

government), it does have the authority to ensure that LSC grant recipients comply with its provisions. LSC chose to exercise this authority and adopted the Part 1624 regulation implementing the non-discrimination requirements in Section 504 in 1979. The regulation has not been amended since that time.

On October 29, 2005, the LSC Board of Directors directed that LSC initiate a rulemaking to consider revisions to LSC's regulation at 45 CFR Part 1624. The rulemaking proceeding is intended to provide the opportunity for an unlimited and thorough review of the regulation with the intent of updating and improving the rule as appropriate. At the Board's further direction, prior to the development of this Notice of Proposed Rulemaking ("NPRM"), LSC convened a Rulemaking Workshop¹ 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 for Law and Social Policy; Don Saunders, National Legal Aid and Defender Association; Helaine Barnett, LSC President (welcoming remarks only); Karen Sarjeant, LSC Vice President for Programs and Compliance; Charles Jeffress, LSC Chief Administrative Officer; Mattie Condray, LSC Office of Legal Affairs; Curtis Goffe, LSC Office of Compliance and Enforcement; Tillie Lacayo, LSC Office of Program Performance; Mark Freedman, LSC Office of Legal Affairs; and Treefa Aziz, LSC Office of Government Relations and Public Affairs.

The discussion was wide-ranging and open. The highlights of the discussion are summarized as follows. There was a general assessment that grantees appear to be in compliance with the regulation and that LSC does not receive many complaints of non-compliance. It was noted that most of the complaints that do come to LSC are from grantee staff and are related to employment discrimination, rather than accessibility of services for applicants or clients with disabilities. LSC's staff practice is to refer such complainants to the

appropriate Federal, state or local agency. At the same time, it was noted that the language of the regulation could be updated in places and that there are new assistive technologies which could be referenced in the regulation.

The participants discussed the fact that LSC's enforcement expertise and resources are limited and that claimants, with the passage of the Americans with Disabilities Act ("ADA"), have recourse to other agencies and private actions for the pursuit of redress for discrimination on the basis of disability. The notion that the regulation could be amended to reflect these facts was raised. In addition, the participants also discussed other avenues of raising awareness of accessibility issues, such as the issuance of guidance from LSC in the form of a Program Letter, focusing on accessibility in program visits and in competition, better sharing of best practices and emphasis on opportunities through LSC's Technology Initiative Grant Program.

At its meeting on January 27, 2006, LSC management made a presentation to the Operations and Regulations Committee of the LSC Board of Directors on the Rulemaking Workshop. The Committee then voted to recommend that the Board of 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

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¹ Under LSC's Rulemaking Protocol, a Rulemaking Workshop is a meeting at which the participants (which may include LSC Board members, staff, grantees and other interested parties) "hold open discussions designed to elicit information about problems or concerns with the regulation (or certain aspects thereof) and provide an opportunity for sharing ideas regarding how to address those issues. * * * [A] Workshop is not intended to develop detailed alternatives or to obtain consensus on regulatory proposals." 67 FR 69762, 69763 (November 19, 2002).

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 definitions 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 does not discriminate on the basis of race, sex, or religion. LSC believes that

receives seriously, has limited resources available and does not generally have significant expertise in investigating these types of claims.

In light of the above, LSC's policy when such complaints have been filed with the Office of Compliance and Enforcement has been to recommend that complainants pursue claims with appropriate Federal, state or local agencies which may be in a better position to investigate their claims and order the relief being sought. In cases where a claim is filed with another agency, LSC generally defers to that investigation during its pendency and relies upon the findings of the other agency in resolving the complaint filed with LSC. LSC has found this policy to be efficient and effective. Accordingly, LSC is proposing to explicitly incorporate this policy into the regulation. LSC believes this action will clarify expectations for LSC enforcement staff, grantees, and potential claimants alike. Of course, LSC retains the discretion and authority to conduct its own investigations into any claim of disability-based discrimination grounded in this Part or the grant assurances and make its own findings upon the conclusion of such investigation, irrespective of whether a complaint based on the same circumstances is pending at another agency.

List of Subjects in 45 CFR Part 1624

Civil rights, Grant programs—law, Individuals with disabilities, Legal services.

For reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC proposes to revise 45 CFR part 1624 as follows:

PART 1624

program, directly or through any contractual or other arrangement.

(b) A legal services program may not deny a qualified person with a disability the opportunity to participate in any of its programs or activities or to receive any of its services provided at a facility on the ground that the program operates a separate or different program, activity or facility that is specifically designed to serve persons with disabilities.

(c) In determining the geographic site or location of a facility, a legal services program may not make selections that have the purpose or effect of excluding persons with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity of the legal services program.

(d) (1) A legal services program that employs a total of fifteen or more persons, regardless of whether such persons are employed at one or more locations, shall provide, when necessary, appropriate auxiliary aids and/or other assistive technologies to persons with impaired sensory, manual or speaking skills, in order to afford

(ii) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of auxiliary aids and/or other assistive technologies, and other similar actions.

(2) In determining whether an accommodation would impose an undue hardship on the operation of a legal services program, factors to be considered include, but are not limited to, the overall size of the legal services program with respect to number of employees, number and type of facilities, and size of budget, and the nature and costs of the accommodation needed.

(3) A legal services program may not deny any employment opportunity to a qualified employee or applicant with a disability if the basis for the denial is a need to 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.

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.

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(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 promptly to the appropriate Federal, state or local agencies, although LSC retains the discretion to investigate all complaints and/or to maintain an open