

**National Council on Disability  
Government Performance and Results Act  
Annual Report to the President and Congress  
Fiscal Year 2004**



**March 16, 2005**

**National Council on Disability**

1331 F Street, NW, Suite 850

Washington, DC 20004

Annual Performance Report to the President and Congress—Fiscal Year 2004

This report is also available in alternative formats and on NCD's award-winning Web site (<http://www.ncd.gov>).

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The views contained in this report do not necessarily represent those of the Administration, as this agency and NCD documents are not subject to the A-19 Executive Branch review process.

In accordance with 31 USC Sec. 1116 (f), this program performance report was prepared solely by federal employees.

## Letter of Transmittal

March 16, 2005

The President  
The White House  
Washington, DC 20500

Dear Mr. President:

The National Council on Disability (NCD) is pleased to submit its *Annual Performance Report to the President and Congress—Fiscal Year 2004*, as required by the Government Performance and Results Act (31 USC Sec. 1116).

As a unique independent federal agency and leader in the development and analysis of disability policy, the National Council on Disability (NCD) conducted a wide variety of activities in Fiscal Year (FY) 2004, with an authorized budget of \$3,021,070.

This report compares actual performance with the projected levels of performance set out in NCD's annual performance plan. As a public policy agency making recommendations to the President and Congress, NCD is pleased to inform you that the findings of this report show a positive link between the allocated resources and NCD's performance. NCD's assessment review showed that it was successful in meeting its goals and achieving its intended results.

NCD's FY 2004 activities promoted the full participation of people with disabilities in all areas of society by increasing access to assistive and universally designed technologies, expanding educational and employment opportunities, and promoting increased access into daily community life—the core of President Bush's New Freedom Initiative. These efforts were based on NCD's strategic goals: 1) Make evidence-based public policy recommendations that can enhance the lives of people with disabilities of all ages and backgrounds; 2) Educate the public and elected officials on disability issues; 3) Promote effective delivery of federal services and programs to all people with disabilities, particularly unserved and underserved populations such as people from diverse cultures, rural residents, and youth; and 4) Maintain NCD's status as a high performance organization.

Through its efforts, NCD was able to have a significant impact on the lives of people with disabilities and their families all over the world. Today, there are more than 54 million Americans with disabilities, 20 percent of the U.S. population. About half of these individuals have a severe disability, affecting their ability to see, hear, walk, or perform other basic functions of life.

With your support, NCD will continue to make recommendations that enhance the quality of life for all Americans with disabilities and their families, promote economic opportunity, support a compassionate society, and provide assistance to the most vulnerable among us.

Sincerely,

Ethel D. Briggs  
Executive Director

(The same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the U.S. House of Representatives)

# National Council on Disability Members and Staff

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Glenn Anderson, Ph.D., Second Vice Chairperson

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*My Administration is committed to tearing down the barriers to equality that face many of the 54 million Americans with disabilities...My New Freedom Initiative will help Americans with disabilities by increasing access to assistive technologies, expanding educational opportunities, increasing the ability of Americans with disabilities to integrate into the workforce, and promoting increased access into daily community life.*

President George W. Bush in the Forward to the New Freedom Initiative

## **Executive Summary**

### **Background**

The National Council on Disability (NCD) is an independent federal agency making recommendations to the President and Congress on issues affecting 54 million Americans with disabilities. NCD is composed of 15 members appointed by the President and confirmed by the U.S. Senate.

### **Statutory History**

NCD was initially established in 1978 as an advisory board within the Department of Education (Public Law 95-602). The Rehabilitation Act Amendments of 1984 (Public Law 98-221) transformed NCD into an independent agency.

### **Consumers Served and Current Activities**

While many government agencies deal with issues and programs affecting people with disabilities, NCD is the only federal agency charged with addressing, analyzing, and making recommendations on issues of public policy that affect people with disabilities regardless of age, disability type, perceived employment potential, economic need, specific functional ability, status as a veteran, or other individual circumstance. NCD recognizes its unique opportunity to facilitate independent living, community integration, and employment opportunities for people with disabilities by ensuring an informed and coordinated approach to addressing the concerns of people with disabilities and eliminating barriers to their active participation in community and family life.

NCD plays a major role in developing disability policy in America. In fact, it was NCD that originally proposed what eventually became the Americans with Disabilities Act (ADA). NCD's present list of key issues includes improving personal assistance services, promoting health care reform, including students with disabilities in high-quality programs in typical neighborhood schools, promoting equal employment and community housing opportunities, monitoring the implementation and enforcement of ADA, improving assistive technology, and ensuring that people with disabilities from culturally diverse backgrounds fully participate in society.

In its 1986 report, *Toward Independence*, NCD first proposed that Congress should enact a civil rights law for people with disabilities. Today, there are more than 54 million Americans with disabilities, a full 20 percent of the U.S. population. About half of these individuals have a severe disability, affecting their ability to see, hear, walk, or perform other basic functions of life.

In 1990, the Americans with Disabilities Act (ADA) was signed into law by President George H. W. Bush. Since that time, the ADA has been instrumental in guaranteeing equal opportunity for people with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications. In 1992, Congress modified NCD's authorizing legislation, Title IV of the Rehabilitation Act of 1973, giving NCD a monitoring role in the enforcement, implementation, and effectiveness of the ADA.

In FY 2004, NCD continued its review and evaluation of new and emerging policy issues that affect people with disabilities. NCD continued to identify the overall needs and concerns of people with disabilities by conducting hearings, forums, and conferences throughout the country, and by responding to thousands of telephone, e-mail, and written inquiries on the ADA and other disability civil rights issues.

Major activities for FY 2004 included the release of a report detailing the agency's history, *National Council on Disability: 20 Years of Independence*, and several policy papers on topics such as the Air Carrier Access Act, Native Americans, educational outcomes, federal disability data, and the United Nations.

In addition, five NCD board members were renominated to NCD by President Bush. They are: Milton Aponte, J.D., Cooper City, FL; Robert R. Davila, Ph.D., Sioux Falls, SD; Young Woo Kang, Ph.D., Munster, IN; Kathleen Martinez, Albany, CA; and Linda Wetters, Columbus, OH.

#### **Fiscal Year 2004**

Influencing the policy making process is a major focus of NCD in the work that it supports. Informing and influencing federal policy making and implementation is a core activity of NCD.

As a leader in the development and analysis of disability policy, NCD conducted numerous activities in Fiscal Year (FY) 2004, with an authorized budget of \$3,021,070. NCD promoted policies, programs, practices, and procedures that guaranteed equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability. NCD's work supported the President's New Freedom Initiative and also helped individuals with disabilities realize the promise of the ADA by empowering them to achieve economic self-sufficiency, independent living, inclusion, and integration into all aspects of society.

Activities for FY 2004 also included the release of several publications. They are:

- *National Council on Disability: 20 Years of Independence*
- *Position Paper on Amending the Air Carrier Access Act to Allow for Private Right of Action*
- *Update on the UN Convention on the Rights of People with Disabilities*
- *Summary of the Native American Forum: Disability Matters in Tribal Communities*
- *Improving Educational Outcomes for Students with Disabilities*
- *Higher Education Act Fact Sheet*
- *Improving Federal Disability Data*

- *Outreach and People with Disabilities from Diverse Cultures: A Review of the Literature*
- *The Supreme Court's Kirkingburg Decision and the Impact of Federal Safety Regulations in ADA Cases*
- *The Supreme Court's Refusal to Permit Punitive Damages in Private Lawsuits Under Section 202 of the ADA*

### **Communications**

In addition, it should be noted that NCD's effective communications strategy for the dissemination of NCD's work was evidenced by the high volume of publicity generated in FY 2004. During the year, NCD received thousands of news clips from its news clipping service, reflecting a high degree of interest by the media in NCD's initiatives and activities. This symbiotic relationship between NCD and the media helps disseminate important disability-related information that affects all Americans with disabilities and their families.

### **Performance Results**

Aligned with the President's Management Agenda (PMA), several key disciplines were highlighted in NCD's work during Fiscal Year 2004.

NCD identified the agency-wide results that were desired, outlined strategies to achieve them and worked assertively to realize those defined goals. A focus on results was not new for NCD; however, self-assessment and accountability with respect to specific and measurable outcomes were given more conspicuous positions.

Based on work plan goals and needs, NCD identified needed additional knowledge, skills and abilities within its own small staff and began to look at ways to make greater and more efficient use of its personnel. Policy team staff leaders were more actively engaged in development of the agency work plan and related activities. Efforts were made to capitalize on the strengths that individuals brought to the workplace. These efforts included regular staff as well as contractors and unpaid interns who contributed commendably to the work of policy team research, related projects and agency advisory committees. NCD's outreach to gather perspectives from underserved and unserved citizens (e.g., youth and people from diverse cultures) continued in the agency's ongoing efforts to make broadly informed public policy recommendations. Collaboration and team work across policy and administrative staff also saw a level of improvement and support through training opportunities, flexible assignments and alternate work locations. Policy team meetings were also open routinely to administrative personnel who were encouraged to participate in discussions.

NCD continued its long-standing and successful practice of determining when services outside the federal government were beneficial for reaching the agency's identified goals. Strides were also made in the ongoing evaluation of how work (e.g., research and related projects) progressed toward the stated agency goals and written cooperative agreements with outside contractors. The improvements in this area resulted in recognizing, and aggressively taking steps to remove, low-performing contractors in a timely manner. Outreach was expanded to solicit and continue to attract highly qualified vendors.

Management and implementation of NCD's work plan and related activities were enhanced by greater collaboration among members of the agency's policy and administrative teams. The effectiveness of this practice was shown in improved procedures for justifying and allocating funds within a small budget. Other staff input from policy and administration aspects also resulted in a number of practices and systems developed and implemented as checks and balances. The policy team also developed a process for in-house collection of impact indicators related to NCD's work products and related activities. Continued self-assessment will aid ongoing improvements in how the agency carries out its mission.

Many NCD project and program objectives reflect the expectation that the policy work supported at NCD will and should influence and have an impact on the policy process. Within projects and programs, for example, NCD staff promote various means of linking research to policy, and research supported is often reported to have enhanced decision makers' awareness of policy options or to have been otherwise taken into account in policy processes.

As indicated in previous Government Performance and Results Act annual reports, in its advisory capacity NCD has had an influence on the IDEA reauthorization process over a three-year period. In 2004, NCD issued a policy paper that examined the evidence base for the use of school vouchers for students with disabilities. In addition, NCD's IDEA report from January 2000, IDEA policy papers from 2000 to 2003, and IDEA public testimony before the House and Senate as well as before the U.S. Commission on Civil Rights and Presidential Commission on Excellence in Special Education resulted in the use of NCD research and resources through: (a) GAO interviews with NCD and reliance on NCD reports as a benchmark and framework for the Government Accountability Office report GAO-04-879 *Special Education: Improved Timelines and Better Use of Enforcement Actions Could Strengthen Education's Monitoring System*; (b) reference to NCD research and advice as indicated in the *Congressional Record* on May 13, 2004 (i.e., regarding state waiver programs and needed protections for IDEA eligible students, which was included in the final IDEA bill) and on November 19, 2004 (i.e., regarding the monitoring and enforcement that was needed to hold the Department of Education to a higher standard, and which will improve their capacity to hold States accountable for fixing problems); and (c) the final IDEA bill, including the provisions related to enhanced monitoring and enforcement (Sec. 616), and the provision involving a 15-state paperwork demonstration waiver program that prohibits the U.S. Secretary of Education from waiving any statutory requirements of, or regulatory requirements relating to, applicable civil rights requirements, which was conferred on November 17, 2004.

During this period, NCD increasingly relied on its ability to provide cost-effective and efficient dissemination of its work through the use of information technology (i.e., its Web site). For example, during the fiscal year, NCD's Web site received in excess of 2,500,000 visits, including an increasing number of first-time visitors.

An increasing number of visitors to NCD's Web site are interested in downloading copies of NCD's reports, policy briefs, and other pertinent outcomes. During FY 2004, 209,779 reports were downloaded, saving thousands of dollars in printing and approximately \$50,000 in postage.

This is an NCD fiscal year record and fully supports the President's expanded electronic government management initiative to improve the government's ability to serve its citizens. All NCD reports are accessible to all people with disabilities. NCD provides all of its documents in braille, large print, on cassette and diskette, and on the Internet. Some NCD documents are also available in Spanish, Chinese, and Vietnamese. All NCD Web documents can be roughly translated into multiple languages other than English with the use of a free Web.

Overall, the findings of this annual performance report clearly indicate that NCD has either met or exceeded the projected levels in our performance plan.

## **NCD Authorizing Statute**

### **TITLE IV, REHABILITATION ACT OF 1973, AS AMENDED--NATIONAL COUNCIL ON DISABILITY**

#### **Establishment of National Council on Disability**

##### **Sec. 400. (a)(1)**

**(A)** There is established within the Federal Government a National Council on Disability (hereinafter in this title referred to as the “National Council”), which shall be composed of fifteen members appointed by the President, by and with the advice and consent of the Senate.

**(B)** The President shall select members of the National Council after soliciting recommendations from representatives of—

- (i)** organizations representing a broad range of individuals with disabilities; and
- (ii)** organizations interested in individuals with disabilities.

**(C)** The members of the National Council shall be individuals with disabilities, parents or guardians of individuals with disabilities, or other individuals who have substantial knowledge or experience relating to disability policy or programs. The members of the National Council shall be appointed so as to be representative of individuals with disabilities, national organizations concerned with individuals with disabilities, providers and administrators of services to individuals with disabilities, individuals engaged in conducting medical or scientific research relating to individuals with disabilities, business concerns, and labor organizations. A majority of the members of the National Council shall be individuals with disabilities. The members of the National Council shall be broadly representative of minority and other individuals and groups.

**(2)** The purpose of the National Council is to promote policies, programs, practices, and procedures that—

**(A)** guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and

**(B)** empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

**(b)(1)** Each member of the National Council shall serve for a term of 3 years, except that the terms of service of the members initially appointed after the date of enactment of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978

shall be (as specified by the President) for such fewer number of years as will provide for the expiration of terms on a staggered basis.

**(2)(A)** No member of the National Council may serve more than two consecutive full terms beginning on the date of commencement of the first full term on the Council. Members may serve after the expiration of their terms until their successors have taken office.

**(B)** As used in this paragraph, the term “full term” means a term of 3 years.

**(3)** Any member appointed to fill a vacancy occurring before the expiration of the term for which such member’s predecessor was appointed shall be appointed only for the remainder of such term.

**(c)** The President shall designate the Chairperson from among the members appointed to the National Council. The National Council shall meet at the call of the Chairperson, but not less often than four times each year.

**(d)** Eight members of the National Council shall constitute a quorum and any vacancy in the National Council shall not affect its power to function.

### **Duties of National Council**

**Sec. 401. (a)** The National Council shall—

**(1)** provide advice to the Director with respect to the policies and conduct of the National Institute on Disability and Rehabilitation Research, including ways to improve research concerning individuals with disabilities and the methods of collecting and disseminating findings of such research;

**(2)** provide advice to the Commissioner with respect to the policies of and conduct of the Rehabilitation Services Administration;

**(3)** advise the President, the Congress, the Commissioner, the appropriate Assistant Secretary of the Department of Education, and the Director of the National Institute on Disability and Rehabilitation Research on the development of the programs to be carried out under this Act;

**(4)** provide advice regarding priorities for the activities of the Interagency Disability Coordinating Council and review the recommendations of such Council for legislative and administrative changes to ensure that such recommendations are consistent with the purposes of the Council to promote the full integration, independence, and productivity of individuals with disabilities;

**(5)** review and evaluate on a continuing basis—

(A) policies, programs, practices, and procedures concerning individuals with disabilities conducted or assisted by Federal departments and agencies, including programs established or assisted under this Act or under the Developmental Disabilities Assistance and Bill of Rights Act of 2000; and

(B) all statutes and regulations pertaining to Federal programs which assist such individuals with disabilities;

in order to assess the effectiveness of such policies, programs, practices, procedures, statutes, and regulations in meeting the needs of individuals with disabilities;

(6) assess the extent to which such policies, programs, practices, and procedures facilitate or impede the promotion of the policies set forth in subparagraphs (A) and (B) of section 400(a)(2);

(7) gather information about the implementation, effectiveness, and impact of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(8) make recommendations to the President, the Congress, the Secretary, the Director of the National Institute on Disability and Rehabilitation Research, and other officials of Federal agencies or other Federal entities, respecting ways to better promote the policies set forth in section 400(a)(2);

(9) provide to the Congress on a continuing basis advice, recommendations, legislative proposals, and any additional information that the National Council or the Congress deems appropriate; and

(10) review and evaluate on a continuing basis new and emerging disability policy issues affecting individuals with disabilities at the Federal, State, and local levels, and in the private sector, including the need for and coordination of adult services, access to personal assistance services, school reform efforts and the impact of such efforts on individuals with disabilities, access to health care, and policies that operate as disincentives for the individuals to seek and retain employment.

(b)(1) Not later than October 31, 1998, and annually thereafter, the National Council shall prepare and submit to the President and the appropriate committees of the Congress a report entitled *National Disability Policy: A Progress Report*.

(2) The report shall assess the status of the Nation in achieving the policies set forth in section 400(a)(2), with particular focus on the new and emerging issues impacting on the lives of individuals with disabilities. The report shall present, as appropriate, available data on health, housing, employment, insurance, transportation, recreation, training, prevention, early intervention, and education. The report shall include recommendations for policy change.

(3) In determining the issues to focus on and the findings, conclusions, and recommendations to

include in the report, the National Council shall seek input from the public, particularly individuals with disabilities, representatives of organizations representing a broad range of individuals with disabilities, and organizations and agencies interested in individuals with disabilities.

### **Compensation of National Council Members**

**Sec. 402. (a)** Members of the National Council shall be entitled to receive compensation at a rate equal to the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code, including travel time, for each day they are engaged in the performance of their duties as members of the National Council.

**(b)** Members of the National Council who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the National Council except for compensation for travel expenses as provided under subsection (c) of this section.

**(c)** While away from their homes or regular places of business in the performance of services for the National Council, members of the National Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

### **Staff of National Council**

**Sec. 403. (a)(1)** The Chairperson of the National Council may appoint and remove, without regard to the provisions of title 5, United States Code, governing appointments, the provisions of chapter 75 of such title (relating to adverse actions), the provisions of chapter 77 of such title (relating to appeals), or the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates), an Executive Director to assist the National Council to carry out its duties. The Executive Director shall be appointed from among individuals who are experienced in the planning or operation of programs for individuals with disabilities.

**(2)** The Executive Director is authorized to hire technical and professional employees to assist the National Council to carry out its duties.

**(b)(1)** The National Council may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code (but at rates for individuals not to exceed the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code).

(2) The National Council may—

(A) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31, United States Code;

(B) in the name of the Council, solicit, accept, employ, and dispose of, in furtherance of this Act, any money or property, real or personal, or mixed, tangible or nontangible, received by gift, devise, bequest, or otherwise; and

(C) enter into contracts and cooperative agreements with Federal and State agencies, private firms, institutions, and individuals for the conduct of research and surveys, preparation of reports and other activities necessary to the discharge of the Council's duties and responsibilities.

(3) Not more than 10 per centum of the total amounts available to the National Council in each fiscal year may be used for official representation and reception.

(c) The Administrator of General Services shall provide to the National Council on a reimbursable basis such administrative support services as the Council may request.

(d)(1) It shall be the duty of the Secretary of the Treasury to invest such portion of the amounts made available under subsection (a)(2)(B) as is not, in the Secretary's judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(2) The amounts described in paragraph (1), and the interest on, and the proceeds from the sale or redemption of, the obligations described in paragraph (1) shall be available to the National Council to carry out this title.

### **Administrative Powers of National Council**

**Sec. 404. (a)** The National Council may prescribe such bylaws and rules as may be necessary to carry out its duties under this title.

(b) The National Council may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as it deems advisable.

(c) The National Council may appoint advisory committees to assist the National Council in carrying out its duties. The members thereof shall serve without compensation.

(d) The National Council may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(e) The National Council may use, with the consent of the agencies represented on the

Interagency Disability Coordinating Council, and as authorized in title V, such services, personnel, information, and facilities as may be needed to carry out its duties under this title, with or without reimbursement to such agencies.

### **Authorization of Appropriations**

#### **Sec. 405.**

There are authorized to be appropriated to carry out this title such sums as may be necessary for each of the fiscal years 1999 through 2003.

# Strategic Plan

## **Vision**

The United States of America will be a stronger country when its 54 million citizens with disabilities are fully integrated into all aspects of American life. The United States has made significant progress in recent years in furthering opportunities for education, employment and independent living for people with disabilities through a broad range of programs that protect the rights of individuals with disabilities from discrimination in education, employment, housing and transportation. Yet significant barriers to achieving the goals of independence, inclusion and empowerment for all persons with disabilities still remain. Conflicting, poorly designed or outdated government programs and policies combine with service gaps and continued negative attitudes toward people with disabilities to marginalize the 54 million Americans with disabilities.

The effects of these barriers on both people with disabilities and society are enormous. Physical and spiritual isolation rob individuals of energy, creativity and productivity. Society loses by not enjoying the benefits of their talents and by incurring large costs to support them.

Through collaboration with its stakeholders, the National Council on Disability (NCD) will pursue a focused agenda that will promote government programs and policies in support of full inclusion of all people with disabilities into the educational, economic and social fabric of the American community. NCD will use the expertise of its diverse membership and well-trained and well-managed staff to identify barriers to inclusion and independence and to develop solutions. NCD will listen to people with disabilities across the country to identify emerging issues that need a response.

As the only agency in the Federal Government that addresses the issues of all people with disabilities, regardless of type or severity, NCD will be aggressive and resolute until the day arrives when people with disabilities in every corner of the land no longer are distinguished by a disability label, but are known as students, workers, parents, neighbors and friends.

## **Mission Statement**

NCD's mission is to promote the full inclusion, independent living and economic self-sufficiency of people with disabilities of all ages and backgrounds by providing advice, analysis, and recommendations on disability policy to the President, Congress, and other federal entities.

## Strategic Goals, Objectives, and Results

### I. Make evidence-based public policy recommendations that can enhance the lives of people with disabilities of all ages and backgrounds.

#### Objectives:

- 1.1 Develop and refine policy recommendations at least annually.
- 1.2 Gather and record information on policy matters affecting people with disabilities through the use of forums, hearings, teleconferences, the Internet, independent studies, and interagency information sharing.
- 1.3 Monitor the effectiveness of the implementation of the Americans with Disabilities Act and other civil rights laws.

#### Results:

- 1.1 NCD reviewed and evaluated new and emerging policy issues affecting people with disabilities at the federal, state, and local levels, and in the private sector, and developed policy recommendations where needed. During FY 2004, NCD produced 10 publications containing specific policy recommendations. They include: *National Council on Disability: 20 Years of Independence*; *Position Paper on Amending the Air Carrier Access Act to Allow for Private Right of Action*; *Update on the UN Convention on the Rights of People with Disabilities*; *Summary of the Native American Forum: Disability Matters in Tribal Communities*; *Improving Educational Outcomes for Students with Disabilities*; *Higher Education Act Fact Sheet*; *Improving Federal Disability Data*; *Outreach and People with Disabilities from Diverse Cultures: A Review of the Literature*; *The Supreme Court's Kirkingburg Decision and the Impact of Federal Safety Regulations in ADA Cases*; and, *The Supreme Court's Refusal to Permit Punitive Damages in Private Lawsuits Under Section 202 of the ADA*.
- 1.2 NCD gathered information and identified the overall needs and concerns of people with disabilities in a variety of ways that included hearings and conferences, and by responding to literally thousands of telephone calls, e-mail messages, and written inquiries.

#### ADA Monitoring

In keeping with its mandate to monitor the effectiveness and implementation of the ADA, NCD continued its two-year project to analyze the Supreme Court decisions interpreting the ADA. This project involved publication of 19 policy briefs, available at <http://www.ncd.gov/newsroom/publications/2003/policybrief.htm>. NCD released the last two policy briefs in this series in FY 2004.

1. In *Barnes v. Gorman*, 536 U.S. 181 (2002), the Supreme Court ruled that punitive damages may not be awarded in private suits brought under Title VI of the 1964 Civil

Rights Act, under Section 202 of the Americans with Disabilities Act (ADA), or under Section 504 of the Rehabilitation Act. This policy brief examines the nature and purpose of punitive damages, their availability under the ADA, and the substance and ramifications of the Court's ruling in *Barnes*.

2. In *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555 (1999), the Supreme Court of the United States ruled that the defendant employer was entitled to rely on a Department of Transportation (DOT) visual acuity standard as a job qualification criterion for a truck driver position. This policy brief examines the intersection of the ADA requirements with safety standards imposed under other federal laws, and the ramifications of the Court's decision in *Kirkingburg* on this issue.

The project culminated in a comprehensive final report, *Righting the ADA* ([http://www.ncd.gov/newsroom/publications/2004/righting\\_ada.htm](http://www.ncd.gov/newsroom/publications/2004/righting_ada.htm)), which includes NCD's legislative proposal, entitled "ADA Restoration Act," intended to restore the protections of the ADA that have been restricted by the U.S. Supreme Court decisions over the past few years.

#### **NCD Awards ADA Impact Study Contract**

NCD awarded a contract for \$180,000 to Lockheed Martin Information Technology of Seabrook, Maryland, to evaluate the impact of the Americans with Disabilities Act (ADA) and the effects of U.S. Supreme Court cases interpreting ADA. The contractor will gather input from ADA stakeholders about the impact of ADA, gather testimony and documentation regarding the impact of the Supreme Court's decisions on people with disabilities, assemble all information gathered, organize all testimony and incidents reported into a consistent format within each of the issue areas, and summarize the findings.

#### **Mediation Technical Assistance**

NCD collaborated with the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice on a Mediation Technical Assistance Project to enhance the use of mediation by people with disabilities to resolve employment disputes and highlight the importance of reasonable accommodation in the alternative dispute resolution process. EEOC has dealt with these issues in its highly regarded mediation program for resolving employment discrimination claims. NCD examined mediation issues in its ADA report *Promises to Keep* and has worked with mediators on accessibility issues. EEOC and NCD combined their experience and expertise to provide technical assistance on disability issues in the mediation of employment discrimination disputes.

#### **Results:**

Two technical assistance documents were produced -- one for mediators and one for consumers.

## **Access to Air Travel**

NCD continued its collaboration with the U.S. Department of Transportation (DOT) to work with consumers with disabilities and the airline industry to improve travel experiences for people with disabilities and airline and airport personnel providing customer service.

“Improving Air Travel for Passengers with Disabilities” through analysis and revision of the Air Carrier Access Act and Rehabilitation Act Part 382, is a joint project of the NCD and DOT. NCD activities include facilitating workgroups with members from the disability, airline and airport communities, as well as providing technical direct assistance to DOT regarding various air travel disability issues. This project produced the following outputs during fiscal year October 2003 through September 2004:

1. Developed and submitted to DOT the joint stakeholder Petition for Rulemaking “Proposed Regulatory Language for Part 382 Amendments Concerning Accommodations for Deaf, Hard of Hearing and Deaf-Blind Passengers.”
2. Developed and submitted to DOT the joint stakeholder document “Proposed Guidance for Service Animal Relief Areas in Airports.”
3. Assisted DOT to plan and deliver its 2004 disability forum, “Working Together to Improve Air Travel by People with Disabilities.”
4. Participated in the 2004 Transportation Security Administration’s (TSA) Disability Coalition Meeting.
5. Participated in the stakeholder meeting regarding accessibility of information and service kiosks used by airlines at airports.
6. Provided content input for DOT’s Technical Assistance Manual for airline and airport employees.
7. Provided content input and assisted DOT in developing a cost analysis measurement tool for proposed regulatory revisions regarding passenger travel with medical devices.
8. Provided monthly workgroup and relevant DOT update reports to stakeholders.
9. Facilitated ongoing communications between DOT and project stakeholders.

NCD also continued to collaborate with TSA in the development of policies, procedures, and training of security personnel to improve the accessibility of security screenings at U.S. airports.

As a result of its efforts, NCD received the U.S. Department of Homeland Security award “in appreciation for partnering initiatives, diligent efforts, support, and steadfast commitment in the creation and continuance of TSA’s Screening of Persons with Disabilities Program.”

### **Long-Term Services and Supports**

NCD has awarded a contract to National Cooperative Bank Development Corporation, National Disability Institute, to conduct a research study examining critical issues surrounding the configuration, financing, and delivery of long-term services and supports financing and systems reform. Current financing mechanisms will become unsustainable in the near future. Without significant reform, tens of millions of Americans with disabilities will be unable to find the wide array of affordable and high-quality long-term services and supports options we all expect and deserve.

This research will focus on the following areas: (1) current level(s) and type(s) of involvement by the Federal Government in a range of long-term services and supports systems and financing; (2) current and projected future needs for long-term services and supports among people with disabilities and the elderly; (3) gaps in long-term services and supports; (4) key features of future long-term care financing and systems reforms; (5) locales that have incorporated indicators of cohesive and comprehensive reform into their policy and service systems; (6) major challenges and barriers that locales face in moving toward cohesive and comprehensive long-term services and supports financing and systems reform; and (7) promising policy levers and policy changes.

Through this research, NCD will focus its attention and resources on an impending crisis in American domestic policy.

### **Cultural Diversity**

NCD released *Outreach and People with Disabilities from Diverse Cultures: A Review of the Literature*, with findings and recommendations. The review showed a paucity of empirical studies of outreach as an intervention, few studies evaluating the effectiveness of outreach activities, and an extensive body of information on racial and ethnic health disparities. The review also presented operational definitions of outreach and principal outreach themes, described and provided examples of outreach, and discussed challenges, given a number of identified barriers to access and appropriate services. The forum phase of the Cultural Diversity Initiative extended across FY 2003 and FY 2004 and engaged federal officials and people with disabilities from diverse cultures in dialogue about ways to address documented issues. NCD posted its summary recommendations on unserved and underserved people with disabilities, *Transcending the Barriers and Gaining Entry: A Culturally Competent-Realm of Community Integration for Americans with Disabilities* ([http://www.ncd.gov/newsroom/advisory/cultural/barriers\\_rev051800.htm](http://www.ncd.gov/newsroom/advisory/cultural/barriers_rev051800.htm)). Developed earlier (May 2000), this document was also used as background materials for the forum. Consistent with the New Freedom Initiative, federal officials participating in the forum said that they wanted to close gaps the data showed in access, services, and awareness of

disability civil rights among racial/ethnic groups. Federal agencies participating in the diversity forum represented the Departments of Education, Justice, Transportation, Labor, and Health and Human Services (Office of Disability and the Administration on Developmental Disability), the Social Security Administration, the Equal Employment Opportunity Commission, and the Federal Communications Commission. NCD stands ready to assist future contacts among agencies and people in the field to follow up on commitments to alleviate inequities.

### **Federal Disability Data**

NCD released a position paper, *Improving Federal Disability Data* (<http://www.ncd.gov/newsroom/publications/2004/improvedata.htm>), describing critical issues involving federal disability data.

The paper describes an urgent and immediate need for the Departments of Commerce and Labor to address matters related to the collection of disability data through the Decennial Census, the American Community Survey, and the Current Population Survey.

Every 10 years the U.S. Census Bureau conducts a complete accounting of every resident in the United States. While there is no congressional mandate requiring an accurate enumeration of Americans with disabilities, communities and people with disabilities will be affected if the Census is inaccurate. Census data are used by educators, policymakers, and community leaders. Census data directly affect funding for many programs critical to individuals with disabilities, including programs for health care, transportation, employment training, and housing. Federal, state, and county governments use Census information to guide the annual distribution of hundreds of billions of dollars in critical services and supports.

There have been some improvements in interview methodology and in the use of a few disability questions in the Decennial Censuses over the past 30 years. Unfortunately, those improvements have been small and incremental.

At a time when cash-strapped states are grappling with major unmet human service needs and increasing numbers of people require a range of services and supports from federal-state programs, the responsibility of our nation's public leadership is at an all-time high to provide accurate Decennial Census data (and related federal survey data such as the Current Population Survey conducted by the U.S. Bureau of Labor Statistics) to states and locales.

NCD recommends:

The U.S. Census Bureau should immediately revise Census questions for the Year 2010 Census (and the American Community Survey) to reflect the ADA definition.

The Department of Labor should finish its work with all due haste involving questions being developed by the Bureau of Labor Statistics (BLS) to identify people with

disabilities in response to Executive Order 13078 through its redesign of disability employment questions for the BLS Current Population Survey.

NCD acknowledges that the collection of disability data involves complex issues, methodologies, and activities. NCD is fully confident that these Cabinet agencies can address these concerns and recommendations in a timely and effective way.

### **Education for Students with Disabilities**

NCD released *Improving Educational Outcomes for Students with Disabilities*, which was commissioned to assist policy leaders and stakeholders in identifying, disseminating, and aligning evidence-based outcome-producing practices with the Federal Government's commitment to leaving no child behind in the attainment of a free, appropriate public education.

Thanks to the Individuals with Disabilities Education Act (IDEA) and its push for increased access to education for students with disabilities, and the No Child Left Behind Act (NCLB), with its push for improved student outcomes, educators across the United States are reexamining their practices to find ways to close the achievement gaps between groups of students. Students with disabilities are a focus of this attention, as schools and states labor to improve their academic outcomes. Currently, the diploma graduation rate for students with disabilities is 57 percent under IDEA. Policymakers are studying both the reauthorization of IDEA and the ongoing implementation of NCLB to determine the most effective means for serving students with disabilities.

Fortunately, there are signs of positive change and evidence that holding students, including students with disabilities, to higher expectations results in improved outcomes. These facts led to NCD's primary recommendation, which is "stay the course."

### **NCD Makes Education Recommendations to Congress**

In a June 21, 2004, letter to Chairman John Boehner of the House Education and Workforce Committee, NCD made recommendations in six areas dealing with educational outcomes for students with disabilities:

1. **Stay the Course.** While some naysayers believe that the No Child Left Behind Act (NCLBA) sets too high a bar for students and schools, the vast majority of people believe that we must maintain high expectations for all students, particularly students with disabilities.
2. **Capacity Building.** So that school leaders and education practitioners can provide the support to help every child meet higher expectations, they need assistance in learning strategies that are effective. Public investments should be carefully directed to professional and leadership development efforts that are tightly linked to the specific needs of each school or district and that address capacity issues related to teaching and

learning and helping all students, particularly students with disabilities, reach high standards.

3. **Highly Qualified Teachers.** Standards for highly qualified teachers should not be relaxed, although limited flexibility in reaching those standards, especially for rural schools, is appropriate. The U.S. Department of Education should conduct research and analysis on effective methods of teacher preparation, including alternative routes to certification, with a particular focus on special education. The higher education system also needs to find new ways to prepare highly qualified teachers.

4. **Better Assessment Tools.** The U.S. Department of Education can play an important role in supporting research and development efforts to create a new generation of assessments that are appropriate for a large number of diverse students; measure more than academic skills; can be used as instructional management tools; and result in an increased number of students taking alternative assessments.

5. **Support and Disseminate Evidence-Based Research and Practice.** It is clear that we need more rigorous research on effective strategies for older students with disabilities. Both the Individuals with Disabilities Education Act and No Child Left Behind should support an enhanced research agenda, and the U.S. Department of Education should bridge research efforts by the Office of Special Education and Rehabilitative Services and the Institute of Education Sciences. Research is particularly needed to understand how to offer more academic rigor to students with disabilities and to understand optimal assessment tools.

6. **Support for Students.** While research on students with disabilities is limited, a range of other research on high school reform points to strategies that are successful in improving student outcomes. The U.S. Department of Education should provide technical assistance on strategies to help students increase engagement in high school, reduce dropout rates, and increase preparation for postsecondary education and careers by higher expectations, greater instructional personalization, self-advocacy, ongoing counseling and mentoring, parental involvement, and connections to the community and postsecondary learning options.

### **NCD Made Transportation Recommendations**

NCD made recommendations to Congress on the reauthorization of the Transportation Equity Act (TEA):

1. Support the House bill (H.R. 3550) approach to funding for New Freedom Initiatives. While both H.R. 3550 and S. 1072 provide for the development of innovative transportation initiatives to facilitate partnerships among transportation providers, people with disabilities, and human service providers that promote access to alternate methods of transportation, H.R. 3550 establishes the New Freedom Initiative as a separate and distinct program with more flexibility and greater opportunities for consumer-directed,

innovative transportation solutions. The House bill allows for the development of promising practices such as accessible taxi services, transportation voucher systems, and support for volunteer driver programs, whereas the Senate bill folds funding for New Freedom Initiatives into an existing, transportation provider-directed structure with a focus on vehicle purchases. The House bill is much more likely to result in innovative and integrated transportation solutions for people with disabilities.

2. Support the House bill approach to funding for Project Action—a highly successful federal program that brings transportation providers and people with disabilities together to improve access to transportation. The House bill increases Project Action funding from \$3 to \$3.5 million and guarantees the funding, whereas the Senate bill level-funds Project Action and does not guarantee the funding.

3. Support the expressed inclusion of individuals with disabilities in all aspects of transportation plans and projects, as was done in Sections 1115, 1120, 1402, 3021, 5602, 5213, 5214, and 6001 of the House bill. All too often, access for people with disabilities is not considered during the planning and design of transportation projects. People with disabilities must be included in transportation planning and projects in order to ensure that all transportation options are open to them and that they can live and participate fully in their communities.

4. Support the provisions in the House bill that call for coordination of transportation resources at the federal, state, and local levels. Many human services agencies buy vans to transport clients, including those with disabilities, to and from services. These agencies often do not coordinate with transportation entities that provide related transportation services, such as paratransit. Human services vans can sit idly for extended periods, while people with disabilities in the same community have difficulty accessing public transportation. In addition, many urban and rural providers are prohibited from picking up residents outside designated areas, even though they may drive directly through those areas while transporting someone. Coordination efforts should seek to enhance transportation services like these by promoting initiatives such as agreements between urban and rural providers to pick up passengers in each other's service areas when doing so is logical. In addition, many people reside in "gray areas," served by neither urban nor rural transit. These are most often communities in urban areas that do not participate in the regional transit system. However, the regional transportation provider's funding allocation includes the population residing in the unserved areas. Coordination should ensure that these people are served by some public transit system.

In response to continuing barriers, NCD is conducting an analysis of the status of transportation for people with disabilities across the nation and will publish a report on these findings in April 2005.

### **NCD Participated in Emerging Workforce Conference**

NCD participated in the Emerging Workforce Conference, February 8-10, 2004, at the Wyndham Bonaventure Resort and Spa in Weston, Florida. More than 500 leaders from various government, private, and nonprofit organizations came together to enhance employment opportunities and outcomes for people with disabilities. Speakers included Florida Governor Jeb Bush; Representative E. Clay Shaw, Jr.; Commissioner JoAnne B. Barnhart, Social Security Administration (SSA); SSA Deputy Commissioner Martin H. Gerry; U.S. Equal Employment Opportunity Commission Chair Cari M. Dominguez; Department of Labor, Office of Disability Employment Policy Assistant Secretary W. Roy Grizzard, Jr., Ed.D.; Department of Justice, Civil Rights Division Assistant Secretary R. Alexander Acosta; Department of Health and Human Services (HHS), Office of Disability Director Margaret J. Gianinni, M.D.; HHS Administration on Developmental Disabilities Commissioner Patricia A. Morrissey, Ph.D.; HHS Administration on Aging Assistant Secretary Josefina G. Carbonell; President's Committee for People with Intellectual Disabilities Chair Madeleine Will; Department of Education (ED), Office of Special Education and Rehabilitative Services Acting Deputy Director Troy Justesen; ED, Office of Special Education and Rehabilitative Services, Office of Special Education Programs Director Stephanie Smith Lee; ED, Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration Commissioner Joanne M. Wilson; NCD Chairperson Lex Frieden; NCD Member Milton Aponte; NCD Executive Director Ethel D. Briggs; NCD General Counsel and Director of Policy Jeffrey T. Rosen; former NCD Member John D. Kemp; and former NCD General Counsel Andrew J. Imperato.

### **NCD Commended Bush Administration**

NCD commends the Administration's ongoing support for the ADA. Millions of Americans with disabilities achieve increased productivity and independence as a result of the access provided by ADA enforcement. In response to recent cases involving the ADA, the U.S. Department of Justice has been consistent in actively defending the constitutionality of the ADA and the civil rights of individuals with disabilities.

### **NCD Awards Social Security Impact Study Contract**

NCD awarded a contract for \$135,000 to Virginia Commonwealth University, Rehabilitation Research Training Center to evaluate the effectiveness and direction of federal social security benefits programs that support people with disabilities. Specifically, NCD is interested in examining in detail the impact of the Supplemental Security Income and Social Security Disability Insurance benefits programs on people with disabilities and how these programs support transitioning or returning beneficiaries to work. This study should incorporate the expertise of key stakeholders, including consumers, service providers, employers, governments (including foreign governments), and other community organizations.

### **ADA 14th Anniversary and NCD History Report**

NCD celebrated the 14th anniversary of the Americans with Disabilities Act at the Kennedy Center for the Performing Arts by releasing a 20-year history of the agency's independence and by bestowing the NCD Justin Dart Freedom Award on former U.S. Senator and Governor of Connecticut, Lowell P. Weicker, Jr., for his preeminent role in helping make ADA a reality and for making NCD an independent federal agency

### **Natural Disaster Recovery Recommendations**

NCD published an op-ed piece on making improvements now to help people with disabilities recovering and rebuilding from hurricanes and other natural disasters (<http://www.ncd.gov/newsroom/news/2004/op-ed04-459.htm>). NCD recommended that those involved in rebuilding the homes lost in the storms keep in mind the many benefits of basic universal accessibility, including ramps and doorways wide enough for wheelchairs and walkers.

### **Foreign Assistance Recommendations**

In its advisory capacity, NCD has had an influence on U.S. foreign assistance legislation. In September of 2003, NCD released a report recommending the adoption of specialized new legislation to ensure the inclusion of people with disabilities in U.S. foreign assistance efforts. In FY 2004, the impact of NCD's report was seen with the report's Executive Summary and Transmittal Letter being read into the *Congressional Record* as an opening to a proposed amendment requiring inclusion of disability language in the then-new Millennium Challenge Account legislation. In the FY 2004 Foreign Operations Supplemental bill, language was included that specified that all work being done in Iraq and Afghanistan is required to comply with USAID's 1997 disability policy paper. The supplemental also required that within 180 days, USAID adopt access standards to govern all construction that USAID was going to do anywhere in the world. USAID then developed access standards in consultation with the disability community, the Access Board, NCD, and other entities. NCD's impact continued to be felt through the adoption of several pieces of legislation in the FY 2005 Omnibus Appropriations bill, (originally under Section 579 of the Foreign Operations Appropriations bill, which was folded into the Omnibus bill). The significant pieces of legislation included: (1) The creation of a fund in the amount of \$2.5 million that will be made available for programs and activities that address the needs, and protect the rights of people with disabilities in developing countries (these funds can also be made available for an international conference on the needs of people with disabilities, including disability rights, advocacy and access); (2) a requirement that the Secretary of State and USAID each designate a disability advisor in their respective agencies; (3) the requirement that the Secretary of State, Secretary of the Treasury, and the USAID Administrator shall seek to ensure that the needs of people with disabilities are met where appropriate in democracy, human rights, rule of law, programs and activities supported by the Department of State, Department of Treasury and USAID; and (4) the requirement that the USAID Administrator shall fully comply with its September 12 policy paper on disability which requires that USAID implement procedures to require prospective grantees seeking funding from USAID to specify,

where relevant, how the proposed program will include protecting the rights and addressing the needs of people with disabilities.

### **Advisory Committees**

The NCD policy team liaisons to three committees formed under the Federal Advisory Committee Act (FACA) continued to provide ongoing guidance and facilitate communication with the committees. Under FACA, these liaisons are the Designated Federal Officials responsible for oversight and coordination of the committees. They assisted the committees in the development of committee purpose, function, and priority areas of focus, within the scope of NCD's statutory authority. The FACA officials consulted with the NCD Board Members assigned to each committee to assure that the needs of youth and young adults with disabilities, people from diverse cultures, and international issues are properly addressed within the scope of the responsibilities of each committee. These officials will carry out their responsibilities in compliance with all of the FACA requirements. The committees are: Cultural Diversity, International Watch, and Youth.

## **II. Educate the public and elected officials on disability issues.**

### **Objectives:**

- 2.1 Strengthen NCD's communication plan, drawing upon new technologies and reaching targeted underrepresented populations.
- 2.2 Disseminate newsletters and reports on disability policy issues.
- 2.3 Hold federal partners meetings with Cabinet secretaries, appointees, and other key individuals to review and promote NCD's disability policy recommendations.
- 2.4 Participate in interagency working groups with federal partners on priority issues.
- 2.5 Serve as the focal point for international activities around the dissemination of information on disability policy in the United States of America and throughout the world.

### **Results:**

- 2.1 NCD's Web site (<http://www.ncd.gov>) is fully accessible to all people with disabilities. Approximately 2,500,000 hits were recorded on the site in FY 2004. All NCD reports, papers, newsletters, and other NCD documents are available to the public on the NCD Web site.

NCD continued to refine its communications strategy, which promotes NCD's recommendations and provides greater opportunities for advancing public awareness of disability issues, especially for people from culturally diverse

backgrounds. Through the standard use of a newspaper clipping service, NCD was able to track the number of minority-owned newspapers that ran stories relating to NCD and disability policy.

NCD continued to work with civil rights organizations, such as the Leadership Conference on Civil Rights, the National Urban League, and the National Council of La Raza to provide information to targeted culturally diverse populations and organizations serving people with underrepresented disabilities. Members of civil rights organizations appeared often at NCD events and news conferences, delivering messages of support for people with disabilities.

- 2.2 NCD gathered information from its board, staff, and other sources for inclusion in its monthly newsletter, *NCD Bulletin* (<http://www.ncd.gov/newsroom/bulletins/2004/04bulletins.htm>). NCD disseminated the *Bulletin* to more than 9,000 people each month by U.S. Mail and another 3,000 copies through the NCD listserv. NCD's news releases and monthly newsletter also appear on U.S. Newswire, which disseminates this information electronically to thousands of news outlets across the country and to each Congressional office.

NCD reports and other publications (<http://www.ncd.gov/newsroom/publications/2004/publications.htm>) were mailed to approximately 48,000 people. More importantly, 209,779 reports were downloaded from the NCD Web site during FY 2004. This is an NCD fiscal year record and fully supports the President's expanded electronic government management initiative to improve the government's ability to serve its citizens.

- 2.3 During FY 2004, NCD met with key administration officials to encourage their adoption of and action on key NCD disability policy recommendations within the general policies and procedures of their departments. NCD met with congressional staff and members of Congress on numerous occasions to discuss new and emerging disability policy issues. NCD testified at a Congressional Human Rights Caucus on international rights regarding the proposed United Nations convention. NCD submitted appropriations testimony for the record of the U.S. Senate Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies. NCD testified on strategies to improve access to Medicaid home- and community-based services before the U.S. Senate Committee on Finance. NCD also submitted testimony on juvenile detention centers for the hearing record of the U.S. Senate Committee on Governmental Affairs.
- 2.4 NCD continued its interagency policy liaison activities with the National Youth Leadership Network, the National Institute on Disability and Rehabilitation Research, President's Committee for People with Intellectual Disabilities, White

House Initiative on Asian Americans and Pacific Islanders, Substance Abuse and Mental Health Administration, the Rehabilitation Services Administration, the Office for Special Education and Rehabilitative Services, the Office of Disability Employment Policy, the Centers for Disease Control and Prevention, the Department of Transportation Interagency Coordinating Committee, the Homeland Security Interagency Coordinating Committee, and the National Center for Medical Rehabilitation Research.

- 2.5 In 1995, NCD was designated by the Department of State to be the official contact point of the U.S. government for disability issues. Specifically, NCD interacted with the special rapporteur of the United Nations Commission for Social Development on disability matters. As the original author of the Americans with Disabilities Act, NCD continues to be the focal point for international activities around the dissemination of information on disability policy in the United States and throughout the world. To that end, NCD continued to serve as the official point of contact with the U.S. government for disability issues. NCD's International Team and International Watch advisory committee met on several occasions to discuss international disability policy. NCD also testified at a Congressional Human Rights Caucus on international rights regarding the proposed United Nations Convention on the Rights of People with Disabilities. NCD published an update on the UN Convention on the Rights of People with Disabilities and a history of the convention process.

In its advisory capacity, NCD has had an influence on U.S. foreign assistance legislation. In September of 2003, NCD released a report recommending the adoption of specialized new legislation to ensure the inclusion of people with disabilities in United States foreign assistance efforts. In FY 2004, the impact of NCD's report was seen with the report's Executive Summary and Transmittal Letter being read into the Congressional Record as an opening to an proposed amendment requiring inclusion of disability language in the then-new Millennium Challenge Account legislation. NCD's impact continued to be felt through the adoption of several pieces of legislation in the FY 2005 Omnibus Appropriations bill, (originally under Section 579 of the Foreign Operations Appropriations bill, which was folded into the Omnibus bill). The significant pieces of legislation included: (1) The creation of a fund in the amount of \$2.5 million that will be made available for programs and activities that address the needs, and protect the rights of people with disabilities in developing countries (these funds can also be made available for an international conference on the needs of people with disabilities, including disability rights, advocacy and access); (2) The requirement requires that the Secretary of State and USAID each designate a disability advisor in their respective agencies; (3) the requirement that the Secretary of State, Secretary of the Treasury, and the USAID Administrator shall seek to ensure that the needs of people with disabilities are met where appropriate in democracy, human rights, rule of law, programs and activities supported by the Department of

State, Department of Treasury and USAID; and (4) the requirement that the USAID Administrator shall fully comply with its September 12 policy paper on disability which requires that USAID implement procedures to require prospective grantees seeking funding from USAID to specify, where relevant, how the proposed program will include protecting the rights and addressing the needs of people with disabilities.

NCD provided guidance to the Secretary of State on the inclusion of people with disabilities in the U.S. delegation to the third session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities.

NCD provided advice to the Secretary of State on the development, at the Department of State and the U.S. Agency for International Development, of a Federal Advisory Committee on Persons with Disabilities.

NCD provided counsel to the CEO of the Millennium Challenge Corporation on NCD's recommendation that inclusion of people with disabilities be a required component of the proposed Millennium Challenge Account.

NCD provided technical assistance upon request to many countries seeking to learn from the American experience about disability law and policy. Some of those countries included Columbia, Kosovo, Norway, China, India, Vietnam, Croatia, Bosnia, Herzegovina, Ireland, Ukraine, Africa, Spain, and Belarus.

NCD also provided technical assistance to organizations such as the United States Institute for Peace, InterAction, and the International Disability Outreach Foundation.

### **III. Promote effective delivery of federal services and programs to all people with disabilities, particularly unserved and underserved populations, such as people from diverse cultures, rural residents, and youth.**

#### **Objectives:**

- 3.1 Monitor federal agencies having civil rights responsibilities to evaluate their efforts to serve underserved populations such as people from culturally diverse backgrounds, rural residents, and youth with disabilities, and develop recommendations to enhance services to these populations.
- 3.2 Promote best practices programs of education and empowerment regarding disability rights for people from culturally diverse backgrounds, rural residents, and youth with disabilities.

- 3.3 Provide an opportunity for leadership development for youth with disabilities.
- 3.4 Establish relationships with national organizations serving these underrepresented populations.

**Results:**

- 3.1 NCD's Cultural Diversity Advisory Committee (<http://www.ncd.gov/newsroom/advisory/cultural/cultural.html>) continued to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee assisted in identifying issues, expanding outreach, infusing participation, and elevating the voices of underserved and unserved segments of this nation's population that help NCD develop federal policy that will address the needs and advance the civil and human rights of people from diverse cultures. This advisory committee is an on-going activity.

**Underserved and Unserved Groups**

As a follow-up activity to its August 2003 report and toolkit guide addressing issues related to American Indians and Alaska Natives with disabilities, NCD conducted a public forum, Disability Matters in Tribal Communities. As part of its quarterly meeting, the NCD forum attracted more than 120 participants from various states, local public and private organizations and tribal communities who dialogued at the Santa Ana Pueblo near Bernalillo, New Mexico. NCD's Chairperson Lex Frieden recounted in his welcoming comments NCD's national mindfulness of many diverse cultures, noting that "despite this reality, sometimes people in the United States forget about the Indian Nations." Forum participants used NCD's report, *People with Disabilities on Tribal Lands*, as a springboard for sharing examples of what seems to be working, as well as some of the remaining challenges for people with disabilities and their families in Indian Country that need to be addressed in the public policy arena.

NCD published its *Summary of the Native American Forum: Disability Matters on Tribal Lands and Outreach and People with Disabilities from Diverse Cultures: A Review of the Literature*.

NCD is also represented on the Interagency Working Group for the White House Initiative on Asian Americans and Pacific Islanders.

NCD coordinated and promoted efforts to focus attention on integration and inclusion of cultural diversity issues across all federal programs monitored by NCD.

- 3.2 NCD promoted best practices programs of education and empowerment regarding disability rights for people from culturally diverse backgrounds, rural

residents, and youth with disabilities by meeting with stakeholders and representatives of disability and traditional civil rights groups to discuss the unique issues faced by culturally diverse people with disabilities.

In addition to input from the FACA committees, an ad hoc group was also formed that provided specific advice on reaching families and people with disabilities in ways that respect cultural traditions. A group representing tribal communities guided NCD's dissemination of resource materials and responses to requests for knowledgeable people to participate in panels, conferences and other gatherings in Indian country.

NCD continued to work on the development of its Cultural Diversity Initiative Toolkit. When completed in FY 2005, the Toolkit will provide a comprehensive resource for federal agencies and their partners to assist in reaching out to people with disabilities from diverse cultures to meaningfully engage them in the agencies' programs and services. NCD invited nine agencies to work together to share outreach practices and programs. The nine participating agencies are: the Departments of Education, Housing and Urban Development, Justice, Labor, and Transportation, and the Social Security Administration, the Equal Employment Opportunity Commission, and the Federal Communications Commission.

The identified agencies provided information on their respective disability and diversity outreach programs, which profile the rich array of opportunities available through the federal government. Besides using these tools to enhance the ability of agencies to share information about their programs and services with each other and with underserved communities, the tools can be used as information sources by the public and as tools to enhance and/or build the capacity within agencies to incorporate the advice and expertise of grassroots constituencies into their program planning.

- 3.3 NCD's Youth Advisory Committee (<http://www.ncd.gov/newsroom/advisory/youth/youth.html>) met several times, expanded its outreach to include two new positions for high school students and provided advice to NCD on various issues, such as NCD's planning and priorities for the upcoming fiscal year. The committee targeted transition from school to employment and independent living as a key area of focus. NCD sought this type of input in order to make sure NCD's activities and policy recommendations respond to the needs of youth with disabilities.
- 3.4 During FY 2004, NCD began to renew its relationships with national organizations serving underrepresented populations. In collaboration with the Cultural Diversity Advisory Committee, NCD developed a cooperative agreement with the American Association for People with Disabilities (AAPD) that capitalized on that organization's direct contacts with national civil rights leaders

through AAPD's membership on the Executive Board for the Leadership Conference on Civil Rights. Coalition building was seen as a viable avenue to identify and address common needs and issues. Groundwork was laid for future dialogue and action planning around selected areas of focus.

#### **IV. Maintain NCD's status as a high performance organization.**

##### **Objectives:**

- 4.1 Provide the necessary tools and training to achieve a highly skilled and high-performing work force.
- 4.2 Provide a physical environment that promotes the health and well-being of employees.
- 4.3 Prepare budget testimony.
- 4.4 Provide support to NCD teams.
- 4.5 Maintain accurate accounting of all NCD obligations and expenditures.
- 4.6 Arrange for NCD quarterly meetings.
- 4.7 Conduct personnel evaluations.
- 4.8 Produce weekly news clips.

##### **Results:**

- 4.1 In order for NCD staff to stay current with critical issues facing people with disabilities and for staff to improve their technical skills, participation in training programs is necessary. Specific training needs were identified for individual staff development plans. Staff attended training programs in one or more of the following areas: contract management, computer technology, financial management, supervision, management, and media relations.

NCD held monthly staff and team building sessions, which led to the development and promotion of new processes for administration.

- 4.2 NCD developed budget priorities and submitted its budget request to the Office of Management and Budget.

NCD is a leader in providing a physical environment that promotes the health and well-being of its employees. All accommodations that are necessary for employees with disabilities to perform at the highest levels are made. These

accommodations include braille printers, telecommunications devices for the deaf, sign language interpreters, special lighting, large screen computer monitors, ergonomic furniture, assistive technology such as screen readers and notetakers, computer aided real time transcription, etc. NCD is also located in a very accessible building in Washington, DC. Every effort is made to create a physical atmosphere that equates to productive employees.

- 4.3 NCD contacted Congressional subcommittee staff regarding its budget submission and submitted testimony for the record. NCD submitted its budget request in a timely fashion to Congress.
- 4.4 NCD staff provided administrative and policy support to NCD's teams, keeping team members abreast of new developments in their issue areas. NCD arranged meetings and teleconferences to facilitate team work.
- 4.5 NCD conducted its biannual financial audit and developed a management response to the audit findings. Financial procedures have been updated to conform with current accounting practices.
- 4.6 NCD coordinated and conducted four quarterly meetings and one teleconference meeting for the NCD board in FY 2004:  
  
November 22-23, 2003, Arlington, VA  
February 8-9, 2004, Fort Lauderdale, FL  
April 13-15, 2004, Santa Ana Pueblo, NM  
June 7, 2004, by teleconference  
July 25-26, 2004, Arlington, VA
- 4.7 NCD conducted staff evaluations for all employees and in some cases provided individualized development plans.
- 4.8 NCD produced weekly clips of disability-related news accounts of NCD activities for members, staff, and contractors. NCD also sent time-sensitive news accounts by e-mail, posting some of the more important articles to the NCD in the News page (<http://www.ncd.gov/newsroom/inthenews/inthenews.htm>) on the NCD Web site.

## **Federal Managers' Financial Integrity Act Signed Assurance Statement**

March 31, 2005

The Honorable Josh B. Bolten, Director  
Office of Management and Budget  
Executive Office Building  
17th Street and Pennsylvania Avenue, NW  
Washington, DC 20503

Dear Mr. Bolten:

On the basis of the National Council on Disability's (NCD) management control process, I am pleased to certify, with reasonable assurance, that NCD's systems of accounting and internal controls are in compliance with the internal control objectives in OMB's Bulletin Number 01-02. I also believe these same systems of accounting and internal controls provide reasonable assurance that NCD is in compliance with the provisions of the Federal Managers' Financial Integrity Act.

The Federal Managers' Financial Integrity Act requires agencies to provide an annual statement of assurance regarding management controls and financial systems. NCD is pleased to report continued progress in strengthening management controls. The continuous improvement of program and operational management process is ongoing. Agency financial management controls and systems, taken as a whole, provide reasonable assurance that accounting systems comply with appropriate federal requirements. This conclusion is based on the review and consideration of internal analyses, reconciliations, reports, and other information.

Prior to the enactment of the Accountability of Tax Dollars Act, NCD had established a policy to conduct an audit biannually. NCD conducted an audit of its FY 2004 financial statement in accordance with the Accountability of Tax Dollars Act. NCD received a clean opinion.

If there are any questions or additional information is needed, please contact the NCD office at 202-272-2004.

Sincerely,

Ethel D. Briggs  
Executive Director

## **Conclusion**

In conclusion, NCD continues to be a leader in the development and analysis of disability policy. The use of the *Annual Performance Report to the President and Congress Fiscal Year 2004*, as required by the Government Performance and Results Act, has greatly assisted NCD in carrying out its mission. The findings of this report clearly indicate that NCD has either met or exceeded the projected levels in its performance plan.