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Director's Message

Your response to the first issue of our *RefugeeWorks* newsletter was overwhelming! We published and mailed 2,500 copies to names gathered over the course of the two and a half years we have been in business. But once the newsletter "hit the streets," we heard from many more of you—including state refugee coordinators with requests for multiple copies to distribute within their respective networks. The copying machines have been humming ever since! Hence, this time around, *RefugeeWorks* has increased its printing run to 3,500 copies, which we hope will better meet demand. We are also gratified that so many of you took us up on our offer of free Earned Income Credit translations and an ESL SCANS curriculum on EIC. Please keep us posted on what other types of informational materials you would find useful.

The focus of this second edition of our *RefugeeWorks* newsletter is **Assuring Employment Rights of Refugees**. We have included a special tear-out page from the Office of Civil Rights/HHS Guidance Memorandum prohibiting discrimination against persons with limited-English proficiency as well as information from the U.S. Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices. *RefugeeWorks* is most interested in learning from its readers about first-hand experiences or strategies found to achieve workplace diversity.

From the Field**WITH "JUSTICE" ON HER SIDE,
JOB DEVELOPER COMBATS UNFAIR PRACTICES**

The cartoon appearing on the following page is an educational outreach effort of the U.S. Department of Justice's Office of Special Counsel (OSC) for Immigration-Related Unfair Employment Practices. The outreach campaign alerts employers, employees, and the general public to its enforcement powers under the Immigration and Nationality Act. OSC is particularly effective with cases related to discrimination on the basis of citizenship, national origin, or "document abuse"—an illegal practice in which 1) additional documentation for employment eligibility verification is requested or 2) reasonably genuine-looking documents are rejected without cause.

According to Kathy Boyle, upgrade job developer for Refugee Services of Catholic Social Services of Lansing/St. Vincent Home, Inc., OSC works well and with astonishing speed to combat unfair employment practices. It began when she brought her client—a Cuban entrant recently resettled with the affiliate—to the International Brotherhood of

Electrical Workers (IBEW) to apply for an apprentice electrician position. The client had all his papers with him, including his translated diploma. "We filled out the application, but were confused about the question, 'Are you a citizen?'" She inquired and was told that all applicants must be citizens. "I didn't argue," Kathy explained, "but I did return to the agency and ask our immigration attorney for the phone number of the Justice Department."

Boyle called OSC and spoke with an attorney who took all the information and said she would call back soon. Within a short time, Boyle heard from the attorney with the following news: She had called the president of the International IBEW, who in turn contacted the head of the state IBEW, who in turn called the gentleman at the local IBEW with whom Boyle had spoken originally. The attorney suggested to Boyle that "now would be a good time to talk to him again." When Kathy called the local office, she found the employer to be very cooperative; he asked that

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she return to the office with the client and reapply for the apprenticeship.

“While I spoke to him, I inquired about the addition of an interpreter so my client would have an equal opportunity—an opportunity for him to be judged on his abilities. There was a slight pause, but he agreed. The system does work!” A second happy ending: The apprenticeship has worked out so well that the local IBEW office calls Kathy Boyle every three or four months now to remind her of his continuing need for talented applicants.

OSC’s toll-free hotlines are staffed by multilingual operators who answer questions about avoiding discriminatory practices and verifying employment eligibility. When appropriate, they transfer calls to OSC attorneys. The toll-free information number and worker hotline is 1-800-255-7688. The toll-free employer hotline is 1-800-255-8155.



Employers Must Make Good-Faith Efforts to Accommodate Religion

Requests for religious accommodation in the workplace are on the increase, requiring employers to demonstrate not only tolerance but also knowledge of employee and employer rights and responsibilities in order to avoid discriminatory practices. If an employee identifies a need for religious accommodation, the U.S. Equal Employment Opportunity Commission technical assistance publication “Religious Discrimination” advises the employer to take the following steps:

- Inquire as to the nature of the employee’s beliefs.
- Consider the nature of the conflict between the employee’s religious beliefs and his job obligations.
- Consider the burdens on business created by possible accommodations.
- Offer an accommodation unless such an accommodation would cause an undue hardship.

Accommodation may involve as little as asking fellow workers to switch shifts voluntarily. Flexible schedules, flexible breaks, allowing exchange of lunchtime for early departure time or prayer time also allow employees to make up time lost to the observance of religious practices. Accommodation in workplace attire can mean simply the tying of long sleeves or pants or headdress.

An employer can legally ask that an employee’s attire not pose a danger to that employee or to others. For Muslim refugees, an employer can require that a woman’s headscarf—or hijab—be arranged so that loose ends are tucked in for safety purposes. The employer may also ask that the hijab be neat and clean. Businesses with designated uniforms may request that the Muslim worker’s attire adhere to certain requirements of fabric, color, and style that are consistent with corporate image. Employers can also require that devout Muslim men who wear beards use proper covering such as hairnets or masks for safety and health reasons.

There are many legal precedents on workplace rights for Muslim employees, well documented by the Council on American-Islamic Relations and other legal advocates. For example, the failure of other Muslim employees to wear headscarves is legally irrelevant; the woman need only show sincerely held religious beliefs. Companies also cannot “give effect to private biases.” In other words, just because an employer believes customers will be prejudiced against a woman in a hijab does not give the employer a right to fire—or refuse to hire—a covered woman. Muslim employees may be reluctant to take part in social gatherings where alcohol is served; these employees cannot be penalized for not attending such functions. RefugeeWorks is preparing comprehensive training materials on Islam and Work—look for more information in coming issues of the newsletter.

WASHINGTON UPDATE

New Employment Provisions in ORR Final Rule

On March 22, the Office of Refugee Resettlement’s Final Rule governing refugee cash and medical assistance was published in the Federal Register. For details, readers can find an executive summary of the rule on ORR’s website (see “Online Connection” for web address). There are three major features of the rule specific to employment—work requirements, employment incentives and refugee medical assistance for employed workers.

Work Requirements

States are given flexibility and choice in how refugee cash assistance (RCA) and services will be provided to single adults and childless couples. A state that chooses to model its RCA program after its TANF program may *not* apply TANF work requirements. Instead, the state must apply existing work requirements pertaining to RCA recipients. The requirements and expectations for employment and participation in employment services in the refugee program are no less strict than in the TANF program, but the types of activities allowed in the refugee program are designed to meet the needs of newly arrived refugees who have little or no English skills.

Incentives

States that elect to establish a public-private RCA partnership program may combine RCA payments with employment incentives that exceed the monthly payment ceiling as long as the total combined payments to a refugee do not exceed the federal monthly ceiling multiplied by the allowable number of months of RCA eligibility.

Refugee Medical Assistance

The final rule contains major changes to refugee medical assistance (RMA) that will help refugees without medical coverage, such as those who become employed soon after arrival, to be eligible for RMA. It states that refugees residing in the United States less than eight months who lose their eligibility for Medicaid because of earnings from employment will be transferred to RMA without an eligibility determination.

Remedying Language Discrimination

On January 29, 1998, the Office for Civil Rights within the Office of the Secretary at U.S. Department of Health and Human Services released a Guidance Memorandum, which is **reprinted here as a tear-out page for your use**. The guidance addresses the issue of enforcement of Title VI of the 1964 Civil Rights Act with respect to obligations of HHS recipients to ensure that persons with limited English proficiency (LEP) have equal opportunity for program participation.

RefugeeWorks has learned that OCR recently drafted a new, even stronger version of the guidance that is now circulating for review within HHS. Again, however, the guidance is an unfunded mandate, without enforcement dollars to monitor compliance. Thus, the responsibility for educating mainstream agencies such as hospitals about their required bilingual provision of services often falls on the refugee service network professionals to assure compliance.

An excellent resource for assistance on language discrimination issues is the Language Rights Project, established by the Employment Law Center in San Francisco and the American Civil Liberties Union Foundation of Northern California. Their pamphlet "Language Discrimination" includes the three questions and answers we have summarized on the right.

When can an employer require an employee to speak only English at work?

Under federal law, an employee may challenge a "speak English only" policy in the workplace if 1) the rule is applied to employees who speak no English or who have difficulty speaking English or 2) the policy creates, or is part of, a work environment that is hostile toward national origin minority employees. If either condition applies, the employer must show some "business necessity" for the policy. Even if the employer shows "business necessity," the policy is still illegal if there are less discriminatory alternatives to the policy that achieve the same goals as effectively.

When can an employer treat an employee differently because of his or her accent?

Discrimination because of accent violates an employee's civil rights. The standard applied in these cases is that the employee's accent must "materially interfere with job performance" in order to justify any adverse action. In other words, the accent must have a significant negative effect upon the employee's ability to do the job.

When can an employer treat an employee differently because of lack of English proficiency?

An employer may not deny a person an employment opportunity because that person is not proficient or fluent in English, unless 1) the job that person performs actually requires some English language skills; and 2) the person does not possess the particular type and level of English language skill required.

Youth Employment to be Focus of New RefugeeWorks Publication

RefugeeWorks is now compiling a portfolio of youth employment initiatives for a manual that will be printed in September. Refugee youth, defined for this purpose as adolescents and young adults ages 14-21, face compelling economic and social challenges as they strive to adjust to and find their place in the United States. Responses to Youth Employment, the workshop we held at November's ORR National Conference, led us to conclude that this topic needs focused attention. Workshop attendees and many other agencies and communities nationwide have asked for further guidance on and strategies for meeting the employment needs of their refugee youth.

To this end, we are inviting our readers to share their experiences, describe program design and implementation issues, offer case studies, and suggest strategies for part-time or full-time employment options, internship and externship programs, career development, skills training, and college preparation program models. There are several targeted groups of refugee youth: in-school seventh and eighth graders; in-school ninth through twelfth graders; out-of-school teenagers; unemployed high school graduates; at-risk youth; youth in need of supervision; and parenting teens.

RefugeeWorks has hired Lorraine Cordeiro (pictured) to coordinate this effort. She is the former Youth Services Program Director at the Cambodian Mutual Assistance Association of Greater Lowell, Inc. During her tenure at the CMAA, youth enrollment increased from 28 to 400, as at-risk refugee and immigrant teenagers participated in a variety of effective and innovative programming. Readers can contact Ms. Cordeiro by phone at 978-937-1451 or by e-mail through our program assistant, Karen Willard, at kwillard@lirs.org.



Lorraine Cordeiro
coordinates new Youth
Employment Manual.

OFFICE FOR CIVIL RIGHTS/DHHS GUIDANCE MEMORANDUM

Title VI Prohibition Against National Origin Discrimination—Persons with Limited-English Proficiency

I. Background (excerpted)

OCR's position as set forth in this document is fully consistent with a government-wide Title VI regulation issued by the Department of Justice (DOJ) in 1976, "Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs," 28 C.F.R. Subpart F. The DOJ regulation addresses the circumstances in which recipients must provide language assistance, in written form, to Limited-English Proficiency (LEP) persons. The DOJ regulation does not address the question of oral language assistance. OCR's experience in conducting complaint investigations and compliance and pre-grant reviews demonstrates that oral communication between recipients and program beneficiaries is an integral part of the exchange that must occur in order for assisted programs and activities to appropriately function. Thus, OCR's longstanding position has been that recipients may be required to provide oral language assistance in languages other than English. This statement affirms this position.

II. Discussion (full text)

A. Who is Covered

All entities that receive Federal financial assistance from HHS, either directly or indirectly through a subgrant or subcontract, are covered by this guidance. Covered entities would thus include any state or local agency, private institution or organization, or any public or private individual that operates, provides or engages in health, medical or social service programs and activities that receive or benefit from HHS assistance.

B. Ensuring Equal Access to LEP Persons

All recipients have the responsibility for ensuring that their policies and procedures do not deny or have the effect of denying such LEP persons equal access to federally assisted health, medical and social service programs, benefits and services for which such persons qualify.

The key to ensuring equal access to benefits and services for LEP persons, is to ensure the service provider and the LEP client can communicate effectively, *i.e.*, the LEP client should be given information about, and be able to understand, the services that can be provided by the recipient to address his/her situation and must be able to communicate his/her situation to the recipient service provider. Recipients are more likely to utilize effective communication if they approach this responsibility in a structured rather than on an *ad hoc* basis.

Developing policies and procedures for addressing the language assistance needs of LEP persons may best be accomplished through an assessment of the points of contact in the program or activity where language assistance is likely to be needed, the non-English languages that are most likely to be encountered, the resources that

will be needed to fulfill this responsibility and the location and/or availability of such resources. In identifying available resources, recipients may find it helpful to consult with national origin organizations and groups in their service areas. **Achieving effective communication with LEP persons may require the recipient to take all or some of the following steps at no cost or additional burden to the LEP beneficiary:**

- **Have a procedure for identifying the language needs of patients/clients.**
- **Have ready access to, and provide services of, proficient interpreters in a timely manner during hours of operation.**
- **Develop written policies and procedures regarding interpreter services.**
- **Disseminate interpreter policies and procedures to staff and ensure staff awareness of these policies and procedures and of their Title VI obligations to LEP persons.**

C. Interpreter Services

In determining the type of interpreter services that will be provided, a recipient has several options. To meet its Title VI responsibility with respect to the provision of interpreter services, a recipient may:

- Hire bilingual staff
- Hire staff interpreters
- Use volunteer staff interpreters
- Arrange for the services of volunteer community interpreters
- Contract with an outside interpreter service
- Use a telephone interpreter service such as the AT&T Language Line
- Develop a notification and outreach plan for LEP beneficiaries

Factors that may be considered by a recipient in determining which option(s) will best meet its needs and the needs of its LEP beneficiaries are its size, the size of the LEP population it serves, the setting in which interpreter services are needed, the availability of staff members and/or volunteers to provide interpreter services during its hours of operation and the proficiency of available staff members or volunteers available to provide the needed services.

A recipient should not require a beneficiary to use friends or family members as interpreters. Use of such persons could result in a breach of confidentiality or reluctance on the part of beneficiaries to reveal personal information critical to their situations, to family or friends. In a medical setting, reluctance or failure to reveal critical personal information could have serious, even life threatening, health consequences. In addition, family and friends may not be competent to act as interpreters, since they may lack familiarity with specialized terminology.

However, a family member or friend may be used as an interpreter if this approach is requested by the LEP individual and the use of such a person would not compromise the effectiveness of services or violate the beneficiary's confidentiality, and the beneficiary is advised that a free interpreter is available.

A recipient should ensure that it uses persons who are competent to provide interpreter services. Competency does not necessarily mean formal certification as an interpreter, though this certification generally is preferable. However, the competency requirement does contemplate proficiency in both English and the other language, orientation or training which includes the ethics of interpreting, and fundamental knowledge in both languages of any specialized terms and concepts peculiar to the recipient's program or activity. For example, a hospital or medical clinic could use a nurse as a volunteer staff interpreter for a Hispanic beneficiary if the nurse speaks both English and Spanish proficiently. It can be assumed that in addition to language skills enabling the relay of critical information about the patient to medical personnel, the nurse will be sufficiently familiar with medical terminology to convey the medical meaning and importance of what is being communicated to the LEP patient. However, it would be inappropriate to use a person who had little knowledge of medical terms or a person who spoke English poorly. Similarly, it would be inappropriate to rely on a medical student who worked part-time and had learned some Spanish but did not speak the language proficiently. While the student would understand the medical terminology, and the use of part-time staff would be appropriate in many circumstances, it is unlikely that such a student would have sufficient Spanish language skills to communicate what is being said and its importance, by and to the LEP patient.

The options available to recipients for providing interpreter services to LEP persons have differing weaknesses and strengths depending on the situation. Hiring bilingual staff for certain critical positions, e.g., for patient or client contact positions, would facilitate participation by LEP persons. However, where there are several LEP language groups in a recipient's service area this option may be impractical as the only interpreter option, and additional language assistance options may be required.

Use of staff or community volunteers may provide recipients with a cost-effective method for providing interpreter services. However, recipients should ensure that such a system is sufficiently organized so that interpreters are readily available during all hours of its operation. In addition, recipients should ensure that such volunteers are qualified, trained and capable of ensuring patient confidentiality.

The use of contract interpreters may be an option for recipients that are small, have a significant but small LEP population, have less common LEP language groups in their service areas, or need to supplement their in-house capabilities on an as needed basis. Such contract interpreters should be readily available, qualified and trained. Paid staff interpreters are especially appropriate where there is a very large LEP presence in a few major language groups. As in other options, these persons should

be qualified and available. In most instances these employees are salaried and are entitled to the same benefits received by other employees.

A telephone interpreter service such as the AT&T language line may be a useful option as a supplemental system, or may be useful when a recipient encounters an unusual language that it cannot otherwise accommodate. Such a service often offers interpreting services in many different languages and usually can provide the service in quick response to a request. However, recipients should be aware that such services may not always have readily available interpreters who are familiar with the terminology peculiar to the particular program or service or may require special arrangements to use such persons.

III. Compliance and Enforcement

The recommendations outlined in Section II(B) are not intended to be exhaustive. Recipients are not required to use all of the suggested methods and options listed. However, recipients should establish and implement policies and procedures for fulfilling their Title VI equal opportunity responsibilities to LEP persons in the population eligible to be served.

In determining a recipient's compliance with Title VI, OCR's concern will be whether the recipient's system allows LEP beneficiaries to overcome language barriers and thus have equal access to, and an equal opportunity to participate in, health care and social service programs and activities. While a recipient is not required to use the options listed, and may use options that are equally effective, a recipient's appropriate use of the options and methods discussed in this guidance, will be viewed by OCR as evidence of a recipient's intent to comply with its Title VI obligations.

For example, a small health care clinic that accepts patients by appointment only and serves a small but significant LEP population may be able to meet its responsibility to its LEP clients by making arrangements for interpreter services on an as needed basis, and appropriately publicizing the availability of such arrangements.

On the other hand, the emergency room in a large hospital located in an area with a larger and more diverse LEP population may require a combination of language assistance options. In this setting, there are likely to be a variety of patient contact points, and immediate and accurate information to and from patients is usually critical. In such a situation the recipient also should have staff that are bilingual in English and other frequently encountered languages, in critical patient contact positions. If available staff is insufficient, the recipient should employ other staff interpreters and/or make other language assistance arrangements to ensure that there are no delays in providing medical care and no misunderstandings when conveying information to, or obtaining information or informal consent from, patients.

The procedural provisions of the regulations implementing Title VI, found at 45 C.F.R. Sections 80.6 through 80.10, are applicable to all complaints or compliance reviews regarding a recipient's compliance with its Title VI responsibility to LEP beneficiaries.

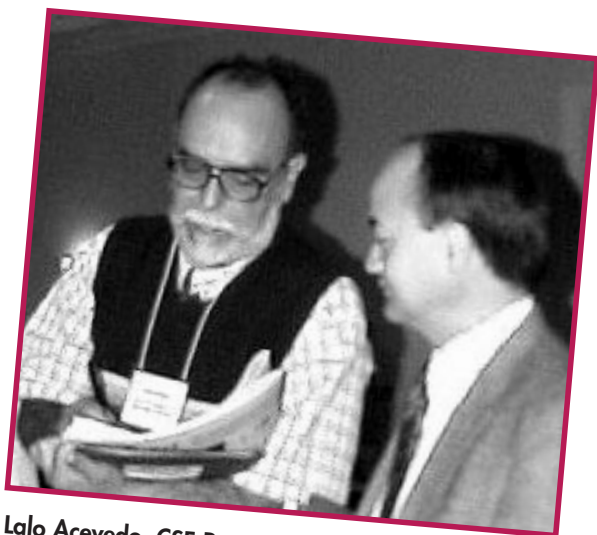
Comings and Goings

RefugeeWorks has taken Willie Nelson's "On the Road Again" as its theme song for this busy spring season. On March 23, Director Jane Bloom attended an exciting meeting in Chicago with the national manager of recruiting and staffing for Sears, Roebuck and Co., the company's national manager for field recruitment, and the local LIRS affiliate. They focused on launching a national Sears-RefugeeWorks partnership that will be piloted by Chicago's InterChurch Refugee and Immigration Ministries. Watch for details in the next newsletter issue.

Peer Expert Suad Barzanji traveled on behalf of RefugeeWorks to train at U.S. Catholic Conference's regional convenings in Chicago,



RefugeeWorks Assistant Director Jo Ann Soker listens to Alternative Project grantees from North Dakota, Vermont, and San Diego at the April 17-18 ORR meeting.



Lalo Acevedo, CSE Program Director, Economic Opportunities Commission, and Pao Fang, Executive Director, Lao Family Community, agency collaborators of the Fresno, California, CSE Program, confer during ORR's April CSE conference.

Miami and San Diego, conducting Islam and Work workshops. She also attended the Somali Women's Association in Minneapolis in late March and the Michigan Providers Conference on May 3-5.

April activities included participation in ORR's Community Service Employment Grantee Conference and its Alternative Project Grantee Conference. Bloom and Assistant Director Jo Ann Soker conducted workshops at the LIRS National Conference, April 5-8. Bloom also accompanied ORR on a site visit to its CSE grantees in Long Beach, California on April 25-26 and continued on to the Building the New American Community Conference in Los Angeles on April 27-28.

In May, RefugeeWorks developed and conducted a one-day training on diversity for the Michigan Providers Conference, utilizing the talents of Thomas Ford, former deputy state refugee coordinator in Massachusetts and now director of The WorkPlace in Boston, and of Suad Barzanji. We next flew to San Diego on May 17 to provide consultation to the Alternative Project partners, then, with peer expert Peter Daniels, to conduct training on May 18 to the Alliance for African Assistance and, on the May 19, facilitate a workshop at USCC's regional convening.

We will still be in high travel gear for the summer, when our schedule includes a technical assistance visit to the Fall River CSE; the National Advisory Committee Meeting at the Community Transportation Association of America Conference, where we expect to pick up lots of information on employment transportation; site visits to the CSE grantees in Wisconsin; and participation in ORR's National Symposium.

CORRECTION:

Last issue's earning disregard policies were incorrectly stated in four cases. The correct disregard amounts are as follows:

District of Columbia	Disregard \$100 and 50% of remainder	Virginia	Disregard \$120 and 33% of the remainder for 4 months, \$120 for next 8 months, and \$90 after 12 months
South Carolina	Disregard 50% for 4 months & \$100 in subsequent months	Wisconsin	None

ONLINE CONNECTION

This feature is designed as your “online connection” to additional information concerning the articles contained in this edition. Each website listed below is followed by the name of the organization that owns it and a brief description of the its contents.

www.hhs.gov/progorg/ocr—Office for Civil Rights.

This site provides anti-discrimination laws, guidances, and links to topic-specific sites. Civil rights-related documents can be downloaded in a variety of languages: Disabled Person’s Rights in Cambodian and Korean; HIV-AIDS Rights in Chinese and Tagalog; Rights Under Title VI in Laotian, Spanish, and Vietnamese; and a notice of translator service availability in 10 languages.

www.acf.dhhs.gov/programs/orr—Office of Refugee Resettlement, Administration for Children and Families.

The ORR website includes information on the Final Rule (see the Executive Summary for a simplified version), the Match Grant program, and frequently updated new funding opportunities. The site also provides a directory of ORR staff and links to other organizations, such as state refugee agencies, national voluntary agencies, federal agencies and technical assistance providers.

www.eeoc.gov—U.S. Equal Employment

Opportunity Commission. This website offers a variety of job discrimination information. Features include copies of federal laws and regulations prohibiting job discrimination, questions and answers concerning these laws, and enforcement guidelines.

Also of interest are the site’s resources for dispute mediation and statistics on job discrimination litigation.

www.usdoj.gov/crt/osc—Office of Special Counsel for Immigration Related Unfair Employment

Practices. This site explains the types of employment discrimination and how employers can guard against them. It also contains information concerning worker’s rights, press releases of discrimination adjudication and educational materials available for download.

www.shrm.org/hrmagazine—HR Magazine Online, Society for Human Resource Management.

Of particular interest is this site’s archive of past articles, which are organized by category and include such topics as diversity, legal issues, training, transportation and women’s issues.

www.cair-net.org—Council on American-Islamic

Relations. This site offers articles concerning issues of discrimination against Muslims in America. CAIR advocates for fair treatment of Muslims by the media, acts as watchdog on legislative issues affecting the Muslim community and raises awareness of other current events related to Islam.

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JANE BLOOM, ACSW
DIRECTOR

JO ANN SOKER
ASSISTANT DIRECTOR

KAREN WILLARD
PROGRAM ASSISTANT

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RALSTON DEFFENBAUGH,
PRESIDENT

BARBARA DAY, VICE PRESIDENT
FOR RESETTLEMENT

700 LIGHT STREET, THIRD FLOOR
BALTIMORE, MARYLAND 21230
PHONE: 410/230-2769
FAX: 410/230-2890
E-MAIL: [KWILLARD@LIRS.ORG](mailto:kwillard@lirs.org)
WEBSITE: WWW.LIRS.ORG