

obligated to issue regulations implementing Section 504, but chose to do so because of the importance of the subject matter. Justifying the decision to issue 504 implementing regulations, the Corporation said (in the preamble to the rule) that “discriminatory practices by legal services programs interfere directly with the ability of those programs to provide high quality legal assistance in an efficient and effective manner.” 44 FR 55175. The same rationale could be said to be applicable in this situation as well.

The disadvantage of taking such an approach is that it would impose an additional regulatory burden on grantees and, given that LSC is not receiving significant complaints of discrimination by grantees related to service to LEP persons, it is does not appear to LSC that such an additional regulatory burden is warranted. Moreover, by issuing regulations, LSC would become obligated to monitor compliance with and enforce any such regulations adopted. Notwithstanding some expansion of its Office and Compliance and Enforcement staff, the Corporation nonetheless has limited resources and the OCE staff does not have the expertise in these matters as do EEOC and DOJ staff. In addition, as with claims of violation of Part 1624, LSC would be without statutory authority to direct a recipient to take any specific action to come into compliance, nor could LSC make any award to an aggrieved complainant; LSC would be limited to attempting to resolve problems informally and to punishing violations by considering suspension or termination of the grant. As such, LSC is not well suited to resolving such claims in the manner that most complainants would find helpful to them.

#### Issuing Non-Regulatory Guidance

The recent guidance issued by DOJ is not in the form of regulations, and LSC could follow suit with issuing its own non-regulatory guidance. Issuing non-binding guidance would avoid some of the disadvantages of issuing regulations, yet would still allow LSC provide assistance to its grantees as to what grantees can, at a minimum, be doing to ensure that they are in compliance with their obligations to refrain from national origin discrimination.

However, if LSC chooses to issue guidance, even taking care to make it clear that such guidance was in the nature of “best practices” and not mandatory standards, LSC could find itself obligated to investigate a claim that a grantee had discriminated against an LEP person (or persons). As noted

above, the Corporation has long taken the position that it is not suited to undertaking such investigations. On the other hand, LSC is obligated by Part 1618 of its regulations to investigate claims of violations of grant assurances. Thus, to the extent the grant assurances prohibit discrimination LSC already has a duty to investigate claims of national origin discrimination. In such a case, issuing guidance on LEP would not impose any additional risks or obligations on LSC or its grantees.

In addition, to the extent that many of LSC grantees receive grants from Federal agencies, such as DOJ, the Department of Housing and Urban Development and the Internal Revenue Service, these grantees will already be subject to the Federal guidance issuing from those agencies. Additional guidance from LSC would, at best, be duplicative and, therefore, unnecessary, and, at worst, be inconsistent, putting grantees in a difficult spot in complying with both sets of standards. LSC is specifically interested in learning how many grantees will already be subject to the DOJ (or other Federal agency) guidance as a result of receipt of DOJ (or other Federal) grants.

#### Refraining from Issuing Guidance

LSC could decline to issue its own guidance, but could commend the DOJ guidance to grantees. Such a message would make clear that the DOJ guidance is not directly applicable to them (unless they also receive grants from DOJ), but might be helpful to them in ensuring that they are complying with their obligations to LEP persons. This approach would remind our recipients of their contractual obligations under the grant assurances as well as any applicable Title VI obligations and provide them with some potentially useful guidance, without injecting LSC directly into the issue. Moreover, as noted above, to the extent that grantees receive grants from Federal agencies, they will already be subject to the Federal guidance issuing from those agencies. Additional guidance from LSC would, at best, be duplicative and, therefore, unnecessary, and, at worst, be inconsistent, putting grantees in a difficult spot in complying with both sets of standards.

The disadvantage of this approach is that, as the DOJ guidance is aimed at a somewhat different grantee population, the guidance might not be as helpful as it would be if LSC developed its own policy guidance document tailored to the legal services community. Further, there is the possibility that if LSC recommended the DOJ guidance to grantees that such an action would be

the functional equivalent to issuing its own guidance, with the attendant advantages and disadvantages outlines above.

#### Refraining from Taking Any Action

LSC could decline to take any action. As noted above, the Executive Order does not apply to LSC and LSC does not have direct responsibility for enforcing Title VI.<sup>3</sup> This approach is legally defensible and would avoid the potential disadvantages which might be generated by either developing LSC's own guidance or endorsing the DOJ guidance. On the other hand, although LSC is not bound to follow Federal initiatives such as this one, LSC often takes cues from them. As noted above, the rationale that led LSC to issue its regulations at Part 1624, would appear to be applicable also in this situation. Moreover, to the extent that LEP persons comprise a significant proportion of the legal services client community, it would appear that guidance in this area would be warranted and helpful to our grantees. LSC specifically invites comments on this issue.

#### Other Actions

Either in addition to, or in lieu of, any of the options above, LSC could collect and disseminate information on ideas and best practices from grantees who are already serving LEP persons. This would allow grantees to reap the benefits of others' experience to lead to an improvement of services throughout the country.

There are any number of ways this could be accomplished. LSC could gather and post information on its Legal Resource Initiative Web site, <http://www.lri.lsc.gov> and success stories could be published in Equal Justice Magazine. There are also resources external to LSC, such as the National LEP Advocacy Task Force, with which LSC could work to the benefit of grantees. LSC requests suggestions and ideas about the best ways for LSC to provide assistance in this area.

**Victor M. Fortuno,**

*General Counsel and Vice President for Legal Affairs.*

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<sup>3</sup> Leaving aside the LSC's responsibility to enforce its grant assurances which prohibit national origin discrimination.