



OFFICE OF LEGAL AFFAIRS

MEMORANDUM

TO: Operations & Regulations Committee

FROM: Victor M. Fortuno
General Counsel

DATE: April 13, 2006

SUBJECT: Staff Report on 45 CFR Part 1624 DRAFT Notice of Proposed Rulemaking

Introduction

On October 29, 2005, the Board of Directors directed that LSC initiate a rulemaking to consider revisions to LSC's regulation on prohibition against discrimination on the basis of handicap at 45 CFR Part 1624. Pursuant to the Board's further direction, LSC convened a Rulemaking Workshop and reported back to the Operations & Regulations Committee at its last meeting on January 27, 2006. The Board adopted the recommendation of the Committee and directed LSC Management to prepare a Draft Notice of Proposed Rulemaking ("NPRM") proposing such changes as it deemed appropriate. Accordingly, attached to this report is a Draft NPRM for the Committee's review and action, as well as a redlined version indicating the proposed changes to the regulatory text.

Summary of the Draft NPRM

Management is proposing only relatively minor changes to the regulation, but Management believes that these changes will improve the utility of the regulation for LSC, its grantees and other interested persons. First, Management proposes 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, Management proposes to add a reference to the Americans with Disabilities Act ("ADA"), enacted in 1990, to the regulation. 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 ADA 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 it is meant to give LSC authority to enforce the ADA.

Third, Management is proposing to use the term “auxiliary aids and/or other assistive technologies” instead of the term “auxiliary aids” and to add a definition of this term to the regulation. Management 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, Management 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.

Fourth, Management proposes to add language to the enforcement provision setting forth LSC policy regarding investigation of complaints of violation of this regulation. 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. This policy has been efficient and effective. Accordingly, Management proposed to explicitly incorporate this policy into the regulation. 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 in LSC’s 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.

Fifth, Management proposes 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. 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.

Finally, Management also proposes to make a number of technical and grammatical corrections to the regulation.

Management Recommendations

Management recommends that the Operations and Regulations Committee recommend that the Board of Directors approve the attached Draft NPRM for publication in the Federal Register for public comment.