

DSWD OPINION NO. 28 S. 2024**DRN: LS-L-LO-24-03-51499-C****MEMORANDUM FOR THE SECRETARY**

THROUGH : **ATTY. HURJAE S. LUBAG, Rpm**
Head Executive Assistant

FROM : **THE ASSISTANT SECRETARY FOR GASSG AND**
CONCURRENT OFFICER-IN-CHARGE, Legal Service

SUBJECT : **LEGAL COVER FOR THE FIELD OFFICE III INNOVATION ON**
THE PROSPECTIVE PARTNERSHIP WITH THE LANDBANK
OF THE PHILIPPINES IN STREAMLINING THE AICS PAY-
OUT

DATE : **14 MARCH 2024**

This pertains to the meeting held on 05 March 2024 between the Department of Social Welfare and Development (DSWD), represented by the Office of the Undersecretary for General Administration and Support Services Group (GASSG), Undersecretary for Operations, Assistant Secretary for GASSG, Regional Director of Field Office (FO) III, representatives from the Legal Service, Financial Management Service, Crisis Intervention Division, FO III representative, Land Bank of the Philippines (LBP), and Universal Storefront Services Corporation (USSC) regarding the feasibility on prompt provision of AICS assistance to entitled beneficiaries.

On 14 March 2024, the Office of the Undersecretary for GASSG endorsed the draft Memorandum of Agreement (MOA) between the Department and LBP, and the draft Supplemental MOA between LBP and Field Office (FO) III Regional Director Venus F. Rebuldela for the purpose of adopting digital payments of government assistance, particularly the Assistance to Individuals in Crisis Situation (AICS), as the pilot program.

At the outset, during the exploratory meeting last 05 March 2024, the proposal to consider the digital payment of AICS grants was through the initiatives of the DSWD FO III, taking into account the successful implementation of Social Amelioration Program (SAP) which was distributed through a third party, USSC, through the secured network of Landbank of the Philippines (LBP). This innovation on the use of digitalization in the distribution of financial assistance to program beneficiaries intends to relieve the Department's social worker's from the heavy obligation of personally handling huge amounts of cash during payouts under the AICS Program which impose a heavy burden as they conduct social case assessment of the clients at the same time. With said innovation, the social workers will be able to perform their primary responsibility of assisting the clients / beneficiaries.

To sum up the proposed arrangement, an innovative approach in the manner of assistance pay-out was introduced by the FO III through the execution of a collaborative agreement with an Authorized Government Depository Bank (AGDB), in this case the LBP. The LBP shall engage the services of an intermediary, such as the USSC, for the conduct of the actual pay-out of cash assistance to qualified AICS beneficiaries.

A Memorandum of Agreement shall be executed between the Department and the LBP, wherein the former shall open a Program Fund Account with the latter. Here, the Fund Account shall cover the amount to be distributed as an assistance to the beneficiaries under the AICS program.

As to the Service Provider (USSC), it shall enter into an independent collaboration with the LBP. It was discussed that the USSC, through its own personnel, will be handling the actual payment of the AICS grants to identified beneficiaries. Further, USSC will have to create an account with the LBP for this purpose, as said USSC account will be the recipient of the identified funds from the DSWD account, all to be transacted and processed by LBP within a secure network as required by the law.

Lastly it was stressed that the DSWD will retain the function of case management which includes the assessment of the eligibility of the client.

Legal Cover / Bases

As provided by Section 1, Title XVI, Chapter 1 of Executive Order No. 292, series of 1987 otherwise known as the "Administrative Code of 1987" the Department of Social Welfare and Development shall lead in the development and implementation of programs in relation to social welfare services by providing an integrated welfare package to its constituents on the basis of their needs, thus:

"Section 2. Mandate. - The Department shall provide a balanced approach to welfare whereby the needs and interests of the population are addressed not only at the outbreak of crisis but more importantly at the stage which would inexorably lead to such crisis.

Xxx

(2) Provide an integrated welfare package to its constituents on the basis of their needs and coordinate the service facilities required from such departments or agencies, governmental and non-governmental, which can best provide them;

xxx

4) Advocate for policies and measures addressing social welfare concerns."

That is, under its social protection mandate, the DSWD is authorized to develop and implement social welfare programs that would help alleviate poverty and empower disadvantaged individuals, families and communities for an improved quality of life; and to implement statutory and specialized programs which are directly lodged with the Department.¹

Based on the law, the Department has been implementing the "Assistance to Individuals in Crisis Situation (AICS) Program" which serves as a stop-gap measure to support the recovery of individuals and families suffering from unexpected life events or crises.² This program is described as one of the social welfare services of the DSWD that provides medical assistance, burial, transportation, education, food or financial assistance for other support services or needs of a person or family.

Financial Assistance in the form of cash is the most availed option being chosen by clients from among the kind of assistance under AICS. Memorandum Circular No. 24, series of 2020 entitled "Amendment to Memorandum Circular No. 11, series of 2019, otherwise known as "The Revised Guidelines on the Implementation of the Assistance to Individuals in Crisis Situation" provided for the following definition:

"V. Program Description and Coverage

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- 1. **Financial and Material Assistance** - Financial assistance is the provision of monetary support in the form of outright cash, guarantee letter and/or voucher with monetary value to augment the resources of the Client. xxx" (emphasis supplied)*

¹ Section 1 of Executive Order No. 221, series of 2003

² Memorandum Circular No. 16, series of 2022 entitled "Revised Guidelines on the Implementation of the Assistance to Individuals in Crisis Situation"

The DSWD has been continuously allocating funds to implement its various programs based on the General Appropriations Act (GAA). In fact, the 2024 GAA appropriated a substantial amount for the Protective Service for Individuals, Families, and Communities (PSIFC) in difficult circumstances dedicated to be used to provide financial assistance which shall include food assistance, food packs, transportation, medical, burial assistance, cash for work, rice subsidies, and all other types of assistance to individuals or communities under difficult circumstances who are vulnerable, at risk, and affected disastrous calamities³. In essence, the PSIFC includes assistance to qualified beneficiaries under the AICS Program.

As part of transparency and public accountability in the government service, the GAA only requires reportorial and posting requirements such as submission by the Department of quarterly reports on its financial and physical accomplishments, within thirty (30) days after the end of every quarter, and the sending of a written notice to the Department of Budget and Management, House of Representatives, Senate of the Philippines, House Committee on Appropriations, Senate Committee on Finance, and other offices where the submission of reports is required under the existing laws, rules, and regulations⁴.

Meanwhile, Republic Act No. 8792 otherwise known as the "Electronic Commerce Act", provides for the guidelines in facilitating domestic and international dealings, transactions, arrangements, agreements, contracts, and exchanges and storage of information through the utilization of electronic, optical, and similar medium, mode, instrumentality and technology to recognize the authenticity and reliability of of electronic data messages or electronic documents related to such activities and to promote the universal use of electronic transactions in the government and by the general public.⁵

RA No. 8792 served as one of the legal references of the Commission on Audit (COA) when it issued COA Circular No. 2021-014 entitled "Guidelines on the use of Electronic Collection (e-Collection) and Electronic Payment (e-Payment) for Government Transactions". The COA issuance has mandated all government entities, including foreign-based government agencies (FBGAs), having e-Collections or e-Payment transactions, to put in place a mechanism that would reduce the physical interaction of the collecting or disbursing officers with other public officials involved in

³ Item 2 on Protective Services Program under 2024 GAA

⁴ Item 13 on reporting and Posting requirements under 2024 GAA

⁵ Section 3(3) Objective, Republic Act No. 8792 otherwise known as "Electronic Commerce Act"

these types of transactions.⁶ Further, under COA Circular No. 2021-014, the use of electronic data messages, documents, and technologies in performing government functions such as, but not limited to, collections and disbursements are generally allowed. But the process of engaging the services of intermediaries other than AGDBs shall require the procedure of procurement under Republic Act No. 9184 or the General Procurement Reform Act.

Applying the COA rules on the digital innovation of FO III, this level opines that since the DSWD will be dealing directly with the LBP, an authorized government depository bank, then the funds are secured as mandated by COA rules. This collaboration of DSWD and LBP in the digital distribution of financial assistance to qualified program beneficiaries will strengthen the efficacy of the service of the Department to its clientele.

In view of the foregoing, this level sees no legal impediment on the prospective collaboration with LBP for the purpose of expediting the distribution of financial assistance under the AICS program. This initiative would be advantageous both to the Department and to the beneficiaries since the provision of financial assistance to qualified beneficiaries would be streamlined pursuant to the Ease of Doing Business Law, the financial assistance will be easily and conveniently received by the clients, and the social workers will be unburdened of their obligations as special disbursing officers during payouts.

Now, may we respectfully direct you to the following enhancements incorporated by this level on the drafts of the Memorandum of Agreement (MOA) and Supplemental MOA:

FOR THE DRAFT MOA BETWEEN DSWD AND LBP

1. **Parties.** Since this is a legal document, the full name of the Secretary **REXLON T. GATCHALIAN** must be indicated. Further, the correct name of the CEO of LBP was indicated in the MOA as **LYNETTE V. ORTIZ**.
2. **2nd WHEREAS CLAUSE.** The full title of Republic Act No. 3844 is incorporated.
3. **Additional Provision as 3rd WHEREAS CLAUSE.** An additional recital was added and shall be read as follows:

⁶ 2.0. Coverage, COA Circular No. 2021-014

"WHEREAS, DSWD Memorandum Circular No. 016, series of 2022 or "Revised Guidelines on the Implementation of the Assistance to Individuals in Crisis Situation", as the leader in social protection, continuously implements the Assistance to Individuals in Crisis Situation (AICS) program to support government efforts in providing aid to individuals and families seeking assistance. The AICS Program serves as a stop-gap measure to support the recovery of individuals and families suffering from unexpected life events or crises."

4. **6TH WHEREAS CLAUSE.** Deletion of the phrase "was issued regarding" and replacing the same to "or the".
5. **7TH WHEREAS CLAUSE.** Inclusion of the word "all".
6. **8th WHEREAS CLAUSE.** This recital is revised for clarity as follows:

"WHEREAS, the Commission on Audit (COA) Circular No. 2021-014 dated 22 December 2021 or the "Guidelines on the Use of Electronic Collection (e-Collection) and Electronic Payment (e-Payment) for Government Transactions allows government entities to employ the services of Authorized Government Depository Bank (AGDB) - for the performance of their collection and disbursements function."

7. **Purpose.** Inclusion of a provision pertaining to the purpose of the MOA pursuant Administrative Order No. 13, Series of 2020, thus:

"This Agreement shall be for the purpose of adopting the use of digital payment of financial assistance to the beneficiaries and clients of Assistance to Individuals in Crisis Situation (AICS), and to pilot this arrangement in DSWD Field Office III;

To implement this purpose, Second Party is not precluded from engaging the services of a BSP-accredited financing intermediary that will provide a secure and reliable service in the disbursement requirements of AICS within the secured network of the Second Party."

8. **ii. Execution of Implementing Guidelines.** There were minor revision in the said provision and shall be read as "xxx *The First Party shall also prepare*

Internal Guidelines for the implementation of this project which shall include, among others, xxx”

9. **III. Execution of Supplemental Agreements for Programs Jointly Executed by DSWD - LBP Authorized Officers.** A minor revision was made and shall be read as *“xxx At the regional level, each Party shall execute a Supplemental Agreement xxx”*

10. **IV. Obligations of the Parties (A)(4).** Minor revision on the provision and shall be read as *“xxx Cause the transfer xxx”*

11. **IV. Obligations of the Parties (A)(7).** Minor revision on the provision and shall be read as *“xxx BSP-accredited financial intermediary xxx”*

12. Revise the title of Section VI from “Governing Law and Arbitration” to **“Governing Law and Settlement of Disputes”**.

13. **EFFECTIVITY AND TERMINATION.** The provision is enhanced as follows:

“This Agreement shall take effect immediately upon its execution, and shall remain in effect for (_____), unless earlier pre-terminated.

Either Party may terminate this Agreement, in whole or in part, by giving at least one (1) month advance written notice to the other Party specifically indicating therein the cause for termination.”

14. **Amendment.** This provision is enhanced as follows:

*“This Agreement may be reviewed, amended, and supplemented **during its validity** as the need arises and only by mutual consent of the parties through a written instrument duly executed and signed by the Parties. ”*

FOR THE DRAFT SUPPLEMENTAL MOA BETWEEN DSWD FO III AND LBP

1. **Parties.** The acronym of the Department is incorporated.

2. **1st WHEREAS CLAUSE.** This recital is enhanced as follows:

WHEREAS, the DSWD and LANDBANK executed a Memorandum of Agreement on _____ 2024 on digital collections and disbursements.

3. **2nd WHEREAS CLAUSE.** Inclusion of the law, Republic Act No. 11975 and replacement of letter "P" for party was changed into lowercase.
4. **6th WHEREAS CLAUSE.** Inclusion of the phrase "to LBP" was included.
5. **I. The Assistance to Individuals in Crisis Situation (AICS) Program.** The word "the" in the first paragraph was included and shall be read as "*Memorandum Circular No. 06 Series of 2023 "Amendment to MC 16, series of 2022" will be implemented by the First Party*"
6. **I. The Assistance to Individuals in Crisis Situation (AICS) Program. (B).** Uppercasing the letter "P" in the First Party.
7. **II. Obligations of the Parties. (A)(2).** Minor revision on the provision and shall be read as "*xxx Cause the processing and transfer xxx*"
8. **II. Obligations of the Parties. (A)(7).** Minor revision on the provision and shall be read as "*xxx other partner stakeholders in identifying payout venue and schedule copy furnished xxx*"
9. **II. Obligations of the Parties. (B)(4).** Minor revision on the provision and shall be read as "*xxx list of accredited partner payout channels xxx*".
10. **II. Obligations of the Parties. (B)(9) and (10).** Uppercasing the letter "P" in the Second Party.
11. **Miscellaneous.** The provision is enhanced as follows:

"MISCELLANEOUS

In case of conflict between the provisions of this Supplemental Memorandum of Agreement and the Memorandum of Agreement dated _____, the provisions of the latter shall prevail."
12. **IX. Separability.** In the provision the phrase "if at any time", "but" and "so" was removed

13. EFFECTIVITY AND TERMINATION. The provision is enhanced as follows:

"This Agreement shall take effect immediately upon its execution, and shall remain in effect for (_____), unless earlier pre-terminated.

Either Party may terminate this Agreement, in whole or in part, by giving at least one (1) month advance written notice to the other Party specifically indicating therein the cause for termination."

14. Amendments. The inclusion of the phrase "during its validity" was added and shall be read as "xxxThis Agreement may be reviewed, amended, and supplemented during its validity xxx"

Respectfully attaching hereto the copy of the enhanced MOA⁷ and Supplemental MOA⁸. After the foregoing comments have been considered, the drafts of the MOA and Supplemental MOA may be forwarded to the appropriate signatories for execution.

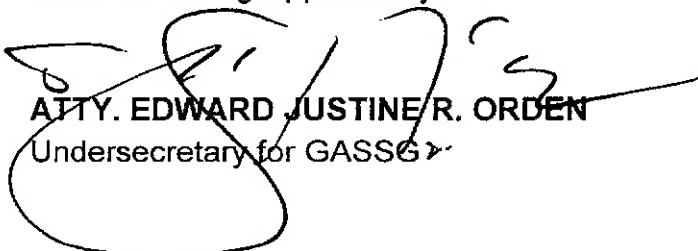
For your consideration.

Thank you.


ATTY. GINA V. WENCESLAO

MCMUG/MMBP/MTML/ESQE

Recommending Approval by:


ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASSG

⁷ Annex "A"

⁸ Annex "B"