

7050-01-P-01-P

**LEGAL SERVICES CORPORATION**

**45 CFR Part 1624**

**Prohibition Against Discrimination on the Basis of Disability**

**AGENCY:** Legal Services Corporation

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This Notice of Proposed Rulemaking (NPRM) proposes to amend the Legal Services Corporation's regulation on prohibitions against discrimination on the basis of disability.

**DATES:** Comments on this NPRM are due on [insert date 45 days from date of publication].

**ADDRESSES:** Written comments may be submitted by mail, fax or email to Mattie C. Condray at the addresses listed below.

appropriate. At the Board's further direction, prior to the development of this Notice of Proposed Rulemaking ("NPRM"), LSC convened a Rulemaking Workshop<sup>1</sup> to consider revisions to this Part.

LSC convened a Rulemaking Workshop on December 13, 2005 to discuss Part 1624. The following persons participated in the Workshop: John "Chip" Gray, South Brooklyn Legal Services; John Herrion, United Spinal Association; Linda Perle, Center

Directors directed LSC to continue the rulemaking and develop an NPRM, proposing such changes as deemed appropriate. On January 28, 2006, the Board of Directors voted to accept the recommendation of the Operations and Regulations Committee.

A Draft NPRM was then presented to the Operations and Regulations Committee at its meeting on April 28, 2006. The Committee voted to recommend that the Board of Directors approve this NPRM for publication. The following day the Board of Directors voted to accept the Committee's recommendation and directed LSC to issue this NPRM for public comment.

### **Summary of Proposed Changes**

LSC is proposing only relatively minor changes to the regulation, but LSC believes that these changes will improve the utility of the regulation for LSC, its grantees and other interested persons. First, LSC is proposing to update the nomenclature used throughout the regulation to refer to "person with a disability" or "persons with disabilities" instead of "handicapped person(s)." This change is not intended to create any substantive change in meaning, but rather is intended to reflect a more current terminology. Second, LSC is proposing to add a reference to compliance with the Americans with Disabilities Act to the regulation. This change is discussed in greater detail in the section-by-section analysis section under the discussion of proposed section 1624.1. Third, LSC is proposing to add language to the enforcement provision setting forth LSC policy regarding investigation of complaints of violation of this regulation. This change is discussed in greater detail in the section-by-section analysis section under the discussion of proposed section 1624.8. LSC is also proposing to make a number of technical and grammatical corrections to the regulation.

In addition, LSC is proposing to eliminate the current section 1624.7 of the regulation on self-evaluation. This section required legal services programs to evaluate by January 1, 1980, their facilities, practices and policies to determine the extent to which they complied with the requirements of this Part. This section does not contain a continuing requirement for self-evaluation and, as such, is now obsolete. LSC is thus proposing to eliminate it. Under section 1624.5, grantees are required to certify facility accessibility prior to entering into leases or purchases of office space (or, if the facility will not be accessible, provide a detailed statement as to why the facility is not accessible and describe steps that the grantee will take to make sure its services are accessible). This requirement ensures that facilities are, to the maximum extent feasible, accessible to persons with disabilities and ensures that grantees are taking accessibility issues into consideration in providing services.

### **Section-by- Section Analysis**

#### *Section 1624.1 – Purpose*

LSC is proposing to change the terms "handicapped persons" as they appear in this section to "persons with disabilities." In addition, LSC is proposing to add language

to make reference to the ADA. The new language would note that requirements of this Part apply in addition to any responsibilities legal services programs may have under applicable requirements of the Americans with Disabilities Act and applicable implementing regulations of the Department of Justice and the Equal Employment Opportunity Commission. The proposed language is not intended to impose any new obligations on grantees with respect to LSC-related regulatory compliance matters, nor assume LSC authority for enforcing the ADA that LSC does not possess.

### *Section 1624.2 - Application*

LSC is not proposing any changes to this section

### *Section 1624.3 – Definitions*

LSC is proposing to change the term “handicapped person” to “person with a disability” in section 1624.3(c)(1). Similarly, LSC proposes to change the term “qualified handicapped person” in section 1624.3(d) to “qualified person with a disability.” In neither case is the proposed change intended to create any substantive change to the regulation, but rather to reflect updated and preferred nomenclature.

LSC is also proposing to add a definition of the term “auxiliary aids and/or other assistive technology.” Under section 1624.4, grantees with more than fifteen employees are required to provide appropriate “auxiliary aids” when necessary to clients and applicants to make services accessible. Although the current regulation uses the term “auxiliary aids,” it does not contain a formal definition of the term in the definition section. Rather, section 1624.4 provides that for the purposes of that section, “auxiliary aids include, but are not limited to, brailled and taped material, interpreters, telecommunications equipment for the deaf, and other aids for persons with impaired vision and hearing.” Although this informal definition of “auxiliary aids” appears to be limited to aids for persons with impaired vision or hearing, the provision of the regulation which requires their use calls for auxiliary aids for persons “with impaired sensory, manual or speaking skills,” which is broader than simply vision or hearing impairments. LSC believes that this discrepancy should be rectified. In addition, although the term “auxiliary aids” is not used in the section on employment (1624.6), a similar concept appears there. Under section 1624.6(e), grantees are required to make reasonable accommodations for otherwise qualified employees and job applicants with disabilities. The regulation specifies that, among other things, “reasonable accommodations” include (but are not limited to) “the modification of equipment or devices, the provision of readers or interpreters and other similar actions.”

Rather than continue to have these similar concepts set forth in different parts of the regulation with different terminology, LSC is proposing to use the single term “auxiliary aids and/or other assistive technology” in both sections and to add a definition of that term to the definition section. Since the original adoption of the regulation in 1979 there have been significant advances in technology which are available to persons with disabilities to help them access and benefit from legal services programs’ services.

The proposed definition is based on a definition of “assistive technologies” found in the Individuals with Disabilities Education Act, 20 U.S.C. §1400, et seq., and is intended to broadly refer to the range of aids or technologies which grantees can make available to applicants, clients and employees with disabilities, as appropriate and necessary, to comply with the requirements of this Part. LSC seeks comment on whether additional specific assistive technologies should be referenced in the list of non-exhaustive examples in the definition, and if so, which ones.

#### *Section 1624.4 – Discrimination prohibited*

LSC is proposing two notable amendments to this section. First, in each instance in which the term “handicapped person” or “handicapped persons” appears, LSC proposes to replace it with “person with a disability” or “persons with disabilities” as grammatically appropriate. As noted above, LSC intends no substantive change, but rather to reflect updated and preferred nomenclature. LSC is also proposing to use the term “auxiliary aids and/or other assistive technologies” instead of the term “auxiliary aids” in section 1624.4(d)(1) and (2) and to delete the text appearing at 1624.4(d)(3). As discussed above, LSC believes that users of the regulation will be better served by having a formal definition of the term in the definitions section of the regulation than an informal definition elsewhere. In addition, LSC believes that expanding the term to include “other assistive technologies,” combined with the proposed definition, will better reflect the range of systems and devices existing in the market that grantees may choose from to help make their services accessible to persons with disabilities.

#### *Section 1624.5 – Accessibility of legal services*

LSC is proposing two notable amendments to this section. First, in each instance in which the term “handicapped person” or “handicapped persons” appears, LSC proposes to replace it with “person with a disability” or “persons with disabilities” as grammatically appropriate. As noted above, LSC intends no substantive change, but rather to reflect updated and preferred nomenclature. Second, LSC is proposing to replace the reference to “the appropriate Regional Office” in section 1624.5(c) with “LSC.” At the time Part 1624 was originally adopted LSC had Regional Offices, but it no longer does. All LSC business is conducted out of its Washington, D.C. offices. As such, the statement required by section 1624.5(c) cannot be submitted to a “Regional Office” any longer and such statements are simply submitted to LSC. The regulation should reflect this fact.

#### *Section 1624.6 – Employment*

LSC is proposing two notable amendments to this section. First, in each instance in which the term “handicapped person” or “handicapped persons” appears, LSC proposes to replace it with “person with a disability” or “persons with disabilities” as grammatically appropriate. As noted above, LSC intends no substantive change, but merely the use of updated and preferred nomenclature.

LSC is also proposing to use the term “auxiliary aids and/or other assistive technologies” instead of the words “readers or interpreters” in section 1626(e)(1). As discussed above, LSC believes that users of the regulation will be better served by using a standardized and formally defined term. LSC believes that using the term “auxiliary aids and/or other assistive technologies” in this section, combined with the proposed definition of that term, will better reflect the range of systems and devices existing in the market that grantees may choose from to make reasonable accommodations in employment for otherwise qualified applicants and employees with disabilities.

*Section 1624.7 – Enforcement*

The current regulation specifies only that LSC’s enforcement procedures at 45 CFR Part 1618 shall apply to alleged violations of this Part. Under Part 1618, LSC is obligated to investigate complaints of violations of the LSC Act, appropriations acts, LSC regulations or grant assurances and to work with grantees to resolve matters informally

**PART 1624—PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF  
DISABILITY**

Sec.

(b) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property;

(c) (1) *Person with a disability* means any person who: (i) Has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment;

(2) As used in paragraph (a)(1) of this section the phrase: (i) *Physical or mental impairment* means: (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; The phrase includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism; (ii) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; (iii) *Has a record of such impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities; (iv) *Is regarded as having an impairment* means: (A) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a legal services program as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or (C) has none of the impairments defined in paragraph (c)(2)(i) of this section but is treated by a legal services program as having such an impairment;

(d) *Qualified person with a disability* means:

(1) With respect to employment, a person with a disability who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) with respect to other services, a person with a disability who meets the eligibility requirements for the receipt of such services from the legal services program.

(e) *Auxiliary aids and/or other assistive technologies* means any item, piece of equipment, or product system whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. Auxiliary aids and/or assistive technologies include, but are not limited to, brailled and taped material, interpreters, telecommunications equipment for the deaf, voice recognition software, computer screen magnifiers, screen reader software, wireless amplification systems, and other aids.



(b) A legal services program shall conduct its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities. This paragraph does not necessarily require a legal services program to make each of its existing facilities or every part of an existing facility accessible to and usable by persons with disabilities, or require a legal services program to make structural changes in existing facilities when other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of this paragraph, a legal services program shall give priority to those methods that offer legal services to persons with disabilities in the most integrated setting appropriate.

(c) A legal services program shall, to the maximum extent feasible, ensure that new facilities that it rents or purchases are accessible to persons with disabilities. Prior to entering into any lease or contract for the purchase of a building, a legal services program shall submit a statement to LSC certifying that the facilities covered by the lease or contract will be accessible to persons with disabilities, or if the facilities will not be accessible, a detailed description of the efforts the program made to obtain accessible space, the reasons why the inaccessible facility was nevertheless selected, and the specific steps that will be taken by the legal services program to ensure that its services are accessible to persons with disabilities who would otherwise use that facility. After a statement certifying facility accessibility has been submitted, additional statements need not be resubmitted with respect to the same facility, unless substantial changes have been made in the facility that affect its accessibility.

(d) A legal services program shall ensure that new facilities designed or constructed for it are readily accessible to and usable by persons with disabilities. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to make the altered facilities readily accessible to and usable by persons with disabilities.

#### **§ 1624.6 Employment.**

(a) No qualified person with a disability shall, on the basis of disability, be subjected to discrimination in employment by any legal services program.

(b) A legal services program shall make all decisions concerning employment under any program or activity to which this part applies in a manner that ensures that discrimination on the basis of disability does not occur, and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of disability.

(c) The prohibition against discrimination in employment applies to the following activities:

- (1) Recruitment, advertising, and the processing of applications for employment;
- (2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;



make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(f) A legal services program may not use employment tests or criteria that discriminate against persons with disabilities, and shall ensure that employment tests are adapted for use by persons who have disabilities that impair sensory, manual, or speaking skills.

(g) A legal services program may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether an applicant is a person with a disability or as to the nature or severity of a disability except under the circumstances described in 45 CFR 84.14(a) through (d)(2). The Corporation shall have access to relevant information obtained in accordance with this section to permit investigations of alleged violations of this Part.

(h) A legal services program shall post in prominent places in each of its offices a notice stating that the legal services program does not discriminate on the basis of disability.

(i) Any recruitment materials published or used by a legal services program shall include a statement that the legal services program does not discriminate on the basis of disability.

#### **§ 1624.7 Enforcement.**

(a) The procedures described in Part 1618 of these regulations shall apply to any alleged violation of this Part by a legal services program.

(b) When LSC receives a complaint of a violation of this Part, LSC policy is generally to refer such complainants to the appropriate Federal, state or local agency, although LSC retains the discretion to investigate all complaints and/or to maintain an open complaint file during the pendency of an investigation being conducted by such other Federal, state or local agency. LSC may use, at its discretion, information obtained by such other agency as may be available to LSC, including findings of such other agency of whether discrimination on the basis of disability occurred.

---

Victor M. Fortuno  
General Counsel and Vice President for Legal Affairs