention of the contracting parties when the contrary function of the courts is to give force and effect to their intention.⁵

In this case, parties to the MOU may freely stipulate on the terms and conditions of their contract as long as they are not contrary to law, morals, good customs, public order, or public policy. The parties are bound to fulfill those stipulations, including the consequences thereof. This also allows the parties to make amendments to their contract which they may agree after the execution of the contract provided that the same are mutually agreed upon by them.

As to the intrinsic component of the amendments, the concerned stakeholders in the Department such as, but not limited to, the Disaster Risk Management Bureau (DRMB), Pantawid Pamilyang Pilipino Program (4Ps), Financial Management Service (FMS), and the Operations Group, must be consulted in order to arrive at a mutually beneficial provision/s.

In the legal perspective, the proposals of UNICEF may be viewed as more anticipatory that would allow quicker response and preparedness as activation for readiness is met at 4 days prior to forecasted landfall, thus, legally sound and acceptable.

⁴ Annex "D" – Letter from LBP to UNICEF dated 26 July 2024


⁵ IP E-Game Ventures, Inc. Vs. Tan, G.R. No. 239576, June 30, 2021

In sum, we respectfully submit that the MOU may be amended provided that all parties mutually agree on the proposed revisions in writing.

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.

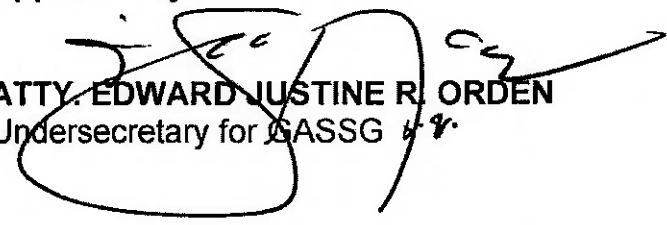
Kindly fill out the attached Customer Feedback Form and return the same to the Legal Service.

For your consideration. Thank you.


ATTY. GINA V. WENCESLAO

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Approved by:


ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASSG