

May 24, 2004

MEMORANDUM TO: William D. Travers  
Executive Director for Operations

FROM: Stephen D. Dingbaum/**RA**  
Assistant Inspector General for Audits

SUBJECT: MEMORANDUM REPORT: NRC'S IMPLEMENTATION OF  
REGULATIONS CONCERNING NONDISCRIMINATION BASED  
ON HANDICAP (OIG-04-A-14)

At the request of a Commissioner, the Office of the Inspector General (OIG) reviewed the Nuclear Regulatory Commission's (NRC) implementation of Federal regulations concerning nondiscrimination based on handicap.<sup>1</sup> The audit showed the following:

- (1) NRC's headquarters facility generally complies with the regulations,
- (2) NRC must improve the administration of the agency's disability program, and
- (3) NRC must ensure accurate reporting of NRC disability-related data to the Department of Justice (DOJ).

#### BACKGROUND

In 1992, Congress revised the Rehabilitation Act of 1973 to make the Americans with Disabilities Act employment standards applicable to the Federal government. Section 504 of the Rehabilitation Act applies to any executive branch agency of the Federal Government, as well as nongovernmental facilities receiving Federal funding. Specifically, Section 504 prohibits discrimination based on disability in programs or activities conducted by any executive branch agency in the Federal government or its affiliates. As such, Section 504 requires that NRC (1) provide reasonable accommodations to qualified individuals with disabilities, (2) provide effective communication tools for hearing- or vision-impaired people, and (3) maintain accessibility to facilities, programs, and activities. To further prohibit discriminatory practices in Federal programs and activities, Executive Order 12250 was issued assigning DOJ the oversight role to ensure that Federal agencies report disability-related data regarding recipients of Federal financial assistance. NRC enforces these requirements through the Code of Federal Regulations, Title 10, Part 4 (10 CFR 4),

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<sup>1</sup> A handicapped person is, "Any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment." In this report, handicap is synonymous with disability.

Subparts B and E.<sup>2</sup> Subpart E also incorporates the requirements of the Architectural Barriers Act of 1968, as amended, to ensure that buildings and facilities designed, built or altered with Federal funds, or leased by Federal agencies are accessible to the physically handicapped.

While all NRC staff are encouraged to do their part in making equal opportunity and managing diversity a reality at the agency, the Office of Administration (ADM), the Office of Human Resources (HR), and the Office of Small Business and Civil Rights (SBCR) have leadership roles in this area. In particular, these offices have specific roles in ensuring that individuals are not discriminated against due to a handicap.

### **NRC is Generally in Compliance with Federal Regulations**

NRC's headquarters facility is generally in compliance with Federal regulations governing accessibility of the disabled to agency programs and activities. Of the agency's 192 self-identified disabled employees, none filed a complaint alleging discrimination under Section 504 over the past three fiscal years. Additionally, NRC initiated an aggressive training program for all managers, supervisors, and team leaders, which addresses applicable Federal disability regulations. SBCR has trained about 67 percent of these individuals to date.

The General Services Administration (GSA) periodically inspects NRC's facility to ensure compliance with the Uniform Federal Accessibility Standards. During the last inspection in February 2002, GSA cited NRC for not meeting these Standards due to the design of the railing along the ramp located on the first floor of One White Flint North. At the time of the inspection, GSA estimated the cost for fixing the railing to be about \$44,000. Because One White Flint North is a Federal building, owned by the U.S. Government, GSA should pay for the cost of a replacement railing. However, GSA did not have the funds to pay for the replacement railing in 2002. Until recently, ADM, the office assigned responsibility for the headquarters facility, had done little or nothing to correct the situation. The office is now pursuing options to resolve the issue and advised OIG that they contacted a technical expert advisor at the United States Access Board with special expertise on the conformance of handrails to accessibility standards. The technical expert recommended that NRC leave the railing "as-is." ADM documented this and sent a copy of its internal memorandum to GSA.

#### Recommendation:

OIG recommends that the Executive Director for Operations:

- (1) Resolve the 2-year old railing issue with GSA so it does not become a repeat finding during the next GSA inspection. [Recommendation closed as of May 19, 2004, when ADM provided evidence that GSA accepted the handrail as being "satisfactory as is."]

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<sup>2</sup> 10 CFR 4, Subpart B, *Regulations Implementing Section 504 of the Rehabilitation Act of 1973, as Amended*. 10 CFR 4, Subpart E, *Enforcement of NonDiscrimination on the Basis of Handicap in Programs or Activities Conducted by the U.S. Nuclear Regulatory Commission*.

## **NRC Needs to Improve Program Administration**

NRC's disability program is fragmented. While NRC is currently meeting Federal regulations, continued inconsistent application and uncoordinated efforts in managing the disability program could seriously impact NRC's future success in this area. NRC has a program in place to foster an equal opportunity organization for all persons regardless of disability. However, the guidance for implementing this program is scattered. As a result, staff are not implementing the program as intended.

NRC has several management directives (MD) that each address a piece of the agency's disability program.

- MD 10.13, *Special Employment Programs*, specifically addresses NRC's program for hiring, placing, and advancing persons with disabilities.
- MD 10.161, *NRC Equal Employment Opportunity Program (EEO)*, addresses the complaint process to prevent discrimination against persons with physical or mental disabilities.
- MD 13.2, *Facility Management*, mentions that NRC will make reasonable accommodations for disabled persons.
- MD 3.5, *Public Attendance at Certain Meetings Involving the NRC Staff*, addresses reasonable accommodations.

However, MD 3.11, *Conference and Conference Proceedings*, which provides guidelines for setting up and conducting NRC-sponsored conferences, does not address reasonable accommodations.

While several MDs address parts of the disability program, NRC also has in place a policy document, *Procedures for Providing Reasonable Accommodation for Individuals with Disabilities* (the Procedures), for providing reasonable accommodation to its employees or applicants with disabilities. However, staff are not following all the procedures set forth in the Procedures. The Procedures outline a specific process for centralizing all reasonable accommodation requests within NRC by assigning a representative from HR, the agency's Disability Program Manager, as the point-of-contact for requests. However, not all activities are shared with the Disability Program Manager. For example, according to the former Disability Program Manager, requests for motorized carts and hearing-impaired services are not routed through the Disability Program Manager. Lack of adherence to the Procedures exacerbates the fragmentation of the disability program. Following are some examples that further illustrate this condition:

- HR announced the availability of the Procedures in July 2001 to all NRC staff via a network announcement and again in December 2003 to office directors and regional administrators. HR staff were very clear on the finalization and intended use of this policy document. Yet, the former Disability Program Manager did not know that the Procedures had been finalized. Moreover, the current Disability

Program Manager does not accept the Procedures as policy. If the Procedures are agency policy, NRC should institutionalize them as policy in the management directive system, which is the agency's method for promulgating policy.

- Per the Procedures, new employees are to receive a copy of this document as part of their orientation on the first day of work. Yet, HR staff responsible for new employee orientation are not aware of this requirement and are not providing new employees with this document.
- NRC's Affirmative Employment Plan<sup>3</sup> states as a goal that HR will periodically update *NRC's Information Guide for People With Disabilities*, an agency brochure. Additionally, MD 10.161, *NRC Equal Employment Opportunity Program (EEO)*, provides reference to this document, as does an agency-wide yellow announcement issued in 2000. However, HR has not updated this brochure since 1997 - - as such, it contains incorrect information.

NRC's disability program lacks management controls because program guidance is not consolidated. As a result, staff are not implementing the program as intended. Continued inconsistent administration of the disability program may adversely affect NRC's future success in this area.

Recommendations:

OIG recommends that the Executive Director for Operations:

- (2) Institutionalize the disability program in a single management directive to ensure that all aspects of the program are addressed and that it is consistently implemented.
- (3) Provide new employees with a copy of the *Procedures for Providing Reasonable Accommodation for Individuals with Disabilities* as part of their orientation on the first day of work.
- (4) Update *NRC's Information Guide for People With Disabilities* on a regular basis to ensure that all information is current.

**NRC is Reporting Inaccurate Information**

The agency is not effectively tracking and reporting disability-related data to DOJ on recipients of NRC grants and cooperative agreements<sup>4</sup> through its financial assistance program. SBCR, which has oversight of this aspect of the program, does not have a mechanism for tracking the number of grants awarded. As a result, NRC is not accurately reporting on amounts disbursed. Because SBCR does not know all recipients

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<sup>3</sup> The NRC *Affirmative Employment Plan, Fiscal Years 2001 through 2005* includes proactive guiding principles, goals, and objectives for achieving and maintaining equal employment opportunity and a diverse workforce.

<sup>4</sup> Grants and cooperative agreements will be referred to as grants in this report.

of financial assistance, the agency cannot provide assurance that its recipients are complying with regulations that prohibit discrimination based on handicap in programs and activities.

Executive Order 12250 assigned DOJ responsibility to ensure that all Federal agencies implement (1) Section 504 of the Rehabilitation Act of 1973, as amended; and (2) any other provision of Federal statutory law which provides that no handicapped individual shall be discriminated against under any program or activity receiving Federal financial assistance. NRC provides financial assistance to a variety of organizations. In return, these organizations must provide assurance that their programs and activities do not discriminate against disabled individuals. To implement this requirement, NRC promulgated 10 CFR 4, Subpart B, assigning SBCR oversight of NRC's recipients of financial assistance. This oversight includes (1) conducting and recording periodic compliance reviews to ensure that financial recipients do not discriminate against disabled individuals; and (2) providing information and reports to DOJ to ensure that NRC's recipients are complying with regulations regarding non-discriminatory practices in Federal programs and activities receiving financial assistance.

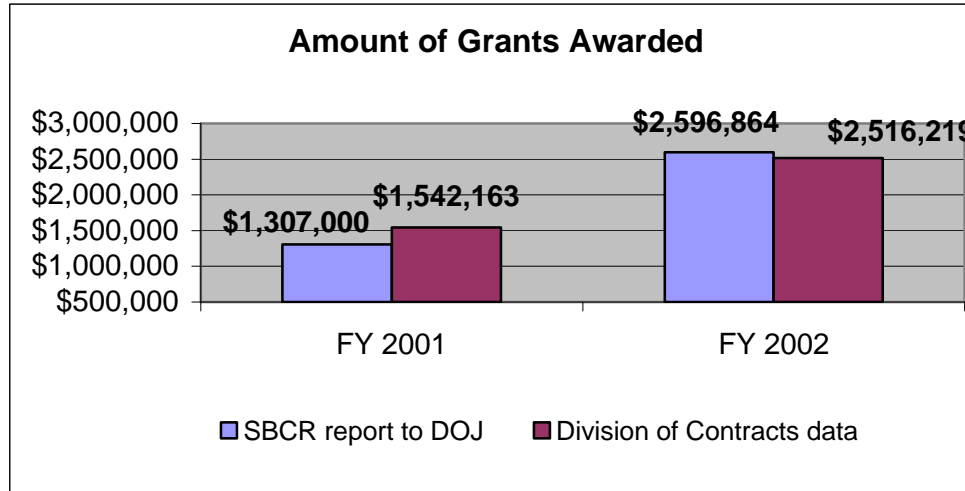
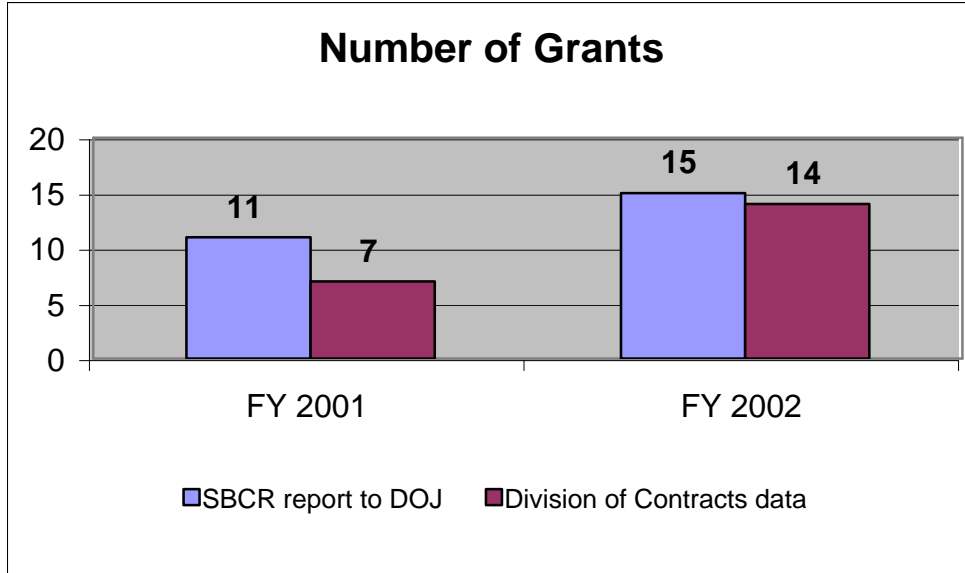
NRC reported to DOJ that it disbursed about \$4 million in FY 2001 and FY 2002 in grants to organizations to:

- provide training on a space available basis through the Office of State and Tribal Programs;
- support basic and applied scientific research at educational, non-educational, and not-for-profit institutions, professional societies, and state/local governments; and
- enable students and faculty at Historically Black Colleges and Universities (HBCU) to conduct technical research and development activities.

NRC's MD 11.6, *Financial Assistance Program*, outlines the agency's process for awarding and tracking grants. Per MD 11.6, the Division of Contracts, ADM, is responsible for maintaining the official record files for all NRC financial assistance awards. However, SBCR's role and responsibility are not included in the agency's process outlined in MD 11.6. As shown in the following charts, a comparison of information reported by SBCR<sup>5</sup> to DOJ and information contained in the Division of Contracts' grant records revealed differences in the number of grants awarded and funds disbursed:

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<sup>5</sup> Amount of disbursements shown in the chart are for grants and cooperative agreements only. OIG did not verify the accuracy of HBCU amounts.



These discrepancies occurred because SBCR depends on individual agency offices to report awards data to them instead of receiving the data from the Division of Contracts, where the agency's official record files are maintained. Further, SBCR lacks a program to ensure effective oversight of NRC's recipients of financial assistance. Specifically, SBCR should be conducting and documenting compliance reviews of its recipients of financial assistance in accordance with the requirements set forth in 10 CFR 4, Subpart B. However, SBCR has not identified all NRC's recipients of financial assistance and does not conduct the compliance reviews. As a result, the agency is not accurately reporting data to DOJ and cannot provide assurance that its recipients of financial assistance are conducting their programs in compliance with disability laws.

Recommendations:

OIG recommends that the Executive Director for Operations:

- (5) Revise Management Directive 11.6, *Financial Assistance Program*, to identify and define SBCR's role in accordance with 10 CFR 4, Subpart B.
- (6) Accurately report to DOJ the disability related data for recipients of NRC's financial assistance.
- (7) Conduct compliance reviews as required by 10 CFR 4, Subpart B.

CONCLUSION

NRC's headquarters facility is generally in compliance with Federal regulations prohibiting discrimination in agency programs and activities. However, the absence of an effective policy and adherence to procedures could adversely affect the future success of NRC's compliance with regulations. Further, NRC lacks an effective program to ensure oversight of and accurate reporting on disability-related data regarding NRC's recipients of financial assistance.

AGENCY COMMENTS

During an exit meeting on May 19, 2004, NRC officials indicated agreement with the audit report. Agency editorial comments were incorporated, as appropriate.

SCOPE AND METHODOLOGY

The overall scope of this audit focused on regulations concerning nondiscrimination based on handicap with regard to (1) accessibility to NRC's headquarters facility, (2) agency reporting requirements, and (3) manager's awareness of applicable Federal regulations. The audit team evaluated these regulations and related programs to determine if NRC complies with Federal regulations. Auditors evaluated the agency's established procedures for soliciting, accepting, processing, and accommodating disabled persons' requests for accommodations. Also, auditors attended public meetings held at NRC headquarters facility to observe the accessibility of public points of ingress and egress and the availability of information to the disabled. Auditors did not review NRC's regional facilities or public meetings held at sites external to NRC. To identify and determine reporting requirements and staff awareness of regulations, the audit team interviewed staff in ADM, HR, and SBCR.

OIG conducted this work between January 2004 and April 2004 in accordance with generally accepted Government auditing standards and included a review of management controls related to audit objectives. Major contributors to this report were Russ Irish, Team Leader; Sherri Miotla, Audit Manager; Yvette Russell, Senior Auditor; and Jerrol Sullivan, Management Analyst.

Please provide information on the actions taken in response to the recommendations directed to your office by June 25, 2004. Actions taken or planned are subject to OIG follow-up. See Attachment for instructions for responding to OIG report recommendations.

If you have any questions or wish to discuss this report, please call me at 415-5915 or Russ Irish at 415-5972.

Attachment: As stated

cc: Chairman Diaz  
Commissioner McGaffigan  
Commissioner Merrifield



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