



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Washington, D.C. 20507

Office of  
Legal Counsel

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Office of Legal Affairs  
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RE: Notice of Proposed Rulemaking on the Prohibition Against Discrimination on the Basis of Disability

Dear Ms Condray,

On behalf of the Equal Employment Opportunity Commission (EEOC), we are submitting these comments in response to the Notice of Proposed Rulemaking (NPRM) on the proposal to amend the Legal Services Corporation's (LSC) regulation on prohibitions against discrimination on the basis of disability found at 45 C.F.R. Part 1624. 71 Fed. Reg. 27,654 (proposed May 12, 2006). These regulations implement section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and cover employment discrimination on the basis of disability by recipients of federal financial assistance.

Background for EEOC Coordination

As you know, the EEOC enforces the federal laws that prohibit employment discrimination on the basis of disability. The EEOC interprets and adjudicates disputes under section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791 (Rehab Act), and it enforces Title I of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq, and other employment discrimination laws. The EEOC also has responsibility under Executive Order 12067 to coordinate the federal government's enforcement of laws, executive orders, regulations, and policies that require equal employment opportunity. 43 Fed Reg. 28,967 (July 5, 1978). In fulfilling our E.O. 12067 responsibilities, the EEOC's goal is to support agencies in developing regulations that are uniform and easily understood. The following comments are limited to ensuring consistency between the employment provisions noted in the NPRM and the requirements set forth in Title I of the ADA. We are not addressing other aspects of the proposed rule.

General Comments About the Proposed Rule

At the outset, we are pleased to note that LSC proposes to revise the terminology used in its section 504 rule, changing the term "handicapped" in its various formulations to "individual with a disability" or "disability." These changes are consistent with the standard set forth in the Rehabilitation Act Amendments of 1992, Public Law 102-569, 106 Stat. 4344 (1992 Amendments), which applied the employment nondiscrimination standards of Title I of the ADA, as well as certain sections of Title V of the ADA, to complaints under sections 501, 503, and 504 of the Rehab Act. See 29 U.S.C. § 791(g); 29 U.S.C. § 794(d).

The LSC proposed rule in section 1624.3 restates some but not all of the definitions covered in the ADA's regulatory provisions. Definitions omitted from the NPRM include reasonable accommodation; undue hardship, and direct threat. We suggest that you cross-reference the definitions of these terms with the definitions set forth in the EEOC's ADA regulations at 29 C.F.R. § 1630.2, so that LSC financial

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assistance recipients will be fully informed of the key terms applicable to disability-related employment matters.

Section 1624.6 Employment

The substance and structure of proposed section 1624.6 (Employment) appear to be modeled on a 1980 Department of Justice section 504 regulation for federally assisted programs, 28 C.F.R. Part 42. In light of the passage of the ADA in 1990 and the 1992 Amendment of section 504, the EEOC strongly recommends cross-referencing the EEOC's ADA regulation at 29 C.F.R. Part 1630 in this section. Using a cross-reference keeps standards uniform and is simple and straightforward. This section also should embody the language contained in the 1994 joint DOJ/EEOC rule regarding coordination between section 504 and the ADA. See 28 C.F.R. § 37.12 and 29 C.F.R. § 1640.12 (identical rules).

Specifically, we suggest that the newly revised section would replace the current proposed text in the NPRM with the following:

Section 1624.6 – Employment. No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any program or activity receiving Federal financial assistance. In any investigation, compliance review, hearing or other proceeding, the standards used to determine whether section 504 has been violated in a complaint alleging employment discrimination in programs or activities receiving Federal financial assistance, shall be the standards applied under Title I of the ADA and the provisions of sections 501 through 504 and 510 of the ADA, as such sections relate to employment. Any program or activity receiving Federal financial assistance shall consider the regulations and appendix implementing title I of the ADA, set forth at 29 C.F.R. part 1630, and case law arising under such regulations, in determining whether a recipient of Federal financial assistance has engaged in an unlawful employment practice.

Thank you for the opportunity to provide these comments in response to the proposed rule. Please feel free to contact Carol R. Miaskoff, Assistant Legal Counsel, either by e-mail at [carol.miaskoff@eeoc.gov](mailto:carol.miaskoff@eeoc.gov) or by telephone at 202-663-4645, if you have any questions.

Sincerely,



Peggy R. Mastroianni  
Associate Legal Counsel

cc: Janet Blizard  
Disability Rights Section  
Department of Justice