



OFFICE OF THE PRESIDENT

MEMORANDUM

**To:** Operations and Regulations Committee

**From:** Victor M. Fortuno   
Interim President

**Date:** January 22, 2010

**Subj:** Management Recommendations regarding Attorneys' Fees Rulemaking

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This memorandum sets forth management's recommendations regarding the various issues and options presented to you in the Office of Legal Affairs's (OLA) Rulemaking Options Paper (ROP) on potential rulemaking to repeal the regulatory prohibition on claiming, collecting and retaining attorneys' fees found in 45 CFR part 1642 and potential conforming rulemakings to revise Parts 1609 (fee-generating cases) and 1610 (use of LSC funds, transfers of LSC funds and program integrity).<sup>1</sup>

Having considered the various options and analysis set forth in the ROP, management recommends that the Committee, in turn, recommend that the Board initiate a rulemaking to repeal Part 1642, and make conforming amendments to Part 1609 and 1610. Management further recommends that this be accomplished by the development and issuance of an Interim Final Rule with Request for Comment. Management believes that the Interim Final Rule should permit recipients to claim or collect and retain attorneys' fees for any work for which attorneys' fees are available to them.

With respect to the exercise of LSC's enforcement discretion, management proposes that the Committee recommend that the Board articulate an updated policy consistent with its actions regarding revision of the rule. Management recommends that the Board adopt a policy that LSC will exercise its enforcement discretion so as not to take any adverse action against a recipient that has claimed or collected attorneys' fees during the period of December 16, 2009 to the effective date of any rule change lifting the regulatory restriction on such actions.

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<sup>1</sup> As contemplated by the LSC Rulemaking Protocol, the ROP is prepared by OLA and is designed to provide the Committee and the Board with a full range of options and information to aid the Committee and Board in their respective deliberations and decisionmaking process. Although recent practice has been to include the management recommendation in the ROP, I believe that setting forth management's recommendations in a separate memo will benefit the Committee and the Board by clarifying the distinction between the analysis being provided by OLA and the policy recommendation being made by Management.