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ADA [Americans with Disabilities Act] Justice Department Report [1]

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DEPARTMENT OF VETERANS AFFAIRS
DEPUTY ASSISTANT SECRETARY FOR
EQUAL OPPORTUNITY
WASHINGTON DC 20420

Facsimile Cover Sheet

To: *Stanley Herr*
Company: *White House*
Phone:
Fax: *456-7028*

From: *Kent Kumbel*
Company: *UA*
Phone: *202-482-6720*
Fax: *202-482-6741*

Date: *11-18-94*

Pages including this
cover page: *21*

Comments: *Attached is the original proposal we discussed yesterday. Modifications were made by the principals but no final action was taken. Judy Gilliom from DOD took the lead in preparing the proposal. Her number is (703) 697-8661.*

October 17, 1991

FEDERAL EMPLOYMENT
OF
PEOPLE WITH DISABILITIES

A Proposal to Centralize the Federal Effort

11/18/94

09:17

202 233 2530

EQUAL OPPORTUNIT

002

Briefing Format

1. The Problem
2. The Solution
3. Requirements:
 - a. Supplemental Central Resources
 - b. Computerized National Referral System
 - c. Federal Hotline
 - d. Location, Staff and Funding
4. Recommendations
5. Benefits and Advantages

THE PROBLEM

- ❑ Seventy percent of people with disabilities do not have jobs.
- ❑ Of these, two-thirds want to work.
- ❑ But thirty percent are so discouraged that they are not even looking for jobs.

SOURCE: LOU HARRIS POLL, 1987

UNNECESSARY COST

\$200 Billion Per Year

Cost to Society for:

Income Support Programs
Such as Welfare, Subsidized Housing and Food Stamps

Lost Income from Taxes

Lost Spending Power

SHORTSIGHTEDNESS

Each Year This Country Spends:

- **\$57 Billion on Dependence-Producing Programs**
- **\$3 Billion on Independence**

THE TARGETED DISABILITIES

- ⇒ Blindness
- ⇒ Deafness
- ⇒ Complete Paralysis
- ⇒ Partial Paralysis
- ⇒ Seizure Disorders
- ⇒ Mental Illness
- ⇒ Mental Retardation
- ⇒ Missing Extremities
- ⇒ Distortion of Limbs/Spine

Specified by EEOC for emphasis in affirmative action programs

AVAILABILITY

**5.95 PERCENT OF THE POPULATION THAT IS
WORK-FORCE-AGE
AND ABLE TO WORK**

EEOC estimate of people who could be employed.

UTILIZATION

1.15 Percent
of the
Federal Work Force

MINIMAL HIRING

FY 1990	0.75%	(2,755 of 368,745 hires) *
FY 1989	1.13%	(3,960 of 349,560 hires)
FY 1988	1.03%	(3,648 of 353,085 hires)
FY 1987	1.05%	(5,560 of 530,578 hires)

Source: EEOC reports to Congress (includes U.S. Postal Service). All tenures, except as noted. *Permanent only

SLOW PROGRESS

Persons with Targeted Disabilities
in the Federal Civilian Work-Force

September 1990	1.15%	(32,128 of 2,785,965)*
September 1989	1.14%	(31,765 of 2,787,712)
September 1988	1.10%	(30,776 of 2,807,546)
September 1987	1.09%	(32,149 of 2,943,878)

Note: Data from EEOC's reports to Congress
(includes U. S. Postal Service). All tenures,
except as noted. *Permanent only

THE SOLUTION

More Federal Jobs
For
People With Disabilities

REQUIREMENTS

- Supplemental Central Resources
- Computerized National Referral System
- Federal Hotline
- Suitable Location
- Specialized Staff
- Adequate Funding

SUPPLEMENTAL CENTRAL RESOURCES

- Pool of slots for readers, interpreters and personal assistants.
- Centrally funded salaries for these personnel.
- Centrally funded accessible transportation (motor pools and contract services).
- Centrally funded individual accommodations such as reading machines, adapted computers and software and text telephones.
- Centrally funded elimination of barriers for accommodation of individual employees (e.g., making a restroom accessible or installing a wheelchair ramp).
- Technical assistance to facilitate accommodations.
- Consultation with oversight agencies to assure effective administration of policies that affect the employment of people with disabilities in the Federal Government.

COMPUTERIZED NATIONAL REFERRAL SYSTEM

- All applicants referred will be interviewed, evaluated and rated.
- Persons with targeted disabilities and other disabilities severe enough for special noncompetitive appointments.
- Readers, sign language interpreters and personal assistants.

FEDERAL HOTLINE

800 Telephone Number.

- How to apply for a job.
- Insurance and retirement information.
- Options for accommodations.
- Transportation.
- Housing.
- Rules and Regulations.

LOCATION

OPTION 1:

General Services Administration (GSA)

OPTION 2:

Office of Personnel Management (OPM)

SPECIALIZED STAFF

- Director at the SES level who has full time responsibility for this program.
- Senior specialists (GM-13/15) with expertise related to:
 - ⇒ Recruitment and placement
 - ⇒ Electronic and other accommodations
 - ⇒ Procurement and logistics
 - ⇒ Various disabilities
 - ⇒ Legal issues
- Support staff

RECOMMENDATIONS

- That the Office of Management and Budget approve an annual appropriation request for this program of \$10M.
- That the General Services Administration provide office space and house the organization administratively.
- That the Office of Personnel Management provide consulting services on personnel policy as necessary.
- That the Interagency Committee on Employment of People with Disabilities seek White House support for this initiative and provide oversight for the start-up.

ADVANTAGES OF CONSOLIDATION

- Consistent with goals of the President's Management Improvement Council.
- Single point of entry for users.
- Quick turnaround.
- Customer satisfaction (both Federal managers and people with disabilities).

A SOUND INVESTMENT

"Each day, millions of Americans demonstrate by their example that a disability need not be an obstacle to success.... Helping greater numbers of persons with disabilities to enter the mainstream of American life is, therefore, more than a moral imperative--it is also a sound investment in our Nation's well being."

President George Bush

1) Greeting -- working meeting --
This one depends on subgroups

part of
2) 1 Presentation - to all DPC
at least 1 slide

3)

98504

Poll - complaints

Larry's Fax

Closing: → Recommendations
→ Something is awaiting
to me re this
→

Terry Thur → (Dist of Bunkle)

Conference call + face-to-face:

TikTok
Women:

mandatory training?
civil service - Lila Farazian

(negative

sex harassment

→ AIDS

minimize

(perhaps mandatory treatment ---
part of syllabus)

availability issues

Union partnerships agreements -
Uniformity -

Sensitivity/ Alternative formats
Remuneration accumulators --

More minimum v. covering

re leave approvals.

#3 or 4

202 205-9252

ADAGE --- Goal

top down Svidence

cross-over down (now UPAS)

Larry -- on 1 front of skunk
8504 ^{res} ~~also~~ cross -
references skunk

Pete Sallito

Kie -

Charlotte ~~Car~~

Mike Carter --

Subgroup: Email
Voice mail

Windows Technology
8504 Computer Technology

Annual of Knowledge Technology

Taxonomy -
Biology.

· Efforts of scale

· personal sense

· common sense

IV. Law Compliance.

Quantifiable quality

· No benefit

· Quantity -

Staff — Point

21 + mil

Moses

Support

Ed -

Energy

Terry - Administration

Sign-language

PAJ - music/culture

Outline of APO --
difficulties of doing

Commitment a/ a hubbub response --
[Big v. small as a rule]

→ User friendly
driven to managers.

Intermediation →

Mike — 2 proxy
intermediate → user friendly.
Cardyn Cunningham →



Enforcing the ADA

A Status Report Update from the Department of Justice

(April-June 1994)

This Status Report Update covers the ADA activities of the Department of Justice during the second quarter (April-June) of 1994. Copies of the earlier April 4, 1994, Status Report, which summarizes all activities up to that date, are available through our ADA Telephone Information Line (see page 10).

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The Americans with Disabilities Act (ADA) is a comprehensive civil rights law for people with disabilities. The Department of Justice enforces the ADA's requirements in three areas -

Title I: Employment practices by units of State and local government

Title II: Programs, services, and activities of State and local government

Title III: Public accommodations and commercial facilities

I. Enforcement

Through lawsuits and both formal and informal settlement agreements, the Department has achieved greater access for individuals with disabilities in approximately 250 cases. Under general rules governing lawsuits brought by the Federal Government, the Department of Justice may not file a lawsuit unless it has first unsuccessfully attempted to settle the dispute through negotiations.

A. Litigation

The Department may file lawsuits in Federal court to enforce the ADA and may obtain court orders including compensatory damages and back pay to remedy discrimination. Under title III the Department may also obtain civil penalties of up to \$50,000 for the first violation and \$100,000 for any subsequent violation.

1. New lawsuits

The Department initiated, or intervened in, the following lawsuits.

Title II

Gorman v. Guitars and Cadillacs, L.P. - The Department intervened in this suit to defend the constitutionality of title II. The Department has

also filed an amicus brief arguing that title II covers police arrest procedures. (See "amicus briefs," below.)

Title III

United States v. Lira Limited Liability Co. - The Department filed its first lawsuit for violations of the alterations provisions of title III against the owners of the Barolo Grill, a restaurant in Denver, Colorado. The Barolo's owners altered the restaurant in November 1992 without complying with the ADA when they constructed a raised dining area with no ramp or lift for persons who use wheelchairs. The owners also failed to make any path of travel modifications, leaving the restaurant's entrance inaccessible, and failed to remove existing barriers to access where readily achievable.

United States v. Pleasant Travel Service, Inc. and Hawaiian Hotels and Resorts, Inc. - The Department filed its first title III action against a hotel, the Royal Lahaina Resort, in Lahaina, Hawaii (on the Island of Maui). The suit alleges that the owner and operator of the hotel failed to remove architectural barriers to access and made alterations to the hotel that did not comply with the ADA's architectural standards. The hotel has approximately 540 guest rooms, suites and cottag-

es, none of which is accessible to individuals with disabilities. In addition, none of the restrooms in the common area of the hotel is accessible; and there are barriers to access in the hotel's restaurants, tennis courts and swimming pools. In undertaking alterations to the hotel's luau grounds, gift shop, and swimming pool area, the owner and operator failed to provide accessible paths of travel to the altered areas.

2. Consent decrees

Some litigation is resolved at the time that the suit is filed or afterwards by means of a negotiated consent decree. Consent decrees are monitored and enforced by the Federal court in which they are entered.

Title III

United States v. Becker C.P.A. Review - In a consent decree resolving the first case filed by the Department of Justice under the ADA, Becker C.P.A. Review, which prepares over 10,000 students annually to take the national certified public accountant exam, agreed to amend its auxiliary aids policy. Becker will no longer limit its offered auxiliary aids to audiotape transcripts prepared for the instructors' use; and will provide appropriate auxiliary aids and services, including qualified sign language interpreters and assistive listening devices, to students who are deaf or hard of hearing. The company may require a student to attend a consultation meeting, at which time the student would explain his or her individual needs and means of communication. Becker would explain the nature of the class and the proposed auxiliary aid or service. However, Becker may request that the student try its proposed aid or service at a Becker class prior to the session that the student wishes to attend. If the student can articulate, based on experience or skills, why the proposed aid or service will not provide effective communication,

the student will not be required to try out the proposed auxiliary aid or service. Becker also agreed to appoint a national ADA coordinator and to train its staff regarding the policy revision; pay \$20,000 to the Department of Justice to be distributed to seven individuals who are deaf or hard of hearing, former Becker students; and establish a \$25,000 scholarship fund for accounting students who are deaf or hard of hearing at California State University.

United States v. Harcourt Brace Legal and Professional Publications, Inc. - A consent decree resolved this suit against the auxiliary aids policies of Harcourt Brace Legal and Professional Publications regarding Bar/Bri, the nation's largest preparatory course for individuals studying for bar examinations. The Department's complaint alleged that the Bar/Bri course failed to provide appropriate auxiliary aids to students with vision and hearing impairments. Under the consent decree, filed simultaneously with the complaint, Harcourt Brace agreed to establish a detailed set of procedures for identifying and providing appropriate auxiliary aids and services, including qualified sign language interpreters, assistive listening devices, and Brailled materials, to students with disabilities. In addition, Harcourt Brace has agreed to pay \$28,000 in compensatory relief. This award is divided among two students; the California Department of Rehabilitation, which provided the interpreter for one of the students; and the

individual who converted the course materials into Braille for the other student. Harcourt Brace also agreed to pay \$25,000 in civil penalties, adopt and implement a formal written policy ensuring that auxiliary aids and services are promptly and properly provided, educate Bar/Bri staff regarding students with disabilities, and include information regarding the availability of auxiliary aids and services for students with disabilities in its advertising materials.

Consent - Decrees

3. Amicus briefs

The Department files briefs in selected ADA cases in which it is not a party in order to guide courts in interpreting the ADA.

Title II

Crowder v. Kitigawa - The Department filed an amicus brief in the United States Court of Appeals for the Ninth Circuit supporting a challenge to Hawaii's 120-day animal quarantine program for all dogs, cats, and other carnivores, including guide dogs, entering the State. The brief argues that title II prohibits discrimination against individuals with disabilities in all actions of State and local governments, including the quarantine requirements, not just in the "services" or "benefits" they provide, and that there are nondiscriminatory alternatives to the quarantine system which could both protect against rabies and allow individuals with guide dogs to travel freely to Hawaii. Hawaii maintains that the quarantine is necessary to protect against the introduction of rabies into Hawaii. The private plaintiffs, however, allege that the quarantine discriminates against individuals with disabilities who use guide dogs by making it virtually impossible for them to travel to or from Hawaii. The Federal district court ruled against plaintiffs who appealed to the United States Court of Appeals for the Ninth Circuit.

Amicus Briefs

Gorman v. Guitars and Cadillacs, L.P. - The Department filed an amicus brief in this case arguing that police arrest procedures are covered by title II. The Department also intervened as a party to defend against allegations that title II is unconstitutionally vague. The plaintiff has paraplegia and uses a wheelchair. His lawsuit alleges that the owner and operators of Guitars & Cadillacs, a country western bar in Kansas City, Missouri, violated his rights under title III of the ADA by refusing to allow him access to the bar where the dance floor is located, and by subse-

quently having him arrested for trespass when he asserted his right to remain there. The plaintiff also alleged that members of the Kansas City Police Department, the department's chief of police, and members of the department's board of commissioners discriminated against him under title II of the ADA by a failure to make the reasonable modifications in its policies, practices, and procedures necessary to ensure safety during arrest and transportation to the police station. This failure resulted in personal injuries and damage to the plaintiff's wheelchair while he was in custody.

Livingston v. Guice - The U.S. District Court for the Western District of North Carolina dismissed this case in which the Department had filed an amicus brief arguing that States may be sued for damages under title II. This private suit alleges that the State of North Carolina and a State court judge violated title II of the ADA by preventing the plaintiff from entering a courtroom through the only accessible entrance known to her. In dismissing the case, the court held that because of the doctrine of judicial immunity, the judge, and therefore, the State could not be held liable.

Ellen S. v. Florida Board of Bar Examiners - The Department filed an amicus brief supporting a challenge to mental health inquiries made by the Florida State Board of Law Examiners in certifying candidates

for admission to the Florida Bar. Florida asks candidates whether they have ever sought treatment for or been diagnosed as having a nervous, mental, or emotional condition, or have ever taken any psychotropic medication. Bar applicants who answer affirmatively must sign a consent form authorizing the release of any and all mental health records. The amicus brief argues that the inquiries are unnecessary and that the Board's procedures unnecessarily impose burdens on people with disabilities in violation of title II.

B. Formal Settlement Agreements

The Department has resolved a number of cases without filing a lawsuit, by means of formal written settlement agreements.

Title II

Fulton, Missouri - The Department settled a complaint filed against the Municipal Court for the City of Fulton and the Office of the Clerk of the Municipal Court. The complaint alleged that the city did not ensure effective communication with persons who are deaf or hard of hearing. The city has agreed to provide appropriate auxiliary aids and services; provide training for personnel; publish a policy that provides reasonable modifications in policies, practices, and procedures for people with disabilities; incorporate instructions for obtaining reasonable modifications in policies, practices, and procedures into the existing language on its traffic citations; and work with the county government to ensure that the municipal courtroom in the county courthouse is accessible.

Waukesha, Wisconsin - Resolving a complaint by a Waukesha city alderman who uses a wheelchair alleging that the city hall was inaccessible, the city agreed to hold its closed deliberations in the accessible room in which it holds general meetings, renovate the first floor men's and women's bathrooms to comply with ADA standards, install two automatic door openers at the building's front entrance, and renovate a van accessible parking space.

Berkeley, California - Agreement was reached with the City of Berkeley, California, to ensure direct access to its 9-1-1 emergency services. Berkeley will modify its current practices to ensure that the services provided to individuals who use TDD's are as effective as those provided

to others. The city will also install one TDD at each of its answering stations, provide training of emergency service call takers in the proper operation of TDD's, and develop and implement a public education program to promote the use of 9-1-1 by individuals who use TDD's.

Wadsworth, Ohio - Resolving a complaint alleging that the city hall and city court were inaccessible to individuals with mobility impairments, the City of Wadsworth agreed to make alternative arrangements for program accessibility until a new city hall is completed in the spring of 1995, upgrade its parking facilities and entryway to ensure access to individuals with disabilities, inform and train all city managers and employees on its policies and procedures for providing accessibility to individuals with disabilities, and adopt and publish grievance procedures for prompt and equitable resolution of complaints alleging actions prohibited by title II.

Alexandria, Louisiana - In response to a complaint alleging that a person who is deaf was denied effective communication during a court proceeding because a sign language interpreter was not provided, the Alexandria City Court agreed to provide auxiliary aids when necessary for effective communication and adopted a policy for the provision of sign language interpreters. A TDD was also purchased.

Atlanta, Georgia - The Georgia World Congress Center Authority has agreed to make significant alterations to the Georgia World Congress Center, a large convention facility, and one of the proposed venues for the 1996 Olympic Games. The alterations include widening doors to the auditorium; providing accessible seating for people who use wheelchairs; providing alternatives to turnstile entrances to food service areas; altering specific features in designated food service areas; and altering telephones, restrooms, door hardware, and water fountains.

Formal Settlement Agreements

Genesee County, Michigan - The County Board of Commissioners agreed to make restroom facilities in the probate court house accessible to individuals with mobility impairments.

Title III

Anthony's Pier 4 Restaurant, Boston, Massachusetts - Settlement agreements were reached with the owners and operators of Anthony's Pier 4 restaurant in Boston, Massachusetts, and three other restaurants in the Boston area. Anthony's Pier 4 is one of the five largest restaurants in the United States. The agreements call for a variety of changes to the facilities, including provision of accessible parking spaces, accessible entrances, accessible dining areas, and accessible restrooms. In particular, the agreement with Anthony's Pier 4 calls for reconstructing the front of the restaurant to provide an accessible entrance and accessible restrooms, construction of a ramp to provide access to an outdoor patio, and installation of a mechanical wheelchair lift to provide access to the banquet and meeting rooms on the second floor of the facility. The other three restaurants covered by the agreements are in Swampscott and Yarmouthport, Massachusetts. At each of those, there will be accessible parking, an accessible main entrance, accessible seating areas, and accessible restrooms. Finally, all of the restaurants have adopted policies for serving customers with disabilities.

Arlington, Virginia - Exxon Gas Station in Arlington, Virginia agreed to provide gas dispensing services to persons with disabilities and implement a procedure that would ensure that persons with disabilities could bypass the electronic card reader devices when dispensing their own gasoline. Furthermore, Exxon agreed to install detailed signage describing this procedure.

Hickory, North Carolina - The Department settled a complaint against the owners of the Life Enhancement Center health club regarding allegations that the health club had excluded an individual who uses a wheelchair from the pool and jacuzzi. The health club owners later allowed him to use the pool, jacuzzi, and other equipment, but only if he wore a protective helmet at any time he was out of his wheelchair. Several aspects of the newly construct-

ed facility failed to meet the ADA new construction standards.

Under the settlement agreement, the owners agreed to change their previous policies and to allow persons who use wheelchairs to use the pool and jacuzzi, eliminate the protective helmet require-

ments, and make all changes necessary to bring the facility into compliance with the new construction standards.

Formal Settlement Agreements

C. Other settlements

The Department resolves numerous cases without litigation or a formal settlement agreement. In some instances, the public accommodation, commercial facility, or State or local government promptly agrees to take the necessary actions to achieve compliance. In others, extensive negotiations are required. Following are some examples of what has been accomplished through informal settlements.

Title II

Access to facilities

- The entrance to the building housing a New England State law library was renovated along with the restrooms servicing the library to make the facility accessible to persons with mobility impairments. The library also revised its policy to ensure that appropriate auxiliary aids and services will be provided when necessary.

- A western State department of corrections retrofitted a prison van with a wheelchair lift, developed procedures for providing physical therapy, constructed a ramp to provide access to a prison library, and leveled the entrance to a shower in a cellblock.
- A Colorado county with an inaccessible elevator and restroom in its court house agreed to make structural changes to the restroom, alter the elevator to carry a greater maximum weight, and install a call button in the elevator so persons with disabilities can call for assistance.

Other Settlements

- A Louisiana motel, part of a national franchise, agreed to provide accessible parking spaces, provide an accessible entrance to the front lobby, lower a portion of the front desk, and modify six guest rooms to make them accessible (including two rooms with roll-in showers). The complaint alleged that an individual who uses a wheelchair called the company's 800 reservations number and requested an

accessible room in the Baton Rouge area. He was informed that none of the motels associated with the national franchise in that area had accessible rooms.

Effective communication

- A western State department of prisons agreed to reschedule a parole hearing so that it could provide a sign language interpreter for an inmate, and agreed to provide a TDD for the facility where the inmate was housed.

Title III

Access to facilities

- A national rental car company is now offering a wide variety of rental cars equipped with hand controls to customers with disabilities at all corporately-owned locations across the country. Additionally, the company is now installing steering knobs free of charge to customers who request them. Hand controls and steering knobs enable persons who have limited use of their lower extremities to drive.
- A Denver restaurant, accessible only by a steep flight of stairs or by narrow winding corridors, agreed, as a readily achievable alternative to barrier removal, to prepare and deliver meals to persons with disabilities who live within three miles of the restaurant and to advertise the availability of this service.

- A luxury hotel in a large Virginia city agreed to provide two accessible restrooms in the lobby area, accessible signage throughout the building, and six accessible guest rooms.
- A retail, fabric store in a small California city has modified one of the store's entrances so that it is accessible to persons with disabilities. Wider doors and an opening device were installed to enable persons with disabilities to enter the store unassisted. Appropriate directional signage was also installed.
- Small town gas stations in Utah and Wyoming agreed to provide dispensing services for persons with disabilities and not to charge prices above ordinary self-serve prices for such services.
- An exercise training facility operating on two floors in a large California city agreed, as a readily achievable alternative to barrier removal, to open a space on the first floor, which was ordinarily reserved for personalized training, to persons unable to gain access to the second floor. The facility also agreed not to charge additional fees, unless personalized training was requested.

- An Atlanta, Georgia, location of a national chain restaurant acquired a portable ramp and installed a doorbell for use by those persons who need access to the ramp. Because of the restaurant's location, installation of a permanent ramp was not readily achievable.
- The owners of a shopping center in Lexington, South Carolina, built a curb ramp and established accessible parking.
- A Denver restaurant installed a curb ramp to make the front entrance accessible.

Other Settlements

Effective communication

- A large, independent California bookstore agreed to provide sign language interpreters upon request for poetry readings that it sponsors and holds at the bookstore. The store will also specify that the service is available in its advertising for the poetry readings.
- Four New York performing arts theaters have installed assistive listening systems, purchased receivers equal in number to at least four percent of available seats, and posted signs indicating the availability of these devices.
- An intercity bus company purchased and installed TDD units at banks of public phones in a large east coast city bus terminal and agreed to ensure that the TDD's are properly maintained.

Policies and procedures

- The Department resolved a complaint against a Jacksonville, Florida, chain restaurant alleging that the manager of the restaurant refused to allow a person with a hearing impairment who was accompanied by a service animal into the restaurant. The restaurant agreed to educate its employees as to the need to make reasonable modifications in policies, practices, and procedures for all people with disabilities, including individuals with hearing impairments who use service animals.

D. Investigations

The Department is currently investigating over 1000 complaints against public accommodations and commercial facilities under title III. The Department also, on its own initiative, is reviewing plans for new construction and alterations of various types of facilities in locations around the country.

In addition, the Department is currently investigating nearly 900 complaints against units of State and local government under title II. Seven other Federal agencies are also investigating title II complaints and may refer cases to the Department of Justice for litigation.

The Department also has a number of investigations under way under title I against public employers. (Enforcement of title I against private employers is handled by the Equal Employment Opportunity Commission.)

II. Certification of State and Local Building Codes

The ADA authorizes the Department to certify State or local laws or building codes that meet or exceed the ADA's accessibility requirements. This is a voluntary program in which States and localities can choose to participate. In a jurisdiction whose law or code has been certified, when a new public accommodation or other commercial facility is built, or an existing facility is altered or expanded, compliance with the local regulations will give the building owner and other responsible parties rebuttable evidence of compliance with the ADA if the building's accessibility is later challenged under the ADA. The Department

is reviewing requests for certification from the State of Washington, the City of New York, the State of New Mexico, the State of Utah, and the State of Florida.

The Department is also reviewing requests for technical assistance from the Council of American Building Officials (CABO) on behalf of the American National Standards Institute (ANSI) A117.1 committee, the Building Officials and Code Administrators International (BOCA), and the National Parking Association.

Title II Proposed Rule

The Department of Justice has published in the Federal Register a proposed rule to amend the regulations implementing title II and titles III of the ADA. The Department is currently seeking public comment on the proposed amendments. Comments must be received in writing on or before August 19, 1994. The proposal would adopt the ADA Accessibility Guidelines as the ADA Standards for Accessible Design for new construction and alterations covered by title II of the ADA. Under the proposed amendment, title II entities would no longer have the option to apply the Uniform Federal Accessibility Standards.

The proposed rule would also amend the ADA Standards in several ways and add sections 11 through 14, dealing with judicial, legislative, and regulatory facilities, detention and correctional facilities, residential housing, and public rights-of-way. Finally, the proposal would publish the amended ADA Standards for Accessible Design as part 37 of 28 C.F.R., deleting them from Appendix A of part 36 of 28 C.F.R., and would amend title III to refer to part 37.

III. Technical Assistance

The ADA requires the Department of Justice to provide technical assistance to entities and individuals with rights and responsibilities under the ADA. The Department encourages voluntary compliance by providing education and technical assistance to business, industry, government, and members of the general public through a variety of means.

ADA Telephone Information Line

The Department of Justice now provides toll-free "800" service for both voice and TDD callers who have questions about title II and title III of the ADA, including the Standards for Accessible Design. Under its expanded hours of operations, operators may be reached from 10:00 a.m. to 6:00 p.m. (EDT), Monday through Friday (except Thursdays, 1:00 p.m. to 6:00 p.m.). The system has been upgraded to accommodate a larger number of callers simultaneously and to provide Spanish language service. Callers may hear recorded information and order materials at any time day or night. The information line numbers are:

Nationwide
1-800-514-0301 (voice)
1-800-514-0383 (TDD)

Washington, D.C., area
202-514-0301 (voice)
202-514-0383 (TDD)

Grants

Section 506 of the ADA requires the Department to provide technical assistance to entities and individuals affected by title II and title III of the ADA. This section also authorizes the Department to award grants for the purpose of supplementing the Department's technical assistance efforts.

The Department of Justice's solicitation for applications for its fiscal year 1994 Americans with Disabilities Act (ADA) Technical Assistance Grant Program was published in the Federal Register on June 3, 1994. The ADA Technical Assistance Grant Program is designed to develop and implement strategies to disseminate information to entities and individuals with rights and responsibilities under titles II and III of the ADA. The goal of the program is to increase understanding of, and facilitate voluntary compliance with, the ADA nationwide. Applications will be accepted until August 2, 1994.

Publications

Copies of the Department of Justice's regulations for titles II and III of the ADA, the ADA Questions and Answers booklet, the ADA Handbook (limited quantities available), and information about the Department's technical assistance grant program can be obtained by calling the Department's toll-free ADA Telephone Information Line at the number listed above or writing to the address listed below. These materials are available in standard print, large print, Braille, audiotape, and computer disk.

U.S. Department of Justice
Civil Rights Division
Public Access Section
Post Office Box 66738
Washington, D.C. 20035-6738

These materials are also available through the Department of Justice's ADA electronic bulletin board at 202-514-6193.

Copies of the Department of Justice's Technical Assistance Manuals for titles II and III and yearly updates can be obtained by subscription from the Government Printing Office. The subscription for the Title II Manual, which includes annual supplements through 1996, costs \$24. The subscription for the Title III Manual with supplements through 1996 costs \$25. Call the ADA Telephone Information Line to obtain an order form.

Copies of legal documents and settlement agreements mentioned in this publication can be obtained by writing to:

Freedom of Information/Privacy Act Branch
Room 7337
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

IV. Other Sources of ADA Information

The *U.S. Department of Transportation* offers technical assistance to the public concerning the public transportation provisions of title II and title III of the ADA.

ADA documents and general questions
202-366-1656 (voice)
202-366-2979 (TDD)

ADA legal questions
202-366-9306 (voice)
202-755-7687 (TDD)

Nat'l Easter Seal Society
"Project Action" grant
202-347-3066 (voice)
202-347-7385 (TDD)

Air Carrier Access Act questions
202-376-6406 (voice)

The *Equal Employment Opportunity Commission* offers technical assistance to the public concerning title I of the ADA.

For ordering documents
1-800-669-3362 (voice)
1-800-800-3302 (TDD)

For questions
1-800-669-4000 (voice)
TDD: use relay service

The *Federal Communications Commission* offers technical assistance to the public concerning title IV.

ADA documents and general questions
202-632-7260 (voice)
202-632-6999 (TDD)

ADA legal questions
202-634-1808 (voice)
202-632-0484 (TDD)

Complaints and Enforcement
202-632-7553 (voice)
202-632-0485 (TDD)

The *U.S. Architectural and Transportation Barriers Compliance Board*, or "Access Board," offers technical assistance to the public on the ADA Accessibility Guidelines.

ADA documents and questions
800-872-2253 (voice & TDD)
202-272-5434 (voice)
202-272-5449 (TDD)

The *National Institute on Disability and Rehabilitation Research (NIDRR)* of the *U.S. Department of Education* has funded centers in ten regions of the country to provide technical assistance to the public concerning title I, title II, and title III of the ADA.

ADA technical assistance nationwide
(800) 949-4232 (voice & TDD)

V. How to File Complaints

Title I

Complaints about violations of title I (employment) by units of State and local government or by private employers should be filed with the Equal Employment Opportunity Commission. Call 1-800-669-4000 for the field office in your area.

Title II

Complaints about violations of title II by units of State and local government should be filed with -

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
Post Office Box 66118
Washington, D.C. 20035-6118
(202) 307-2222 (Voice)
(202) 307-2678 (TDD)

Title III

Complaints about violations of title III by public accommodations and commercial facilities should be filed with -

U.S. Department of Justice
Civil Rights Division
Public Access Section
Post Office Box 66738
Washington, D.C. 20035-6738



April 4, 1994

Enforcing the ADA

A Status Report from the Department of Justice

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The Americans with Disabilities Act (ADA) is a comprehensive civil rights law for people with disabilities. The Department of Justice enforces the ADA's requirements in three areas --

Title I: Employment practices by units of State and local government

Title II: Programs, services, and activities of State and local government

Title III: Public accommodations and commercial facilities

I. Enforcement

Through lawsuits and both formal and informal settlement agreements, the Department has achieved greater access for individuals with disabilities in over 200 cases. Under general rules governing lawsuits brought by the Federal Government, the Department of Justice may not file a lawsuit unless it has first unsuccessfully attempted to settle the dispute through negotiations. As a result, most complaints filed with the Department will be resolved before a lawsuit becomes necessary. Many cases are settled after an on-site investigation.

A. Litigation

The Department may file lawsuits in Federal courts to enforce the ADA and may obtain court orders including compensatory damages to remedy discrimination. Under title III the Department may also obtain civil penalties of up to \$50,000 for the first violation and \$100,000 for any subsequent violation.

1. Ongoing lawsuits

The Department has initiated, or intervened in, the following pending lawsuits.

Title I

U.S. v. State of Illinois -- The Department sued the State of Illinois, the City of Aurora, and its police and fire pension funds for excluding police officers and firefighters from its pension funds on the basis of disability. Under the challenged system, police officers and firefighters are required to undergo separate physical examinations, after they are hired, to determine eligibility for retirement and disability benefits. The Department's investigation resulted from the complaint of an Aurora police officer who was ruled ineligible for pension benefits because he has diabetes.

Title III

U.S. v. Morvant, Louisiana and *U.S. v. Castle Dental Center, Texas* -- The Department filed lawsuits against a dentist in New Orleans and a dental center in Houston alleging that they had violated title III of the ADA by refusing to provide dental treatment to individuals who had tested positive for HIV. The Department asserts that there is no scientific or medical justification for excluding persons with HIV or AIDS from dental or orthodontic treatment solely on the basis of their HIV+ status. Both cases are in the early stages of litigation.

In *Morvant* the court denied the defendant's motion to dismiss. The court ruled that compensatory damages may be awarded on behalf of a deceased individual who suffered discrimination because of his positive HIV status. The court also held that the defendant dentist may be sued in his individual, as well as his corporate, capacity.

U.S. v. Becker CPA Review, Inc., District of Columbia -- The Department sued Becker CPA Review for failing to take appropriate steps to communicate effectively with students who have hearing impairments. Becker, the nation's largest CPA review course, prepares over 10,000 students a year to take the national certified public accountant exam. The Department is seeking (1) a permanent change in Becker's policy so that sign language interpreters and other auxiliary aids are provided to those who need them; (2) civil penalties; and (3) damages for the original complainant, several other people with hearing impairments who have reported that they were not accommodated, and any others who may have had similar experiences. Trial is scheduled for July 5, 1994.

Ongoing Lawsuits

Pinnock v. International House of Pancakes (IHOP), California -- Upon notice by the Federal district court that the constitutionality of a Federal law was being challenged, the Department intervened in this case to defend the constitutionality of title III of the ADA. The suit had been filed by a private individual asserting that the California pancake restaurant had failed to undertake readily achievable barrier removal and to provide auxiliary aids and services. The court adopted the Department's views and upheld title III's constitutionality. The defendant has appealed the court's ruling.

Posner v. Central Synagogue, New York -- In a private lawsuit involving alleged discrimination by a nursery school, the Department intervened, upon notice by the Federal district court, to defend the constitutionality of the exemption for religious organizations under title III of the ADA. The court has not yet issued a ruling.

2. Consent decrees

Some litigation is resolved at the time that the suit is filed or afterwards by means of a negotiated consent decree. Consent decrees are monitored and enforced by the Federal court in which they are entered.

Title III

U.S. v. Allright Colorado, Inc., Colorado -- The Department entered into a consent decree resolving its lawsuit against Allright Colorado, a company that owns or operates over 100 parking lot facilities in Denver. Under the agreement, Allright will add well over 400 accessible parking spaces to its facilities and will instruct parking attendants to monitor the slots and ticket cars that are improperly parked in accessible spaces. Allright paid a \$20,000 civil penalty to the United States because of the alleged delay in moving toward compliance.

U.S. v. Venture Stores, Inc., Illinois -- The Department entered into a consent decree resolving its lawsuit against Venture Stores, Inc., a St. Louis, Missouri, firm that operates more than 90 discount department stores in eight states. Venture agreed to modify its policy of permitting only customers with drivers' licenses to pay for merchandise with a personal check, and will now permit individuals who do not drive because of a disability to pay by check if they have a non-driver state ID card. Venture also agreed to make payments to four individual complainants.

3. Amicus briefs

The Department files briefs in selected ADA cases in which it is not a party in order to guide courts in interpreting the ADA properly.

Title II

Kinney v. Yerusolim, Pennsylvania -- In agreement with an amicus brief filed by the Department of Justice, the U.S. Court of Appeals for the Third Circuit ruled that the ADA requires cities to install curb ramps when they resurface streets. This title II lawsuit was brought against the city of Philadelphia by a group of people with mobility impairments.

Lakes Region Consumer Advisory Board v. City of Laconia, New Hampshire -- The City of Laconia denied the Lakes Region Consumer Advisory Board's application for a permit to operate a facility providing services to persons with mental illness. The Advisory Board sued, alleging that the denial violated title II of the ADA and section 504 of the Rehabilitation Act. The Department filed an amicus brief supporting the Advisory Board's position that zoning decisions are subject to review under title II of the ADA and section 504 of the Rehabilitation Act. No ruling has yet been issued.

Medical Society of New Jersey v. New Jersey State Board of Medical Examiners, New Jersey -- The Medical Society of New Jersey filed suit challenging certain questions on the State medical board's application for renewal of medical licenses. The Department filed an amicus brief arguing that broad questions pertaining to a history of psychiatric illness or a history of drug or alcohol abuse, not drawn to focus on current impairments of a physician's fitness to practice medicine, are discriminatory under title II of the ADA. In a procedural ruling, the Federal district

court agreed that a licensing process that places greater burdens on individuals because of positive responses to the challenged questions would likely violate title II.

Galloway v. Superior Court of the District of Columbia, District of Columbia -- A blind individual filed a lawsuit in Federal district court charging that the District of Columbia Superior Court's policy of categorically excluding blind persons from jury service violates title II of the ADA and section 504 of the Rehabilitation Act of 1973. The Federal district court judge agreed, and awarded the plaintiff \$30,000 in damages. The Department of Justice argued in support of the plaintiff's view that compensatory damages are available remedies under both the ADA and section 504.

Livingston v. Guice, North Carolina -- A person who uses a wheelchair filed a lawsuit in Federal district court against the State of North Carolina and a State court judge charging that they had violated title II of the ADA by preventing her from entering a courtroom through the only accessible entrance known to her. The Department argued in an amicus brief that States may be sued for damages under title II. The court has not yet issued a ruling.

Rosenthal v. State Board of Law Examiners, New York -- A law school graduate with learning disabilities filed a lawsuit charging that the New York State Board of Law Examiners had refused to make reasonable adjustments in its procedures to give her an equal opportunity to pass the State bar exam. In settling the case the State Board agreed to let her take the exam in a separate room, take twice the usual amount of time, and have the assistance of a person to transcribe her answers onto the multiple choice answer sheet. During the litigation the Department of Justice filed an amicus brief arguing that both title II and

Amicus Briefs

title III of the ADA require reasonable modifications in policies, practices, and procedures when necessary to avoid discrimination in testing.

Title III

Cohen v. Boston University, Massachusetts -- A person who has Tourette Syndrome filed a lawsuit against Boston University charging that it violated title III of the ADA by refusing to readmit her to its graduate school of social work because of her disability. The Department filed a brief in support of the plaintiff arguing that the court should not grant summary judgment for the University, because facts concerning the University's actions remain in dispute. The court has not yet issued a decision.

B. Formal settlement agreements

The Department has resolved a number of cases without filing a lawsuit by means of formal written settlement agreements.

Title II

Philadelphia, Pennsylvania -- The City of Philadelphia entered an agreement resolving a complaint alleging that emergency medical technicians (EMT's) of the Philadelphia Fire Department had refused to assist an individual when they learned that he had HIV. The City agreed to conduct mandatory training of the Department's 2,300 EMT's and firefighters regarding universal precautions to prevent the transmission of HIV/AIDS, as well as to provide HIV/AIDS sensitivity training. The City will also develop and publicize a written policy stating that individuals with disabilities shall be given the opportunity to benefit fully from its emergency medical services. The policy will include disciplinary measures for any individual

who fails to follow the City's guidelines. In addition, the City will provide \$10,000 in compensatory damages and a written apology to the individual denied services.

Hickman County, Kentucky -- Hickman County agreed to develop a compliance plan to provide access to the services, programs, and activities conducted in its courthouse, thus resolving a complaint alleging that a man using a wheelchair was unable to enter the circuit clerk's office to renew his driver's license because the doors were too narrow.

Van Buren County, Arkansas -- Van Buren County agreed to relocate County court activities to an accessible site upon request; develop a self-evaluation and a transition plan; adopt a grievance procedure; and place public notices of its nondiscrimination policy and responsibilities under the ADA on County bulletin boards and in local newspapers.

Harris County (Houston), Texas -- Harris County agreed to make all of the programs offered in each of its 106 courtrooms and jury assembly rooms accessible, to furnish the auxiliary aids necessary to achieve effective communication in all of the county's programs, and to provide staff training.

Scott County, Arkansas -- Scott County agreed to renovate the county courthouse in order to make it readily accessible to individuals with disabilities. Specifically, the county agreed to renovate the courthouse's entrances, restrooms, door hardware, and drinking fountains.

City of Fargo, North Dakota -- The City of Fargo agreed to resolve complaints against its sports stadium and general entertainment facility, the Fargodome. The City will adopt a formal policy

Formal Settlement Agreements

that provides for ticket prices for individuals with disabilities who need special seating to attend events in the Fargodome that are equivalent to ticket prices charged to others. The City also agreed to publicize its new policy, appoint an ADA coordinator for the Fargodome, develop an ADA grievance procedure, and conduct an evaluation of its policies and practices as required by title II.

Norwood, Ohio -- The City of Norwood agreed to develop a written plan and timetable for making the services, programs, and activities offered at the Norwood City Hall accessible for persons with mobility impairments; submit architectural plans to the Department for review if the City determines that structural changes are needed; and make the agreement available to the public.

Madison County, Florida -- The Board of Commissioners of Madison County agreed to install an elevator, widen doors, renovate toilet facilities and water fountains, and install appropriate signage to make its programs at the Madison County Courthouse accessible for persons with mobility impairments. The County also will submit an interim plan for making its programs accessible until the renovations are completed.

Pinellas County, Florida -- The Sixth Judicial District of Florida entered into an agreement requiring the courts in that district to establish a written policy on providing qualified interpreters for participants, including parties, witnesses, jurors, and spectators, who are deaf or hard of hearing; secure the services of a qualified interpreter when necessary to ensure effective communication; notify the public about the policy; and inform and instruct all appropriate district court officials to comply with the policy.

Formal Settlement Agreements

Salt Lake City, Utah -- The complaint alleged that a State district court in Salt Lake City disqualified or otherwise excluded from jury service individuals who are deaf unless they bring their own interpreters. The agreement with the Utah State Administrative Office of the Courts committed the courts in Utah to provide appropriate auxiliary aids and services, including qualified interpreters, when necessary to provide an individual with a disability an opportunity to serve as a juror. The agency will establish a written policy on jury duty and the provision of interpreting services; notify the public about the new policy; inform and instruct all appropriate district court officials to adhere to the policy; and conduct at least four regional training seminars.

Clearwater, Florida -- The complaint alleged that the police department had failed to provide an interpreter in the arrest of an individual who is deaf. The Clearwater police department agreed to establish and publicize a written policy for providing interpreters whenever necessary for effective communication.

Paulding County, Ohio -- In response to a complaint that the county courtroom was inaccessible to individuals with mobility impairments, the County board of commissioners agreed to relocate court activities to an accessible site upon request, if the request is made in a reasonable period of time before the scheduled court date. The County board also agreed to publicize its new policy.

Title III

Educational Testing Service, New York, New York -- The Educational Testing Service (ETS) and the College Entrance Examination Board agreed to provide additional opportunities for students with disabilities to take the new version of the Scholastic Assessment Text (SAT-I) in the spring of 1994. Students had complained that the testing schedule set up by ETS and the College Board prevented students with disabilities from taking the SAT-I in May or June 1994 even though virtually all other students were given those opportunities. Approximately 2,600 students with disabilities took an old version of the SAT in March 1994. Under the agreement, ETS will notify them of the opportunity to cancel those scores and take the new SAT-I in June 1994.

Motorcycle Mechanics Institute, Phoenix, Arizona -- A Phoenix trade school agreed to pay \$16,000 to an individual with a vision impairment who had been denied admission to the program. The school also agreed to change its policy of requiring persons with disabilities to submit additional documentation regarding their career goals and proof of employability.

Omaha Zoological Society, Omaha, Nebraska -- The Omaha Zoological Society, a nonprofit corporation that operates and manages the Henry Doorly Zoo, Lied Jungle indoor rainforest, and its Treetops Restaurant, agreed to remove architectural barriers and to provide auxiliary aids and services. Under the agreement the Society will install a wheelchair lift in the Treetops Restaurant; continue to make electric scooters available to persons with mobility impairments to provide access to the Jungle floor path; remove barriers on the Jungle's path; and make modifications to restrooms. In addition, the society will provide a

variety of auxiliary aids and services, including audiotape recordings of the Lied Jungle Trial Guide and information about the rainforest contained on signs located throughout the jungle. Staff will be available to serve as guides to visitors with visual impairments upon request.

Empire State Building, New York, New York -- The owners and operators of the Empire State Building agreed to take wide-ranging measures to ensure access to public areas of the building. The agreement mandates changes to the lobby, entrance, observation decks, restrooms and telephones, but does not cover any privately leased office space in the building. The complaint alleged that the Empire State Building was operating in violation of the ADA because its owners and operators failed to remove architectural barriers where such removal was readily achievable.

Formal Settlement Agreements

Emerald Lanes, Greenwood, South Carolina -- The owners of Emerald Lanes, a bowling center, agreed to construct a ramp and a new door at the front entrance; build a new, accessible unisex restroom and vestibule leading to it; and add accessible parking. The agreement resolved a complaint from an individual who uses a wheelchair for mobility who could not watch his children participate in a bowling league and banquet because the facility was inaccessible.

Marquee Video, Lacey, Washington -- Marquee Video of Lacey, Washington, agreed to modify its policy of permitting only customers with drivers' licenses to rent videotapes and videotape players. It will now permit people who do not drive because of a disability to rent videotapes and tape players if they have a non-driver State ID card.

Sardi's Restaurant, New York, New York --
Sardi's Restaurant in New York City agreed to resolve a complaint that the restaurant's restrooms were inaccessible for persons who use wheelchairs or other mobility devices. Sardi's will install an accessible unisex restroom and signage indicating the location of the restroom.

Quality Hotel Downtown, Washington, D.C. --
Staff of the Quality Hotel Downtown in Washington, D.C., had not permitted a guest to use a motorized scooter as a mobility device to get to his room. The hotel agreed to pay the complainant \$10,000 in damages and to train all employees on the requirements of the ADA.

*Formal
Settlement
Agreements*

Inter-Continental Hotel, New York, New York --
The Department entered a wide-ranging formal settlement agreement with the Inter-Continental Hotel in midtown New York, a member of a chain of prestigious hotels in major cities. The hotel will make numerous changes to its 691-room facility and procedures over the next five years, including removing physical barriers in public areas such as the front entrance, lobby, and ballroom, as well as in 21 guest rooms; providing television decoders, telephone handset amplifiers, visual smoke alarms, and visual door knock and telephone indicators in 35 guest rooms; making elevator modifications to provide access for persons with vision impairments; and modifying reservation and room assignment policies to ensure that accessible rooms are made available to those who request them.

Municipal Credit Union, New York, New York --
A branch office of the Municipal Credit Union in New York City was inaccessible to people with mobility impairments. The Credit Union agreed

to install a ramp at the entrance, to notify its customers of the ramp, to post appropriate signs, and to instruct the staff to provide assistance when requested by an individual with a disability.

C. Other settlements

The Department resolves numerous cases without litigation or a formal settlement agreement. In some instances, the public accommodation or commercial facility promptly agrees to take the necessary actions to achieve compliance. In others, extensive negotiations are required. Following are some examples of what has been accomplished through informal settlements.

Title II

Access to facilities

- A Missouri county agreed to install an elevator and make other structural modifications to make its courthouse accessible. In the interim, it will provide alternative means for providing services to individuals with disabilities.
- A Tennessee city agreed to move all city meetings from the inaccessible second floor of the town hall to the city's accessible library. It also built ramps at two entrances to the town hall and remodeled restrooms in the town hall and library.
- Various cities and towns in the East and Midwest agreed to install elevators in their city halls/courthouses and to undertake other structural actions, such as adding ramps and remodeling restrooms and entrances, or to make these buildings accessible by moving their programs (e.g., town meetings and services) to alternative accessible locations.

- A Washington county installed an intercom on the first floor of its courthouse annex so that persons can contact offices located on the second floor when they need to have the services provided on the first floor.
- A New England town agreed to build a roof over the ramp leading to its 150-year-old town hall to ensure that the ramp does not become blocked by snow.
- A small town in Oklahoma agreed to formulate and enforce a written policy prohibiting the misuse of accessible parking spaces at its town hall by nondisabled town officials.
- In Iowa, a board of elections agreed to move a polling place to an accessible location.

Other Settlements

Policies and procedures

- A Texas police department agreed to change its policies and procedures on public contact after an individual with severe physical disabilities was treated in a demeaning manner at the scene of an automobile accident. The police officer involved received a reprimand and was required to attend sensitivity training.
- A State board of law examiners agreed to allow an individual extra time (time and one-half over two days) to take the State bar examination as an accommodation for his learning disability.
- A west coast State board of behavioral science examiners agreed to provide extra time (time and one-half) for an individual with a learning disability taking the oral examination for licensed clinical social worker.
- An Arizona police department agreed to allow an individual with a mobility impairment to use his motorscooter on roads and sidewalks within city limits anywhere that conventional wheelchairs are allowed.
- A State department of corrections agreed to relocate an inmate with a disability to a facility 400 miles closer to his mother's home so that his mother could visit him and monitor his medical condition.
- Two midwest State prisons agreed to modify security and visitation procedures to allow wives with disabilities to visit their inmate husbands.
- A county in Washington State agreed to include individuals with disabilities in developing its self-evaluation and transition plans.

Effective communication

- A western State department of corrections agreed to provide a sign language interpreter for a deaf inmate's parole hearing.
- A Michigan State district court agreed to provide an assistive listening device for an upcoming court date for an individual who is hard of hearing.
- A city in Texas agreed to provide additional microphones during city council meetings to ensure more effective communication with persons who have hearing impairments.
- A committee of bar examiners of a west coast State agreed to allow a severely visually impaired individual to use a personal computer with a high resolution monitor to take the bar exam.

- A Pennsylvania county court agreed to provide accommodations for an individual with a learning disability, including daily transcripts and extra time to ask questions, during court proceedings.
- A Louisiana fast food restaurant, a Texas grocery store, a health care facility, a shopping mall, an Oregon shopping center, and a retirement community have all agreed to provide accessible parking in their parking lots. The grocery store and shopping center also agreed to install the curb ramps that a person who uses a wheelchair needs to get from the parking lot to the front door.

Employment

- A Tennessee county agreed to separate its medical and personnel records, as required by the ADA.
- A city in Illinois agreed to reinstate an individual with epilepsy to his position as custodian.
- Two other fast food restaurants agreed to relocate their accessible parking spaces to make them closer to the front door.

Title III

Other Settlements

Access to facilities

- A California convenience store of a well-known franchise agreed to make three of its checkout aisles, including one express lane, accessible for people who use mobility devices.
- A Utah bank, an Illinois bowling center, an office building, and a Maryland cable television company have all agreed to install ramps to make their entrances accessible for people who use mobility devices. The bowling center, office building, and cable TV company also agreed to provide accessible parking in their parking lots.
- A credit union agreed to lower an ATM machine to make it accessible for persons who use wheelchairs.
- An Illinois bank agreed to install automatic doors at its front entrance to make it easier for people with visual, manual, and mobility impairments to gain access.
- A health club agreed to install a lift to enable a wheelchair user to participate in an arthritis rehabilitation program in the club's swimming pool.
- A national retail chain agreed to provide accessible parking at its stores nationwide, and a major rental car company agreed to provide accessible parking at a major metropolitan airport and to institute valet parking service when needed by customers with disabilities.
- A 12-theater complex in Colorado agreed to provide additional seating throughout its theaters for people who use wheelchairs.
- A California department store agreed to make its restrooms and fitting rooms accessible for people with manual or mobility impairments, to lower the height of its public telephones and drinking fountains to make them accessible for people who use wheelchairs, and to upgrade its elevators and install signage to make the store accessible for people who have vision impairments.

- A motel in Louisiana agreed to provide accessible parking, to make its front desk and lobby restrooms accessible, and to make six guest rooms accessible for guests with mobility impairments, including converting to roll-in showers in two of the rooms.
- A Louisiana steamboat company agreed to improve accessibility for passengers with mobility impairments on two of its boats. It eliminated access barriers in its dining and entertainment areas and made its restrooms accessible.
- Organizers of the Mississippi Delta Blues Festival, which draws some 10,000 to 20,000 spectators each year, took a number of steps to make its parking, seating, restrooms, and festival grounds accessible for people with disabilities when the 1993 festival was held in Greenville, Mississippi.
- A baseball stadium agreed to make its ticket counters, seating, restrooms, and concessions accessible for people who have mobility impairments.
- A hospital agreed to change its policy of providing sign language interpreters only for patients and not for family members. It provided an interpreter for a man who is deaf so that he could attend his wife's Lamaze classes and serve as her coach during the birth of their child.
- Several movie theaters in Florida have agreed to provide assistive listening devices for patrons who have hearing impairments.
- A famous entertainer, who was performing in New York, allowed a man with a hearing impairment to move closer to the stage so that he could read the entertainer's lips during the concert and provided him with printed lyrics for all of the songs to be performed.
- An Arizona hotel agreed to purchase additional TDD's and closed-captioning decoders and to implement a better system for responding to guests with hearing impairments who request the use of this equipment during their stay in the hotel.

Other Settlements

Effective communication

- A variety of public accommodations, including a practicing attorney in California, a midwife service, a psychiatric hospital in New York, a famous entertainer, an alcohol and drug counseling program in Washington, D.C., and a program to reduce domestic violence in Colorado, have agreed to provide sign language interpreters to communicate effectively with clients who are deaf or hard of hearing.
- A North Carolina mortgage company agreed to pay damages to a complainant who alleged that the company rejected his application for refinancing his mortgage loan because of his disability. The mortgage company paid to the complainant direct expenses that were sustained as a result of refinancing his mortgage elsewhere, and other damages, with a total payment of \$6,000.
- A national rental car company revised its policy relating to cash qualifications for rental car customers. Previously, customers who did not have credit cards could only rent a car with cash if they had a verifiable em-

Policies and procedures

ployment history. A person with a disability who was unemployed due to the disability, and who did not have a credit card, was denied service altogether. Now customers may complete a written application that includes disability-related income as an alternative to employment information.

- A Texas movie theater that had prevented a woman from bringing a box of cookies into the theater for her diabetic child agreed to modify its policy against outside food and beverages by making an exception in the case of medical necessity.
- A bar in Illinois agreed to modify its policy of refusing to serve alcohol to customers who appear to be drunk based on the way they walk. A customer who has Parkinson's disease had been refused service because staff assumed he was drunk due to his unsteady gait associated with his disability.
- A drugstore chain agreed to modify its policy against permitting animals in its stores by making an exception in the case of service animals such as guide dogs.
- A famous restaurant in New York City that had turned away a customer who was wearing sneakers due to a mobility impairment agreed to modify its dress code by making an exception when necessary to provide service to a person with a disability.
- A Nevada hotel agreed to offer its barrier-free rooms at the same rate as its other rooms, including at those times when promotional or special rates are offered.

Other Settlements

D. Investigations

The Department is currently investigating over 900 complaints against public accommodations and commercial facilities under title III.

In addition, the Department is currently investigating nearly 800 complaints against units of State and local government under title II. Seven other Federal agencies are also investigating title II complaints and may refer cases to the Department of Justice for litigation.

The Department also has a number of investigations underway under title I against public employers. (Enforcement of title I against private employers is handled by the EEOC.)

II. Certification of State and Local Building Codes

The ADA authorizes the Department to certify State or local laws or building codes that meet or exceed the ADA's accessibility requirements. This is a voluntary program in which States and localities can choose to participate. In a jurisdiction whose law or code has been certified, when a new public accommodation or other commercial facility is built, or an existing facility is altered or expanded, compliance with the local regulations will give the building owner and other responsible parties rebuttable evidence of compliance with the ADA if the building's accessibility is later challenged under the ADA.

On May 20, 1993, the Department of Justice issued its first response to a request for certification of a state accessibility code. The letter to the State of Washington provided a side-by-side analysis of the State's standards and the ADA standards as a means of providing technical

assistance to the State in identifying minor areas of discrepancy. It was not a formal preliminary determination of equivalency or nonequivalency with the Federal accessibility standards.

Other requests for certification have been received from the City of New York, the State of New Mexico, the State of Utah, and the State of Florida.

The Department has also responded to a request for technical assistance from the State of New Hampshire and is reviewing requests for technical assistance from the Council of American Building Officials (CABO) on behalf of the American National Standards Institute (ANSI) A117.1 committee, the Building Officials and Code Administrators International (BOCA), and the National Parking Association.

III. Technical Assistance

The ADA requires the Department of Justice to provide technical assistance to entities and individuals with rights and responsibilities under the ADA. The Department encourages voluntary compliance by providing education and technical assistance to business, industry, government, and members of the general public through a variety of means.

ADA telephone information line

The Department of Justice now provides toll-free "800" service for voice callers and TDD callers. Under its expanded hours of operations, operators may be reached from 11:00 a.m. to 5:00 p.m. (EDT), Monday through Friday (except

Thursdays, 1:00 p.m. to 5:00 p.m.). The system has been upgraded to accommodate a larger number of callers simultaneously and to provide Spanish language service. Callers may hear recorded information and order materials at any time, day or night. The information line numbers are:

Nationwide
1-800-514-0301 (voice)
1-800-514-0383 (TDD)

Washington, D.C., area
202-514-0301 (voice)
202-514-0383 (TDD)

Grants

ADA technical assistance grants are awarded primarily to target specialized information to specific audiences. To date, \$6.5 million in grant funds have been awarded for ADA technical assistance projects to 30 organizations.

Publications

Copies of the Department of Justice's regulations for titles II and III of the ADA, the ADA Questions and Answers booklet, the ADA Handbook (limited quantities available), and information about the Department's technical assistance grant program can be obtained by calling the telephone number listed above or writing to the address listed below. These materials are available in standard print, large print, Braille, audio-tape, and computer disk.

U.S. Department of Justice
Civil Rights Division
Public Access Section
Post Office Box 66738
Washington, D.C. 20035-6738

These materials are also available through the Department of Justice's ADA electronic bulletin board at 202-514-6193.

Copies of the Department of Justice's Technical Assistance Manuals for titles II and III can be obtained by subscription from the Government Printing Office. The subscription for the Title II Manual, which includes annual supplements through 1996, costs \$24. The subscription for the Title III Manual with supplements through 1996 costs \$25. Call the ADA information line to obtain an order form.

Copies of legal documents and settlement agreements mentioned in this publication can be obtained by writing to:

Freedom of Information/Privacy Act
Branch
Room 7337
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

IV. Other Sources of ADA Information

The Equal Employment Opportunity Commission offers technical assistance to the public concerning title I of the ADA.

For ordering documents
1-800-669-3362 (voice)
1-800-800-3302 (TDD)

For questions
1-800-669-4000 (voice)
TDD: use relay service

The U.S. Department of Transportation offers technical assistance to the public concerning the public transportation provisions of title II and title III of the ADA.

ADA documents and general questions
202-366-1656 (voice)
202-366-2979 (TDD)

ADA legal questions
202-366-9306 (voice)
202-755-7687 (TDD)

Nat'l Easter Seal Society
"Project Action" grant
202-347-3066 (voice)
202-347-7385 (TDD)

Air Carrier Act questions
202-376-6406 (voice)

The Federal Communications Commission offers technical assistance to the public concerning title IV.

ADA documents and general questions
202-632-7260 (voice)
202-632-6999 (TDD)

ADA legal questions
202-634-1808 (voice)
202-632-0484 (TDD)

Complaints and Enforcement
202-632-7553 (voice)
202-632-0485 (TDD)

The U.S. Architectural and Transportation Barriers Compliance Board, or "Access Board," offers technical assistance to the public on the ADA Accessibility Guidelines.

ADA documents and questions
800-872-2253 (voice & TDD)
202-272-5434 (voice)
202-272-5449 (TDD)

The National Institute on Disability and Rehabilitation Research (NIDRR) of the U.S. Department of Education has funded Disability and Business Technical Assistance Centers (DBTAC's) in ten regions of the country to provide technical assistance to the public concerning title I, title II, and title III of the ADA.

ADA technical assistance
(800) 949-4232 (voice & TDD)

V. How to File Complaints

Title I

Complaints about violations of title I (employment) by units of State and local government or by private employers should be filed with --

Equal Employment Opportunity Commission
Program Development and Technical Assistance Division
Office of Program Operations
1801 "L" Street, N.W.
Washington, D.C. 20507

Title II

Complaints about violations of title II by units of State and local government should be filed with --

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
Post Office Box 66118
Washington, D.C. 20035-6118

Title III

Complaints about violations of title III by public accommodations and commercial facilities should be filed with --

U.S. Department of Justice
Civil Rights Division
Public Access Section
Post Office Box 66738
Washington, D.C. 20035-6738

This status report was prepared by the Public Access Section, Civil Rights Division, U.S. Department of Justice. Updates of this report will be produced quarterly.
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BACKGROUND MATERIALS
FEDERAL DISABILITY ACCOMMODATIONS WORKING GROUP

1. Architectural Barriers Act
2. Section 501 of the Rehabilitation Act of 1973, as amended
3. Section 503 of the Rehabilitation Act of 1973, as amended
4. Section 504 of the Rehabilitation Act of 1973, as amended
5. Regulation of Department of Justice, Implementing Section 504 for Federally Conducted Programs
6. List of Federal Agency Section 504 Regulations for Federally Conducted Programs
7. Policy Statement of the Interagency Coordinating Council
8. Department of Justice Status Reports on ADA Enforcement

**THE ARCHITECTURAL BARRIERS
ACT (Public Law 90-480) of
August 12, 1968
AS AMENDED THROUGH 1984
42 U.S.C. §§4151 *et seq.***

An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, as used in this Act, the term "building" means any building or facility (other than (A) a privately owned residential structure not leased by the Government for subsidized housing programs and (B) any building or facility on a military installation designed and constructed primarily for use by able bodied military personnel) the intended use for which either will require that such building or facility be accessible to the public, or may result in employment or residence therein of physically handicapped persons, which building or facility is —

- (1) to be constructed or altered by or on behalf of the United States;
- (2) to be leased in whole or in part by the United States after August 12, 1968;*
- (3) to be financed in whole or in part by a grant or a loan made by the United States after August 12, 1968, if such building or facility is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan; or
- (4) to be constructed under authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or title III of the Washington Metropolitan Area Transit Regulation Compact.

Sec. 2 The Administrator of General Services, in consultation with the Secretary of Health and Human Services, shall prescribe standards for the design, construction, and alteration of buildings (other than residential structures subject to this Act and buildings, structures, and facilities of the Department of Defense and of the United States Postal Service subject to this Act) to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

*A 1976 amendment, Public Law 94-541, deleted the following words from the end of section 2: "after construction or alteration in accordance with plans and specifications of the United States." Section 202 of Public Law 94-541 states that the amendment applies to "every lease entered into on or after January 1, 1977, including any renewal of a lease entered into before such a date which renewal is on or after such date." Regulations at 43 Fed. Reg. 16478 (April 19, 1978) amending 41 C.F.R. §101-19.6.

Sec. 3 The Secretary of Housing and Urban Development, in consultation with the Secretary of Health and Human Services, shall prescribe standards for the design, construction, and alteration of buildings which are residential structures subject to this Act to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

Sec. 4 The Secretary of Defense, in consultation with the Secretary of Health and Human Services, shall prescribe standards for the design, construction, and alteration of buildings, structures, and facilities of the Department of Defense subject to this Act to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

Sec. 4a The United States Postal Service, in consultation with the Secretary of Health and Human Services, shall prescribe such standards for the design, construction, and alteration of its buildings to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

Sec. 5 Every building designed, constructed, or altered after the effective date of a standard issued under this Act which is applicable to such building, shall be designed, constructed, or altered in accordance with such standard.

Sec. 6 The Administrator of General Services, with respect to standards issued under section 2 of this Act, and the Secretary of Housing and Urban Development, with respect to standards issued under section 3 of this Act, and the Secretary of Defense, with respect to standards issued under section 4 of this Act, and the United States Postal Service, with respect to standards issued under section 4a of this Act —

- (1) is authorized to modify or waive any such standard, on a case-by-case basis, upon application made by the head of the department, agency, or instrumentality of the United States concerned, and upon a determination by the Administrator or Secretary, as the case may be, that such modification or waiver is clearly necessary, and
- (2) shall establish a system of continuing surveys and investigations to insure compliance with such standards.

Sec. 7(a) The Administrator of General Services shall report to Congress during the first week of January of each year on his activities and those of other departments, agencies, and instrumentalities of the Federal Government under this Act during the preceding fiscal year including, but not limited to, standards issued, revised, amended, or repealed under this Act and all case-by-case modifications, and waivers of such standards during such year.

(b) The Architectural and Transportation Barriers Compliance Board established by section 502 of the Rehabilitation Act of 1973 (Public Law 93-112) shall report to the Public Works and Transportation Committee of the House of Representatives and the Public Works Committee of the Senate during the first week of January of each year on its activities and actions to insure compliance with the standards prescribed under this Act.

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Pub.L. 102-569, § 406, substituted "1993 through 1997" for "1987, 1988, 1989, 1990, 1991, and 1992".

1991 Amendment

Pub.L. 102-52 substituted "1990, 1991, and 1992" for "1990, and 1991".

1986 Amendment

Pub.L. 99-506, § 504, added provision limiting authorization of appropriations under this section to each of the fiscal years 1987, 1988, 1989, 1990, and 1991.

Effective Date of 1986 Amendment

Amendment to this section by Pub.L. 99-506 to take effect Oct. 21, 1986, unless otherwise

provided, see section 1006 of Pub.L. 99-506, set out as a note under section 701 of this title.

Exclusion From Coverage

Enactment of section 706(8)(C) of this title and amendment of section 794 of this title by Pub.L. 100-259 not to be construed to extend the application of the Rehabilitation Act of 1973 [this chapter] to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see Pub.L. 100-259, § 7, Mar. 22, 1988, 102 Stat. 31, set out as a note under section 1687 of Title 20, Education.

Legislative History

For legislative history and purpose of Pub.L. 99-506, see 1986 U.S. Code Cong. and Adm. News, p. 3471. See, also, Pub.L. 102-569, 1992 U.S. Code Cong. and Adm. News, p. 3712.

SUBCHAPTER V—RIGHTS AND ADVOCACY

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Pub.L. 102-569, Title V, § 501(a), Oct. 29, 1992, 106 Stat. 4424, substituted "Rights and Advocacy" for "Miscellaneous Provisions".

LAW REVIEW COMMENTARIES

Confronting AIDS in the workplace: Balancing employment opportunity and occupational

health under existing labor laws. Ilise Feitshans, *Det.C.L.Rev.* 953 (1989).

§ 790. Repealed. Pub.L. 102-569, Title V, § 502(a), Oct. 29, 1992, 106 Stat. 4424

HISTORICAL AND STATUTORY NOTES

Section, Pub.L. 93-112, Title V, § 500, Sept. 26, 1973, 87 Stat. 390, related to effects on existing law, references in other provisions,

availability of unexpended appropriations, savings provision, and extension of appropriations.

§ 791. Employment of individuals with disabilities

(a) Interagency Committee on Employees who are Individuals with Disabilities; establishment; membership; co-chairmen; availability of other Committee resources; purpose and functions

There is established within the Federal Government an Interagency Committee on Employees who are Individuals with Disabilities (hereinafter in this section referred to as the "Committee"), comprised of such members as the President may select, including the following (or their designees whose positions are Executive Level IV or higher): the Chairman¹ of the Equal Employment Opportunity Commission (hereafter in this section referred to as the "Commission"), the Director of the Office of Personnel Management, the Secretary of Veterans Affairs, the Secretary of Labor, the Secretary of Education, and the Secretary of Health and Human Services. Either the Director of the Office of Personnel Management and the Chairman of the Commission shall serve as co-chairpersons of the Committee or the Director or Chairman shall serve as the sole chairperson of the Committee, as the Director and Chairman jointly determine, from time to time, to be appropriate. The resources of the President's Committees on Employment of People With Disabilities and on Mental Retardation shall be made fully available to the Committee. It shall be the purpose and function of the Committee (1) to provide a focus for Federal and other employment of individuals with disabilities, and to review, on a periodic basis, in cooperation with the Commission, the adequacy of hiring, placement, and advancement practices with respect to individuals with disabilities, by each department, agency, and instrumentality in the executive branch of Government, and to insure that the special needs of such individuals are being met; and (2) to consult with the Commission to assist the Commission to carry out its responsibilities under

subsections (b), (c), and (d) of this section. On the basis of such review and consultation, the Committee shall periodically make to the Commission such recommendations for legislative and administrative changes as it deems necessary or desirable. The Commission shall timely transmit to the appropriate committees of Congress any such recommendations.

(b) Federal agencies; affirmative action program plans

Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch shall, within one hundred and eighty days after September 26, 1973, submit to the Commission and to the Committee an affirmative action program plan for the hiring, placement, and advancement of individuals with disabilities in such department, agency, or instrumentality. Such plan shall include a description of the extent to which and methods whereby the special needs of employees who are individuals with disabilities are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Commission if the Commission determines, after consultation with the Committee, that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for individuals with disabilities.

(c) State agencies; rehabilitated individuals, employment

The Commission, after consultation with the Committee, shall develop and recommend to the Secretary for referral to the appropriate State agencies, policies and procedures which will facilitate the hiring, placement, and advancement in employment of individuals who have received rehabilitation services under State vocational rehabilitation programs, veterans' programs, or any other program for individuals with disabilities, including the promotion of job opportunities for such individuals. The Secretary shall encourage such State agencies to adopt and implement such policies and procedures.

(d) Report to Congressional committees

The Commission, after consultation with the Committee, shall, on June 30, 1974, and at the end of each subsequent fiscal year, make a complete report to the appropriate committees of the Congress with respect to the practices of and achievements in hiring, placement, and advancement of individuals with disabilities by each department, agency, and instrumentality and the effectiveness of the affirmative action programs required by subsection (b) of this section, together with recommendations as to legislation which have been submitted to the Commission under subsection (a) of this section, or other appropriate action to insure the adequacy of such practices. Such report shall also include an evaluation by the Committee of the effectiveness of the activities of the Commission under subsections (b) and (c) of this section.

(e) Federal work experience without pay; non-Federal status

An individual who, as a part of an individualized written rehabilitation program under a State plan approved under this chapter, participates in a program of unpaid work experience in a Federal agency, shall not, by reason thereof, be considered to be a Federal employee or to be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(f) Federal agency cooperation; special consideration for positions on President's Committee on Employment of People With Disabilities

(1) The Secretary of Labor and the Secretary of Education are authorized and directed to cooperate with the President's Committee on Employment of People With Disabilities in carrying out its functions.

(2) In selecting personnel to fill all positions on the President's Committee on Employment of People With Disabilities, special consideration shall be given to qualified individuals with disabilities.

(g) Standards used in determining a violation of section

The standards used to determine whether this section has been violated in a complaint alleging nonaffirmative action employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans

with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

(As amended Pub.L. 99-506, Title I, § 103(d)(2)(C), Title X, §§ 1001(f)(1), 1002(e)(1), (2)(A), Oct. 21, 1986, 100 Stat. 1810, 1843, 1844; Pub.L. 100-630, Title II, § 206(a), Nov. 7, 1988, 102 Stat. 3311; Pub.L. 102-54, § 13(k)(1)(B), June 13, 1991, 105 Stat. 276; Pub.L. 102-569, Title I, § 102(p)(29), Title V, § 503, Oct. 29, 1992, 106 Stat. 4360, 4424; Pub.L. 103-73, Title I, § 112(a), Aug. 11, 1993, 107 Stat. 727.)

¹ So in original. Probably should be "Director".

HISTORICAL AND STATUTORY NOTES

References in Text

The Americans With Disabilities Act of 1990, referred to in subsec. (g), is Pub.L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to chapter 126 (section 12101 et seq.) of Title 42, The Public Health and Welfare. Title I of this Act is classified generally to subchapter I (section 12111 et seq.) of chapter 126 of Title 42. Sections 501 through 504, and 510, of this Act are classified to sections 12201 through 12204, and 12210, of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

Codification

Amendment by section 1002(e)(2)(A), directed the substitution of the phrase "of the activities" for "of the the activities" in subsec. (d) in order to correct prior amendment to subsec. (d) by section 104(b)(3)(E) of Pub.L. 98-221, which, if executed literally, would have resulted in the insertion of another "the" following "Such report shall also include an evaluation by the Committee of the effectiveness of the". Such "the" had been omitted editorially as the probable intent of Congress; accordingly, amendment by section 1002(e)(2)(A) of Pub.L. 99-506 resulted in no change in text.

1993 Amendments

Subsec. (a). Pub.L. 103-73, § 112(a), inserted a comma following "Veterans Affairs".

1992 Amendments

Heading. Pub.L. 102-569, § 102(p)(29)(A), substituted "disabilities" for "handicaps".

Subsec. (a). Pub.L. 102-569, § 102(p)(29)(B), (C), substituted "Employees who are Individuals with Disabilities" for "Handicapped Employees" and "individuals with disabilities" for "individuals with handicaps" wherever appearing.

Pub.L. 102-569, § 503(a), substituted "the Director of the Office of Personnel Management, the Secretary of Veterans Affairs" for "the Secretary of Veterans Affairs, and" and substituted that either the Director of the Office of Personnel Management and Chairman of the Commission serve as co-chairpersons or the Director or Chairman serve as sole chairperson, as jointly determined, for provision that the Secretary of Education and Chairman of the Commission serve as co-chairpersons of the Committee.

Subsec. (b). Pub.L. 102-569, § 102(p)(29)(C), (D), substituted "individuals with disabilities" for "individuals with handicaps" wherever appearing and "employees who are individuals with disabilities" for "employees with handicaps".

Subsecs. (c), (d), (f). Pub.L. 102-569, § 102(p)(29)(C), substituted "individuals with disabilities" for "individuals with handicaps".

Subsec. (g). Pub.L. 102-569, § 503(b), added subsec. (g).

1991 Amendment

Subsec. (a). Pub.L. 102-54 substituted "Secretary of Veterans Affairs" for "Administrator of Veterans' Affairs".

1988 Amendment

Subsec. (a). Pub.L. 100-630, § 206(a)(1) to (4), inserted "(hereafter in this section referred to as the 'Commission'))" after "Equal Employment Opportunity Commission", substituted "Commission" for "Equal Opportunity Employment Commission" wherever appearing, "Secretary of Labor, the Secretary of Education, and the Secretary of Health and Human Services" for "Secretaries of Labor and Education and Health and Human Services", "serve as co-chairpersons" for "service as co-chairmen", "Employment of People With Disabilities" for "Employment of the Handicapped", and "assist the Commission to carry out" for "assist the Office to carry out".

Subsec. (b). Pub.L. 100-630, § 206(a)(2), (5), substituted "submit to the Commission" for "submit to the Equal Opportunity Commission", "employees with handicaps" for "handicapped employees", and "Commission, if the Commission determines" for "Office, if the Office determines".

Subsecs. (c), (d). Pub.L. 100-630, § 206(a)(2), substituted "Commission" for "Equal Opportunity Employment Commission" wherever appearing.

Subsec. (e). Pub.L. 100-630, § 206(a)(6), substituted "an individualized" for "a individualized".

Subsec. (f). Pub.L. 100-630, § 206(a)(7), substituted "Employment of People With Disabilities" for "Employment of the Handicapped".

1986 Amendment

Catchline. Pub.L. 99-506, § 103(d)(2)(C), substituted "individuals with handicaps" for "handicapped individuals" wherever appearing.

Subsec. (a). Pub.L. 99-506, § 103(d)(2)(C), substituted "individuals with handicaps" for "handicapped individuals" wherever appearing.

Pub.L. 99-506, § 1002(e)(1), substituted "Equal Employment Opportunity Commission" for "Office of Personnel Management" wherever appearing.

Subsec. (b). Pub.L. 99-506, § 103(d)(2)(C), substituted "individuals with handicaps" for "handicapped individuals" wherever appearing.

WEST'S FEDERAL FORMS

Jurisdiction and venue in district courts, see
§ 1003 et seq.

LAW REVIEW COMMENTARIES

Discrimination legislation for the handicapped: much ferment and the erosion of cover- age. Janet A. Flaccus, 55 U.Cin.L.Rev. 81 (1986).

§ 793. Employment under Federal contracts

(a) Amount of contracts or subcontracts; provisions for employment and advancement of qualified individuals with handicaps; regulations

Any contract in excess of \$10,000 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified individuals with disabilities. The provisions of this section shall apply to any subcontract in excess of \$10,000 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after September 26, 1973.

(b) Administrative enforcement; complaints; investigations; departmental action

If any individual with a disability believes any contractor has failed or refused to comply with the provisions of a contract with the United States, relating to employment of individuals with disabilities, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.

(c) Waiver by President; national interest special circumstances for waiver of particular agreements

(1) The requirements of this section may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which the President shall prescribe, when the President determines that special circumstances in the national interest so require and states in writing the reasons for such determination.

(2)(A) The Secretary of Labor may waive the requirements of the affirmative action clause required by regulations promulgated under subsection (a) of this section with respect to any of a prime contractor's or subcontractor's facilities that are found to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, if the Secretary of Labor also finds that such a waiver will not interfere with or impede the effectuation of this chapter.

(B) Such waivers shall be considered only upon the request of the contractor or subcontractor. The Secretary of Labor shall promulgate regulations that set forth the standards used for granting such a waiver.

(d) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleging nonaffirmative action employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

(e) Avoidance of duplicative efforts and inconsistencies

The Secretary shall develop procedures to ensure that administrative complaints filed under this section and under the Americans with Disabilities Act of 1990 [42 U.S.C.A. § 12101 et seq.] are dealt with in a manner that avoids duplication of effort and prevents

imposition of inconsistent or conflicting standards for the same requirements under this section and the Americans with Disabilities Act of 1990 [42 U.S.C.A. § 12101 et seq.].

(As amended Pub.L. 99-506, Title I, § 103(d)(2)(B), (C), Title X, §§ 1001(f)(2), (3), 1002(e)(3), Oct. 21, 1986, 100 Stat. 1810, 1843, 1844; Pub.L. 100-630, Title II, § 206(c), Nov. 7, 1988, 102 Stat. 3312; Pub.L. 102-569, Title I, § 102(p)(31), Title V, § 505, Oct. 29, 1992, 106 Stat. 4360, 4427.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Americans With Disabilities Act of 1990, referred to in subsecs. (d) and (e), is Pub.L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to chapter 126 (section 12101 et seq.) of Title 42, The Public Health and Welfare. Title I of this Act is classified generally to subchapter I (section 12111 et seq.) of chapter 126 of Title 42. Sections 501 through 504, and 510, of this Act are classified to sections 12201 through 12204, and 12210, of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

1992 Amendments

Subsec. (a). Pub.L. 102-569, § 102(p)(31)(A), substituted "disabilities" for "handicaps as defined in section 706(8) of this title".

Pub.L. 102-569, § 505(a), substituted "\$10,000" for "\$2,500" wherever appearing and struck out ", in employing persons to carry out such contracts," after "requiring that".

Subsec. (b). Pub.L. 102-569, § 102(p)(31)(B), substituted "individual with a disability" for "individual with handicaps" and "individuals with disabilities" for "individuals with handicaps".

Subsec. (c). Pub.L. 102-569, § 505(b), designated existing provision as par. (1) and added par. (2).

Subsecs. (d), (e). Pub.L. 102-569, § 505(c), added subsecs. (d) and (e).

1988 Amendment

Subsec. (a). Pub.L. 100-630, § 206(c)(1), inserted a comma after "to carry out such contract".

Subsec. (b). Pub.L. 100-630, § 206(c)(2), substituted "refused" for "refuses".

Subsec. (c). Pub.L. 100-630, § 206(c)(3), substituted "the President" for "The President" wherever appearing.

1986 Amendment

Subsec. (a). Pub.L. 99-506, § 103(d)(2)(C), substituted "individuals with handicaps" for "handicapped individuals" wherever appearing.

Pub.L. 99-506, § 1002(e)(3), substituted "section 706(8) of this title" for "section 706(7) of this title".

Subsec. (b). Pub.L. 99-506, § 103(d)(2)(B), substituted "individual with handicaps" for "handicapped individual" wherever appearing.

Pub.L. 99-506, § 103(d)(2)(C), substituted "individuals with handicaps" for "handicapped individuals" wherever appearing.

Pub.L. 99-506, § 1001(f)(2), substituted "provisions of a contract" for "provisions of his contract".

Subsec. (c). Pub.L. 99-506, § 1001(f)(3), substituted "The President" for "he" preceding "shall prescribe" and preceding "determines that special circumstances", respectively, and substituted "the reasons" for "his reasons".

Effective Date of 1992 Amendment

Amendment by Title I of Pub.L. 102-569 effective Oct. 29, 1992, see section 123(a) of Pub.L. 102-569, set out as a note under section 701 of this title.

Effective Date of 1986 Amendment

Amendment to this section by Pub.L. 99-506 to take effect Oct. 21, 1986, unless otherwise provided, see section 1006 of Pub.L. 99-506, set out as a note under section 701 of this title.

Exclusion From Coverage

Enactment of section 706(8)(C) of this title and amendment of section 794 of this title by Pub.L. 100-259 not to be construed to extend the application of the Rehabilitation Act of 1973 [this chapter] to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see Pub.L. 100-259, § 7, Mar. 22, 1988, 102 Stat. 31, set out as a note under section 1687 of Title 20, Education.

Legislative History

For legislative history and purpose of Pub.L. 99-506, see 1986 U.S. Code Cong. and Adm. News, p. 3471. See, also, Pub.L. 102-569, 1992 U.S. Code Cong. and Adm. News, p. 3712.

LAW REVIEW COMMENTARIES

AIDS: Does it qualify as a "handicap" under the Rehabilitation Act of 1973? 61 Notre Dame L.Rev. 572 (1986).

AIDS in the Workplace. Richard T. Sampson, 35 Fed.Bar News, 126 (March/April 1988).

Alcohol and drug testing: Legal considerations. Richard L. Connors and Earl J. Engle, 42 J. of Mo.B. 523 (1986).

Application of handicap discrimination laws to AIDS patients. 22 U.S.F.L.Rev. 317 (1988).

At work while "under the influence": The employer's response to a hazardous condition. 70 Marquette L.Rev. 88 (1986).

Burdens of proving handicap discrimination using federal employment discrimination law: Rational basis or undue burden? Kenneth Allen Greene, Det.C.L.Rev. 1053 (1989).

Discrimination legislation for the handicapped: Much ferment and the erosion of coverage. Janet A. Flaccus, 55 U.Cin.L.Rev. 81 (1986).

§ 794. Nondiscrimination under federal grants and programs

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined

For the purposes of this section, the term "program or activity" means all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 2891(12) of Title 20) system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers; exception

Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

—(d) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201–12204 and 12210), as such sections relate to employment.

(As amended Pub.L. 99-506, Title I, § 103(d)(2)(B), Title X, § 1002(e)(4), Oct. 21, 1986, 100 Stat. 1810, 1844; Pub.L. 100-259, § 4, Mar. 22, 1988, 102 Stat. 29; Pub.L. 100-630, Title II, § 206(d), Nov. 7, 1988, 102 Stat. 3312; Pub.L. 102-569, Title I, § 102(p)(32), Title V, § 506, Oct. 29, 1992, 106 Stat. 4360, 4428.)

into consideration new regulations and development of special buses designed to accommodate the handicapped. *Leary v. Crapsey*, C.A.N.Y.1977, 566 F.2d 863.

Although parents of handicapped student were not provided with full and open hearing with respect to school placement of student by hearing officer, in that he did not accept information relating to placement of student at private school proposed by parents, district court would not order placement of the child at that school on appeal from that hearing, as the court did not address the issue of whether that school was appropriate for student; therefore, remand to the hearing officer was appropriate for a determination of that issue. *Davis v. District of Columbia Bd. of Ed.*, D.C.D.C. 1981, 522 F.Supp. 1102, reconsideration denied 530 F.Supp. 1209.

In proceedings on law student's request for vocational rehabilitation assistance, record, which appeared not to contain individualized written rehabilitation plan and which established that neither the student nor the Bureau of Vocational Rehabilitation of Department of Labor and Industry adduced sufficient proof to settle factual issue of whether the student was eligible for assistance for law school, required, due to fact that the proceedings below were purposely kept informal and were conducted in violation of Administrative Agency Law, 71 P.S. § 1710.1 et seq., remand for fair hearing conducted in full compliance with such Law and directed to answering question whether the student was eligible for rehabilitative assistance in form of financial aid for law school. *Cook v. Com., Bureau of Vocational Rehabilitation of Dept.*

of Labor and Industry, 1979, 405 A.2d 1000, 45 Pa.Cmwlth. 415.

127. Appellate review—Generally

Applicant's appeal from a denial of his request for full-time attendant care under this chapter would not be quashed on the ground that applicant had failed to file exceptions to the recommended order, since state regulations cited in support of the motion to quash referred to the waiver of objections only with respect to appeals to a higher administrative tribunal, and not to an appeals court, and since the cited regulation was not applicable to a proceeding involving an act of Congress. *Turbesky v. Com., Dept. of Labor and Industry*, 1982, 442 A.2d 849, 65 Pa.Cmwlth. 363.

128. — Judicial notice

In deaf student's action seeking services of sign language interpreter he required to participate in and benefit from his college classes, court of appeals would take judicial notice that rubella epidemic in 1963-65 doubled number of births of hearing-impaired infants, with result that some 15,000 deaf individuals were at or approaching age of college or professional education. *Jones v. Illinois Dept. of Rehabilitation Services*, C.A.Ill.1982, 689 F.2d 724.

To anticipate issues that would arise on remand of suit under this chapter the court of appeals judicially noticed further factual development set forth in record of companion discrimination action which had been instituted by same plaintiff and which was consolidated with instant suit on appeal. *Prewitt v. U. S. Postal Service*, C.A.Miss.1981, 662 F.2d 292.

§ 794a. Remedies and attorney fees

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5(f) through (k)), shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.] shall be available to any person aggrieved by any act or failure to act by any recipient of Federal

assistance or Federal provider of such assistance under section 794 of this title.

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

(Pub.L. 93-112, Title V, § 505, as added Pub.L. 95-602, Title I, § 120, Nov. 6, 1978, 92 Stat. 2982.)

Historical Note

References in Text. The Civil Rights Act of 1964, referred to in subsec. (a), is Pub.L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (section 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. Sections 717 and 706(f) through (k) of the Civil Rights Act of

1964 are classified to sections 2000e-16 and 2000e-5(f) through (k) of Title 42, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 95-602, see 1978 U.S. Code Cong. and Adm. News, p. 7312.

Cross References

Right or remedy available to employee or applicant for employment in civil service under this section as not lessened by foreign service personnel action, see section 3905 of Title 22, Foreign Relations and Intercourse.

West's Federal Forms

Affidavit to sue in forma pauperis, see §§ 1506.1, 4646, 4647.

Intervention, see § 3111 et seq.

Jurisdiction and venue in district courts, see § 1003 et seq.

Masters, see § 4361 et seq.

Preliminary injunctions and temporary restraining orders, matters pertaining to, see § 5271 et seq.

Taxation of costs, see § 4612 et seq.

Code of Federal Regulations

Equal employment opportunity in federal government, see 29 CFR 1613.201 et seq.

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1. Construction with other laws

Passage of Education of All Handicapped Children Act, section 1400 et seq. of Title 20, precluded parents from recovering attorney fees pursuant to subsec. (b) of this section. *Wilson v. Marana Unified School Dist. No. 6 of Pima County*, C.A.Ariz.1984, 735 F.2d 1178.

Section 794 of this title governing nondiscrimination under federal grants and programs is general prohibition of discrimination against otherwise qualified handicapped individuals and federally funded programs and does not specifically apply to education of handicapped children, whereas Education of the Handicapped Act, section 1400 et seq. of Title 20, is comprehensive Act specifically providing substantive and procedural rights

Building Officials (CABO) and its Board for the Coordination of Model Codes (BCMC); Southern Building Code Congress International (SBCCI). While the Department will not certify or "precertify" model codes, as urged by some commenters, it does wish to encourage the continued viability of the consensus and model code process consistent with the purposes of the ADA.

The new section therefore allows an authorized representative of a private entity responsible for developing a model code to apply to the Assistant Attorney General for review of the code. The review process will be informal and will not be subject to the procedures of §§ 36.602 through 36.607. The result of the review will take the form of guidance from the Assistant Attorney General as to whether and in what respects the model code is consistent with the ADA's requirements. The guidance will not be binding on any entity or on the Department; it will assist in evaluations of individual State or local codes and may serve as a basis for establishing priorities for consideration of individual codes. The Department anticipates that this approach will foster further cooperation among various government levels, the private entities developing standards, and individuals with disabilities.

PART 39—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF JUSTICE

Sec.

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- 39.161—39.169 [Reserved]
- 39.170 Compliance procedures.

AUTHORITY: 29 U.S.C. 794.

SOURCE: Order No. 1065-84, 49 FR 35734, Sept. 11, 1984, unless otherwise noted.

§ 39.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the U.S. Postal Service.

§ 39.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 39.103 Definitions.

For purposes of this part, the term—
Agency means the Department of Justice.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complaint Adjudication Officer means the Complaint Adjudication Officer appointed by the Assistant Attorney General for Civil Rights.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitorurinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the at-

titudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Official or Responsible Official means the Director of Equal Employment Opportunity for the Department of Justice or his or her designee.

Qualified handicapped person means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

Respondent means the organizational unit in which a complainant alleges that discrimination occurred.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 39.104—39.109 [Reserved]

§ 39.110 Self-evaluation.

(a) The agency shall, by October 11, 1985, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until October 11, 1987, maintain on file and make available for public inspection:

- (1) A description of areas examined and any problems identified, and
- (2) A description of any modifications made.

§ 39.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program or activities conducted by the agency, and make such information available to them in such manner as the Attorney General finds necessary, to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 39.112—39.129 [Reserved]

§ 39.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same

result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 39.131—39.139 [Reserved]

§ 39.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 39.141—39.148 [Reserved]

§ 39.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 39.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 39.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 39.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in

existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by December 10, 1984, except that where structural changes in facilities are undertaken, such changes shall be made by October 11, 1987, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by April 11, 1985, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 39.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 39.152—39.159 [Reserved]

§ 39.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 39.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 39.161—39.169 [Reserved]

§ 39.170 Compliance procedures.

(a) *Applicability.* Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) *Employment complaints.* The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) *Responsible Official.* The Responsible Official shall coordinate implementation of this section.

(d) *Filing a complaint.*—(1) *Who may file.* (i) Any person who believes that he or she has been subjected to dis-

crimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint with the Official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint with the Official.

(ii) Before filing a complaint under this section, an inmate of a Federal penal institution must exhaust the Bureau of Prisons Administrative Remedy Procedure as set forth in 28 CFR part 542.

(2) *Confidentiality.* The Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, except that complaints by inmates of Federal penal institutions shall be filed within 180 days of the final administrative decision of the Bureau of Prisons under 28 CFR part 542. The Official may extend this time limit for good cause shown. For purposes of determining when a complaint is timely filed under this subparagraph, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the agency.

(4) *How to file.* Complaints may be delivered or mailed to the Attorney General, the Responsible Official, or agency officials. Complaints should be sent to the Director for Equal Employment Opportunity, U.S. Department of Justice, 10th and Pennsylvania Avenue, NW., Room 1232, Washington, DC 20530. If any agency official other than the Official receives a complaint, he or she shall forward the complaint to the Official immediately.

(e) *Notification to the Architectural and Transportation Barriers Compliance Board.* The agency shall promptly send to the Architectural and Transportation Barriers Compliance

Board a copy of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons. The agency shall delete the identity of the complainant from the copy of the complaint.

(f) *Acceptance of complaint.* (1) The Official shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which the agency has jurisdiction. The Official shall notify the complainant and the respondent of receipt and acceptance of the complaint.

(2) If the Official receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Official shall dismiss the complaint without prejudice.

(3) If the Official receives a complaint over which the agency does not have jurisdiction, the Official shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(g) *Investigation/conciliation.* (1) Within 180 days of the receipt of a complete complaint, the Official shall complete the investigation of the complaint, attempt informal resolution, and, if no informal resolution is achieved, issue a letter of findings.

(2) The Official may require agency employees to cooperate in the investigation and attempted resolution of complaints. Employees who are required by the Official to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) The Official shall furnish the complainant and the respondent a copy of the investigative report promptly after receiving it from the investigator and provide the complainant and respondent with an opportunity

for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant and respondent. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and respondent have agreed.

(h) *Letter of findings.* If an informal resolution of the complaint is not reached, the Official shall, within 180 days of receipt of the complete complaint, notify the complainant and the respondent of the results of the investigation in a letter sent by certified mail, return receipt requested, containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right of the complainant and respondent to appeal to the Complaint Adjudication Officer; and

(4) A notice of the right of the complainant and respondent to request a hearing.

(i) *Filing an appeal.* (1) Notice of appeal to the Complaint Adjudication Officer, with or without a request for hearing, shall be filed by the complainant or the respondent with the Responsible Official within 30 days of receipt from the Official of the letter required by paragraph (h) of this section.

(2) If a timely appeal without a request for hearing is filed by a party, any other party may file a written request for hearing within the time limit specified in paragraph (i)(1) of this section or within 10 days of the date on which the first timely appeal without a request for hearing was filed, whichever is later.

(3) If no party requests a hearing, the Responsible Official shall promptly transmit the notice of appeal and investigative record to the Complaint Adjudication Officer.

(4) If neither party files an appeal within the time prescribed in paragraph (i)(1) of this section, the Re-

sponsible Official shall certify that the letter of findings is the final agency decision on the complaint at the expiration of that time.

(j) *Acceptance of appeal.* The Responsible Official shall accept and process any timely appeal. A party may appeal to the Complaint Adjudication Officer from a decision of the Official that an appeal is untimely. This appeal shall be filed within 15 days of receipt of the decision from the Official.

(k) *Hearing.* (1) Upon a timely request for a hearing, the Responsible Official shall appoint an administrative law judge to conduct the hearing. The administrative law judge shall issue a notice to all parties specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date.

(2) The complainant and respondent shall be parties to the hearing. Any interested person or organization may petition to become a party or *amicus curiae*. The administrative law judge may, in his or her discretion, grant such a petition if, in his or her opinion, the petitioner has a legitimate interest in the proceedings and the participation will not unduly delay the outcome and may contribute materially to the proper disposition of the proceedings.

(3) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act). The administrative law judge shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to—

(i) Arrange and change the date, time, and place of hearings and pre-hearing conferences and issue notice thereof;

(ii) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters

that may aid in the expeditious disposition of the hearing;

(iii) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(iv) Examine witnesses and direct witnesses to testify;

(v) Receive, rule on, exclude, or limit evidence;

(vi) Rule on procedural items pending before him or her; and

(vii) Take any action permitted to the administrative law judge as authorized by this part or by the provisions of the Administrative Procedure Act (5 U.S.C. 551-559).

(4) Technical rules of evidence shall not apply to hearings conducted pursuant to this paragraph, but rules or principles designed to assure production of credible evidence and to subject testimony to cross-examination shall be applied by the administrative law judge whenever reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(5) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(i) Persons employed by the agency, shall, upon request to the agency by the administrative law judge, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(ii) Employees of other Federal agencies called to testify at a hearing shall, at the request of the administrative law judge and with the approval of the employing agency, be on official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees.

(iii) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(iv) The administrative law judge may require the agency to pay travel expenses necessary for the complainant to attend the hearing.

(v) The respondent shall pay the required expenses and charges for the administrative law judge and court reporter.

(vi) All other expenses shall be paid by the party, the intervening party, or amicus curiae incurring them.

(6) The administrative law judge shall submit in writing recommended findings of fact, conclusions of law, and remedies to all parties and the Complaint Adjudication Officer within 30 days after receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcript is made. This time limit may be extended with the permission of the Complaint Adjudication Officer.

(7) Within 15 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to the decision with the Complaint Adjudication Officer. Thereafter, each party will have ten days to file reply exceptions with the Officer.

(1) *Decision.* (1) The Complaint Adjudication Officer shall make the decision of the agency based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 days of receipt of the transmittal of the notice of appeal and investigative record pursuant to § 39.170(i)(3) or after the period for filing exceptions ends, whichever is applicable. If the Complaint Adjudication Officer determines that he or she needs additional information from any party, he or she shall request the information and provide the other party or parties an opportunity to respond to that information. The Complaint Adjudication Officer shall have 60 days from receipt of the additional information to render the decision on the appeal. The Complaint Adjudication Officer shall transmit his or her decision by letter to the parties. The decision shall set forth the findings,

remedial action required, and reasons for the decision. If the decision is based on a hearing record, the Complaint Adjudication Officer shall consider the recommended decision of the administrative law judge and render a final decision based on the entire record. The Complaint Adjudication Officer may also remand the hearing record to the administrative law judge for a fuller development of the record.

(2) Any respondent required to take action under the terms of the decision of the agency shall do so promptly. The Official may require periodic compliance reports specifying—

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final decision has not yet been taken; and

(iii) The steps being taken to ensure full compliance.

The Complaint Adjudication Officer may retain responsibility for resolving disagreements that arise between the parties over interpretation of the final agency decision, or for specific adjudicatory decisions arising out of implementation.

EDITORIAL NOTE: For the convenience of the user, the "Supplementary Information" portion of the document published at 49 FR 35724, Sept. 11, 1984, is set forth below:

SUPPLEMENTARY INFORMATION: On December 16, 1983, the Department of Justice published a Notice of Proposed Rulemaking (NPRM) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by the Department of Justice. 48 FR 55996. Shortly after the NPRM was published, the Department received a number of preliminary comments from handicapped individuals and from organizations representing handicapped individuals. The tone and nature of these comments indicated to the Department that some of the regulatory provisions of the NPRM were being misunderstood. As a result, the Department, on March 1, 1984, published a Supplementary Notice further explaining the NPRM and requesting comments on possible revisions to the original NPRM. 49 FR 7792.

By April 16, 1984, close of the comment period, the Department received 1,194 comments. Two hundred and six of these com-

ments also addressed the supplemental notice. Over 90% of the comments that the Department received came from individuals (908), most frequently handicapped persons, and from organizations representing the interests of handicapped persons (180). The Department received comments from all fifty states, the District of Columbia, Puerto Rico, Canada, and Denmark. Most of the comments that the Department received were general in nature. The Department received 721 comments based on a form letter. This form letter, written before issuance of the Supplemental Notice, expressed dismay at the inclusion of the regulation's "undue financial and administrative burdens" language, asserted that the Department was imposing a lesser requirement on the Federal government than on recipients of Federal assistance, and requested that the regulation be withdrawn. This form letter did not contain any substantive or detailed analysis. In fact, only 55 of the 1,194 comments contained specific, detailed analysis of the Department's proposal.

The Department read and analyzed each comment. Each comment was then subdivided according to one or more of over 90 issue categories. Because comments often addressed, even in general terms, more than one issue, the 1,194 comments were translated into 4,256 issue-specific comments. The decisions that the Department made in response to these comments, however, were not made on the basis of the number of commenters addressing any one point but on a thorough consideration of the merits of the points of view expressed in the comments. Copies of the written comments will remain available for public inspection in Room 854 of the HOLC Building, 320 First Street, NW., Washington, DC from 9:00 a.m. to 5:30 p.m., Monday through Friday, except for legal holidays, until November 13, 1984.

Section 504 requires that regulations that apply to the programs and activities of Federal executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been so submitted. The Department has today submitted this regulation to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and the House Committee on Education and Labor and its Subcommittee on Select Education pursuant to the terms of section 504. The regulation will become effective on October 11, 1984.

This rule applies to all programs and activities conducted by the Department of Justice. Thus, this rule regulates the activities of over 30 separate subunits in the Department, including, for example, the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration

and Naturalization Service, the Bureau of Prisons, Federal Prison Industries, and the United States Attorneys.

BACKGROUND

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Justice (DOJ). As amended by the Rehabilitation Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. See 28 CFR part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1984) *id.*, 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

Nine hundred and two comments that the Department received agreed that the obligations of section 504 for federally conducted programs should be identical to those developed by the Federal agencies over the past seven years for federally assisted programs. These commenters, however, objected to

any language differences between the Department's proposed rule for federally conducted programs and the Department's section 504 coordination regulation for federally assisted programs (28 CFR part 41). The commenters asserted that a number of language differences that the Department had proposed created less stringent standards for the Federal government than those applied to recipients of Federal assistance under section 504. They wrote that such a result could not be justified by Executive Order 12250, by the wording of the statute itself, nor by the legislative history of the 1978 amendments.

The commenters appear to have misunderstood the basis for inclusion of the new language in the DOJ regulation. The changes in this regulation are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. See *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (APTA); see also *Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

Some commenters questioned the use of *Davis* as justification for the inclusion of the new provisions in the federally conducted regulation. They noted that the Department had not included these changes when, subsequent to the *Davis* decision, it issued a regulation implementing section 504 in programs receiving Federal financial assistance from this Department. The Department's section 504 federally assisted regulation, however, was issued prior to the D.C. circuit's decision in APTA. In APTA, the Department had argued a position similar to that advocated by the commenters. Judge Abner Mikva's decision in APTA clearly rejected the Department's position in that case. Other circuit court decisions followed the APTA interpretation of *Davis*. Since these decisions, the Department has interpreted its section 504 regulation for federally assisted programs in a manner consistent with the language of this final rule. The Department believes that judicial interpretation of section 504 compels it to incorporate the new language in the federally conducted regulation.

Incorporation of these changes, therefore, makes this section 504 federally conducted regulation consistent with the Federal government's section 504 federally assisted regulations. Because many of these federally assisted regulations were issued prior to the judicial interpretations of *Davis* and its progeny, their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assist-

ed regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the Department believes that there are no significant differences between this final rule for federally conducted programs and the Federal government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

SECTION-BY-SECTION ANALYSIS AND RESPONSE TO COMMENTS

Section 39.101 Purpose

Section 39.101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

The Department received no comments on this section and it remains unchanged from the Department's proposed rule.

Section 39.102 Application

The regulation applies to all programs or activities conducted by the Department of Justice. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the Department for program beneficiaries and participants. Activities in the first part include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the Department's facilities (cafeteria, library). Activities in the second category include programs that provide Federal services or benefits (immigration activities, operation of the Federal prison system). No comments were received on this section.

Section 39.103 Definitions

The Department received 469 comments on the definitions section. Most of the comment, however, concentrated on the definition of "qualified handicapped person."

"Agency" is defined as the Department of Justice.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Auxiliary aids are addressed in § 39.160(a)(1). Comments on the definition of "auxiliary aids" are discussed in connection with that section.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180 day period for the agency's investigation (see § 39.170(g)) begins when it receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted.

Twenty commenters on the NPRM objected to the omission of the phrase "or interest in such property" from the definition of "facility." As explained in the Supplemental Notice, the term "facility," as used in this regulation, refers to structures, and does not include intangible property rights. The definition, therefore, has no effect on the scope of coverage of programs, including those conducted in facilities not included in the definition. The phrase has been omitted because the requirement that facilities be accessible would be a logical absurdity if applied to a lease, life estate, mortgage, or other intangible property interest. The regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. Sixty commenters supported the clarification of this issue in the Supplemental Notice.

"Handicapped person." The definition of "handicapped person" has been revised to make it identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). In its NPRM, the Department omitted the list of physical or mental impair-

ments included in the definition of "handicapped persons." The Department received 19 negative comments on this omission, and, in the Supplemental Notice, requested comments on whether it should be re-inserted. On the basis of the comments received, we have included the list in the final rule.

"Qualified handicapped person" The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Subparagraph (1) of the definition states that a "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment is a handicapped person who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition is based on the Supreme Court's *Davis* decision.

In *Davis*, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." 442 U.S. at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

The Department incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some pro-

grams, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

Two hundred and forty-four commenters objected to this revised definition for a variety of reasons. Several commenters stated that the Department incorrectly used *Davis* as the justification for explaining the differences between the federally assisted and the federally conducted regulations because the Supreme Court upheld the validity of the existing regulations in *Consolidated Rail Corp. v. Darrone*, 104 S. Ct. 1248 (1984). This view misunderstands the Court's actions in *Darrone*. In that case the Court ruled on a series of issues, the most important of which was under what circumstances section 504 applied to employment discrimination by recipients. The Court did not concern itself either directly or indirectly with the definition of "qualified handicapped person" or whether section 504 included limitations based on "undue financial and administrative burdens."

Many commenters stated that the proposal would change the definition of qualified handicapped person for employment. "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by §39.140. Nothing in this part changes existing regulations applicable to employment.

Many commenters assumed that the definition would have the effect of placing on the handicapped person the burden of proving that he or she is qualified. The definition has been revised to make it clear that the agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in §§39.150(a)(2) and 39.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the handicapped person to achieve the purpose of the program but would not result in such an alteration.

Some commenters said that the definition of "qualified handicapped person" places handicapped persons in a "Catch-22" situation: because only qualified handicapped

persons are protected by the statute, a determination that a person is not qualified would make enforcement remedies unavailable to that person. This concern is misplaced. If the Department determined that a handicapped person was not "qualified," the person could use the procedures established by §39.170 to challenge that determination, just as he or she could challenge any other decision by the agency that he or she believed to be discriminatory.

Many commenters argued that the definition of "qualified handicapped person" confused what should be two separate inquiries: whether a person meets essential eligibility requirements and, if so, whether accommodation is required. They argued that the reference to "fundamental alteration" in the definition focuses attention on accommodations rather than on a handicapped person's abilities. As another commenter noted, however, the Supreme Court in *Davis* developed the "fundamental alteration" language in a decision that was determining the nature and scope of what constitutes a qualified handicapped person. The Department continues to believe that the concept of "qualified handicapped person" properly encompasses both the notion of "essential eligibility requirements" and the notion of program modifications that might fundamentally alter a program.

Some commenters argued that our analysis of *Davis* was inappropriate because *Davis* was decided on the basis of individual facts unique to that case or because *Davis* involved federally assisted and not federally conducted programs. While cases are decided on the basis of specific factual situations, courts, especially the Supreme Court, develop general principles of law for use in analyzing facts. The *Davis* decision was the Supreme Court's first comprehensive view of section 504, a major new civil rights statute. The *Davis* holding, that a person who cannot achieve the purpose of a program without fundamental changes in its nature is not a "qualified handicapped person," is a general principle, a statement by the Court on how it views section 504. It is therefore necessary to reflect it in the Department's regulation.

Subparagraph (2) of the definition adopts the existing definition in the coordination regulation of "qualified handicapped person" with respect to services for programs receiving Federal financial assistance (28 CFR 41.32(b)). Under this part of the definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to pro-

grams or activities to which it provides Federal financial assistance.

Section 39.110 Self-evaluation

This section requires that the agency conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

In response to preliminary comments that the proposed rule had no specific criteria for conducting a self-evaluation, we requested comment on a proposed alternative in our Supplemental Notice (49 FR 7792). We received 64 comments, 57 of which were positive. The comments generally favored adoption of the alternative section, instead of the proposed section. We agree.

With respect to the applicability of the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) (FACA), several comments were received. They argued that the FACA is not intended to apply to meetings with a self-evaluation group comprised of private individuals because they are rather unstructured, ad hoc meetings.

Authority for interpreting FACA was delegated to the General Services Administration (GSA) by Executive Order 12024 in 1977. Regulations issued by GSA place specific limitations on the scope of the Act by delineating examples of meetings or groups not covered. 41 CFR part 101-6. GSA identified a major issue in the promulgation of the regulations to be the extent of applicability of the Act.

Some commenters believe, as a matter of general policy, that advisory groups which are not formally structured, which do not have a continuing existence, which meet to deal with specific issues, and whose meetings do not constitute an established pattern of conduct should not be covered under the Act. * * * This rule reflects our judgment that the exclusion of certain non-recurring meetings from the Act's coverage is fully consistent with the statute, its legislative history, and judicial interpretation. * * * The interim rule provides guidance for those meetings between Federal officials and non-Federal individuals which do not fall within the scope of the Act, and for which a charter and consultation with GSA is not required.

48 FR 19324 (Preamble to interim rules).

The regulations define "advisory committee" in pertinent part as:

Any committee, board, commission, council, conference, panel, task force or other similar group * * * established by * * * or utilized by * * * any agency official for the purpose of obtaining advice or recommendations on issues or policy which are within the scope of his or her responsibilities.

41 CFR 101-6.1003 (emphasis added).

In turn, "utilized" is defined in pertinent part as a

group * * * which * * * agency official(s) adopts, such as through institutional arrangements, as a preferred source from which to obtain advice or recommendations on a specific issue or policy within the scope of his or her responsibilities in the same manner as that individual would obtain advice or recommendations from an established advisory committee.

41 CFR 101-6.1003 (emphasis added).

The GSA regulation further provides that the Act does not apply to

(g) Any meeting initiated by the President or one or more Federal official [sic] for the purpose of obtaining advice or recommendations from one individual;

(h) Except with respect to established advisory committees:

(1) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information; or

(2) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's view, provided that the President or Federal official(s) does not use the group as a preferred source of advice or recommendations;

* * *

(j) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations.

41 CFR 101-6.1004 (g), (h), and (j).

This final rule provides that the agency shall provide an opportunity for interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process and development of transition plans by submitting comments (both oral and written).

Section 39.111 Notice

The Department received negative comments on its omission of a paragraph routinely used in section 504 regulations for federally assisted programs requiring recipients to inform interested persons of their

rights under section 504. In the Department's Supplemental Notice, we requested comments on inclusion of specific regulatory language. Fifty-four positive comments were received. As a result, the Department has incorporated that new provision on notice into the final rule. It appears as § 39.111.

Section 39.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 of this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 39.111 is, in fact, a broader and more detailed version of the proposed rule's requirement (at § 39.160(d)) that the agency provide handicapped persons with information concerning their rights. Because § 39.111 encompasses the requirements of proposed § 39.160(d), that latter paragraph has been deleted as duplicative.

Section 39.130 General prohibitions against discrimination

Section 39.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51). This regulatory provision attracted relatively few public comments and has not been changed from the proposed rule.

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 39.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 39.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g., epileptics, hearing-impaired persons, persons with heart ailments) from participation in

programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to disqualify automatically all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Subparagraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 39.149-39.151) and communications (§ 39.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, subparagraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Subparagraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, subparagraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Subparagraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Subparagraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Subparagraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of adminis-

tration" refers to official written agency policies and to the actual practices of the agency. This subparagraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Subparagraph (b)(4) specifically applies the prohibition enunciated in § 39.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Subparagraph (b)(4) does not apply to construction of additional buildings at an existing site.

Subparagraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Subparagraph (b)(6) prohibits the agency from discriminating against qualified handicapped persons on the basis of handicap in the granting of licenses or certification. A person is a "qualified handicapped person" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 39.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate in an impermissible manner against the employment of qualified handicapped persons.

Subparagraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of its operations.

Twenty-three commenters argued that the regulation should extend to the activities of licensees or certified entities, citing *Community Television of Southern California v. Gottfried*, 103 S. Ct. 885 (1983). In that case, the Court held that section 504 as applied to federally assisted programs did not require the Federal Communications Commission to prohibit discrimination on the basis of handicap by licensed broadcasters, but that "the policies underlying the

Communications Act" might authorize the Commission to issue a regulation governing such discrimination. The Court did not, however, indicate that section 504 itself could serve as the source of such regulatory authority.

The Court has held that "the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare. Rather the words take meaning from the purposes of the regulatory legislation." *National Association for the Advancement of Colored People v. Federal Power Commission*, 425 U.S. 662, 669 (1976). In our view, section 504 does not of itself extend an agency's regulatory authority to the activities of licensees or certified entities. Where an agency has existing regulatory authority that is broad enough to enable it to establish a nondiscrimination requirement for its licensees or certified entities, section 504 may support the exercise of that authority. Because the Department of Justice has no such underlying authority, it cannot prohibit discrimination by licensees.

Twenty-two commenters objected to the omission of a paragraph from the regulations for federally assisted programs that prohibits a recipient from providing significant assistance to an organization that discriminates. To the extent that assistance from the agency would provide significant support to an organization, it would constitute Federal financial assistance and the organization, as a recipient of such assistance, would be covered by the agency's section 504 regulation for federally assisted programs. The regulatory "significant assistance" provision, however, would be inappropriate in a regulation applying only to federally conducted programs or activities.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

Section 39.140 Employment

Section 39.140 prohibits discrimination on the basis of handicap in employment by the agency. Comments on proposed § 39.140 identified two types of problems. First, several commenters felt that the rule's treatment of employment was not sufficiently comprehensive. They pointed out that the rule does not enumerate the employment practices covered (e.g., hiring, promotion, assignment); it does not say what must be done to avoid or correct possible discrimina-

tion (e.g., reasonable accommodation, review of preemployment tests, limitations on preemployment inquiries and the use of medical examinations); nor does it define a "qualified handicapped person" with respect to employment.

Second, one commenter objected to the rule's adoption of "the definitions, requirements and procedures of section 501 of the Rehabilitation Act" as established in rules of the Equal Employment Opportunity Commission (EEOC) at 29 CFR part 1613. This commenter argued that EEOC's rules on physical examinations were too restrictive and claimed that the proposed rule did not limit employment coverage to the program conducted by the Federal government in a manner similar to the "program or activity" limitation on coverage of programs receiving Federal financial assistance. Finally, the commenter asserted that reliance on section 501 was misplaced because that section of the Rehabilitation Act requires affirmative action whereas section 504, which the rule implements, contains only a nondiscrimination requirement.

The original notice of proposed rulemaking explained that the regulation is in accord with *Prewitt v. United States Postal Service*, 662 F.2d 292 (5th Cir. 1981), which held that Congress intended section 504 to cover the employment practices of Executive agencies. In *Prewitt*, the court also held that, in order to give effect to sections 501 and 504, both of which cover Federal employment, the administrative procedures of section 501 must be followed. Accordingly, the proposed rule adopted the definitions, requirements and procedures of section 501 as established in EEOC's rules.

The final rule has not been changed. The Department intends to avoid duplicative, competing or conflicting standards under the Rehabilitation Act with respect to Federal employment. While the rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, reference to the Government-wide rules of the Equal Employment Opportunity Commission is sufficient and avoids duplication. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

*Section 39.149 Program accessibility:
Discrimination prohibited*

The proposed regulation did not contain a general statement of the program accessibility requirement similar to that appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.56).

The decision not to include this language in the proposed regulation created the misperception that a change in substance was intended. In order to remedy this misunderstanding, the Supplemental Notice requested comments on explicitly including it. Sixty-two commenters favored inclusion of the specific regulatory language that was published in the Supplemental Notice. Consequently, the final rule has been revised to include the language of the Supplemental Notice. The language appears at § 39.149.

*Section 39.150 Program accessibility:
Existing facilities*

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 39.150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 39.150(a)(1)). However, § 39.150, unlike 28 CFR 41.56-41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 39.150(a)(2)). This provision provoked 959 comments, the largest number received on any single issue. Most commenters sought the deletion of the "undue financial and administrative burdens" language from the regulation. On the basis of preliminary comments on this paragraph, the Department published clarifying language in its Supplemental Notice. The final version includes that clarification.

The "undue financial and administrative burdens" language (found at §§ 39.150(a)(2) and 39.160(d)) is based on the Supreme Court's *Davis* holding that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. See, e.g., *Dopico v. Goldschmidt*, *supra*; *American Public Transit Association v. Lewis*, *supra* (APTA). In APTA the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation (DOT). The court in APTA noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate

only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of subparagraph (a)(2) is an effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This subparagraph acknowledges, in light of recent case law, that, in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

Many commenters argued that the Supreme Court's decision in *Davis* did not require inclusion of an undue burdens defense in this regulation. These commenters asserted that the holding in *Davis* was that the plaintiff was not a qualified handicapped person and that the subsequent reference to "undue financial and administrative burdens" was mere *dicta*. These commenters overlook the interpretations of *Davis* provided by the Federal circuit court cases mentioned above. The *APTA* and *Dopico* decisions make it clear that financial burdens can limit the obligation to comply with section 504. See also *New Mexico Association for Retarded Citizens v. New Mexico*, 678 F.2d 847 (10th Cir. 1982).

Many commenters argued that inclusion of the undue burdens defense was inconsistent with the position taken by Vice President Bush in his letter of March 21, 1983, in which he announced the Administration's decision not to revise the coordination regulation for federally assisted programs. The decision to include the undue burdens defense represents no contradiction with the position taken by Vice President Bush on the guidelines for federally assisted programs. In his letter the Vice President stated that "extensive change of the existing 504 coordination regulations was not required, and that with respect to those few areas where clarification might be desirable, the courts are currently providing useful guidance and can be expected to continue to do so in the future." One element of that "useful guidance" obviously comes from interpretations of the *Davis* decision by the lower Federal courts.

The Department has carefully considered the comments on the process that the Department should follow in determining whether a program modification would result in undue financial and administrative

burdens. The Department intends to be guided by six principles in its application of the "fundamental alteration" and "undue financial and administrative burdens" language.

First, because of the extensive resources and capabilities that could properly be drawn upon for section 504 purposes by a large Federal agency like the Department of Justice, the Department explicitly acknowledges that, in most cases, making a Department program accessible will likely not result in undue burdens. Second, the burden of proving that the accommodation request will result in a fundamental alteration or undue burdens has been placed squarely on the Department of Justice, not on the handicapped person. Third, in determining whether financial and administrative burdens are undue, the Department is to consider all Department resources available for use in the funding and operation of the conducted program. Fourth, the "fundamental alteration"/"undue burdens" decision is to be made by the Attorney General or his designee and must be accompanied by a written statement of reasons for reaching such a conclusion. Fifth, if a disabled person disagrees with the Attorney General's finding, he or she can file a complaint under the complaint procedures established by the final regulation. A significant feature of this complaint adjudication procedure is the availability of a hearing before an independent administrative law judge under the due process protections of the Administrative Procedure Act. Sixth and finally, even if there is a determination that making a program accessible will fundamentally alter the nature of the program, or will result in undue financial and administrative burdens the Department must still take action, short of that outer limit, that will open participation in the Department's program to disabled persons to the fullest extent possible.

One hundred and eighty-one commenters on the Supplemental Notice objected to the provision that the "undue burdens" decision would be based on consideration of "all agency resources available for use in the funding and operation of the conducted program," arguing that it should be based on the resources of the agency as a whole. Some argued that this formulation was required because all agency resources come from taxpayer monies and should not be used to support discrimination.

The Department's entire budget is an appropriate touchstone for making determinations as to undue financial and administrative burdens. Many parts of the Department's budget are earmarked for specific purposes and are simply not available for use in making the Department's program accessible to disabled persons. For example, funds for the operation of the Bureau of

Prisons are unavailable for defraying the cost of a sign language interpreter at a deportation hearing conducted by the Immigration and Naturalization Service. There are extensive resources available to the Department and it is expected that the Department will, only on very rare occasions, be faced with "undue burdens" in meeting the program accessibility or communications sections of the regulation.

One commenter said that the term "undue hardship" used in regulations for federally assisted programs is more specific and less discriminatory than the term "undue burdens." The term "undue hardship" is a term of art used in connection with employment. The term "undue burdens" is taken from the Supreme Court's opinion in *Davis* and is appropriately included in this regulation.

Some commenters argued that section 504 creates an absolute right to access, and that cost cannot limit this right, although it may be a factor in determining timeframes for compliance. Section 504 does not create an absolute right to access. The Supreme Court stated in *Davis* that recipients need not undertake modifications to their programs to meet the requirements of section 504 that would result in "undue financial and administrative burdens." This understanding of section 504 and its implementing regulations for federally assisted programs is shared by the lower Federal courts, which have routinely applied the "undue burdens" limitation to accessibility issues. Congress suggested no different interpretation of section 504 when applying it to federally conducted programs. Spreading the cost of compliance over a period of time is, however, one way of avoiding undue financial and administrative burdens, and the Department will consider that as an option whenever it considers asserting that defense.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon

as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 39.151 Program accessibility: New construction and alterations

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). Section 39.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101-19.600 to 101-19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). It is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 39.150.

A commenter has recommended that the regulation should require that buildings leased after the effective date of the regulation should meet the new construction standards of § 39.151, rather than the program accessibility standard for existing facilities in § 39.150. Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the Department believes the same program accessibility standard should apply to both owned and leased existing buildings.

Section 39.160 Communications

Section 39.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal

entities, applicants, participants, and members of the public. These steps include procedures for determining when auxiliary aids are necessary under § 39.160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 39.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 39.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble § 39.150(a)(2)). Unless not required by § 39.160(d), the agency shall provide auxiliary aids at no cost to the handicapped person.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (e.g., a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids when several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency, e.g., INS deportation proceedings. Auxiliary aids in these proceedings must be afforded where they are necessary to ensure effective communication at the proceedings. When sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 39.160(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require

the agency to provide wheelchairs to persons with mobility impairments.

Some commenters suggested that the Department's language in § 39.160(a)(1)(ii) that states that the agency need not provide individually prescribed devices or readers for personal use or study be modified to state that such devices are not required for "nonprogram material." This suggestion has not been adopted because it is less clear than the existing formulation, which is intended to distinguish between communications that are necessary to obtain the benefits of the federal programs and those that are not and which parallels the requirements of the Federal government's section 504 regulations for federally assisted programs. For example, a federally operated library would have to ensure effective communication between its librarian and a patron, but not between the patron and a friend who had accompanied him or her to the library.

Several comments suggested that the definition of auxiliary aids should include attendant services that may be needed to aid disabled persons to travel to meetings. Other comments recommended that in some cases attendant services may be an appropriate auxiliary aid to achieve program accessibility.

The Department has not adopted the approach recommended by these comments. To the extent that the services of an attendant are not directly related to a federally conducted program or activity, it would be inappropriate to require them at Federal expense. For example, the services of a sign language interpreter make a workshop available to any deaf participant as it is to other participants. The need for services of interpreters arises directly out of the presentation of information in a form that can be understood by hearing persons. However, the Department views the services of an attendant for a disabled person as generally personal in nature and not directly related to the federally conducted program.

A different conclusion, however, might be reached for Federal employees or other persons traveling for the agency. Where a disabled person who is unable to travel without an attendant is required to perform official travel, the travel expenses of an attendant including per diem and transportation expenses, may be paid by the Department. See 5 U.S.C. 3102(d) (1982).

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section 39.170 Compliance procedures

Section 39.170 establishes a detailed complaint processing and review procedure for resolving allegations of discrimination in violation of section 504 in the Department of Justice's programs and activities. The 1978 amendments to section 504 failed to provide a specific statutory remedy for violations of section 504 in federally conducted programs. The amendment's legislative history suggesting parallelism between section 504 for federally conducted and federally assisted programs is unhelpful in this area because the fund termination mechanism used in section 504 federally assisted regulations depends on the legal relationship between a Federal funding agency and the recipients to which the Federal funding is extended. The Department has decided that the most effective and appropriate manner in which to enforce section 504 in the federally conducted area is through an equitable complaint resolution process. Section 39.170 establishes this process.

The complaint process in the final rule is substantially the same as the one that the Department proposed. The Department received 57 comments on this section. These comments did not question the use of a complaint-responsive enforcement scheme as appropriate for section 504 for federally conducted programs. The Department continues to view its specific proposal as satisfactory.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) vests in the Responsible Official the responsibility for the overall management of the 504 compliance program. "Responsible Official" or "Official," as defined in § 39.103, refers to the Director of Equal Employment Opportunity, who is designated as the official responsible for coordinating implementation of compliance procedures set forth in § 39.170. The definition of "Official" includes other Department Officials to whom authority has been delegated by the Official. The Assistant Attorney General for Administration has been designated as the Director of Equal Employment Opportunity for the Department. See 28 CFR 42.2(a).

Although one person has responsibility both for administering the Equal Employment Opportunity Program for the Department and for coordinating implementation of the compliance procedures under this part, the procedures for carrying out these

two responsibilities are different. The Official would follow the procedures for enforcing equal employment opportunity, as set forth in 29 CFR part 1613, only for complaints alleging employment discrimination (see § 39.170(b)). Other complaints would be processed under the procedures in § 39.170. Authority for processing complaints of employment discrimination has been delegated to Equal Employment Opportunity Officers in some Department components, and it is expected that authority for enforcing this part will be similarly delegated.

Subparagraphs (d) (1) and (3) provide that any person who believes that he or she has been discriminated against may file a complaint within 180 days from the date of the alleged discrimination. The Official may extend the time limit when the complainant shows good cause. Good cause could be found if, for example, (1) the complainant mistakenly filed with the wrong agency and was not informed of the mistake within the 180 days; or (2) the complainant could not reasonably be expected to know of the act or event said to be discriminatory.

Several commenters argued that the proposed rule unnecessarily restricted the right to file a complaint by not allowing an individual victim of discrimination to authorize a representative to file on his or her behalf. The final rule permits filing by the authorized representative of an individual victim, or, in the case of class discrimination, of a member of the class, as well as by an individual victim or class member. The final rule has been revised to make it clear that complaints alleging that a specific class of persons has been discriminated against may only be filed by a member of that specific class or by a representative authorized to file the complaint by a member of that class (§ 39.170(d)(1)).

The Federal Bureau of Prisons has established an Administrative Remedy Procedure for handling grievances of inmates of Federal penal institutions (28 CFR part 542). This procedure allows an inmate to file a formal written complaint with the Warden of the Institution or with the Regional Director. While these remedies are not a substitute for the right to an independent investigation by a civil rights office and appeal to the Complaint Adjudication Officer, the final rule requires inmates to exhaust these procedural remedies before filing a complaint with the Official. The time period for filing a complaint with the Official would be extended by the time spent exhausting these remedies. This requirement applies only to inmates and does not extend to visitors and employees.

The Department received several comments on how prisoners' complaints should be handled. Some of them suggested that both the discrimination procedure and the

prison grievance procedures should be invoked simultaneously. The Department believes that this proposal would require the unnecessary duplication of efforts without materially enhancing results. The Bureau of Prisons reported that thousands of inmate complaints were filed in 1983 alone and that several court decisions have held that the inmate administrative remedy procedure must be exhausted before suit can be filed. Although the volume of complaints by prison inmates might be burdensome, it is not possible now to forecast the number that will be filed. The Department believes, however, that handicapped prisoners must be afforded the right to have their complaints investigated by an office that specializes in discrimination complaints, including section 504 complaints, as well as the right to appeal to the Complaint Adjudication Officer. It is expected that the requirement that inmates first exhaust prison administrative remedies will be effective in resolving most meritorious complaints. It may be necessary, of course, for the Department to provide additional resources to handle complaints filed under the new regulation.

Subparagraph (d)(2) requires that the name and identity of a complainant be held in confidence unless he or she waives that right in writing and except to the extent necessary for compliance purposes.

Complaints may be mailed or delivered to the Attorney General, the Responsible Official, or other agency officials. Complaints received by any agency official other than the Responsible Official must be forwarded immediately to the Responsible Official (subparagraph (d)(4)).

Paragraph (e) requires the agency to send to the Architectural and Transportation Barriers Compliance Board a copy of any complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access to and use by handicapped persons.

The Official is required to accept all complete complaints over which the agency has jurisdiction (§ 39.170(f)(1)). If the Official determines that the agency does not have jurisdiction over a complaint, the Official shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 39.170(f)(3)).

If a complaint is not complete when it is filed, the Official must notify the complainant within 30 days that additional information is needed. The complainant must furnish the necessary information within 30 days of receipt of the notice, or the complaint will be dismissed without prejudice. Filing an incomplete complaint within 180 days from the date of the alleged discrimination satisfies the requirement of subpara-

graph (d)(3), but the timeframes governing the Official's other obligations to process the complaint (see, e.g., § 39.170(g)(1), § 39.170(h)) do not begin to operate until the Official receives a complete complaint.

Within 180 days of receipt of the complete complaint, the Official is to investigate the complaint, attempt an informal resolution and, if informal resolution is not achieved, issue a letter of findings (§ 39.170(h)). Within the time limit, the Official should make every effort to achieve informal resolution whenever possible.

In response to a suggestion from a commenter, the Department no longer refers to the letter of findings as "preliminary." The word "preliminary" has been deleted because, if there is no appeal, the determination made in the letter of findings will constitute the final agency decision.

Paragraph (h) requires that the Official's letter be sent to the complainant and respondent, and that it contain findings of fact and conclusions of law, the relief granted if discrimination is found, and notice of the right to appeal. The regulation provides that a party may appeal the Official's letter or findings to the Complaint Adjudicator Officer (CAO). If neither party files an appeal from the letter of findings within 30 days after receipt of the letter, the letter will constitute the final decision of the agency (§ 39.170(i)(4)).

The Department's final rule provides an opportunity for a hearing before an administrative law judge (ALJ). The ALJ would make a recommended decision to the CAO who would make the final agency decision. The purpose of the hearing is to provide a forum in which the complainant or respondent can have an opportunity to be heard, confront witnesses, and present evidence so that an administrative law judge can issue a recommended decision that is well-reasoned and justified on the basis of the evidence presented.

The opportunity for a hearing before an ALJ assures more impartiality and the appearance of more impartiality than a decision made by one agency official concerning other officials of the same agency. The Department expects that agency decisions based on a hearing record would more likely survive later judicial review.

Under the regulation, another person or organization would be allowed to participate as a third party or amicus curiae if the ALJ determines that the petitioner has a legitimate interest in the proceedings, that participation will not delay the outcome, and that petitioner's participation may contribute materially to the disposition of the proceedings.

The Department received comments on the proposed opportunity for a hearing before an administrative law judge. Some

commenters were primarily concerned that by invoking a hearing before the ALJ with the procedural safeguards adopted from the Administrative Procedure Act (APA) (5 U.S.C. 554-557), the complainant would lose the right to a *de novo* review of the agency's final decision, because the APA allows a Federal court only to determine if the agency's final decisions are "arbitrary and capricious" (5 U.S.C. 706(2)(A)). It is beyond our jurisdiction to specify that a *de novo* review is available to complaints seeking judicial review of final agency decisions. This issue is for the courts to decide. That is also true for the issue of the availability of a private right of action, either without invoking our compliance procedures or after the issuance of letters of findings.

Given the inherent conflicts of interest in situations where complaints allege discrimination on the part of the Department, it is critically important to ensure that a complaint be reviewed in a fair, independent process. The availability of a hearing before an independent ALJ would provide the appearance as well as the actuality of an impartial compliance mechanism. The Department has therefore included the provision for a hearing in the final regulation.

One comment requested the addition of a provision whereby the Department would award attorneys fees to complainants. Another comment suggested that the Equal Access to Justice Act (5 U.S.C. 504) might provide for the award of fees. Nothing contained in title V of the Rehabilitation Act provides for the agency award of attorneys fees in administrative proceedings other than those involving Federal employment. Nor does the EAJA and the Department's implementing regulations at 28 CFR part 24 provide for such awards in hearings conducted under § 39.170(k). We have therefore included no attorneys fee provision in the current regulations.

Under paragraph (1), the CAO renders a final agency decision after appeal without a hearing or after a hearing. The CAO directs appropriate remedial action if discrimination is found. The CAO's decision will involve reviewing the entire file, including the investigation report, letter of findings, and, if a hearing was held, the hearing record and recommended decision of the administrative law judge. The decision shall be made within 60 days of receipt of the complaint file or the hearing record.

One commenter objected to the requirement in subparagraph (1)(1) that the CAO explain specifically a decision to reject or modify the ALJ's proposed findings, arguing that it would inappropriately limit the CAO's consideration of the issues. We have adopted the suggestion and eliminated the requirement.

In response to recommendations from the Department's CAO and the Drug Enforcement

Administration's ALJ, some changes have been made in the compliance procedures. Among the changes are a new requirement that the ALJ provide findings to all parties, not just the CAO, an added provision for filing exceptions to an ALJ's recommended decision, a delineation of the authorities of the ALJ, and a clarification of the responsibility for supervising compliance with the final agency decision between the Responsible Official and the CAO.

The Department also received some comments on the appropriateness of providing for an appeal by either the complainant or respondent. Some commenters objected to allowing a respondent to obtain an administrative appeal because it could delay remedying discrimination. On the other hand, an impartial adjudicatory mechanism would require that opportunity is provided for both sides to appeal. For this reason, the Department finds it necessary and appropriate for both complainant and respondent to have the right to an administrative appeal.

PART 40—STANDARDS FOR INMATE GRIEVANCE PROCEDURES

Subpart A—Minimum Standards for Inmate Grievance Procedures

Sec.

- 40.1 Definitions.
- 40.2 Adoption of procedures.
- 40.3 Communication of procedures.
- 40.4 Accessibility.
- 40.5 Applicability.
- 40.6 Remedies.
- 40.7 Operation and decision.
- 40.8 Emergency procedure.
- 40.9 Reprisals.
- 40.10 Records—nature; confidentiality.

Subpart B—Procedures for Obtaining Certification of a Grievance Procedure

- 40.11 Submissions by applicant.
- 40.12 Notice of intent to apply for certification.
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- 40.16 Denial of certification.
- 40.17 Reapplication after denial of certification.
- 40.18 Suspension of certification.
- 40.19 Withdrawal of certification.
- 40.20 Contemplated change in certified procedure.
- 40.21 Notification of court.
- 40.22 Significance of certification.

AUTHORITY: 42 U.S.C. 1997e.

SOURCE: Order No. 957-81, 46 FR 48186, Oct. 1, 1981, unless otherwise noted.

AGENCY REGULATIONS IMPLEMENTING
SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED
IN FEDERALLY CONDUCTED PROGRAMS AND ACTIVITIES

Final Rules

Administrative Conference of the U. S.	1 C.F.R. pt. 326; 51 Fed. Reg. 4,566 (1986)
Advisory Commission on Intergovernmental Relations	5 C.F.R. pt. 1720; 51 Fed. Reg. 4,566 (1986)
Advisory Committee on Federal Pay	5 C.F.R. pt. 1411; 51 Fed. Reg. 4,566 (1986)
Advisory Council on Historic Preservation	36 C.F.R. pt. 812; 51 Fed. Reg. 22,880 (1986)
*African Development Foundation	22 C.F.R. pt. 1510; 53 Fed. Reg. 25,872 (1988)
American Battle Monuments Commission	36 C.F.R. pt. 406; 51 Fed. Reg. 4,566 (1986)
Architectural and Transportation Barriers Compliance Board	36 C.F.R. pt. 1154; 53 Fed. Reg. 24,264 (1988)
Board for International Broadcasting	22 C.F.R. pt. 1304; 51 Fed. Reg. 4,566 (1986)
Commission of Fine Arts	45 C.F.R. pt. 2104; 51 Fed. Reg. 22,880 (1986)
Committee for Purchase from the Blind & Other Severely Handicapped	41 C.F.R. pt. 51-9; 51 Fed. Reg. 22,880 (1986)
Commodity Futures Trading Commission	17 C.F.R. pt. 149; 51 Fed. Reg. 22,880 (1986)
Consumer Product Safety Commission	16 C.F.R. pt. 1034; 51 Fed. Reg. 4,566 (1986)
Department of Agriculture	7 C.F.R. {{15.50-.52; 31 Fed. Reg. 8,175 (1966)

* Final rules published, but not yet codified in the Code of Federal Regulations.

Department of Commerce	15 C.F.R. pt. 8c; 53 Fed. Reg. 19,270 (1988)
Department of Defense	32 C.F.R. pt. 56; 47 Fed. Reg. 15,124 (1982)
Department of Energy	10 C.F.R. pt. 1040; 51 Fed. Reg. 4,566 (1986)
Department of Health and Human Services	45 C.F.R. pt. 85; 53 Fed. Reg. 25,595 (1988)
Department of Interior	43 C.F.R. pt. 17; 52 Fed. Reg. 6,549 (1987)
Department of Justice	28 C.F.R. pt. 39; 49 Fed. Reg. 35,724 (1984)
Department of Labor	29 C.F.R. pt. 33; 52 Fed. Reg. 11,600 (1987)
Department of State	22 C.F.R. pt. 144; 51 Fed. Reg. 22,880 (1986)
*Department of Veterans Affairs	38 C.F.R. pt. 15; 53 Fed. Reg. 25,872 (1988)
Environmental Protection Agency	40 C.F.R. pt. 12; 52 Fed. Reg. 30,598 (1987)
Executive Office of the President	3 C.F.R. pt. 102; 53 Fed. Reg. 25,872 (1988)
-White House Office	"
-Office of the Vice - President	"
-Office of Management and Budget	"
-Office of Policy Development	"
-National Security Council	"
-Office of Science and Technology Policy	"
-Office of the United States Trade Representative	"

-Council on Environmental Quality	"
-Council of Economic Advisers	"
-Office of Administration	"
-Office of Federal Procurement Policy	"
Export-Import Bank	12 C.F.R. pt. 410; 51 Fed. Reg. 4,566 (1986)
*Farm Credit Administration	12 C.F.R. pt. 606; 53 Fed. Reg. 19,884 (1988)
Federal Communications Commission	47 C.F.R. pt. 1; 52 Fed. Reg. 16,249 (1987)
Federal Deposit Insurance Corporation	12 C.F.R. pt. 352; 51 Fed. Reg. 9,638 (1986)
Federal Election Commission	11 C.F.R. pt. 6; 49 Fed. Reg. 33,206 (1984)
Federal Emergency Management Agency	44 C.F.R. pt. 16; 53 Fed. Reg. 25,872 (1988)
Federal Labor Relations Authority	5 C.F.R. pt. 2416; 53 Fed. Reg. 25,872 (1987)
Federal Maritime Commission	46 C.F.R. pt. 507; 51 Fed. Reg. 22,880 (1986)
Federal Mine Safety and Health Review Commission	29 C.F.R. pt. 2706; 51 Fed. Reg. 22,880 (1986)
Federal Reserve System	12 C.F.R. pt. 268; 50 Fed. Reg. 18,768 (1985)
Federal Trade Commission	16 C.F.R. pt. 6; 52 Fed. Reg. 45,619 (1987)
*Harry S. Truman Scholarship Foundation	45 C.F.R. pt. 1803; 54 Fed. Reg. 4794 (1989)
Institute of Museum Services	45 C.F.R. pt. 1181; 51 Fed. Reg. 4,566 (1986)
Inter-American Foundation	22 C.F.R. pt. 1005; 51 Fed. Reg. 22,880 (1986)

International Boundary and Water Commission--U.S. and Mexico--United States Section	22 C.F.R. pt. 1103; 51 Fed. Reg. 4,566 (1986)
International Development Cooperation Agency/AID	22 C.F.R. pt. 219; 51 Fed. Reg. 4,566, (1986)
Interstate Commerce Commission	49 C.F.R. pt. 1014; 51 Fed. Reg. 22,880 (1986)
Japan-U.S. Friendship Commission	22 C.F.R. pt. 1600; 51 Fed. Reg. 22,880 (1986)
Marine Mammal Commission	50 C.F.R. pt. 550; 51 Fed. Reg. 4,566 (1986)
Merit Systems Protection Board	5 C.F.R. pt. 1207; 53 Fed. Reg. 25,872 (1988)
National Aeronautics and Space Administration	14 C.F.R. pt. 1251; 53 Fed. Reg. 25,872 (1988)
*National Archives and Records Administration	36 C.F.R. pt. 1208; 53 Fed. Reg. 25,872 (1988)
National Capital Planning Commission	1 C.F.R. pt. 457; 51 Fed. Reg. 22,880 (1986)
National Commission for Employment Policy	1 C.F.R. pt. 500; 51 Fed. Reg. 22,880 (1986)
National Commission on Libraries and Information Science	45 C.F.R. pt. 1706; 51 Fed. Reg. 4,566 (1986)
National Credit Union Administration	12 C.F.R. pt. 794; 51 Fed. Reg. 22,880 (1986)
National Endowment for the Arts	45 C.F.R. pt. 1153; 51 Fed. Reg. 22,880 (1986)
National Endowment for the Humanities	45 C.F.R. pt. 1175; 51 Fed. Reg. 4,566 (1986)
*National Labor Relations Board	29 C.F.R. pt. 100; 53 Fed. Reg. 25,872 (1988)
*National Science Foundation	45 C.F.R. pt. 606; 54 Fed. Reg. 4784 (1989)

National Transportation Safety Board	49 C.F.R. pt. 807; 51 Fed. Reg. 4,566 (1986)
Navajo and Hopi Indian Relocation Commission	25 C.F.R. pt. 720; 51 Fed. Reg. 22,880 (1986)
Nuclear Regulatory Commission	10 C.F.R. pt. 4; 51 Fed. Reg. 22,880 (1986)
Occupational Safety and Health Review Commission	29 C.F.R. pt. 2205; 51 Fed. Reg. 22,880 (1986)
*Office of Personnel Management	5 C.F.R. pt. 723; 53 Fed. Reg. 25,872 (1988)
Office of Special Counsel	5 C.F.R. pt. 1262; 53 Fed. Reg. 25,872 (1988)
Office of the Federal Inspector, Alaska Natural Gas Transportation System	10 C.F.R. pt. 1535; 51 Fed. Reg. 4,566 (1986)
*Overseas Private Investment Corporation	22 C.F.R. pt. 711; 53 Fed. Reg. 25,872 (1988)
Panama Canal Commission	35 C.F.R. pt. 257; 52 Fed. Reg. 26,001 (1987)
Pennsylvania Avenue Development Corporation	36 C.F.R. pt. 909; 51 Fed. Reg. 22,880 (1986)
Pension Benefit Guaranty Corporation	29 C.F.R. pt. 2608; 51 Fed. Reg. 22,880 (1986)
*Railroad Retirement Board	20 C.F.R. pt. 365; 53 Fed. Reg. 43,429 (1988)
Securities and Exchange Commission	17 C.F.R. pt. 200; 53 Fed. Reg. 25,872 (1988)
Selective Service System	32 C.F.R. pt. 1699; 50 Fed. Reg. 35,219 (1985)
*Small Business Administration	13 C.F.R. pt. 136; 53 Fed. Reg. 19,752 (1988)
Tennessee Valley Authority	18 C.F.R. pt. 1313; 51 Fed. Reg. 22,880 (1986)
U.S. Arms Control and Disarmament Agency	22 C.F.R. pt. 607; 51 Fed. Reg. 4,566 (1986)

U.S. Information Agency

22 C.F.R. pt. 530; 51 Fed. Reg.
22,880 (1986)

U.S. International Trade
Commission

19 C.F.R. pt. 201; 51 Fed. Reg.
4,566 (1986)



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

AUG 21 1992

MEMORANDUM

TO: Heads of Federal Executive Agencies

FROM: John R. Dunne, Chairperson
Interagency Coordinating Council

Subject: Making Government Documents and Audiovisual
Materials Available in Accessible Formats

The Interagency Coordinating Council is issuing the attached policy statement to assist all Federal agencies in understanding their responsibility under section 504 of the Rehabilitation Act of 1973, as amended, to make Government documents and audio-visual material available in accessible formats for people who are unable to use conventionally printed or filmed material.

The Council encourages each agency to consider this policy as it continues to implement the requirements of the statute and its own section 504 federally conducted program regulation. The guidance and examples contained in this policy should be useful to program and administrative managers and staff who exercise specific section 504 responsibilities, as well as those whose programs are most affected by accessible format requirements.

Attachment

**MAKING GOVERNMENT DOCUMENTS AND AUDIO-VISUAL
PRESENTATIONS AVAILABLE IN ACCESSIBLE FORMATS**

**INTERAGENCY COORDINATING COUNCIL
POLICY STATEMENT**

BACKGROUND

The Interagency Coordinating Council (the Council)¹ is issuing this policy statement to assist all Federal agencies in understanding their responsibility under section 504 of the Rehabilitation Act of 1973, to make Government documents and audio-visual material available in accessible formats for people who are unable to use conventionally printed or filmed material.

Section 504 forbids Federal agencies to deny persons with disabilities access to programs and activities. By Federal regulations, each agency is to provide material to disabled persons in an accessible format if the material would ordinarily be made available to other individuals in printed or audio-visual forms, see, e.g., 28 C.F.R. § 39.160 (DOJ regulation implementing section 504 as it applies to federally conducted programs),²

¹ The Interagency Coordinating Council was established by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, § 120(a); 29 U.S.C. § 794c) to "promote efficiency . . . and eliminate . . . inconsistencies among the operations . . . of the various departments . . . of the Federal Government responsible for the implementation and enforcement of [title V of the Rehabilitation Act]."

The eight Federal agencies represented on the Council are the Departments of Justice, Labor, Education, Health and Human Services, and the Interior; the Equal Employment Opportunity Commission; the Office of Personnel Management; and the Architectural and Transportation Barriers Compliance Board. The Department of Justice, which chairs the Council, has government-wide coordination authority for section 504 of the Rehabilitation Act pursuant to Executive Order 12,250 (45 Fed. Reg. 72995, 3 C.F.R., 1980 Comp., p. 298).

² See, also, 36 C.F.R. § 1154.160 (Architectural and Transportation Barriers Compliance Board); 43 C.F.R. § 17.560 (Department of the Interior); 29 C.F.R. § 33.11 (Department of Labor); 16 C.F.R. § 6.160 (Federal Trade Commission); 22 C.F.R. § 144.160 (Department of State); 10 C.F.R. § 1041.10 (Department of Energy); and 29 C.F.R. § 1615.160 (Equal Employment Opportunity Commission).

unless the agency can demonstrate that providing the material in an accessible format would constitute a fundamental alteration in the agency's program or would require the agency to undertake undue financial and administrative burdens. 28 C.F.R. § 39.160(d).³ See also Southeastern Community College v. Davis, 442 U.S. 397 (1979). It is the purpose of this policy statement to provide guidance to Federal agencies seeking to apply the requirements of the regulation to specific programs and activities that they administer.

POLICY STATEMENT

Each agency has a responsibility, pursuant to section 504 of the Rehabilitation Act, as amended, to communicate fully and effectively with employees, applicants, program participants, personnel of other Federal entities, and members of the public who have disabilities. Federal regulations implementing section 504 require each agency to take appropriate steps to ensure that this policy is served. See, e.g., 28 C.F.R. §§ 39.160(a)(1) and 39.160(b). Such steps include 1) establishing auxiliary aids procedures to ensure that an individual who has a disability has ready access to the agency's programs and activities; 2) providing on request necessary auxiliary aids at agency expense; and 3) establishing procedures to ensure that individuals who need auxiliary aids are informed of the existence of accessible services and how to obtain them.

Historically, agency personnel have not been apprised of these responsibilities. All staff should be apprised of their responsibilities once a year, at a minimum.

AVAILABLE AUXILIARY AIDS

Available auxiliary aids include computer text readers, brailled materials, audio recordings, magnification devices, large print formats, open and closed captioning, closed caption decoders, audio described films and videos, amplified telephones, TDD's (telecommunication devices for the deaf), and assistive listening systems. Agencies may also assign agency personnel or contract employees to provide assistance as readers for persons with vision impairments, interpreters for persons with hearing

³ See, also, 36 C.F.R. § 1154.160(e) (Architectural and Transportation Barriers Compliance Board); 43 C.F.R. § 17.560(d) (Department of the Interior); 29 C.F.R. § 33.11(e) (Department of Labor); 16 C.F.R. § 6.160(d) (Federal Trade Commission); 22 C.F.R. § 144.160(d) (Department of State); 10 C.F.R. § 1041.160(d) (Department of Energy); and 29 C.F.R. § 1615.160(d) (Equal Employment Opportunity Commission).

impairments, or amanuenses for persons with mobility impairments, or to provide other assistance needed by persons with disabilities.

The regulations implementing section 504 provide that, when an agency is providing materials in an accessible format for a specific individual, it must determine which format is most suited to the needs of that individual. When an agency is preparing accessible format publications for a potentially large distribution, e.g., a pamphlet explaining Social Security program benefits, it should select the format that is likely to be usable by the largest number of people. At this time, these formats are audio tape for persons with vision impairments or other disabilities that prevent the use of conventionally printed material and open-captioned video tape for persons with hearing impairments or other disabilities that prevent the use of uncaptioned videos. Agencies should be aware that preparation of materials in one accessible format, such as audio tape, may not eliminate the need for the agency to also produce the material in a different accessible format, such as braille, in response to a specific request from an individual with a disability; however, it is not necessary to prepare material in all possible accessible formats prior to receiving a request. Material prepared for public distribution should list a contact person for requests of accessible materials. If the telephone number of the contact person is provided, a TDD number should be listed to provide access to persons who have hearing or speech impairments.

PROCEDURES FOR DETERMINING HOW TO PROVIDE MATERIALS IN ACCESSIBLE FORMATS

Because of the variations in agency missions and experiences, it is impossible for the Council to provide detailed guidelines that would be uniformly applicable to determinations made by all agencies. Therefore, it is important for each agency to review its current procedures to identify its printed and filmed materials and ascertain which ones, if any, can be routinely made available in accessible formats and which might be made available only upon request. Some agencies routinely produce material that is regularly requested by the public; other agencies may find that their only requests for accessible material arise in specific cases, such as Freedom of Information Act requests or direct contact with program participants.

To satisfy its responsibility under section 504, each agency should identify each category of material that may be subject to access and determine how the material in that category should be

made accessible to persons with disabilities. Each agency should identify the specific material that should be put into an accessible format at the time that it is issued or produced. In addition, each agency should be prepared to make available any of its material in accessible formats upon request. Agencies should be aware that it is most cost-effective to have accessible versions of documents or videos that will be distributed to a significant number of people prepared at the time that the material is initially produced.

AGENCY EMPLOYEES AND LIBRARY PATRONS

The agency's review should include consideration of materials that may be provided only to an agency employee in the performance of his or her official duties and those that are made available to users of the agency library. Routine procedures should be established to ensure that employees and library users who need auxiliary aids have the services of readers or optical aids that will enable them to have access to printed materials on an equal basis with nondisabled persons. In addition, if taped or filmed material is used by agency employees and library patrons, equipment capable of displaying captioned material should be available.

The Interagency Committee on Employment of Persons with Disabilities issued guidance to Federal agencies on strategies for making documents and video presentations accessible to Federal employees with disabilities. Agency staff should be made aware of this resource.

MATERIALS PROVIDED TO THE PUBLIC

In determining whether specific material (e.g., all regulations or all press releases) should be prepared in an accessible format prior to receiving a specific request, the agency should consider, among other things, the consequences of a delay to the requester. Section 504 requires that individuals with disabilities must be provided an equal opportunity to participate in federally conducted programs and activities. If, for example, the activity in question is the right to comment on a regulation, to apply for a job, or to file a timely tax return, then the agency should undertake to provide the information in an accessible format without delay. If the agency is unable to respond promptly to a request for material in an accessible format, the agency must take steps to ensure that the requester's rights are not prejudiced as the result of agency action. If the requested material is not time sensitive, and few requests are anticipated, it would appear to be permissible for the agency to produce the material in an accessible format only upon request.

If the agency decides that it need not prepare accessible format documents prior to receiving a request, it is necessary for the agency to advise all agency personnel who may receive such requests that persons with disabilities may request materials in accessible formats. Agency personnel should be trained in the procedures to be followed in producing accessible material. The Department of Justice has prepared technical assistance guides for Federal agencies that provide specific information about obtaining audio tapes, brailled or large print documents, and captioned videos. Federal agencies should make their employees aware of these resources.

CHOICE OF FORMAT

In selecting the appropriate accessible format, agency personnel should be aware that the regulations implementing section 504 call upon the agency to give primary consideration to the use of the format preferred by the individual who is making the request. See 28 C.F.R. § 39.160(a)(1). The agency shall honor that choice unless it can demonstrate that another effective means of communication exists⁴ or that the format requested would not be required because it would require a fundamental alteration in the program or would require undue financial and administrative burdens. (See discussion infra.) When the agency is selecting a format for distribution of a document or the presentation of a film to a large number of people rather than responding to an individual request, it is not necessary to prepare the document or video in all possible accessible formats. It is sufficient to produce the material in the format that may be used by the largest number of people. At this time, these formats are audiotaping for printed material and open-captioning for videos. However, when an agency has a large amount of printed material, such as a library, that is likely to be subject to frequent access requests, but is not easily

⁴ In some circumstances, a notepad and written material may be sufficient to permit effective communication with a person who has a hearing impairment or other disability that impedes aural communication. In many circumstances, they will not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (e.g., a meeting) or where the individual is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For people who can not use conventionally printed material, effective communication may be achieved by several means, including the use of readers or audio recordings. However, as with the example of the notepad, where the document is lengthy or complex (e.g., Federal Register publications), audio tape may not be as effective as braille.

converted to tape or braille, the purchase of mechanical readers may be the most effective way to ensure that the library's material is readily accessible.

Agencies should be aware that preparation of a document in one accessible format, such as audio tape, may not eliminate the need for the agency to also produce the material in a different accessible format, such as braille, in response to a specific request. However, it is not necessary to prepare material in all possible accessible formats prior to receiving a request.

COST TO THE AGENCY

Section 504 contemplates that each agency will bear the cost of making its documents available in accessible formats, but it does not require the agency to undertake undue financial and administrative burdens. Southeastern Community College v. Davis, 442 U.S. 397 (1979). In applying Davis, the courts have recognized that section 504 may require an agency to undertake more than minimal expense in order to make its programs accessible. See, e.g., Nelson v. Thornburgh, 567 F. Supp. 369 (E.D. Pa. 1983), aff'd without opinion, 732 F.2d 146 (3d Cir. 1984), cert. denied, 469 U.S. 1188 (1985).

Cost factors may properly influence an agency's decision as to whether it will produce all of its public documents in accessible formats prior to receiving requests. Mass production of material that is seldom requested may constitute an unwise allocation of scarce agency resources, and thus there may on occasion be good and sufficient reason not to provide a public document in one or another of the accessible formats unless and until it has been requested. The most cost efficient way of producing material in accessible formats is at the development stage. Thus, agencies should consider establishing procedures under which all material produced for mass distribution is simultaneously prepared in an appropriate accessible format.

BURDEN OF PROOF

The agency bears the burden of demonstrating that the preparation of material in an accessible format would cause undue financial and administrative burdens. Agency personnel should be made aware that this determination may only be made by the agency head or his or her designee and only after consideration of all of the resources available for use in the program in question. Agency personnel should also be aware that if it is determined that a specific request would constitute an undue burden, the agency must ascertain whether there exists another way to make the information available to the requesting person without causing undue financial and administrative burdens. If so, that accessible format must be used.

NOTICE OF AVAILABLE ACCESSIBLE FORMAT MATERIAL

Each agency is responsible for ensuring that persons with disabilities are informed of their right to request material in accessible formats and that they receive information identifying any material that is routinely provided in an accessible format. The Council recommends that agencies include statements in all Federal Register notices, pamphlets, manuals, and other publications to inform the public that copies of these issuances may be made available in accessible formats upon request. If an agency uses television and radio announcements to communicate with the public, such announcements should include a statement that any advertised publication may be made available in an accessible format. Material prepared for television should also be captioned.

AVAILABLE ASSISTANCE

The Department of Justice has published technical assistance guides that have been distributed to Federal agencies that provide information about accessible format material. In addition, the Department provides technical assistance to agencies upon request. Agencies that want assistance in developing procedures to comply with the requirements of section 504 may contact the:

Coordination and Review
Section
Civil Rights Division
Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118
Telephone: (202) 307-2222 (voice)
(202) 307-2678 (TDD)

The Interagency Committee on Employment of People with Disabilities has also issued guidance for Federal agencies on strategies for making documents and videos accessible for Federal employees who have disabilities. Further information may be obtained from the:

Interagency Committee on
Employment of People with
Disabilities
1801 "L" Street, N.W.
Washington, D.C. 20748
Telephone: (202) 663-4568 (voice)
(202) 663-4053 (TDD)

Paul & Mary
Evans
Fairbairn

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United States Architectural and Transportation Barriers Compliance Board

1331 F Street, NW • Washington, DC 20004-1111 • 202-272-5434 (Voice) • 202-272-5449 (TDD) • 202-272-5447 (FAX)

What Is the Access Board? What Is Its Work?

Since 1973, the United States Access Board has been the only independent Federal agency whose primary mission is accessibility for people with disabilities.

Congress created the United States Architectural and Transportation Barriers Compliance Board--the agency's full name--under the Rehabilitation Act of 1973, as amended.

The Access Board's first major responsibility was to enforce the Architectural Barriers Act (ABA) of 1968, ensuring accessibility in all facilities owned, rented or funded in any part by the Federal government. The Board continues to be the lead agency in enforcing the ABA.

Since passage in 1990 of the landmark Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability, the Access Board has been responsible for two major public roles:

- To develop ADA Accessibility Guidelines (ADAAG), minimum accessibility guidelines for places of public accommodation, commercial facilities, state and local government facilities, and transportation vehicles and facilities, all of which are covered under the ADA
- To offer training and technical assistance to individuals and organizations throughout the country on removing architectural, transportation and communication barriers

In pursuing these responsibilities under the ADA, the Board uses citizens' advisory committees and other communication channels to encourage the public's full participation in the Federal rulemaking process for developing the ADAAG.

In addition, the Board is working toward the goal of developing a single set of minimum accessibility guidelines, using ADAAG as the basis. At present, accessibility guidelines other than ADAAG are used by Federal, state and local government agencies and by industry and the private sector.

How Is the Access Board Organized?

The Access Board has 25 members. The President appoints thirteen members from the general public for four-year terms. The remaining twelve represent the Departments of Commerce, Defense, Education, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, Transportation, and Veterans Affairs; the General Services Administration and the Postal Service.

The Board holds public meetings six times a year, usually in Washington, D.C. In conjunction with the ADAAG Federal rulemaking activities, the Board has held public hearings in cities across the country.

A staff of 36 supports the work of the Access Board. The office is organized into four divisions: technical assistance and training, compliance and enforcement, general counsel, and office of the executive director.

Access Board offices are at 1331 F Street, NW, Suite 1000, in Washington, D.C. They are within three blocks of the Metro Center subway exit at 12th and G Streets, which has an elevator, or the exit at 13th and G Streets, NW, served only by escalator.

The Board is accessible by voice phone at 202-272-5434 or for technical assistance, both voice and TTY (text telephone), at 800-USA-ABLE (800-872-2253); by TTY for people with hearing or speech impairments, 800-993-2822 and 202-272-5449; and by FAX, 202-272-5447. In addition, the Access Board's computerized bulletin board service (BBS) is reachable by modem around the clock at 202-272-5448.

Office hours are Monday through Friday, 9 to 5 p.m., Eastern Time. The 800-USA-ABLE number handles technical assistance calls Monday through Friday from 10 a.m. to 5 p.m., with the exception of Wednesdays when technical assistance hours are from 10 a.m. to 2 p.m. and from 4 to 5 p.m.



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United States Architectural and Transportation Barriers Compliance Board

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What Is the Access Board?

What Is Its Work?

Since 1973, the United States Access Board has been the only independent Federal agency whose primary mission is accessibility for people with disabilities.

Congress created the United States Architectural and Transportation Barriers Compliance Board--the agency's full name--under the Rehabilitation Act of 1973, as amended.

The Access Board's first major responsibility was to enforce the Architectural Barriers Act (ABA) of 1968, ensuring accessibility in all facilities owned, rented or funded in any part by the Federal government. The Board continues to be the lead agency in enforcing the ABA.

Since passage in 1990 of the landmark Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability, the Access Board has been responsible for two major public roles:

- To develop ADA Accessibility Guidelines (ADAAG), minimum accessibility guidelines for places of public accommodation, commercial facilities, state and local government facilities, and transportation vehicles and facilities, all of which are covered under the ADA
- To offer training and technical assistance to individuals and organizations throughout the country on removing architectural, transportation and communication barriers

In pursuing these responsibilities under the ADA, the Board uses citizens' advisory committees and other communication channels to encourage the public's full participation in the Federal rulemaking process for developing the ADAAG.

In addition, the Board is working toward the goal of developing a single set of minimum accessibility guidelines, using ADAAG as the basis. At present, accessibility guidelines other than ADAAG are used by Federal, state and local government agencies and by industry and the private sector.

How Is the Access Board Organized?

The Access Board has 25 members. The President appoints thirteen members from the general public for four-year terms. The remaining twelve represent the Departments of Commerce, Defense, Education, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, Transportation, and Veterans Affairs; the General Services Administration and the Postal Service.

The Board holds public meetings six times a year, usually in Washington, D.C. In conjunction with the ADAAG Federal rulemaking activities, the Board has held public hearings in cities across the country.

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