



Board of Directors
c/o Rebecca Weir, Assistant General Counsel
Legal Services Corporation
3333 K Street, NW
Washington, DC 20007

October 4, 2011

Dear LSC Board of Directors:

Thank you for the opportunity to comment on the July 28, 2011 Fiscal Oversight Task Force Report to the LSC Board of Directors ("Task Force Report"). The commentary below is provided by the Board of Directors of the International Federation of Professional and Technical Engineers ("IFPTE") on behalf of the union. Local 135 is comprised of two bargaining units that represent 70 of the 100 positions at LSC (this staff number does not include the OIG staff). IFPTE Local 135 is the exclusive representative of all positions (except management) in the Office of Information Management, Office of Compliance and Enforcement, and Office of Program Performance that could be significantly impacted by certain conclusions and recommendations of the Task Force Report. With this in mind, we hereby submit the following comments.

As agreed to with management, these comments dated October 4, 2011 replace in full the comments originally submitted by letter dated September 30, 2011.

General Statement

Overall, the Task Force Report reflects significant work and consideration of financial oversight as it applies to LSC. Further, the Task Force Report provides extensive recommendations for improvement of LSC's financial oversight function. We offer our appreciation to the membership of the Task Force, and to the LSC Board for conducting a study of this critical oversight area.

Regarding some recommendations of the Task Force Report, we determined it essential to provide additional information and comments from a staff perspective. Local 135 strongly supports increased efficiency and effectiveness at LSC. As part of this, we strongly support increased efficiency and effectiveness for the core LSC functions involved with the grant-making cycle. This includes the critical assessment of: the quality of the legal services provided; compliance with the law and congressional restrictions; and financial accountability systems and expenditures. These efforts also include the critical information and statistical support functions of the Office of Information Management ("OIM"). It should also be noted that significant collaboration

between the three offices of OPP, OIM, and OCE has continued to grow productively in the last several years.

We hope that our comments below will be helpful towards the goal of ensuring needed improvements to LSC and its important work. Also, should the LSC Board adopt any of the Task Force Report recommendations that affect employee terms and conditions of employment, we welcome the opportunity to work collaboratively and have discussions with management in the best interests of the employees and of LSC and its critical mission.

Diverse Policy Manuals of Units

The Task Force Report notes that the units of OCE and OPP have various separate manuals. We note that LSC also has several other manuals. Over time, these manuals contradict, confuse and reduce LSC's ability to have consistent overall instructions to, and practices by, LSC staff. The ability of each division or unit to have a separate manual or manuals has often increased a lack of consistency and effectiveness at LSC and should be ended in favor of a central document with specialized sections, as warranted.

Whether or not the LSC Board adopts the structural changes of the Task Force Report, we strongly recommend ending the practice of having multiple policy and other manuals throughout the LSC offices and activity areas.

Task Force Report Recommendations

Below, we provide several specific or general comments to certain Task Force Report recommendations. These comments are organized according to the designation and numbering of the recommendations in the Task Force Report.

I. Organizational Identity and Mission

In general, the recommendations and statements found in Section I of the Task Force Report recommendations section are strong and would serve to improve LSC's critical functions. A few of this section's recommendations warrant additional comment or emphasis.

Recommendation I(5)

Recommendation I(5) states that LSC should continue to promulgate a strong "tone at the top" that promotes the importance of LSC's fiscal oversight activities. As the Task Force Report was limited to the review of fiscal oversight, the limitations of this recommendation are understandable. Nevertheless, we recommend that all efforts and statements regarding the essential development and communication of an appropriate "tone at the top" be expanded to include all core LSC functions, and not be solely

focused on fiscal oversight. At a minimum, the value guidance envisioned by this recommendation should clearly include both quality and compliance functions, and should make clear the relative weight placed on each, if differing.

Recommendation I(6)

Recommendation I(6) states:

Draft, agree-upon, and promote a detailed description of LSC's intended culture, balancing an emphasis on grantee program quality, compliance, and fiscal responsibility with an organizational dynamic that results in high morale and commitment of LSC's people.

This recommendation is critical and we recommend that it be commenced immediately, as it is of the highest importance. This recommendation is solidly part of a report focused on fiscal oversight. However, providing clarity as to LSC's intended culture, and development of an *affirmative, intended* organizational dynamic is something that does and should stand alone, and should engage and include all LSC units and staff. The values and elements behind this recommendation are essential to LSC's ability to function effectively.

Also, as elected representatives of a majority of LSC staff, we appreciate the inclusion of staff morale in Recommendation I(6). Further, the connection of "high morale" and commitment are noteworthy and critical. As one could probably expect, in an environment with continual change, much of it without clear objectives or outcomes, staff morale is an ongoing challenge for LSC. In recent years, staff chose to unionize by overwhelming margins so as to have some ability to voice concerns over managerial and directional issues at LSC. However, the slow pace of change and the continuation of many past issues through to the present have meant ongoing morale issues. Further, the issuance of this report with its limited scope of review, but nevertheless with the broad, unsupported recommendation for yet another structural change, resulted in additional erosion of staff morale.

For all of the above reasons, we recommend that recommendation I(6) be expanded to include all LSC units and staff and be given top priority.

II. Communications and Coordination among the Board, Management, and OIG

A. Roles and Responsibilities

As the development of a new organizational structure is a fundamental underpinning of this group of recommendations, our comments to this section will focus on identified issues with that conclusion.

Scope of Review

The Task Force Report clearly stated that the focus of the Fiscal Oversight Task Force was solely on financial oversight. On page iii the Task Force Report stated:

In 2010, the LSC Board of Directors (the Board) approved the creation of an independent task force to review and make recommendations to the Board regarding how LSC carries out its fiscal oversight responsibilities.

On page ii, the letter from the co-chairs stated:

The charter of the Task Force focused on fiscal oversight, and that has therefore been the focus of our work.

Further, on page 30, the Task Force Report defined “Fiscal Oversight” as:

The process and systems in place to appropriately monitor and review the use of funds to mitigate the risk of misuse of grant monies, as described in OMB Circular A-110, Subpart C. Fiscal oversight may include many activities, including audits, information gathering and data analysis, or required reporting.

This fiscal scope of review limitation did not include an assessment of the other two core LSC oversight functions of quality and compliance. Nor did the review include assessment of the functions of the Office of Information Management (“OIM”). In particular, regarding LSC’s quality assessment function, the Task Force Report on page iii stated:

LSC’s processes related to assessing program quality were outside of the scope of the Task Force’s purview...

Despite not having conducted an in-depth review of the compliance and quality functions, nor of OIM, the Task Force Report nevertheless determined that these functions should be combined into a new unit under one vice-president. The same is true for the functions of OIM. It is unclear what evidence and analysis supports this conclusion, as discussed further, below.

Recommendation for a new LSC Structure – Quality, Compliance and OIM Functions

Neither the compliance nor the quality review functions conducted by LSC receive much detail in the report. It is clear that the report, as well as the hired consultants were focused upon the financial oversight systems of LSC. It was therefore surprising that the Task Force Report then reached a conclusion that may fundamentally change two significant oversight functions that were not specifically reviewed. All three of the oversight functions (compliance, quality and fiscal) have been congressionally mandated, and each should be considered fully before LSC determines the most effective organizational configuration. As the report lacks detail regarding the perceived positive

effects on the quality and compliance review functions from the new structure, we find it impossible to agree or disagree with the recommendation for a combined unit. Neither the evidence nor the analysis supports the conclusion for a new combined unit.

We see a strong possibility of significant expenditures of LSC staff time and resources being taken to effect a unit structure change, which by itself would not address any of the significant underlying issues that hamper LSC's effectiveness in discharging its core statutory and regulatory functions. In the experience of many staff, it has seldom been the structure of the LSC divisions and units that affected their ability to conduct their work. It has been the lack of planning, coordination and consistent direction that has led to restricted or inefficient working conditions.

Several current, long-term staff members have been present at one of the numerous prior LSC configuration changes. What was consistent about each such change is that it required extensive work and cost. What has also been the experience of many is that when a new structure was implemented, the outcome was that little had ultimately changed. The changes did not effectively address LSC's underlying and long-term issues.

Related to this discussion, it is the presence, or not, of a clear LSC work vision, and consistent application of that vision, that ultimately matters in an organization as small as LSC. In the past, the names and number of offices and divisions have been many, but they served no effective function if management was not consistently applying uniform, effective and clearly disclosed (written) standards.

If reorganization is the desired goal, we recommend that further study be conducted (by appropriate professionals in compliance and quality assessment) to include a more detailed consideration of the two areas outside the scope of the Task Force Report (compliance and quality). A similar assessment of OIM is also warranted. Only in this manner can a decision as to the proper LSC structure be well informed and fully deliberative. In the end, whatever changes are made should ultimately result in the anticipated desired outcomes; and be justified by an analysis of the benefit derived from the cost and work involved in any reconfiguration.

Should the LSC Board determine to adopt the proposed reorganization, Local 135 expects to work collaboratively with management regarding any anticipated changes to terms and conditions of employment.

Methodology – Non-Management Interviews

Of the LSC staff interviewed by the consultant firm, 20 of the 25 were management or employees of the OIG. The Task Force Report states that a total of only five non-management staff in OCE and OPP were interviewed. No non-management staff members were interviewed in OIM. The non-management staff interviewed included one attorney and one non-attorney in OPP and one attorney and two fiscal analysts ("Program

Analyst”) in OCE.¹ The number and lack of diversity of the non-management staff interviewed in OCE and OPP means that the information obtained could not be adequate or representative of the compliance or quality functions conducted by LSC. In addition, as the only fiscal analyst staff interviewed were two of the most recently hired staff (having each been at LSC slightly more than one year), the task force could not have obtained a comprehensive understanding of the past limitations and restrictions on fiscal staff work *from the staff perspective* that have persisted into the current time. Finally, we note that some of the information sought by the interviewers was unclear as to its probative value.²

Office of Information Management Independence

The report does not discuss the important reasons why the OIM was made into a separate unit by LSC, which is a critical consideration before potentially undoing its independence. In the past the data functions now conducted by OIM could be overly influenced by a subset of management to serve their viewpoint or perspective. As a result, a unit and unit head were created so as to allow an independent voice with access to the LSC president. OIM can routinely serve the information needs and requests of OCE, OPP, Government Relations and Public Affairs (“GRPA”), the Office of Inspector General (“OIG”) and the Executive Office. The existence of a separate unit has been critical to this work. Again, it is unclear what evidence supports the inclusion of OIM, without review and analysis of its work, role and history, into a new proposed division as set forth by the Task Force Report.

B. Board’s Responsibility for Fiscal Oversight

We have no specific comments on the specifics regarding Items 1, 2, and 3, and their subsections. However, we wish to strongly recommend that the current LSC Board be the first to establish another essential line of formal communication not mentioned in the report. Specifically, the LSC Board should establish some type of formal liaison, committee, or other mechanism by which all LSC staff are encouraged to directly communicate, in complete safety and confidence, and present evidence directly to, the LSC Board regarding potentially serious issues occurring at LSC. Such issues should include situations such as:

- When LSC upper management has withheld or misrepresented crucial information necessary for the board to properly exercise its responsibilities; or
- When the OIG has failed, or is refusing to investigate an internal LSC issue for which there is sufficient evidence of fraud, waste and/or abuse.

It should be noted that both of the above situations have occurred at LSC in the past, and that at that time no staff felt safe in approaching the LSC Board. Further, there have been

¹ Also, it should be noted that the Task Force Report contains an error in the characterization of one of the non-management staff interviewed. Willie Abrams, Esq. is an attorney and therefore is a Program Counsel, not a Program Analyst.

² For example, one staff member was asked to opine whether a certain class of their fellow workers were good—or not—at exercising their job functions. An individual staff member is not in a position of either sufficient awareness or authority to properly answer such a broad question.

prior executive-office policies restricting direct staff access to the board. In some situations, actions or statements by members of a prior LSC Board indicated support for the stated “no contact” rule.

LSC has no comprehensive whistle-blowing policy. A formal board mechanism is also necessary, as traditionally LSC Boards have come to rely on a small number of upper management staff both in the OIG and LSC. As this occurs, the appearance to staff becomes that the board and management are very close, and that staff (including sometimes mid-level management) are neither welcome nor safe to communicate with or bring information to the attention of the LSC Board. This has had the result, on occasion, of the LSC Board learning of issues months or years after they had begun and after they had continued for long periods.

As an aside, the ability to be able to speak up safely against perceived wrong was another significant desired change that led many staff to organize a union. With a union structure there are several mechanisms for staff to have LSC Board or other contacts, so as to ensure that future wrongdoing is stopped in a timely manner. However, the unionization only partially solved this issue and only for the unionized staff. To this date there is still no *confidential individual* staff communication mechanism with the LSC Board. Such a mechanism would establish a highly positive and accountable “tone at the top” from the LSC Board. It would be available to both unionized and non-unionized staff, and all members of management. Ultimately it would best serve the LSC Board’s exercise of its fiduciary responsibilities, by allowing multiple avenues for the provision of information, when warranted.

C. Management and OIG Relationship

Item 1: The following observation is not specific to the subsections (a) through (c) of Item 1.

As a general observation, we strongly support having board awareness of, and guidance for, the sharing of information regarding grantees, by the OIG with the LSC oversight management and staff. The OIG and LSC do not have in place clear document and information sharing systems to ensure timely disclosure of pertinent information. However, should it be concluded that the current level of information sharing by the OIG is due to the nature and necessary independence of the OIG’s work, it would still be useful for the LSC Board to ensure the creation of written policies and practices so as to provide future clarity for LSC staff.

There have been several instances in which both OCE/OPP and the OIG have had to conduct, by design, separate but overlapping investigations of the same recipient in the same general time period. This alone is not a problem, and is sometimes necessary. However, when this has occurred, information collected by the OIG is, in general, not shared with LSC staff. By contrast, as is appropriate, all information collected by LSC may be requested by the OIG. In the past, the secrecy of pending OIG reviews, audits or

investigations has sometimes resulted in duplicative, delayed or disrupted reviews by LSC along with increased review costs.

Item 2: Putting aside the recommendation regarding the creation of a new division, the union strongly supports increased sharing of best practices and common challenges between the OIG and the LSC oversight staff (OIM, OPP, and OCE). Under the current Inspector General this has occurred on occasion, and when this has been done it has served both LSC and its staff well. Further, unlike for LSC oversight staff, the OIG has had a strong emphasis on ongoing and intensive support and training of its staff.

III. Grantee Fiscal Oversight Process

Our comments to this section will not address specific items found in parts A, B, and C. However, there are specific comments regarding section D addressing conflicts of interest.

Overall, the complex and varied items found in this section and its parts include many strong ideas and recommendations that are likely to improve LSC oversight functions. It is noted that several of these will require substantial work and expense, such as the recommendation found at III(B)(3) that LSC increase the scope and frequency of grantee capability assessments.

To the extent that the recommendations of section III reference a newly created Office of Grantee Assessment (“OGA”) division, we note that the recommendations should remain valid even if this new structure is not adopted. The current OCE, OIM and OPP divisions should simply assume the coordination and information sharing functions attributed to OGA.

Conflicts of Interest

We strongly support enhancement, clarification and enforcement of a strong conflicts of interest policy as part of an appropriate “tone at the top” (as also discussed in the Task Force Report). However, we note that the current recommendation appears inadequate. The conflicts of interest policy should be expanded to include all LSC staff, all management and all LSC Board members. In the past, some LSC staff members have witnessed or been subjected to direct interference by a member of management or by an LSC board member regarding a person, program or economic interest with which the manager or board member had a clear and direct conflict. Some of these activities also have been documented in formal oversight reports regarding LSC.

We cannot state strongly enough that any conflicts of interest policy, in order to be fully effective, must include all persons serving in formal roles with LSC. This is also consistent with Sarbanes-Oxley principles.

With the above said, it is necessary to fully clarify that to our full knowledge, the current LSC Board generally, and each of its members individually, have operated only in a fully

professional manner and with high ethical standards. Further, neither the current board nor any of its members have been involved in the activities or incidents discussed above. Similarly, current management has not been involved in the type of incidents discussed.

IV. Knowledge, Skills and Experience

This section again assumes the adoption of a new OGA unit. Our response to that suggestion has been discussed fully, *supra*.

We wish to first address Parts A, C and D of this section, and then provide comments to Part B that addresses LSC employees.

Regarding IV(A)(1), we strongly support staggered terms for LSC Board members for the reasons stated. We also believe that this would allow for enhanced knowledge retention and better governance during transitions.

Regarding IV(C), we note that LSC has had, for several years, diverse training programs for new grantees, new executive directors, and/or for programs at risk. Further, although much of the subject matter of those trainings addressed compliance-related or other non-fiscal issues, some of these training modules also covered numerous financial and internal control issues. One training module for new executive directors specifically reviewed and instructed on proper fiscal internal controls in a targeted on-site review. The reception to, and success of, such recipient training indicates that strong training *provided directly by LSC* can be a highly effective and cost-effective oversight tool. With this awareness, we strongly support the Task Force Report recommendation IV(c)(3) regarding the addition of training regarding the effective stewardship of funding. We also recommend that this training be housed in LSC and utilize LSC staff.

We have no specific comments on the two recommendations regarding IV(D) regarding the Independent Public Accountants (IPA). However we have a general comment regarding past effectiveness of the IPA system. The report makes no mention of the insufficiency of the LSC IPA system, over many years, to identify many significant compliance patterns or violations with required regulatory requirements and restrictions. The independent IPA system has also failed to identify significant fiscal issues. In the past, comparisons were conducted of then-recent OCE reports to IPA reports of the same grantee in the same time period. Repeatedly, the OCE reports identified numerous compliance issues and corresponding required corrective actions that were not identified by the IPA. In several instances, the issues identified only by LSC were very significant.

The identified weakness in the IPA system was reported to a prior LSC Board; as a result, the OIG determined to increase its oversight of the IPA system and of the individual IPA contractors. It is recommended that the LSC Board actively continue the assessment of the IPA oversight process to ensure that the IPA work product is highly reliable.

Part B – LSC Employees

This section contains several items that will involve a need for formal union-management engagement if these recommendations are adopted. Some recommendations could affect certain staff's terms and conditions of employment, and the effects of some proposed changes are appropriate topics for union engagement. As this report is currently in the public comment period, we believe it prudent to withhold any specific comments on this section and its parts, until such time that the LSC Board and/or management make a final decision regarding these items.

With the above said, we do wish to provide the following general information regarding staff training.

We note that LSC's budget allots money for staff training that has been, in the experience of many staff, arbitrarily and inconsistently expended, and often not towards staff training. Most LSC staff members have been provided very little professional training designed specifically for LSC's oversight functions. Many have received no LSC-paid training for many years.³ Often we have been told that LSC lacks sufficient funds. However, that is rarely true as LSC often carries a significant surplus, as it does today.

From a union perspective, the lack of training is a matter of management and board priorities. To date, it has never been an overall LSC Board or management priority to provide sufficient funding for appropriate, comprehensive and necessary staff training. This has specifically affected staff's ability to be widely trained on internal controls (as noted in the report) and on other critical areas surrounding oversight and other work.

We strongly support a policy and practice to have all staff receive ongoing and necessary training for their job functions. Today, as in the past, both the resources and ability to ensure proper training of staff are available; and the ability to remedy this issue rests fully with the LSC Board, through its funding priorities and instructions to, and follow-up with management. Simply making money available in the budget has proven ineffective from past experience. The relationship of staff training to LSC's ability to best discharge its duties is an area that warrants significant board oversight.

Sincerely,



David de la Tour, Esq.
Board President
IFPTE Local 135

³ It is worth noting that some staff members have paid for their own professional training or education. This includes administrative and oversight staff. Also, such training may not be in LSC records, as staff members have also used their personal leave for the training days.