



OFFICE OF LEGAL AFFAIRS

Legal Services Corporation
America's Partner For Equal Justice

MEMORANDUM

TO: Operations & Regulations Committee

THROUGH: Helaine M. Barnett
President

FROM: Victor M. Fortuno
Vice President and General Counsel

DATE: October 12, 2006

SUBJECT: Staff Report on 45 CFR Part 1624 Rulemaking –Draft Final Rule

Introduction

On October 29, 2005, the Board of Directors directed that LSC initiate a rulemaking to consider revisions to LSC's regulation on prohibitions against discrimination on the basis of handicap at 45 CFR Part 1624. On May 12

commenter has misread or misunderstood the proposed change. The preamble discussion addresses these comments at length.

Section 1624.1 – Purpose

LSC proposed changing the terms “handicapped persons” as they appear in this section to “persons with disabilities.” In addition, LSC proposed adding language to make reference to the ADA. LSC received several comments supporting the proposed changes to this section and none in opposition. Accordingly, the Draft Final Rule recommends adopting the changes as proposed.

Section 1624.2 - Application

LSC did not propose any changes to this section. LSC received no suggestions for change to this section. Accordingly, the Draft Final Rule recommends not making any changes to this section.

Section 1624.3 – Definitions

LSC proposed changing the term “handicapped person” to “person with a disability” in section 1624.3(c)(1). Similarly, LSC proposed to change the term “qualified handicapped person” in section 1624.3(d) to “qualified person with a disability.” LSC received several comments in support and no comments in opposition to these proposed changes. Accordingly, the Draft Final Rule recommends adopting them as proposed.

LSC also proposed to add a definition of the term “auxiliary aids and/or other assistive technology” and to use the single term “auxiliary aids and/or other

proposed employment section, 1624.6. Management agrees that the EEOC's definitions of these terms are appropriate for use in the context of the proposed employment section. However, rather than simply cross-reference the definitions in the text of the regulation, the definitions have been reprinted in the preamble to the Draft Final Rule so that LSC staff and recipients would have a ready reference without having to have a full copy of the EEOC's regulations at hand.

Section 1624.4 – Discrimination prohibited

LSC proposed two notable amendments to this section. First, in each instance in which the term “handicapped person” or “handicapped persons” appears, LSC proposed to replace it with “person with a disability” or “persons with disabilities” as grammatically appropriate. LSC also proposed 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 by an informal definition elsewhere. LSC received several comments supporting the proposed changes to this section.

LSC also received one comment suggesting that this section as proposed is inconsistent with the ADA and “misstates” the law. The Draft Final Rule explains that, since the provision being objected to is not based in the ADA, but rather was adopted in 1979, there is no misstatement of the law. The Draft Final Rule goes on to explain the current and proposed LSC requirement does not impose any responsibility which contradicts responsibilities recipients have under the ADA (i.e., complying with the LSC requirement does not preclude compliance with ADA requirements). As such, it does not appear necessary or desirable to change LSC's regulation in this matter.

LSC also received one comment suggesting that LSC substitute the term “auxiliary aids and/or other assistive technologies” for “auxiliary aids” in proposed 1624.4(d)(2). Management agrees with this comment and the Draft Final Rule reflects this suggestion.

Section 1624.5 – Accessibility of legal services

LSC proposed two notable amendments to this section. First, in each instance in which the term “handicapped person” or “handicapped persons” appears, LSC proposed to replace it with “person with a disability” or “persons with disabilities” as grammatically appropriate. Second, LSC proposed to replace the reference to “the appropriate Regional Office” in section 1624.5(c) with “LSC.” LSC received several comments supporting and no comments opposing these changes. Accordingly, the Draft Final Rule recommends adopting them as proposed.

LSC received one comment suggesting that LSC add a subsection (e) to require recipients to “make reasonable modifications in policies, practices and procedures” to avoid engaging in discrimination on the basis of disability. The Draft Final Rule agrees with the commenter that recipients should not have policies, practices or procedures which have the effect of

discriminating on the basis of disability and expects that part of a recipient's obligation to be in compliance with Part 1624 is to ensure that it does not have policies, practices or procedures which result in discrimination on the basis of disability. However, Management is not convinced that it is necessary to add such an express provision to the regulation because for a recipient to be in compliance with the substantive requirements of Part 1624, the recipient cannot have policies, practices or procedures which result in or have the effect of discriminating on the basis of disability. The Draft Final Rule does not include the suggested new subsection.

Section 1624.6 – Employment

LSC proposed two notable amendments to this section. First, in each instance in which the term “handicapped person” or “handicapped persons” appears, LSC proposed to replace it with “person with a disability” or “persons with disabilities” as grammatically appropriate. LSC also proposed to use the term “auxiliary aids and/or other assistive tech

One commenter stated that it agreed with the substance of the policy and with LSC's proposal to formalize the policy by placing it in the regulation. The commenter expressed its concern, however, that the language proposed is "not sufficiently clear or definitive." The Draft Final Rule explains that the proposed alternative language does not appear to be preferable to the language LSC proposed because the proposed alternative language, while creating more specificity, does so at the expense of necessary LSC discretion. The Draft Final Rule also continues to recommend the language as proposed because it more plainly indicates LSC's exercise of discretion.

Another commenter took the opposite position, urging LSC not to codify its current policy. This commenter suggested that LSC should instead adopt a new policy under which LSC would commit to investigating and processing all complaints directly without referral or reference to any other agency's investigations. The commenter argues that LSC's expertise in legal services makes it uniquely qu

Management Recommendation

Management recommends that the Operations and Regulations Committee recommend that the Board of Directors adopt the changes to the Part 1624 as provided in the Draft Final Rule and approve the Final Rule for publication.