



OFFICE OF LEGAL AFFAIRS

## MEMORANDUM

**TO:** Operations & Regulations Committee

**FROM:** Victor M. Fortuno  
General Counsel

**DATE:** January 11, 2006

**SUBJECT:** Staff Report on 45 CFR Part 1624 (Prohibition Against Discrimination on the Basis of Handicap) Rulemaking

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### *Introduction*

On October 29, 2005, the Board of Directors directed that the Legal Services Corporation (LSC) initiate a rulemaking to consider revisions to LSC's regulation on prohibition against discrimination on the basis of handicap. 45 CFR Part 1624 (hereinafter "part 1624"). The Board further directed that LSC convene a Rulemaking Workshop and report back to the Operations & Regulations Committee prior to the development of any Notice of Proposed Rulemaking ("NPRM"). This report is provided to inform the Committee of the results of the Rulemaking Workshop and present management's recommendation for further action in the rulemaking.

### *Summary of the Workshop*

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.

President Barnett welcomed the group and provided background on the LSC Board's interest in reviewing Part 1624. She explained that this is LSC's first rulemaking workshop, which is designed to share issues and problems but not to develop recommendations or consensus. After self-introductions by the participants and finalization of the agenda, the participants began their discussions.

At the outset, Ms. Condray provided some background and an overview of the requirements set forth in the current regulation. She also provided a brief overview of LSC's enforcement procedures set forth at 45 CFR Part 1618, Enforcement Procedures, as Part 1624 is enforced in accordance with that part. Specifically, Ms. Condray explained that LSC's enforcement powers involve working informally with grantees to ensure compliance and allow for sanctions involving reducing or eliminating funding generally, but noted that LSC does not have authority to order "injunctive relief."

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 with disabilities. LSC's staff practice is to refer such complainants to the appropriate 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, 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 the Technology Initiative Grant Program. Finally, the participants discussed the fact that LSC does not have regulations setting forth standards relating to other types of discrimination (race, gender, national origin, etc.) which are also prohibited by Federal law and LSC's grant assurances. It was acknowledged that an undertaking to develop such standards would require considerable thought and effort.

### ***Management Recommendations***

After consideration of the information which was developed at the Rulemaking Workshop, management recommends that LSC continue to pursue the rulemaking and develop an NPRM for the Committee's review. Management recommends that the NPRM: 1) focus on updating the language of the regulation to provide for current terminology; and 2) state in the regulation LSC's position regarding deference to investigations of other agencies, where appropriate, including reference as necessary to the Americans with Disabilities Act. If the Committee agrees and makes these recommendations to the Board and the Board provides direction to staff to proceed along these lines, management would anticipate providing a draft NPRM to the Committee for review at the April 2006 meeting.